

MASON'S MINNESOTA STATUTES

1927

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THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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WILLIAM H. MASON,
Editor in Chief.
MARTIN S. CHANDLER,
RICHARD O. MASON,
Assistant Editors.

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the same, if it has not been so asserted. Refusal to cause satisfaction to be entered within ten days after such payment, tender, or demand shall render the party so refusing liable in a civil action, to any person interested, for twenty-five dollars as liquidated damages if the lien was claimed upon real estate; otherwise, ten dollars. Also, in either case, for any further damages which the plaintiff may have suffered therefrom. (5551) [7087]

34-407, 26+227.

8561. Pledgee permitted to buy pledge where sold at public sale—Whenever a pledgee of personal property has a remedy to enforce his lien upon such property by sale thereof in case of default, by virtue of the con-

tract creating such lien, any such pledgee, his legal representatives or assigns, may, fairly and in good faith, purchase such property or any part thereof, at any sale so made; provided, that such sale, if such pledgee shall wish to bid thereat, shall be at public auction and upon like notice as is required in case of execution sales of personal property in this state, and shall be conducted by the sheriff or his deputy of the county, or by a constable of the town in which such pledged property or some part thereof is situated at the time of giving such notice. ('17 c. 305 § 1)

The pledgee's actual interest is purely contingent in this, that it depends for effect on something that may or may not occur; and the term "indebtedness" as used is construed as meaning a direct and not a contingent liability. 162-455, 203+220.

CHAPTER 70

MARRIAGE

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55-464, 57+205.

Marriage of divorced persons within six months valid until dissolved by judicial decree (113-503, 130+10). Epilepsy is not a ground for annulment of marriage (144-95, 174+611; 195+901). 157-250, 195+901; 166-331, 203+14, note under § 8569.

8565. By whom solemnized—Marriages may be solemnized by any justice of the peace in the county in which he is elected, and throughout the state by any judge of a court of record, the superintendent of the department for the deaf and dumb, in the state school for the deaf and blind, or any licensed or ordained minister of the gospel in regular communion with a religious society. (3555) [7091]

8566. Credentials of minister—Ministers of the gospel, before they are authorized to perform the marriage rite, shall file a copy of their credentials of license or ordination with the clerk of the district court of some county in this state, who shall record the same and give a certificate thereof; and the place where such credentials are recorded shall be indorsed upon and recorded with each certificate of marriage granted by a minister. (3556) [7092]

8567. Parties examined—Every person authorized by law to perform the marriage ceremony, before solemnizing any marriage, may examine the parties on oath, which oath he is authorized to administer, as to the legality of such intended marriage, and no such person shall solemnize a marriage unless he is satisfied that there is no legal impediment thereto. (3557) [7093]

8568. License—Before any persons shall be joined in marriage, a license shall be obtained from the clerk of the district court of the county in which the woman resides, or, if not a resident of this state, then from such clerk of the county where the marriage is to take place in this state (3558) [7094]

166-331, 203+14, note under § 8569.

8569. Examination—License—Consent of parents—The clerk shall examine upon oath the party applying for a license, relative to the legality of such contemplated marriage, and, if satisfied that there is no legal impediment thereto, he shall issue such license, with his official seal attached, and make a record thereof. If any person intending to marry shall be under age, and shall not have had a former husband or wife, such license shall not be issued unless the consent of the parents or guardians shall be personally given before

8562. Marriage a civil contract—Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential. (3552) [7088]

23-528.

Essentials to common law marriage stated. (122-407, 142+593).

Breach of marriage promise—damages. 159-258, 198+669.

8563. Persons capable of contracting—Every male person who has attained the full age of 18 years, and every female person who has attained the full age of 16 years, is capable in law of contracting marriage, if otherwise competent. Provided that a female person of the full age of 15 years may with the consent of her parents and her guardian if there be one, receive a license to marry, when, after a careful inquiry into the facts and surrounding circumstances, her application for a license is approved by the judge of the juvenile court of the county in which she resides. (3553) [7089] (Amended '27, c. 166)

166-331, 203+14, note under § 8569.

78-166, 80+877; 80-216, 83+141.

Cited (99-54, 108+812).

8564. Marriages prohibited—No marriage shall be contracted while either of the parties has a husband or wife living; nor within six months after either has been divorced from a former spouse; nor between parties who are nearer of kin than second cousins, whether of the half or whole blood, computed by the rules of the civil law; nor between persons either one of whom is epileptic, imbecile, feeble minded or insane. (R. L. § 3554, amended '11 c. 222 § 1) [7090]

the clerk, or certified under the hand of such parents or guardians, attested by two witnesses, one of whom shall appear before such clerk and make oath that he saw said parents or guardians subscribe, or heard them acknowledge, the same. The clerk shall be entitled to a fee of two dollars for administering the oath, and issuing, recording, and filing all papers required. Any clerk who shall knowingly issue or sign a marriage license in any other manner than in this section provided shall forfeit and pay for the use of the parties aggrieved not to exceed one thousand dollars. (3559) [7095]

Cited (118-170, 136+746).

Age and residence are material, and a knowingly false answer in such examination as to either may be made the basis for a criminal prosecution for perjury. 166-381, 208+14.

8570. Form not essential—In the solemnization of marriage, no particular form shall be required, except that the parties shall declare in the presence of the judge, minister, or magistrate and the attending witnesses that they take each other as husband and wife; and in every case there shall be at least two witnesses present besides the person performing the ceremony. (3560) [7096]

8571. Certificate given—The person solemnizing a marriage shall give to each of the parties a certificate thereof, specifying therein the names and residences of the parties, and of at least two of the witnesses present, and the time and place of the marriage. (3561) [7097]

8572. Record and certificate—Every person solemnizing a marriage shall make a record thereof, and within one month make and file with the clerk of the district court of the county in which the license was issued a certificate, under his hand, containing the facts mentioned in § 8571, which certificate shall be filed and recorded by said clerk in a book kept by him for that purpose; and said clerk shall be entitled to receive twenty-five cents for recording said certificate from the person offering the same for record. (R. L. § 3562, amended '09 c. 386 § 1) [7098]

See following section.

8573. Record and certificate—Receipt—Every person solemnizing a marriage shall make a record thereof, and within one month make and deliver to the clerk of the district court of the county where the marriage took place, or of the county to which said county is attached for judicial purposes, a certificate under his hand containing the particulars mentioned in the preceding section, which certificate shall be filed and recorded by said clerk in a book by him kept for that purpose, and said clerk shall be entitled to receive the sum of twenty-five cents for recording said certificate from the person offering the same for record. And the clerk of said court shall execute a receipt to the person delivering said certificate, which said receipt shall be of even date with the delivery of said certificate, and shall contain substantially all of the facts set forth in said certificate; be signed by said clerk and have affixed thereto the seal of said court. (G. S. 1894 § 4778, amended '05 c. 294 § 1) [7099]

This amended section appears to be superseded by the preceding section.

8574. Penalty for failure—Every person solemnizing a marriage who shall neglect to make and deliver to the clerk a certificate thereof within the time above specified shall forfeit a sum not exceeding one hundred dollars, and every clerk who neglects to record such certificate shall forfeit a like sum. (3563) [7100]

8575. Illegal marriage—False certificate—If any person authorized by law to join persons in marriage shall knowingly solemnize any marriage contrary to the provisions of this chapter, or wilfully make any false certificate of any marriage or pretended marriage, he shall forfeit for every such offence a sum not exceeding five hundred dollars, or may be imprisoned not exceeding one year. (3564) [7101].

8576. By unauthorized persons—Penalty—If any person undertakes to join others in marriage, knowing that he is not lawfully authorized to do so, or knowing of any legal impediment to the proposed marriage, he shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punished by imprisonment not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. (3565) [7102]

8577. Want of authority not to avoid—No marriage solemnized before any person professing to be a judge, justice of the peace, or minister of the gospel shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed officer or person: Provided, the marriage is consummated with the full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. (3566) [7103]

41-50, 54, 42+602.

8578. Marriage among Quakers—All marriages solemnized among the people called Friends or Quakers, in the form heretofore practiced and in use in their meetings, shall be valid and not affected by any of the foregoing provisions; and the clerk of the meeting in which such marriage is solemnized, within one month after any such marriage, shall deliver a certificate of the same to the clerk of the district court of the county where the marriage took place, under penalty of not more than one hundred dollars, and such certificate shall be filed and recorded by the clerk under a like penalty; and, if such marriage does not take place in such meeting, such certificate shall be signed by the parties and at least six witnesses present, and filed and recorded as above provided under a like penalty. (2567) [7104]

8579. Illegitimate children—Illegitimate children shall become legitimized by the subsequent marriage of their parents to each other, and the issue of marriages declared null in law shall nevertheless be legitimate. (3568) [7105]

22-351; 149-79, 182+952.

The marriage of the mother of an illegitimate child to its father under the statute legitimates the child; and a child so legitimated is an heir of other children born to its parents. 160-463, 200+742.

The fact of legitimacy or illegitimacy is provable by family history, reputation and tradition, and by declarations of deceased members of the family. 160-463, 200+742.

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



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William H. Mason
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1940

If an unauthorized sale by pledgee to himself is disaffirmed, contract of pledge remains in force, and pledgee retains right of possession, and cannot be charged with conversion, or embezzlement. *Id.* See Dun. Dig. 7748.

Sheriff is entitled to fees of \$4.50 for posting notices and making sale. *Op. Atty. Gen.*, May 20, 1929.

8561 1/2.

CHAPTER 70

Marriage

8562. Marriage a civil contract.

Marriage may be annulled where the defendant was prohibited by law from entering into it because he had been divorced from a former wife within six months, and induced the consent of plaintiff by a false representation of no divorce within the six-month period. 171M340, 214NW650.

Where the promises of the husband, under an antenuptial contract, to make payments of money to his wife have matured and the money has become due, the causes of action so perfected are not defeated by the wife's subsequent desertion of the husband. 172M91, 214NW791.

Alienation of affections and damages therefor. 177M270, 224NW839.

Essentials of common-law marriage between single man and married woman by cohabitation and consent following death of husband of woman. 180M463, 231NW199.

Contract whereby plaintiff was employed at a stipulated compensation per month as a farm hand was not abrogated by marriage of plaintiff to his employer, but remained a binding obligation upon her, and he could recover for work performed after the marriage. *Archer v. M.*, 183M306, 236NW455. See Dun. Dig. 4258.

Circumstantial evidence necessary to show common-law marriage estate. *Ghehin v. J.*, 186M405, 243NW443. See Dun. Dig. 5796.

General reputation alone that parties are married is not alone sufficient to show common-law marriage. *Ghehin v. J.*, 186M405, 243NW443.

On objection to petition for appointment of administrator, on ground that objector was common-law wife of decedent, burden of proof was upon objector to show that there was in fact a marriage contract. *Welker's Estate*, 190M447, 265NW273. See Dun. Dig. 5793.

Mere cohabitation, not shown to be of matrimonial nature or intent, without more, there being no evidence of public matrimonial behavior or general matrimonial repute, held insufficient to establish common-law marriage. *Id.*

Where employee entered into an agreement to marry on a certain date and was killed several days before date set for marriage and after banns of marriage had been published by church, and 8 1/2 months after death girl bore a child of the employee, there was no marriage and child was not entitled to compensation under workmen's compensation act. *Guptil v. E.*, 197M211, 266NW748. See Dun. Dig. 5784.

On evidence that mother-in-law actively and maliciously interfered to prevent reconciliation between plaintiff and her husband, defendant's son, verdict for damages for alienation of the son's affections sustained was proper. *Ruble v. Ruble*, 203M399, 281NW529. See Dun. Dig. 4294.

Validity of marriage celebrated in foreign state in violation of statute of domicile. 16MinnLawRev173.

Common-law marriage in Minnesota. 22MinnLawRev 177.

8563. Persons capable of contracting.

Where a boy 19 years of age and a girl 14 years of age, residents of Wisconsin, went to Minnesota and were married and returned to Wisconsin, Minnesota law governed and marriage was only voidable and not void, and the boy obtained his majority under Iowa statute by marriage. *Boehm v. R.*, 224Iowa226, 276NW105.

A male person over 18 but under 21 years of age, and a female over 16 but under 18 years of age, cannot procure a marriage license without the consent of parents or guardians. *Op. Atty. Gen.*, Feb. 13, 1930.

Neither Laws 1937, c. 79, nor Laws 1937, c. 435, affect §8569, or any other provisions of marriage law of state, and consent to marriage is required from guardian or parent where female is of full age of 15 years and under 18. *Op. Atty. Gen.* (300a), May 13, 1937.

Boy seventeen years of age can marry with consent of parents and an order of Juvenile Court. *Op. Atty. Gen.* (300a), Nov. 27, 1937.

Marriage is a civil contract and marriage of minors over age prescribed by this section but under age of 21, without consent of parents, is not void, but voidable only by action of party under disability. *Op. Atty. Gen.* (300a), Jan. 30, 1939.

COMMON LAW DECISIONS RELATING TO LIENS IN GENERAL

An equitable lien exists when there is a contract, express or implied, sufficiently indicating an intention to make some particular property security for a debt or other obligation, or it may arise wholly for consideration of right and justice. *Marquette Nat. Bank v. M.*, 287NW233. See Dun. Dig. 5577b.

8564. Marriages prohibited.—No marriage shall be contracted while either of the parties has a husband or wife living; nor within six months after either has been divorced from a former spouse; nor between parties who are nearer of kin than second cousins, whether of the half or whole blood, computed by the rules of the civil law; nor between persons either one of whom is epileptic, imbecile, feeble-minded or insane; nor between persons one or both of whom are under 15 years of age. (As amended Apr. 24, 1937, c. 407, §1.)

Marriage to woman who had been divorced less than a year, and who was prohibited from remarrying by the laws of Wisconsin, held invalid under this section. *Cummings v. U. S.*, (USDC-Minn), 34F(2d)284.

Marriage may be annulled where it took place within six months after divorce of defendant, through false representation. 171M340, 214NW650.

Evidence held not to show common-law marriage. 175M547, 221NW911.

State v. Yoder, 113M503, 130NW10, L. R. A. 1916C, 686, followed to the effect that a marriage within the time during which the parties may not remarry, may be voidable but is not void under our laws. *Ommang's Estate*, 183M92, 236NW529. See Dun. Dig. 5788(68).

Marriage in Minnesota within one year after divorce in Wisconsin was valid, though it would be void under Wisconsin law. *Ommang's Estate*, 183M92, 236NW529. See Dun. Dig. 1557, 5788(68).

This statute prohibits the remarriage within six months of persons who have been divorced from each other. *Op. Atty. Gen.*, Sept. 3, 1931.

Marriage is forbidden between a woman and her mother's first cousin. *Op. Atty. Gen.* (300j), Feb. 26, 1935.

Marriage between first cousins solemnized outside of the state would probably be valid in Minnesota. *Op. Atty. Gen.* (133b-36), Sept. 7, 1935.

8565. By whom solemnized.

Probate judge performing marriage ceremonies is not required to turn over fee to county. *Op. Atty. Gen.*, June 22, 1933.

8568. License.

No marriage can be solemnized without a license being first issued therefor, notwithstanding pre-existing common-law marriage. *Op. Atty. Gen.*, Feb. 17, 1933.

Clerk of court may issue a second marriage license when any female decides to marry a different man, though first man refuses to surrender the first license. *Op. Atty. Gen.*, Nov. 27, 1933.

Marriage license may be issued to male resident of county to marry nonresident providing marriage is performed in county where license is procured. *Op. Atty. Gen.* (300m), April 6, 1939.

8569. Marriageable age of females.—Application for a marriage license shall be made at least five days before a license shall be issued. The clerk shall examine upon oath the party applying for license relative to the legality of such contemplated marriage, and if, at the expiration of said five-day period, satisfied that there is no legal impediment thereto, he shall issue such license, with his official seal attached, and make a record thereof, provided that in case of emergency, or extraordinary circumstances, the judge of the probate court or any judge of the district court of the county in which the application is made may authorize the license to be issued at any time before the expiration of said five days. If any person intending to marry shall be under the age of twenty-one if a male and under the age of eighteen if a fe-

male, and shall not have had a former husband or wife, such license shall not be issued unless the consent of the parents or guardians shall be personally given before the clerk, or certified under the hand of such parents or guardians, attested by two witnesses, and duly verified by an officer duly authorized to take oaths and duly attested by a seal, where such officer has a seal. The clerk shall be entitled to a fee of two dollars for administering the oath, and issuing, recording, and filing all papers required. Any clerk who shall knowingly issue or sign a marriage license in any other manner than in this section provided shall forfeit and pay for the use of the parties aggrieved not to exceed one thousand dollars. (R. L. '05, §3559; G. S. '13, §7095; Apr. 25, 1931, c. 401, §1; Apr. 14, 1939, c. 243.)

Marriage may be annulled where it took place within six months after divorce of defendant, through false representation. 171M340, 214NW650.

Where either party intending to marry is under legal age as defined in Mason's Stat., §8992-185, clerk of court is unauthorized to issue a license for marriage of such persons under Mason's Stat., §8569, without consent of parents or guardian as case may be. *Lundstrom v. M.*, 285NW83. See *Dun. Dig.* 5788.

A male person over 18 but under 21 years of age and a female over 16 but under 18 years of age cannot procure a marriage license without the consent of parents or guardians. *Op. Atty. Gen.*, Feb. 13, 1930.

In computing the five-day period, the day on which the application is made is to be excluded and the day the license is issued is to be included. *Op. Atty. Gen.*, Apr. 29, 1931.

Fractions of days may not be considered in determining five days after which a marriage license may be issued. *Op. Atty. Gen.*, May 9, 1931.

Consent of parents may be given any time during the five-day period. *Op. Atty. Gen.*, June 2, 1931.

A party applying for a license must appear personally before the clerk. *Op. Atty. Gen.*, June 2, 1931.

After the five-day period has expired, it is proper to mail the license to the applicant. *Op. Atty. Gen.*, June 19, 1931.

The mother of two dependent children born of a bigamous marriage may receive a county allowance to enable her to care for these children in her home. *Op. Atty. Gen.*, Sept. 26, 1931.

Marriage is forbidden between a woman and her mother's first cousin. *Op. Atty. Gen.* (300j), Feb. 26, 1935.

A court commissioner has power to waive five-day waiting period for marriage license, and express desire of judge of district court that court commissioners do not exercise such power is of no force and effect. *Op. Atty. Gen.* (128b), June 21, 1935.

Neither Laws 1937, c. 79, nor Laws 1937, c. 435, affect §8569, or any other provisions of marriage law of state, and consent to marriage is required from guardian or parent where female is of full age of 15 years and under 18. *Op. Atty. Gen.* (300a), May 13, 1937.

Boy seventeen years of age can marry with consent of parents and an order of Juvenile Court. *Op. Atty. Gen.* (300a), Nov. 27, 1937.

Application for license must be made in person. *Op. Atty. Gen.* (300m), Feb. 4, 1938.

Consent to marriage by parent or guardian was not affected by Laws 1937, c. 435, §24, amending §8992-185. *Op. Atty. Gen.* (493c), May 3, 1938.

Clerk of court should not issue marriage licenses, without consent of parents or guardian of either party who is under 21 years of age. *Op. Atty. Gen.* (300a), Jan. 30, 1939.

8579. Illegitimate children.

This statute does not refer to the children of one marrying while still having a spouse by a prior voidable marriage. 175M547, 221NW911.

The presumption of the legitimacy of a child conceived during wedlock, while strong, is not conclusive. *State v. Soyka*, 181M533, 233NW300. See *Dun. Dig.* 3432.

Marriage of parents legitimized child and purged begetting of all meretricious aspect, as affecting necessity of consent to adoption. *Anderson*, 189M85, 248NW657. See *Dun. Dig.* 844(19).

In bastardy proceedings wherein there was no exception or objection to charge, court did not err in submitting case to jury in absence of proof that child was born alive or was still living, and no proof that defendant was not husband of complaining witness, since it is not conceivable that defendant would not attempt to decide state by setting forth his rights under §8579, §514(1). *State v. Van Guilder*, 199M214, 271NW473. See *Dun. Dig.* 840.

Issue of bigamous marriage is legitimate. *Op. Atty. Gen.*, July 25, 1933.

Where following birth of illegitimate father signed affidavit of admission of paternity and thereafter married mother and two years later a divorce was obtained, child was legitimate and father could be prosecuted for desertion. *Op. Atty. Gen.* (494b-27), Sept. 17, 1935.

CHAPTER 71

Divorce

See §§208-1 to 208-9.

8580. What marriages void.—All marriages which are prohibited by law on account of consanguinity, or on account of either or both parties being under the age of 15 years, or on account of either party having a former husband or wife then living, if solemnized within this state, shall be absolutely void, without any decree of divorce or other legal proceedings; Provided, that if any person whose husband or wife has been absent for five successive years, without being known to such person to be living during that time, marries during the lifetime of such absent husband or wife, the marriage shall be void only from the time that its nullity is duly adjudged. (As amended Apr. 24, 1937, c. 407, §2.)

One who married during the existence of a voidable marriage was guilty of bigamy. 175M498, 221NW867.

Evidence held not to show common-law marriage. 175M547, 221NW911.

A widow of a member of fire department relief association, recipient of a pension under its constitution and by-laws, terminated her right to such pension by a marriage and is not entitled to reinstatement as a pensioner upon such marriage being annulled by a judgment of a court of competent jurisdiction. *Northrup v. S.*, 193M623, 259NW185. See *Dun. Dig.* 6605a.

Marriage between first cousins solemnized outside of the state would probably be valid in Minnesota. *Op. Atty. Gen.* (133b-46), Sept. 7, 1935.

8581. What voidable.

175M498, 221NW867; note under §8580.

Marriage may be annulled where it took place within six months after divorce of defendant, through false representation. 171M340, 214NW650.

Denial of intercourse is not ground for annulment of marriage unless at the time of the marriage the offending spouse entertained an intention not to fulfill her marital obligations. *Osbon v. O.*, 185M300, 240NW894. See *Dun. Dig.* 5797.

A widow of a member of fire department relief association, recipient of a pension under its constitution and by-laws, terminated her right to such pension by a marriage and is not entitled to reinstatement as a pensioner upon such marriage being annulled by a judgment of a court of competent jurisdiction. *Northrup v. S.*, 193M623, 259NW185. See *Dun. Dig.* 6605a.

Settlement of married woman follows that of husband, and annulment of marriage does not void pauper settlement. *Op. Atty. Gen.* (339o-2), Aug. 4, 1938.

8582. Action to annul.

Jurisdiction to annul a marriage—Conflict of laws. 16 *MinnLawRev*398.

Allowance of alimony on annulment of marriage. 23 *MinnLawRev*387.

8583. When not annulled.

Application of clean hands doctrine to annulment of void marriages. 16 *MinnLawRev*215.

8585. Grounds for divorce.—A divorce from the bonds of matrimony may be adjudged by the district court for any of the following causes:

1. Adultery.
2. Impotency.
3. Cruel and inhuman treatment.
4. Sentence to imprisonment in any state or United States prison or any state or United States reformatory subsequent to the marriage; and in such a case a pardon shall not restore the conjugal rights.