

# MASON'S MINNESOTA STATUTES

1927

---

PUBLISHED UNDER THE TERMS OF THE CONTRACT MADE BY THE  
STATUTE COMPILATION COMMISSION FOR THE PUBLICATION OF  
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THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED  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.

COMPILED AND EDITED BY THE EDITORIAL STAFF OF THE  
CITER-DIGEST COMPANY

WILLIAM H. MASON,  
Editor in Chief.

MARTIN S. CHANDLER,  
RICHARD O. MASON,  
Assistant Editors.

---

Citer-Digest Company  
St. Paul  
1927

CHAPTER 71

DIVORCE

|  |      |
|--|------|
| What marriages void .....  | 8580 |
| What voidable .....  | 8581 |
| Action to annul .....  | 8582 |
| When not annulled .....  | 8583 |
| Not at suit of party capable .....   | 8584 |
| Grounds for divorce .....  | 8585 |
| Residence of complainant .....   | 8586 |
| Denial, though adultery proved .....                                       | 8587 |
| Action, how and where brought—Venue .....                                  | 8588 |
| Requisites of complaint .....  | 8589 |
| Service—Publication .....  | 8590 |
| Time for answering .....   | 8591 |
| Failure to answer—Reference .....  | 8592 |
| Alimony pending suit—Costs .....   | 8593 |
| Protection of wife .....   | 8594 |
| Custody of children, etc. ....   | 8595 |
| Same—On judgment .....   | 8596 |
| Order may be revised .....   | 8597 |
| Possession of wife's real estate—What may be de-<br>creed to husband ..... | 8598 |
| Same—Pending proceedings .....   | 8599 |
| Order as to wife's property .....  | 8600 |
| Trustee of alimony .....   | 8601 |
| Property of husband—Permanent alimony .....                                | 8602 |
| Order for alimony, etc., revised .....                                     | 8603 |
| Security—Sequestration—Contempt .....                                      | 8604 |
| Remarriage—Revocation .....  | 8605 |
| Cohabiting after divorce .....   | 8606 |
| Effect of divorce—Name of wife .....                                       | 8607 |
| Limited Divorces, §§ 8608-8615.  |      |
| Separation .....   | 8608 |
| For what causes .....  | 8609 |
| Complaint .....  | 8610 |
| Defences .....   | 8611 |
| Alimony, etc. ....   | 8612 |
| As to alimony and wife's property .....                                    | 8613 |
| When separation not granted .....  | 8614 |
| Revocation .....   | 8615 |

**8580. What marriages void**—All marriages which are prohibited by law on account of consanguinity, 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 life-time of such absent husband or wife, the marriage shall be void only from the time that its nullity is duly adjudged. (3569) [7106]

41-201, 42+935; 55-464, 57-205; 144-95, 174-611.  
 Legality of marriage of divorced persons within six months of date of divorce as basis for bigamy (113-503, 130+10).

**8581. What voidable**—When either party to a marriage is incapable of assenting thereto for want of age or understanding, or when the consent of either has been obtained by force or fraud, and there is no subsequent voluntary cohabitation of the parties, the marriage may be annulled at the suit of the injured party, and shall be void from the time its nullity is adjudged. (3570) [7107]

44-124, 46+323; 78-166, 80+877; 144-95, 174-611.  
 Action to annul marriage procured by fraud and duress not action for divorce (102-405, 113+1013).

Concealment or deception by one of the parties as to defects of character, morality, chastity, habits, and temper are not grounds for annulment. 163-501, 204+329.  
 Failure, under the circumstances stated in the opinion, to disclose past insanity is not ground for annulment of the marriage contract. 163-501, 204+329.

Defendant for many years lived as the wife of a man whose lawful wife was still living. After the death of plaintiff's wife, defendant, by falsely representing that she had secured a divorce from the man with whom she had been living, induced him to marry her. It is held,

that the facts found justified an annulment of the marriage on the ground of fraud. 212+808.

**8582. Action to annul**—When the validity of a marriage is disputed for any of the causes mentioned in §§ 8580, 8581, either party may begin an action in the district court of the county where either resides, to annul the same. In such action the complaint shall be filed and proceedings had thereon as in actions for divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void. (3571) [7108]  
 41-201, 42+935; 95-464, 104+300.

**8583. When not annulled**—No marriage shall be adjudged a nullity on the ground that one of the parties was under the age of legal consent if it appears that the parties had voluntarily cohabited together as husband and wife after having attained such age; nor shall the marriage of any insane person be adjudged void after his restoration to reason, if it appears that the parties freely cohabited together as husband and wife after such restoration. (3572) [7109]  
 44-124, 46+323; 78-166, 80+877.

**8584. Not at suit of party capable**—No marriage shall be adjudged a nullity at the suit of the party capable of contracting, on the ground that the other party was under the age of legal consent, or was idiotic or insane, if such idiocy or insanity was known to the party capable of contracting at the time of such marriage. (3573) [7110]  
 44-124, 46+323.

**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 prison or state reformatory subsequent to the marriage; and in such a case a pardon shall not restore the conjugal rights.
5. Wilful desertion for one year next preceding the commencement of the action.
6. Habitual drunkenness for one year immediately preceding the commencement of the action.
7. Incurable insanity. But no divorce shall be granted upon this ground unless the insane party shall have been under regular treatment for insanity, and because thereof, confined in an institution for a period of at least ten years immediately preceding the commencement of the action. In granting a divorce upon this ground, notice of the pendency of the action shall be served in such manner as the court may direct, upon the nearest blood relative and guardian of such insane person, and the superintendent of the institution in which he is confined. Such relative or guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues. The status of the parties as to the support and maintenance of the insane person shall not be altered in any way by the granting of the divorce. (R. L. '05, § 3574; amended '09, c. 443, § 1; '27, c. 304)

Adultery of plaintiff is not a bar to an action on any of the other grounds (23-563). A decree for limited divorce is not a bar to an action for absolute divorce (43-31, 44-524. Cited 102-405, 113+1013). Subd. 1 (27-299, 7+144). Subd. 2 (46-467, 49+230). Subd. 3 (36-239, 30+766; 39-258, 39+492; 46-461, 49+198; 56-264, 57+651; 62-212, 64+561; 81-242, 83+988; 85-383, 88+1103; 86-249, 90+390; 88-94, 92+1130; 91-165, 97+671; 92-278, 100+4, 1101; 93-284, 101+179; 101-400, 112+528; 102-235, 113+332; 111-403, 127+391; 126-65, 147+825; 132-340, 156+664; 135-179, 160+494). Subd. 4 (92-278, 100+4, 11-1). Subd. 5 (27-330, 7+267; 39-258, 39+492; 39-394, 40+360; 53-502, 55+630; 64-234, 66+983; 76-292, 79+172, 668; 80-373, 83+342; 114-510, 131+1135). Subd. 6 (43-31, 44+524; 44-132, 46+236; 85-383, 88+1103; 88-94, 92+1130).

The finding that the defendant deserted the plaintiff is sustained by the evidence; and the testimony of defendant did not require a finding that her refusal to live with him was justified by his ill treatment of her. 166-137, 207+200.

The evidence did not require a finding that the plaintiff treated the defendant in a cruel and inhuman manner. 166-137, 207+200.

The evidence is conclusive that the charge of adultery, made by plaintiff against defendant as a ground for divorce, was unfounded to his knowledge, and that plaintiff was guilty of cruel and inhuman treatment of defendant, which entitled her to an absolute divorce, as asked for in her answer and cross-bill. 165-291, 206+450. Action for an absolute divorce upon the grounds of cruel and inhuman treatment. Held: The findings of fact are justified by the evidence. 210+393.

The evidence sustains the findings to the effect that defendant was not guilty of the cruel and inhuman treatment alleged as ground for divorce. 210+878.

Plaintiff by allegation and proof made defendant's disposition and temper an issue, and there was no error in permitting witnesses who had for many years known, and been in personal contact with, defendant to state what his disposition and temper were. 210+878.

The evidence supports the finding that a husband was guilty of cruelty, entitling his wife to a divorce. In that he had frequently and unjustifiably accused her of marital infidelity. 161-293, 201+289.

The trial court's finding in a divorce case that the defendant did not cruelly or inhumanly treat the plaintiff is sustained by the evidence. 163-400, 204+465.

**8586. Residence of complainant**—No divorce shall be granted unless the plaintiff has resided in this state one year immediately preceding the filing of the complaint, except for adultery committed while the plaintiff was a resident of this state. (3575) [7112]

73-474, 76+268; 75-433, 78+108; 81-287, 83+1088; 95-464, 104+300.

**8587. Denial, though adultery proved**—In any action brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

1. When it appears that the offence was committed by the procurement or with the connivance of the plaintiff.

2. When there has been an express forgiveness of the adultery charged, or a voluntary cohabitation of the parties, with knowledge thereof.

3. When the action has not been brought within three years after the discovery of the offence charged.

4. When it is proved that the plaintiff has also been guilty of adultery under such circumstances as would have entitled the defendant, if innocent, to a divorce. (3576) [7113]

**8588. Action, how and where brought—Venue**—An action for divorce may be brought by a wife in her own name, and all actions for divorce shall be commenced by summons and complaint in the county where the plaintiff resides, as hereinafter provided, subject to the power of the court to change the place of trial by consent of parties, or when it shall appear that an impartial trial cannot be had in the county where the action is pending, or that the convenience of witnesses and ends of justice would be promoted by the change. (3577) [7114]

18-90, 72; 73-474, 76+268; 93-284, 101+179. Rule in 80-373, 83+342, changed. Ch. 77 does not apply (110-501, 126+133); 140-385, 168+135. Subd. 4 (92-278, 100+4, 1101; 135-259, 160+687). Subd. 5 (27-330, 7+267;

39-258, 39+492; 39-394, 40+360; 53-502, 55+630; 64-234, 66+983; 76-292, 79+172, 668; 80-373, 83+342; 114-510, 131+1135; 189+447; 132-321, 156+348). Subd. 6 (43-31, 44+524; 44-132, 46+236; 85-383, 88+1103; 88-94, 92+1130).

Either party to a divorce proceeding, who asks for an absolute divorce, may withdraw the demand any time before the decree is granted. After such withdrawal, the court has no authority to grant a divorce to such party. 164-102, 204+915.

Abatement on death of party. 166-468, 207+180.

**8589. Requisites of complaint**—The complaint shall state the names and ages of the parties, the name of the court in which the action is brought, and the facts constituting the cause or grounds of action, in ordinary and concise language, without repetition. (3578) [7115]

Residence in state for statutory period must be alleged (75-433, 78+108; 81-287, 83+1088), but it is unnecessary to allege that plaintiff resides in the county where the action is brought (18-90, 72). Not necessary to anticipate defenses of condonation, procurement or connivance (18-90, 72. See 46-461, 49+198). Mode of charging adultery (39-370, 40+167). Mode of charging cruelty (39-258, 39+492; 81-242, 83+988). Mode of charging desertion (76-292, 79+172, 668). Allegations of fitness for custody of children (32-499, 18+832, 21+736). Facts justifying a limited divorce may be joined in a complaint with those justifying an absolute divorce and relief may be sought in the alternative (36-233, 30+766; 53-181, 54+1059). Unnecessary to anticipate claim for alimony or make any allegations as to property of plaintiff (73-474, 76+268). Divorce held properly granted on supplemental answer without proof first being made of offence charged in original answer (96-329, 104+976); 130-472, 153+864.

**8590. Service—Publication**—Copies of the summons and complaint shall be served on the defendant personally, and, when such service is made out of this state and within the United States, it may be proved by the affidavit of the person making the same, with the certificate of the clerk of the court of the county to the identity of the officer taking the affidavit, and when made without the United States it may be proved by the affidavit of the person making the same, taken before and certified by any United States minister, charge d'affaires, commissioner, consul or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officer authorized to perform their duties; or before an officer authorized to administer an oath with the certificate of an officer of a court of record of the country wherein such affidavit is taken as to the identity and authority of the officer taking the same, but, if personal service cannot well be made, the court may order service of the summons by publication, which publication shall be made as in other actions. (R. L. § 3579, amended '09 c. 434; '13 c. 57 § 1) [7116]

58-279, 287, 59+1017; 94-301, 102+861. No substantial change as to service by publication (99-307, 109+243). Sufficiency of judgment roll as showing that personal service could not well be made (107-498, 120+902). Where summons is served personally out of state, return of sheriff and affidavit required by Ch. 77, not pre-requisites (117-366, 135+998); 190+989. Cited: 161-246, 201+323.

**8591. Time for answering**—The defendant shall have thirty days in which to answer the complaint. In case of service by publication, said thirty days shall not begin to run until the expiration of the period allowed for publication, and, in case of personal service out of the state, the court shall not permit the action to be heard and determined, as upon default, until the lapse of such reasonable time as will allow the defendant to appear and answer, which time shall be fixed, by order, after proof of such service is made and filed in the action. (3580) [7117]

9-72, 61; 94-301, 102+861.

**8592. Failure to answer—Reference**—If the defendant does not appear after service duly made and proved, the court may hear and determine the action at a

general or special term, or in vacation: Provided, that the court or judge, upon application, may refer said action to a referee to take and report the evidence therein. When issue is joined, like proceedings shall be had as in civil actions. (3581) [7118]

Reference (18-90, 72). Necessity of proof and findings (6-458, 315; 68-1, 70+776).

**8593. Alimony pending suit—Costs—**In every action brought either for a divorce or separation, the court, in its discretion, may require the husband to pay any sum necessary to enable the wife to carry on or defend the action, or for her support during its pendency; and it may adjudge costs against either party, and award execution therefor, or it may direct such costs to be paid out of any property sequestered or in the power of the court. (3582) [7119]

Allowance largely a matter of discretion. Allowable though plaintiff has some means of her own (69-461, 72+708). Not allowable after judgment for defendant (34-441, 26+450. See 91-165, 97+671). Held allowable though part of the attorney's fees were for a prior trial. Order allowing appealable (84-403, 87+1014). Effect of dismissal on commitment for contempt for not paying (40-4, 41+1076). Cited (73-474, 76+268); 136-190, 161+525; 151-458, 185+509, 187+227; 145-499, 177+491. 210+393; 210+878.

A conveyance of land in lieu of motion for temporary alimony and attorneys' fees was considered by the court, and properly so. 160-224, 199+908.

Where the husband brings a suit for annulment, and the wife defends, asserting the validity of the marriage, she may claim alimony, pendente lite, and allowance for expenses of the suit and for counsel fees. 160-477, 200+465.

Order in a divorce action denying an allowance to the wife for suit money, attorney's fees, and temporary alimony is appealable as one denying a provisional remedy. 166-283, 207+616.

After the entry of judgment annulling the marriage in the court below and the subsequent death of the husband, this court on appeal from the judgment, is without authority to award the wife alimony or attorney's fees. 212+808.

**8594. Protection of wife—**When an action is commenced, or about to be commenced, to annul a marriage, or for a divorce or separation, the court may at any time, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the action. (3583) [7120]

**8595. Custody of children, etc.—**The court, on the application of either party, may make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance, during the pendency of such action, and such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper. (3584) [7121]

73-474, 479, 76+268; 85-401, 89+3; 135-307, 160+778; 136-190, 161+525.

A state has the right to determine the status of persons domiciled within its territory. 163-435, 204+324.

An order concerning the custody of minor children, pendente lite, is not appealable. 166-283, 207+616.

**8596. Same—On judgment—**Upon adjudging the nullity of a marriage, or a divorce or separation, the court may make such further order as it deems just and proper concerning the care, custody, and maintenance of the minor children of the parties, and may determine with which of the parents they, or any of them, shall remain, having due regard to the age and sex of such children. (3585) [7122]

73-474, 479, 76+268; 85-401, 89+3; 97-56, 105+483; 97-76, 106+100; 136-190, 161+525. 166-495, 206+954.

**8597. Order may be revised—**The court may afterward, from time to time, on the petition of either parent, revise and alter such order concerning the care, custody, and maintenance of the children, or any of them, and make such new order concerning them, as

the circumstances of the parents and the benefit of the children shall require. (3586) [7123]

73-474, 479, 76+268; 85-401, 89+3; 135-473, 159+1068; 151-458, 185+509, 187+227.

**8598. Possession of wife's real estate—**What may be decreed to husband—Whenever a divorce is granted from the bonds of matrimony for any cause, except adultery committed by the wife, or from bed and board, or the husband is sentenced to imprisonment for life, or the marriage is adjudged null, the wife shall be entitled to the immediate possession of all her real estate. But in case of a divorce obtained by a husband any real or personal property to which she procures title through her husband, not exceeding one-half thereof, may be decreed to be and belong to the husband; the court having regard to the ability, character and situation of the parties, and other circumstances of the case. (R. L. § 3587, amended '13 c. 189 § 1) [7124]

148-381, 182+433; 149-285, 183+354.

167-489, 209+636.

Where the property received through the husband has been converted into other property, a part of such other property may be decreed to him. 167-80, 208+643.

**8599. Same—Pending proceedings—**The provisions of this act shall apply to all proceedings that are now pending as well as those hereafter commenced. ('13 c. 189 § 2) [7125]

**8600. Order as to wife's property—**Upon every such dissolution of marriage as is specified in § 8598, the court may make a further order for restoring to the wife the whole or such part as it deems just and reasonable of the personal estate that has come to the husband by reason of the marriage, or for awarding to her the value thereof, and also the value of any real estate of the wife disposed of by the husband and wife during the coverture, to be paid by her husband in money; and such court may require the husband to disclose on oath what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof remains in his hands. (3588) [7126]

Cited (113-503, 130+10).

**8601. Trustee of alimony—**The court may appoint trustees, whenever it is deemed expedient, to receive any money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct, or to pay over to the wife the principal sum in such proportions and at such times as the court shall order, regard being had in all such cases to the situation and circumstances of such wife, and the children if there are any, provided for in the order; and such trustees shall give such bond, as the court shall require, for the faithful performance of their trust. (3589) [7127]

Cited (103-241, 114+762).

**8602. Property of husband—Permanent alimony—**Upon a divorce for any cause except that of adultery committed by the wife, if the estate and property restored or awarded to her is insufficient for the suitable support of herself and such children of the marriage as shall be committed to her care and custody, or if there is no such estate and property, the court may further order and decree to her such part of the personal and real estate of the husband, not exceeding in value one-third thereof, as it deems just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other

circumstances of the case. The court may also, in the cases provided for in this section, decree to the wife such alimony out of the estate, earnings, and income of the husband as it may deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and other circumstances of the case, and may by its decree make the same a specific lien upon any specified parcels of his real estate, or authorize its enforcement by execution against his property, real and personal; but the aggregate award and allowance made to the wife from the estate of the husband under this section shall not in any case exceed in present value one-third of the personal estate, earnings, and income of the husband, and one-third in value of his real estate. (3590) [7128]

R. L. § 3591 was repealed by 1909 c. 292, 39-258, 39+492; 59-347, 61+334; 67-444, 70+154 (overruled in part by 1901 c. 144); 69-427, 72+451; 73-474, 76+268; 90-471, 97+122; 93-188, 101+70; 96-329, 104+976; 103-241, 114+762; 115-1, 131+784; 116-10, 132+1129.

Action for divorce and alimony and to have recovery declared specific lien on real property placed in name of third person (103-5, 114+87). Enforcement of judgment (106-357, 119+51). In general, alimony is not awarded as penalty, but as substitute for marital support; right thereto being wholly statutory and subject to revision as provided by R. L. 1905 §§ 3590, 3592 [8602, 8603] (119-484, 138+787). Court has no power to make allowance to be paid by husband for support of minor child lien on personal property (119-139, 137+387); 127-96, 148+1074; 135-397, 161+148; 140-385, 168+135; 196+646; 197+261.

Section 7128, Gen. St. 1913, grants discretionary power to give permanent alimony and the amount thereof. 157-422, 196+646.

Courts are authorized to award permanent alimony to the wife, even though her conduct has been such as to justify granting a divorce to the husband. 157-422, 196+646.

Permanent alimony cannot be determined by any fixed standards. Alimony is not allowed as a penalty but as a substitute for marital support. 157-422, 196+646.

It cannot be held that the trial court abused its discretion, where each of the parties owned property valued at \$30,000, and the husband is a professional man earning \$10,000 per year, and the divorce is granted to the husband, and he is required to pay the wife \$2,500. 157-422, 196+646.

The findings as to the value of defendant's property justify the award of permanent alimony, since it does not exceed the limit set. 158-296, 197+261.

In awarding alimony to a wife, while it is proper to consider the property she owns, regard may also be had as to whose efforts and labors accumulated the property held by either party. 158-296, 197+261.

Alimony is a substitute for marital support. 160-224, 199+908.

An award of permanent alimony of \$24,000 to a wife whose husband's property is of the value of \$125,000 approved. 160-224, 199+908.

In such an action, which was on trial four days \$2,000 is a reasonable amount to be allowed as attorneys' fees. 160-224, 199+908.

Not necessary to make finding as to income of husband. 160-224, 199+908.

The court did not err in modifying a judgment for the payment of alimony by making the installments immediately payable, and sequestering the defendant's personal property and applying its proceeds in payment. 163-331, 203+966.

The amount of alimony allowed is within the limits prescribed by the statute. 210+393.

Under the statute in force when the decree of divorce was entered, the wife could have claimed and might have been awarded alimony, although the divorce was procured by her husband for her desertion of him. 210+385.

In consideration of her release of all claims against him and his estate, he promised to create a trust fund for her support, and, in addition, to pay her a stipulated sum of money monthly, the release thereof was a sufficient consideration for the contract. 210+385.

**8603. Order for alimony, etc., revised**—After an order or decree for alimony, or other allowance for the wife and children, or either of them, or for the appointment of trustees to receive and hold any property for the use of the wife or children, the court, from time to time, on petition of either of the parties, may revise and alter such order or decree respecting the

amount of such alimony or allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting any of the said matters which it might have made in the original action. (3592) [7129]

23-214; 28-33, 8+900; 77-67, 79+648; 88-105, 92+522; 90-466, 97+147; 91-193, 97+669; 97-56, 105+483; 103-241, 114+762; 114-389, 121+379.

Authority to modify judgment for alimony, whether payable in gross or in installments, when substantial change in circumstances (116-10, 132+1129). May make modifications respecting alimony, notwithstanding that judgment was founded on stipulation, entered into pending action, fixing award (116-458, 133+1009). Application to action for limited divorce (116-128, 133+460). Where contract for procurement of divorce and for payment to wife of agreed sum in lieu of alimony, was void as against public policy, wife after judgment of divorce, who has not offered to return sum paid under contract, could not secure an allowance for alimony (97-76, 106+100); 135-397, 161+148; 140-385, 168+135; 142-274, 171+925; 145-27, 176+180.

163-331, 203+966, note under § 8602.  
Under the facts stated in the opinion, there was such a change of conditions that the decree should have been modified. 163-236, 263+786.

A judgment in a divorce action awarding alimony against the husband, to continue during the life of the wife though her husband should predecease her, and charge as a lien upon his property, may be modified in a proper case upon the application of his heirs after his death. 163-236, 293+786.

Under the facts stated in the opinion, the court properly denied defendant's motion for a modification of a portion of a decree of divorce which required him to make weekly payments of alimony to his former wife. 163-394, 204+161.

**8604. Security — Sequestration — Contempt**—In all cases when alimony or other allowance is ordered or decreed to the wife or children, the court may require sufficient security to be given by the husband for the payment thereof, according to the terms of the order or decree; and upon his neglect or refusal to give such security, or upon his failure to pay such alimony or allowance, the court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate, and the rents and profits of such real estate to be applied according to the terms of such order or decree. If the husband has an income from any source sufficient to enable him to pay such alimony or other allowance, and fails and refuses to pay the same, the court may order him to pay such alimony or allowance for the use of the wife or the children, or both. And if any person or party shall disobey such order, he may be punished by the court as for contempt. (3593) [7130]

63-443, 65+728.

163-331, 203+966, note under § 8602.

His earnings being from \$20 to \$30 a week, and it appearing that he is able to support an automobile for pleasure purposes, appellant was properly convicted of contempt for failure to comply with a decree of divorce requiring him to pay \$9 a week for the support of his minor daughter. 166-262, 207+617.

Defendant appealed from an order committing him for contempt for failing to comply with an order requiring him to contribute toward the support of his child. The default being admitted, the burden was on him to show inability to comply with the order. 209+901.

**8605. Remarriage—Revocation**—When a divorce has been granted, and the parties afterward intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all decrees and orders of divorce, alimony, and subsistence which will not affect the rights of third persons. (3594) [7131]

**8606. Cohabiting after divorce**—Persons who shall cohabit together before intermarriage, after having been divorced from the bonds of matrimony, shall be liable to all the penalties provided by law against adultery. (3595) [7132]

**8607. Effect of divorce—Name of wife—**Whenever a decree of divorce from the bonds of matrimony is granted in this state, such decree shall completely dissolve the marriage contract as to both parties. And in all actions for a divorce brought by a woman, if a divorce is granted, the court may change the name of such woman, who shall thereafter be known by such name as the court designates in its decree. (3596) [7133]

Collateral attack on foreign divorce (108-291, 120+540).

A judgment in a divorce suit between the parties, it not appearing that the facts involved here and essential to a recovery were involved there, is not a bar. 160-431, 200+480.

LIMITED DIVORCES

**8608. Separation—**A separation from bed and board forever, or for a limited time, may be adjudged by the district court, on the complaint of a married woman, in the following cases:

1. Between any husband and wife, inhabitants of this state.

2. When the marriage shall have taken place within this state, and the wife shall be an actual resident at the time of filing her complaint.

3. When the marriage shall have taken place out of this state, and the parties have been inhabitants of this state at least one year, and the wife shall be an actual resident at the time of filing her complaint. (3597) [7134]

See generally as to limited divorces (36-239, 30+766; 43-31, 44+524; 53-181, 54+1059; 77-67, 79+648; 81-287, 83+1088; 87-136, 91+432; 91-165, 97+671). Under complaint for absolute divorce for cruel and inhuman treatment, may grant limited divorce (107-43, 119+489). Who is "actual resident" (101-511, 112+883); 189+447.

A motion to amend an amended complaint, asking for an absolute divorce, so as to ask for a limited divorce and support, amounts to a withdrawal of the demand for a divorce, and should be granted as a matter of right. 164-102, 204+915.

**8609. For what causes—**Such separation may be adjudged for the following causes:

1. Cruel and inhuman treatment by the husband.

2. Such conduct on the part of the husband towards his wife as may render it unsafe and improper for her to cohabit with him.

3. The abandonment of the wife by the husband, and his refusal or neglect to provide for her. (3598) [7135]

53-181, 54+1059. Subd. 1 (116-128, 133+460). Subd. 2 (107-43, 119+489). See 190+343.

**8610. Complaint—**The complaint in every such case shall specify particularly the facts and circumstances on which the plaintiff relies, and shall set forth times and places with reasonable certainty. (3599) [7136]

**8611. Defences—**The defendant may prove in his justification the ill conduct of the plaintiff, and, on establishing such defence to the satisfaction of the court, the complaint shall be dismissed. (3600) [7137]

**8612. Alimony, etc.—**Such proceedings shall be commenced and conducted in the same manner as actions for a divorce from the bonds of matrimony, and the court, upon motion, may award such sum for counsel fees and temporary alimony during the pendency of the action as the circumstances and situation of the parties appear to warrant. (3601) [7138]

36-239, 30+766.

In husband's divorce suit, where defendant asked for separate maintenance, court, on finding that she was justified in living apart from plaintiff though not entitled to divorce, should have retained case to determine what support plaintiff should pay her during such time, though trial did not proceed on theory that separate maintenance would be sought. 163-509, 203+769.

**8613. As to alimony and wife's property—**Upon adjudging a separation in any such suit, the court may make such order and decree for the suitable support of the wife and her children by the husband, or out of his property or earnings, as may appear just and proper, and by such decree may give the wife absolute control of her separate property, with power of alienation, and may make such further decree as the nature and circumstances of the case require. (3602) [7139]

Modification of judgment as to alimony and property rights (116-128, 133+460).

A court of equity, though an action for divorce or separation is not pending, and though grounds for such action do not exist, may award the wife support and maintenance, when the husband unjustifiably refuses to live with or support her. 160-431, 200+480.

**8614. When separation not granted—**Although a decree for separation from bed and board be not made, the court may make such decree for the support of the wife and her children, or any of them, by the husband, or out of his property or earnings, as the nature of the case renders suitable and proper. (3603) [7140]

28-33, 8+900; 142-279, 171+933; 136-190, 161+525.

**8615. Revocation—**Upon a joint application of the parties, and satisfactory proof of their reconciliation, the court granting any decree of separation may revoke the same, under such regulations and restrictions as it shall prescribe. (3604) [7141]

CHAPTER 72

MARRIED WOMEN

|   |        |
|---|--------|
| Separate legal existence .....                        | 8616   |
| Property rights .....                                 | 8617   |
| Contracts—Torts—Property rights and liabilities ..... | 8618   |
| Property acquired by wife during separation—          |        |
| Conveyance—Certain conveyances legalized .....        | 8619   |
| Liability of husband and wife .....                   | 8620   |
| Contracts between husband and wife .....              | 8621   |
| Barring interest of spouse .....                      | 8622   |
| Dower and curtesy abolished in certain lands .....    | 8622-1 |
| Same—Actions not maintainable .....                   | 8622-2 |
| Antenuptial contracts .....                           | 8623   |

**8616 Separate legal existence—**Women shall retain the same legal existence and legal personality after marriage as before, and every married woman shall re-

ceive the same protection of all her rights as a woman which her husband does as a man, including the right to appeal to the courts in her own name alone for protection or redress; but this section shall not confer upon the wife a right to vote or hold office, except as is otherwise provided by law. (3605) [7142]

A married woman may sue her husband in her own name in any form of action to enforce any right affecting her property (64-381, 67+20. See 96-294, 104+969). If living apart from her husband she may sue him for support without seeking a divorce (91-165, 97+671). The object of this section is obscure. It does not authorize a wife to convey her realty independently of her husband (48-18, 50+1018); or to maintain an action for criminal conversation against another woman (60-372, 62+433). It does not relieve a husband of liability for his

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.



Edited by  
**William H. Mason**  
*Assisted by*  
**The Publisher's Editorial Staff**

MASON PUBLISHING CO.  
SAINT PAUL, MINNESOTA  
1940

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.

5. Wilful desertion for one year next preceding the commencement of the action.
6. Habitual drunkenness for one year immediately preceding the commencement of the action.
7. Incurable insanity, provided that no divorce shall be granted upon this ground unless the insane party shall have been under regular treatment for insanity, and because thereof, confined in an institution for a period of at least five years immediately preceding the commencement of the action. In granting a divorce upon this ground, notice of the pendency of the action shall be served in such manner as the court may direct, upon the nearest blood relative and guardian of such insane person, and the superintendent of the institution in which he is confined. Such relative or guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues. The status of the parties as to the support and maintenance of the insane person shall not be altered in any way by the granting of the divorce.
8. Continuous separation under decree of limited divorce for more than five years next preceding the commencement of the action.
9. That Laws 1933, Chapter 262 be and the same hereby is repealed. (R. L. '05, §3574; '09, c. 443, §1; '27, c. 304; Apr. 15, 1933, c. 262, §1; Apr. 20, 1933, c. 324; Jan. 9, 1934, Ex. Ses., c. 78; Apr. 25, 1935, c. 295.)

#### ½. In general.

Suit for divorce or separate maintenance is not maintainable after husband's death. *Maruska v. E.*, (USDC-Minn.), 21FSupp841.

A husband sued for a limited divorce, held not estopped by the decision against him in a subsequent suit for absolute divorce from his wife. 178M1, 226NW412.

Divorce jurisdiction is purely statutory, and court has no power in premises except as delegated to it by statute. *Sivertsen v. S.*, 198M207, 269NW413. See Dun. Dig. 2784b.

Amendments covered or attempted to be covered by Laws 1933, c. 262, were not repealed by Laws 1933, c. 324, approved five days later. Op. Atty. Gen., Nov. 18, 1933.

Amendments covered or attempted to be covered by Laws 1933, c. 262, were not repealed by Laws 1933, c. 324 approved five days later. Op. Atty. Gen., Nov. 18, 1933.

Amendments provided for in Laws 1933, c. 262, were not repealed nor superseded by Laws 1933, c. 324. Op. Atty. Gen., Jan. 2, 1934.

#### 3. Cruel and inhuman treatment.

Conduct and associations of a spouse with one of the opposite sex, carried on against the protest of the one wronged and of a character justifying the belief that the object is criminal may constitute cruel and inhuman treatment within the meaning of the divorce statute. 170M235, 212NW193.

Acts of cruel and inhuman treatment which result from a diseased mind are no cause for divorce. 171M258, 213NW906.

Husband granted divorce for cruelty of the wife. 172M250, 215NW181.

Finding of cruel and inhuman treatment sustained. 177M53, 224NW461.

Cruel treatment held not established. *Taylor v. T.*, 177M453, 225NW237.

Evidence held insufficient to show desertion, but to show cruel and inhuman treatment. 179M266, 229NW123.

Finding that wife was guilty of cruel and inhuman treatment, though she used no physical force or violence held sustained by evidence. *Eller v. E.*, 183M133, 233NW823. See Dun. Dig. 2778.

Divorce for cruel and inhuman treatment will be denied where parties were equally to blame. *Thorem v. T.*, 183M153, 246NW674. See Dun. Dig. 2778.

Association with opposite sex may constitute cruel and inhuman treatment. *Tschida v. T.*, 170M235, 212NW193. See Dun. Dig. 2778(92).

Evidence that wife nagged, scolded and upbraided husband and called him names at all times, even when he was convalescing from a major operation, held to warrant divorce for cruel and inhuman treatment. *Gordon v. G.*, 193M97, 259NW529. See Dun. Dig. 2778(87).

Cruel and inhuman treatment may consist in actual or threatened personal violence, or a systematic course of ill treatment consisting of continued scolding and fault-finding, using unkind language, and petty acts of a malicious nature. *Bickle v. B.*, 194M375, 260NW361. See Dun. Dig. 2778.

Evidence held sufficient to sustain divorce to husband on ground of cruel and inhuman treatment. *Monson v. M.*, 195M257, 262NW641. See Dun. Dig. 2778.

Evidence held to sustain finding that there was no cruelty although defendant became intoxicated and quarreled with his wife. *Tompkins v. T.*, 204M323, 283NW485. See Dun. Dig. 2778(87).

A continuous contemptuous treatment of a spouse may constitute cruel and inhuman treatment just as truly as physical violence. *Id.* See Dun. Dig. 2778(87, 88).

Cruelty as a ground for divorce in Minnesota. 16MinnLawRev256.

#### 5. Desertion.

Nonsupport. 172M250, 215NW181.

Complaint failed to establish desertion arising out of wife's qualified refusal to live with plaintiff while depending upon the benevolence of his father. *Taylor v. T.*, 177M453, 225NW237.

Evidence held sufficient to establish willful desertion. *Graml v. G.*, 134M324, 238NW683. See Dun. Dig. 2776.

Complaint held to sufficiently state cause of action for desertion. *Hoogesteger v. W.*, 186M419, 243NW716. See Dun. Dig. 2791.

Evidence held to support finding of desertion. *Hoogesteger v. W.*, 186M419, 243NW716. See Dun. Dig. 2776.

#### 8. Continuous separation under decree.

Chapter 324, Laws 1933, approved five days after approval of c. 262, Laws 1933, did not repeal latter. *Gerdtz v. G.*, 196M599, 265NW811.

Laws 1933, c. 262, adding a ground for absolute divorce, is retrospective as well as prospective. *Id.*

Right to absolute divorce after continuous separation under a decree of limited divorce is to either spouse regardless of ground upon which decree of limited divorce was granted. *Id.*

Separation for a period in excess of five years, only three years of which was under a decree of limited divorce, does not constitute grounds for absolute divorce. *Moravitz v. M.*, 285NW884.

#### 5586. Residence of complainant.

Where both parties in divorce action in another state voluntarily appear and submit to jurisdiction of court, they are bound by judgment as to all matters litigated therein and cannot avoid it in a collateral proceeding in this state by proof that when action was brought and judgment rendered neither of them was a resident in that state, and that both were residents in this state, following *In re Ellis' Estate*, 55M401, 56NW1056, 23LRA287, 43AmStRep514. *Norris v. N.*, 273NW708. See Dun. Dig. 2789.

Since there was no settled case on appeal from order denying motion to dismiss divorce action it must be assumed that there was evidence to sustain lower court's determination that plaintiff was a resident of state for required year. *Meddick v. M.*, 204M113, 282NW676. See Dun. Dig. 2789.

Some problems in jurisdiction to divorce. 13MinnLawRev525.

#### 5587. Denial, though adultery proved.

Condonation of adultery held sufficiently shown. *Howard v. H.*, 171M65, 212NW738.

Knowledge or belief as a prerequisite to condonation. 21MinnLawRev408.

#### 5588. Action—how and where brought—venue.—

An action for divorce or separate maintenance may be brought by a wife in her own name, and all actions for divorce shall be commenced by summons and complaint in the county where the plaintiff resides, as hereinafter provided, subject to the power of the court to change the place of trial by consent of parties, or when it shall appear that an impartial trial cannot be had in the county where the action is pending, or that the convenience of witnesses and ends of justice would be promoted by the change. (R. L. '05, §3577; G. S. '13, §7114; Apr. 20, 1931, c. 226, §1.)

In view of §9311, plaintiff was entitled to have the facts found and the conclusions of law separately stated in writing, and judgment entered accordingly. 172M72, 214NW735.

Whether the place of trial should be changed is largely discretionary with trial court. *State v. District Court*, 186M513, 243NW692. See Dun. Dig. 2788.

Denial of a motion to change place of trial of an action for divorce, brought in proper county, upon ground that convenience of witnesses and ends of justice will be promoted, may be reviewed on mandamus. *State v. District Court*, 186M513, 243NW692. See Dun. Dig. 2788.

In matters of divorce and alimony, district court has no jurisdiction not delegated to it by statute. *Ostrander v. O.*, 190M547, 252NW449. See Dun. Dig. 2784b.

Equitable action for separate maintenance was not abolished by Laws 1933, c. 165, repealing statute authorizing actions by wife for a limited divorce. *Barich v. B.*, 201M34, 275NW421. See Dun. Dig. 2793.

#### 5502. Failure to answer—Reference.

A final judgment in an action for divorce cannot be vacated on ground that defendant failed to answer through mistake or excusable neglect. *Wilhelm v. W.*, 201M462, 276NW804. See Dun. Dig. 2799b, 5025, 5027, 5123a.

Motion to vacate divorce decree and grant leave to answer based upon alleged fraud held properly denied. *Wilhelm v. W.*, 201M462, 276NW804. See Dun, Dig. 5122. Attack on decrees of divorce. 34MichLawRev749.

#### 8598. Alimony pending suit.

Defendant in divorce in contempt of court in failing to obey order for payment of temporary alimony, is not for that reason deprived of the right of defense. 173M165, 216NW940.

Postnuptial agreements properly made between husband and wife after a separation, are not contrary to public policy, but the parties cannot, by a postnuptial agreement, oust the court of jurisdiction to award alimony or to punish for contempt a failure to comply with the judgment, though it followed the agreement. 178M75, 226NW211.

Show cause order served with summons in divorce action, held to give court jurisdiction to mere motion for temporary alimony. 179M106, 228NW351.

Service of an attorney for wife in divorce case amicably withdrawn was not a necessity for which husband was liable. *Melin v. R.*, 189M638, 249NW194. See Dun, Dig. 2804.

Where wife sued for divorce and her prayer was denied but husband was given a divorce on cross-bill, wife was not entitled to receive additional allowance on account of attorney's fees on her appeal which was entirely without merit. *Monson v. M.*, 195M257, 262NW641. See Dun, Dig. 2804.

Final determination of a suit for divorce supersedes any power on part of court to grant further temporary alimony and an order granting temporary alimony terminates then even if order provides that it is to be paid until further order of court. *Bickle v. E.*, 196M392, 265NW276. See Dun, Dig. 2802.

Appellate court and lower court from which an appeal is taken in an action for divorce have concurrent jurisdiction to award temporary alimony pending appeal. *Id.*

Temporary alimony, paid pending appeal, may be applied as pro tanto payment on a permanent alimony award. *Id.* See Dun, Dig. 2803.

#### 8595. Custody of children; etc.

Husband could not attack a judgment granting alimony entered on stipulation because it provided for support of a child living with the parties, but not their own. *Cary v. C.*, 177M194, 225NW11.

Evidence held insufficient to show that mother was unfit person to have custody of infant child. 179M184, 228NW759.

Jurisdiction to award custody of minor child. 18Minn LawRev591.

#### 8596. Custody of children.

Custody of girl of 15 years and a boy of 12 years, held properly awarded to mother. 172M89, 214NW793.

Habeas corpus lies to determine right to possession of child but court will give effect to divorce judgment. 173M177, 216NW937.

Provision for custody of child in judgment is binding until changed but may be changed upon application in action where conditions warrant it. 173M177, 216NW937.

In a judgment decreeing a divorce the court may commit the custody of minor children to mother and may require father to pay specified sum monthly, and may make the same a lien upon specified real estate. 176M393, 223NW609.

Court abused its discretion in giving divided custody of a child six years of age, where it required frequent moving of the child between homes in different states. 176M490, 223NW789.

Where, at time of entry of divorce decree, the question of custody of the child cannot be determined, a determination of such matter should be made as soon as possible. 181M176, 231NW795.

Only court of state in which minor is domiciled can fix or change custody. *State v. Larson*, 190M489, 252NW329. See Dun, Dig. 4433b.

Though unemancipated minor generally has his father's domicile, where mother and father are divorced, minor's domicile follows that of parent to whose custody it has been legally given. *Id.* See Dun, Dig. 2813.

A wife may after divorce acquire a separate domicile. *Id.* See Dun, Dig. 2814.

Where mother is able to and does properly keep, care for, and control child in her own suitable home, its custody should not be divided so as to permit divorced father to transport child to another home in a different town and surroundings for a week's visit each month, where it is not shown that such other home is suitable. *McDermott v. M.*, 192M32, 255NW247. See Dun, Dig. 2800.

Evidence abundantly supported trial court's conclusion that welfare and best interests of children required that they remain in custody of their mother. *Brown v. E.*, 193M211, 258NW150. See Dun, Dig. 2800.

Court properly struck from original judgment provision for support and maintenance of children after reaching majority. *Sivertsen v. S.*, 198M207, 269NW413. See Dun, Dig. 2800.

Plaintiff's financial situation held so changed as to justify substantial modification of original judgment. *Id.* See Dun, Dig. 2805.

A minor child's domicile follows that of his divorced parent to whom his custody was awarded by decree of divorce, and a judgment of a court of this state decreeing adoption of such child by his stepfather does not impair full faith and credit of divorce decree entered in court of another state, permitting father to see child. *Buckman v. H.*, 202M460, 278NW908. See Dun, Dig. 2813.

#### 8597. Order may be revised.

176M393, 223NW609; note under §8596.

Provision for custody of child in judgment is binding until changed but may be changed upon application in action where conditions warrant it. 173M177, 216NW937.

If child was awarded to third party who has never had nor sought possession of him, on controversy between parents, court will make such provision for his custody as it deems for the best interest of the child. 173M177, 216NW937.

Application to amend decree by changing custody of children, held properly denied; and letters by one of the children to his mother were properly excluded. 179M520, 229NW868.

Custody of minor child, held properly changed to aunt, sister of mother who had remarried. 180M182, 230NW479.

Provision for alimony and support of children may be changed and amended though incorporated in the decree by stipulation. 181M18, 231NW413.

Where divorce decree of Iowa awarded custody of minor child to each parent alternately for six months of each year and mother subsequently established her domicile in Minnesota, Minnesota court has jurisdiction to determine minor's custody during mother's six months and is not bound by full faith and credit clause of federal constitution. *State v. Larson*, 190M489, 252NW329. See Dun, Dig. 2800.

Evidence held to show a change of circumstances sufficient to warrant awarding custody of a minor child to the mother in contravention of an earlier divorce decree of the Iowa court. *Id.*

#### 8598. Possession of wife's real estate, etc.

This section does not prevent determination of the rights of husband and wife in real estate so far as such issues are tendered by the pleadings or litigated by consent in the divorce action, and judgment vesting absolute title to certain land in the husband, is not open to collateral attack by the wife. 177M189, 222NW922.

Where a divorce is granted to the wife, on the ground of cruel and inhuman treatment, the court is not authorized to grant husband any alimony or allowance out of the property of the wife. 177M189, 224NW852.

Court properly divided property in the name of plaintiff, but coming from the defendant by giving a half to each. 179M266, 229NW128.

When the husband dies after the judgment of divorce in his favor, and pending the appeal in this court, and property rights are involved, his personal representative will be substituted and the case reviewed, notwithstanding the general rule as to the abatement of divorce actions by the death of either party. *Swanson v. S.*, 182M492, 234NW675. See Dun, Dig. 15.

Following *Nelson v. Nelson*, 149Minn285, 183NW354, in absence of statutory authority courts have no power in divorce proceedings to deal with property rights of parties, and where wife obtains a divorce court may not award to husband property standing in name of wife on the theory of joint enterprise or partnership. *Hutson v. H.*, 204M601, 284NW780. See Dun, Dig. 2799.

#### 8601. Trustee of alimony.

Trust agreement made in contemplation of divorce, held to derive its force from court's approval, and payments thereunder were alimony. *Douglas v. Willcuts*, 296US1, 56SCR59, aff'g 73F(2d)130.

#### 8602. Property of husband—Permanent alimony.

\$5,000 as permanent alimony and \$500 as attorney's fees was not excessive where husband was worth \$15,000 and had monthly income of \$300. 171M65, 212NW738.

Where husband had annual income of \$6,000 and property worth \$7,000 to \$8,000, court properly awarded plaintiff \$2,500, and also permanent alimony in the sum of \$50 per month, and an allowance of \$50 per month for support of two children. 172M89, 214NW793.

Where husband worth \$12,000 was granted divorce for wife's cruelty, court properly fixed alimony at one-third of that amount. 172M250, 215NW181.

Where the only resource for the payment of alimony is the income of a professional man, the statutory limitation refers to the net income. 173M464, 217NW488.

Upon hearing of motion for reduction, the only issue is whether there has been such a change in the status of the parties since the last time, that court should reduce or cancel same. 173M464, 217NW488.

In a judgment decreeing a divorce, the court may commit the custody of minor children to mother and may require father to pay specified sum monthly, and may make the same a lien upon specified real estate. 176M393, 223NW609.

Alimony judgment cannot be taken on execution by wife's pre-existing judgment creditor. 177M178, 225NW104.

Court, held to have properly vacated amended judgment entered on stipulation for undue influence and over-reaching. 179M488, 229NW791.

Allowance supported by evidence, held not reviewable on appeal. 180M180, 230NW638.

Settlement agreement pending divorce, held not obtained from wife by duress, threats or undue influence. McCormick v. H., 186M380, 243NW392. See Dun. Dig. 1813a.

A discharge in bankruptcy does not discharge an assigned matured claim for alimony. Cederberg v. G., 193M421, 258NW574. See Dun. Dig. 743.

A past-due sum or installment of alimony payable to a divorced wife is assignable. *Id.* See Dun. Dig. 569.

A separation agreement between husband and wife which in terms obligated each to join with other in execution of future conveyances or incumbrances of real property belonging to either, was illegal. Simmer v. S., 195M1, 261NW481. See Dun. Dig. 4282.

Where contract between parties, entered into many years after they were divorced, recites a valuable consideration, and facts show a valuable consideration, past-due installments of alimony constitute a legal indebtedness and may be recovered in an independent action. Koch v. K., 196M312, 264NW791. See Dun. Dig. 2807.

Interest may be allowed on a judgment for alimony. Bickle v. B., 196M392, 265NW276. See Dun. Dig. 2803.

Temporary alimony, paid pending appeal may be applied as pro tanto payment on a permanent alimony award. *Id.*

Where plaintiff's right to alimony was litigated in a divorce action brought against her in another state, she cannot thereafter maintain an action therefor in this state. Norris v. N., 200M246, 273NW708. See Dun. Dig. 2807(81).

In suit to set aside divorce judgment, whether defendant's decedent falsely represented to plaintiff that district judge stated that he would only allow \$500 alimony, held for jury. Osbon v. H., 201M347, 276NW270. See Dun. Dig. 5131.

Without determining whether 10-year limitations is applicable, upon a decree of divorce awarding alimony until child should reach 18 years of age and imposing lien on real estate, a motion for an order requiring execution of a certificate of satisfaction of judgment made more than 6 years after child obtained age of 18 was denied on theory that 6-year limitation was not applicable. Akerson v. A., 202M356, 278NW577. See Dun. Dig. 2811.

Agreement as to alimony was wholly superseded and rendered void by stipulation for alimony provisions embodied in decree. Vassar v. V., 204M326, 283NW483. See Dun. Dig. 2803.

Availability of equitable relief in enforcing foreign alimony decrees. 18MinnLawRev589.

Separation agreements and effect of adultery. 19MinnLawRev218.

### 8603. Order for alimony, etc., revised.

Court has power to cancel accrued installments of alimony, but must use its discretion in doing so, there being no "vested rights." Plankers v. P., 178M15, 225NW913.

Alimony allowance, held properly modified on account of husband's changed financial condition, and evidence of wife's misconduct may be considered. 180M33, 230NW117.

Provision for alimony and support of children may be changed by the court though incorporated in the decree by stipulation. 181M18, 231NW413.

Agreement between parties as to amount of alimony did not oust court of power to amend its judgment as to alimony. 181M421, 232NW793. See Dun. Dig. 2805.

Fact that income from a trust estate had not been paid over to defendant by trustees at time of hearing did not prevent court from taking such income into consideration in awarding additional alimony. 181M421, 232NW793. See Dun. Dig. 2805.

Fact that income from trust cannot be reached or attached by creditors while in hands of trustees did not prevent its consideration by court in determining alimony. 181M421, 232NW793. See Dun. Dig. 2803.

Court may modify alimony allowance where there has been a substantial change in the situation of the parties. Hollida v. H., 183M396, 237NW2. See Dun. Dig. 2805.

Obligation imposed upon a divorced husband by a South Dakota decree to pay alimony to the divorced wife will be considered here as remaining one for alimony and not an ordinary debt. Ostrander v. O., 190M547, 252NW449. See Dun. Dig. 2811, 5207.

Showing warranted reduction made in alimony. Erickson v. E., 194M634, 261NW397. See Dun. Dig. 2805.

Denial of a prior application to reduce alimony is not a bar to a subsequent application, if a change of financial ability is shown to have occurred after denial of the first. *Id.*

Fact that applicant for reduction of alimony is in arrears in his payments, so that judgments have been rendered therefor, does not preclude court from acting on application. *Id.*

A motion by defendant to modify decree was properly denied, where it appears that plaintiff, now 80 years of age, is receiving under a contract with defendant \$70 per month, which amount is reasonably necessary for her support, and defendant has sufficient property and income to make such payments. Koch v. K., 196M312, 264NW791. See Dun. Dig. 2805.

Pending motion for reduction of alimony in a divorce action did not bar or abate suit to recover money past due under contract. *Id.* See Dun. Dig. 2807.

After affirmance of divorce decree fixing alimony court could not order continuance of payment of monthly temporary alimony, in absence of showing of any change in circumstances. Bickle v. B., 196M392, 265NW276. See Dun. Dig. 2805.

Court properly struck from original judgment provision for support and maintenance of children after reaching majority. Sivertsen v. S., 198M207, 269NW413. See Dun. Dig. 2800.

Plaintiff's financial situation held so changed as to justify substantial modification of original judgment. *Id.* See Dun. Dig. 2805.

It is within discretion of trial court, upon a proper showing, to relieve a defendant in a divorce action from default in making of payments for alimony and support money, even though there has been a delay in making application therefor, and where defendant paid and plaintiff accepted without complaint \$25 per month instead of \$40 per month, court did not abuse its discretion in cancelling a substantial part of deficiency, particularly upon a showing that defendant's financial ability to pay was materially changed. Kumlin v. K., 200M26, 273NW253. See Dun. Dig. 2805.

While divorce jurisdiction is purely statutory and as such court possesses only powers so delegated, court on change in circumstances may cut off unpaid accumulations of alimony. Wilhelm v. W., 201M462, 276NW804. See Dun. Dig. 2805.

Fact that parties are in pari delicto, does not excuse court from duty with respect to alteration of decree with respect to alimony. *Id.* See Dun. Dig. 2805.

Authority to modify alimony allowances is discretionary, and is to be exercised cautiously, only upon new facts occurring after judgment, or upon facts existing before judgment, of which a party was excusably ignorant at time judgment was rendered. Clarizio v. C., 201M590, 277NW262. See Dun. Dig. 2805.

To justify elimination of all alimony from a divorce decree there must be proof of a substantial change in pecuniary situation of parties. Vassar v. V., 204M326, 283NW483. See Dun. Dig. 2805.

Notwithstanding a stipulation as to alimony incorporated in decree, court has power to modify it as changed conditions may require. *Id.* See Dun. Dig. 2805.

An order modifying alimony and barring every future claim to alimony or support indicates an erroneous conception of statutory power of court over alimony by attempting to bar all future control by any court. *Id.* See Dun. Dig. 2805.

Power of court to modify accrued installments. 20 MinnLawRev314.

### 8604. Security—Sequestration—Contempt.

Contempt is not a "crime" within §934, and, in view of §9302, punishment can only be by imprisonment in county jail and not in a workhouse. 175M57, 220NW414.

Postnuptial agreements properly made between husband and wife after a separation, are not contrary to public policy, but the parties cannot, by a postnuptial agreement, oust the court of jurisdiction to award alimony or to punish for contempt a failure to comply with the judgment though it followed the agreement. 178M75, 226NW211.

Postnuptial agreement to pay wife certain weekly amounts, incorporated in judgment of the court, may be enforced by contempt. 178M75, 226NW701.

The payment of attorney's fees allowed in a contempt proceeding to enforce a provision in a judgment of divorce for the payment of support money may be coerced by imprisonment. 178M75, 226NW701.

The alimony obligations of a nonresident husband personally served out of the state may be enforced out of his property in this state when the custodian thereof is made a party defendant, and the court has entered a preliminary order enjoining him from delivering to the husband any of the money or other personal property in his possession, and restraining the husband from disposing of any of his property in the state; such order and procedure constituting an effective seizure of the property. 181M564, 233NW312. See Dun. Dig. 1653, 2811.

Defendant in divorce cannot, by contempt proceedings, be compelled to pay encumbrances against his homestead, especially where not indispensable for shelter of plaintiff. Newell v. N., 189M501, 250NW49. See Dun. Dig. 2799.

Husband should not be adjudged guilty of contempt in failing to pay money to divorced wife where such failure resulted from refusal of divorced wife to join in mortgage. Feltmann v. F., 189M584, 250NW457. See Dun. Dig. 2811.

A local statute authorizing resort to sequestration and contempt proceedings to compel payment of alimony includes an action brought to compel payment of unpaid installments under a foreign judgment for alimony; local action on that judgment being itself a case where "alimony" is decreed. Ostrander v. O., 190M547, 252NW449. See Dun. Dig. 2811, 5207.

A defendant in a divorce action against whom an award for alimony and for support of minor children has been decreed cannot, when he has voluntarily placed himself in a position where he is unable to conform to court's order, purge himself of contempt for failure to

comply with order by establishing his inability to pay installments provided for in decree. *Ryerson v. R.*, 194 M350, 260NW530. See Dun. Dig. 1703(40).

Neither corpus nor income of spendthrift trust could be reached to satisfy claims for alimony or support money for children. *Erickson v. E.*, 197M71, 266NW161. See Dun. Dig. 2809a.

Evidence held to justify denial of motion that plaintiff be adjudged in contempt for failure to pay alimony. *Zeches v. Z.*, 198M488, 272NW380. See Dun. Dig. 1703.

Upon ex parte application for a declaratory judgment for unpaid alimony and for execution, trial court may, in its discretion, require notice of application to be given to other party to proceedings, even though statutes do not require giving of notice in such cases. *Kumlin v. K.*, 200M26, 273NW253. See Dun. Dig. 2811.

Defendant is not relieved from paying alimony and support money because of plaintiff's action in keeping children with relatives outside of state rendered necessary because of defendant's failure to make payments, distinguishing *Eberhart v. E.*, 153Minn66, 189NW592, *Fjeld v. F.*, 201M512, 277NW203. See Dun. Dig. 2803.

Defendant cannot purge himself of contempt by showing that he assumed additional burdens by remarriage. *Fjeld v. F.*, 201M512, 277NW203. See Dun. Dig. 1703.

Default in payment of alimony being admitted, defendant had burden of showing inability to make payments ordered to be made by him. *Id.* See Dun. Dig. 1703.

Following *State ex rel. Hurd v. Willis*, 61 Minn. 120, 63NW169, supreme court will not review by writ of certiorari an order of the district court adjudging the relator guilty of a civil contempt. *Guleson v. G.*, 286 NW721.

Enforcement of payment of alimony by commitment. 18MinnLawRev45.

LIMITED DIVORCES

8608 to 8615 [Repealed].

Repealed by Laws 1933, c.165, to take effect from its passage but not to apply to actions now pending in district courts. Filed Apr. 10, 1933, without approval.

ANNOTATIONS UNDER REPEALED SECTIONS

8608. Separation.

Equitable action for separate maintenance was not abolished by Laws 1933, c. 165, repealing statute authorizing actions by wife for a limited divorce. *Barich v. B.*, 201M34, 275NW421. See Dun. Dig. 2798.

8609. For what causes.

Evidence held to warrant decree of separation. 171 M213, 213NW919.

Evidence held to sustain finding that plaintiff could not reside with defendant with safety and self-respect, warranting separation. 172M96, 214NW771.

A judgment denying the wife absolute divorce for cruelty is not a bar to her action for separate maintenance and support for children, where she has legal cause for living apart from her husband, but there is an estoppel where maintenance action is grounded upon the same specific acts of cruelty. 174M159, 218NW559.

8613. As to alimony and wife's property.

Finding as to value of homestead held sustained by the evidence. 171M213, 213NW919.

On decree of separation from husband earning \$115 monthly, court properly awarded wife use of homestead during five years separation and \$25 per month alimony, the wife having an income of \$57.50. 171M213, 213NW 919.

Where the evidence of misconduct of husband does not justify either an absolute or a limited divorce, the court is not authorized to terminate the husband's inchoate interest in the wife's real estate even though the misconduct may legally justify her in living apart from him. 174M159, 218NW559.

8614. When separation not granted.

177M178, 225NW104.

Court may require father to pay support of child to wife even though she has no legal cause to live apart from him. 174M159, 218NW559.

Irrespective of this section a court of equity may create a lien against real estate of a husband in favor of a wife for her separate maintenance while justifiably living apart from him, though the decree is not enforceable against the husband personally. 178M531, 227NW895.

A husband sued for a limited divorce held not estopped by the decision against him in a subsequent suit for absolute divorce from his wife. 178M1, 226NW412.

In suit by guardian of insane ward against husband of ward, court held not to have abused its discretion in denying motion for allowance pending suit. *Rutledge v. H.*, 186M369, 243NW385. See Dun. Dig. 4273.

8615. Revocation.

A husband sued for a limited divorce held not estopped by the decision against him in a subsequent suit for absolute divorce from his wife. 178M1, 226NW412.

Decree of separation from bed and board is subject to termination by consent of parties and aid of court. *Bakula v. B.*, 186M488, 243NW703. See Dun. Dig. 2798.

Separation from bed and board is not a bar to an action for absolute divorce. *Bakula v. B.*, 186M488, 243 NW703. See Dun. Dig. 2798(76).

CHAPTER 72

Married Women

8616. Separate legal existence.

Husband has absolute power to dispose of his personal property, providing that no fraud be committed against his wife's marital rights. *Maruska v. E.*, (USDC-Minn), 21FSupp841.

Status of marriage has not been modified by the Married Woman's Act, and only property rights and contracts are affected thereby. *State v. Arnold*, 182M313, 235NW373. See Dun. Dig. 4258.

Though wife cannot maintain an action against her husband for a tort committed by him against the person of the wife, action by administrator of a child is not an action by wife against husband, and administrator may recover for death of child, though wife of defendant is sole beneficiary. *Albrecht v. P.*, 192M557, 257NW377. See Dun. Dig. 2608, 4288.

Neither wife nor minor child may recover damages for personal injuries to husband and father, remedy being solely in husband and father. *Eschenbach v. B.*, 195 M378, 263NW154. See Dun. Dig. 4288b, 7305b.

A married woman cannot maintain an action against her husband for damages claimed to have been caused to her by the negligence of her husband prior to their marriage. *Patenaude v. P.*, 195M523, 263NW546. See Dun. Dig. 4288.

Fact that, prior to their marriage, plaintiff commenced and action against defendant for same cause which action she thereafter dismissed, does not create any estoppel or entitle her to any relief in suit brought after marriage. *Id.*

Immunity of husband from suit in tort on part of his wife does not inure to benefit of owner of automobile driven by husband. *Miller v. J.*, 196M438, 265NW324. See Dun. Dig. 4258(77).

Where a husband is driving his automobile with his wife as passenger, his negligence cannot be imputed to wife on basis of joint venture unless it is shown that wife jointly controlled, or had right to join in controlling, driving of automobile at time of collision. *Olson v. K.*, 199M493, 272NW381. See Dun. Dig. 4262.

An inference that husband is acting as agent or servant of his wife in driving her in his automobile to a doctor for medical attention does not arise from fact of marital relation alone, nor from fact that husband acts at wife's request. *Id.*

In Minnesota a wife cannot maintain an action in tort against her husband, but a Wisconsin court cannot refuse to take jurisdiction of such an action between persons domiciled in that state. *Bourestom v. B.*, 285NW(Wis) 426.

8617. Property rights.

Wife by letting husband use and manage her property apparently as his own, may estop herself from asserting ownership as against a mortgagee of the husband. 171M276, 214NW45.

Recital in instrument concerning conveyance of land signed by defendant and husband of deceased were not conclusive as to the deceased when she was the real party in interest. *Kehrer v. S.*, 182M596, 235NW386. See Dun. Dig. 4259(84).

Fact that wife, who was either joint tenant or tenant in common, did not join in writing authorizing tenant to cut and sell wood was immaterial where she substantially participated in contract. *Morrow v. P.*, 186M516, 243NW785. See Dun. Dig. 4256.

Neither husband nor wife have separate actions for damages to property owned only by one of them. *Eschenbach v. B.*, 195M378, 263NW154. See Dun. Dig. 4288a.

When a husband acquires possession of the separate property of the wife, whether with or without her consent, he must be deemed to hold it in trust for her benefit in the absence of evidence that she intended to make a gift of it to him. *Reifsteck's Estate*, 197M315, 267NW 259. See Dun. Dig. 4259.

That widow as administratrix listed property in inventory as belonging to estate does not estop her from making claim that it was held in trust for her. *Id.*

Complaint filed by widow against estate of which she was administratrix to recover property held in trust for her by deceased stated a cause of action as against claim that administratrix and claimant were same person