

James C. Child
35
THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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clerk of the district court of the county where such marriage took place, on penalty of forfeiting fifty dollars, which certificate shall be filed and recorded by such clerk; and if such marriage do 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 upon such parties.

Certificate of marriage, and the record thereof, to be evidence.

(17.) SEC. XVII. The original certificates and records of marriage, made by the judge, justice or minister, as prescribed in this chapter, and the record thereof by the clerk of the district court, or a copy of such record duly certified by such clerk, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

Illegitimate children legitimized by marriage of parents.

(18.) SEC. XVIII. Illegitimate children become legitimized by the subsequent marriage of their parents with each other.

Marriages not solemnized as required in this chapter when valid.

(19.) SEC. XIX. Marriages contracted with the consent of the parties, when the residence of the parties is remote from any person duly authorized to solemnize marriage, in any other manner than is herein prescribed, shall be valid: *provided*, that no legal impediment shall exist thereto; such contracts shall be made in writing, duly attested, and shall be recorded in the office of the clerk of the district court in the proper county, within sixty days from the execution of the same.

Chapter 66, Revised Statutes
CHAPTER 53.

DIVORCE.

SECTION

1. Marriages when void without divorce.
2. Marriage when void from time its nullity is declared.
3. When and how suit may be brought to annul marriage.
4. When and how proceedings may be had to affirm marriage.
5. When marriage shall not be declared void.
6. When marriage shall not be declared void.
7. When and for what causes a divorce from the bond of matrimony may be decreed.
8. When divorce not to be granted.
9. When court may deny divorce, though adultery be established.
10. Wife may sue for divorce in her own name, defendant may answer without oath; complaint what to contain.
11. Complaint what to contain.
12. Complaint and notice how served on defendant.
13. Either party entitled to trial by jury, as in a civil action.
14. Proceedings same as in a civil action, except when commenced in equity side of the court.
15. Court may require husband to furnish money to wife in certain cases.
16. Court may prohibit husband from imposing restraint on wife.

SECTION

17. Court may make order concerning care and custody of children.
18. Order in relation to children on final decree.
19. Court may revise and alter decree, concerning children.
20. When wife entitled to her real estate, &c.
21. Restoration to the wife of her personal estate, &c.
22. Court may appoint trustees to receive moneys decreed to wife.
23. Court may further order alimony, &c.
24. When wife entitled to dower.
25. In such case, court may make further allowance to wife.
26. Court may alter order for alimony on petition.
27. Court shall allow alimony, &c., according to the provisions of this chapter.
28. Children born before marriage legitimized by marriage, &c.
29. When court may revoke an order of divorce, &c.
30. Cohabitation after divorce, how punished.
31. Order of divorce to dissolve the marriage contract as to both parties; court may change name of wife.

28. 1858
96. 1865

(1.) SEC. I. All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this

Marriages when void without divorce.

territory, be absolutely void, without any decree of divorce, or other legal proceedings.

(2.) SEC. II. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or, when the consent of either party shall have been obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be void, from the time its nullity shall be declared by a court of competent authority.

Marriages when void from time its nullity is declared.

(3.) SEC. III. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the district court of the county where the parties, or one of them, reside, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said court for a divorce; and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

When and how suit may be brought to annul marriage.

(4.) SEC. IV. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a complaint in the manner aforesaid, for affirming the marriage, and upon due proof of the validity thereof, it shall be declared valid by a judgment or sentence of the court; and such judgment, unless reversed on appeal, shall be conclusive upon all persons concerned.

When and how proceedings may be had to affirm marriage.

(5.) SEC. V. In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under the age of legal consent, if it shall appear that the parties after they had attained such age, had, for any time, freely cohabited together as husband and wife; nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife, after such insane person was restored to a sound mind.

When marriage shall not be declared void.

(6.) SEC. VI. A marriage shall, in no case, be adjudged a nullity, on the application of a party capable of contracting who entered into the marriage state with any person under the age of legal consent, for that cause; nor shall the marriage of a person capable of contracting, with any idiot or insane person, for that cause, be annulled on the application of such person thus capable to contract, if he knew of such idiocy or insanity at the time of such marriage.

When marriage shall not be declared void.

(7.) SEC. VII. [As amended by laws of 1855, ^{7 54} page 62.] A divorce from the bonds of matrimony, may be adjudged and decreed by the several district courts, on suit brought in the county where the parties, or either of them, reside, for either of the following causes:

When and for what causes a divorce from the bond of matrimony may be decreed.

1. Adultery;
2. For impotency;
3. When either party, subsequent to the marriage, has been sentenced to imprisonment in the penitentiary, and no pardon granted, after a divorce for that cause, shall restore the party sentenced, to his or her conjugal rights;
4. For willful desertion of one party by the other, for the term of one year next preceding the filing of the complaint;
5. Where the treatment of the wife by the husband has been cruel and inhuman, whether practiced by using personal violence, or by any other means; or when the wife shall be guilty to her husband;
6. When the husband or wife shall have been a habitual drunkard for the space of one year, immediately preceding the filing of the complaint.
7. When it shall be made fully to appear that from any other reason or causes existing, the parties cannot live in peace and happiness together, and that their welfare requires a separation.

When divorce not to be granted.

(8.) SEC. VIII. No divorce shall be granted, unless the complainant shall have resided in this territory one year immediately preceding the time of exhibiting the complaint, except for adultery, alleged to have been committed whilst the complainant was a resident of this territory, or unless the marriage was solemnized in this territory, and the applicant shall have resided therein from the time of such marriage, to the time of exhibiting the complaint.

When court may deny divorce, though adultery be established.

(9.) SEC. IX. In any suit 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 the offense shall appear to have been committed by the procurement or with the connivance of the complainant ;

2. When the adultery charged, shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties, with the knowledge of the offense ;

3. When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have been brought within three years after the discovery by the complainant of the offense charged.

Wife may sue for divorce in her own name ; defendant may answer without oath.

(10.) SEC. X. A complaint for divorce, or for affirming or declaring the marriage contract void, may be exhibited by a wife in her own name, or by her next friend ; and in all cases, the defendant may answer without oath or affirmation. Application for a divorce shall be made to the district court of any county in this territory, and the proceedings shall be as follows :

Complaint what to contain.

1. The applicant shall file in the office of the clerk of the district court of the county, a complaint in writing, containing the names and ages of the parties, and the name of the court in which the action is brought.

Complaint what to contain.

(11.) SEC. XI. Such complaint shall also contain a statement of the facts constituting the cause or grounds of the complaint, in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

Complaint and notice how served on defendant.

(12.) SEC. XII. A copy of such complaint must be served upon the defendant, with a notice to appear and answer to the same within thirty days after service thereof ; or such other notice as the court or judge may direct, shall be given for such reasonable time as the court or judge may direct ; and like notice of the taking depositions shall be given in all cases.

Either party entitled to trial by jury, as in a civil action.

(13.) SEC. XIII. If either party shall claim a trial by jury of the facts set forth in the petition, the court shall thereupon order a jury to be empaneled, in the same manner as a jury is empaneled for the trial of any civil action ; when the jury is completed, it must be sworn to investigate the truth of the matters contained in the complaint, and to find a true verdict thereon, according to the evidence.

Proceedings same as in a civil action, except when commenced in equity side of the court.

(14.) SEC. XIV. The proceedings on the trial of a complaint for a divorce, shall be conducted in the same manner as in the trial of a civil action, unless the complaint be filed upon the equity side of the court ; in which case the proceedings shall be so far as may be without contravening the provisions of this chapter, according to the practice and usages of courts of equity.

Court may require husband to furnish money to wife in certain cases.

(15.) SEC. XV. In every suit specified in this chapter which shall be brought, the court may in its discretion require the husband to pay any sums necessary to enable the wife to carry on or defend the suit during its pendency, and it may adjudge costs against either party, and award execution for the same.

Court may prohibit husband

(16.) SEC. XVI. After the exhibiting of a complaint in a suit to

annul a marriage, or for a divorce, the court may at any time either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the suit.

from imposing
restraint on wife.

(17.) SEC. XVII. The court may in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance during the pendency of such suit, and may make such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper.

Court may make
order concerning
care and custody
of children.

(18.) SEC. XVIII. Upon pronouncing a sentence or granting a decree of nullity of marriage, and also upon granting a divorce the court may make such further order as it shall deem just and proper concerning the care, custody, and maintenance of the minor children of the parties, and may determine with which of the parents the children or any of them shall remain; having due regard to the age and sex of such children.

Order in relation
to children on
final decree.

(19.) SEC. XIX. The court may from time to time afterwards, on the petition of either of the parents, revise and alter such order concerning the care, custody, and maintenance of the children, or any of them, and make a new order concerning the same, as the circumstances of the parents and the benefit of the children shall require.

Court may
revise and alter
decree, concern-
ing children.

(20.) SEC. XX. Whenever the nullity of a marriage or a divorce from the bond of matrimony, for any cause excepting that of adultery committed by the wife, shall be ordered, and when the husband shall be sentenced to imprisonment for life, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband were dead.

When wife enti-
tled to her real
estate, &c.

(21.) SEC. XXI. Upon every such dissolution of a marriage, as is specified in the preceding section, the court may make a further order for restoring to the wife the whole or such part as it shall deem just and reasonable, of the personal estate that shall have 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.

Restoration to
the wife of her
personal estate,
&c.

(22.) SEC. XXII. The court shall have power to appoint a trustee or trustees, whenever the same shall be deemed expedient, to receive any sum or sums of money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support and maintenance 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 also the children, if there be any provided for in the order; and such trustees shall give such bond with surety as the court shall require for the faithful performance of their trusts.

Court may ap-
point trustees to
receive moneys
decreed to wife.

(23.) SEC. XXIII. Upon every divorce from the bond of matrimony for any cause excepting that of adultery committed by the wife, if the estate and property restored or awarded to the wife shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, or if there be no such estate and property, the court may further order to her such part of the personal estate of the husband, and such alimony out of his estate,

Court may fur-
ther order
alimony, &c.

1865
Chap
p 75

as it shall deem just and reasonable, having regard to the ability of the husband and the character and situation of the parties, and all the other circumstances of the case.

When wife entitled to dower

(24.) SEC. XXIV. When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to her dower in his lands in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

In such case, court may make further allowance to wife.

(25.) SEC. XXV. In the case last mentioned, the court may by order allow the wife for her subsistence as much of her said personal or real estate, or of the income thereof, as such court shall judge necessary.

Court may alter order for alimony on petition.

(26.) SEC. XXVI. After an order for alimony, or other allowance for the wife and children, or either of them, and also after an order for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may from time to time, on petition of either of the parties, revise and alter such order 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 such court might have made in the original suit.

Court shall allow alimony, &c., according to the provisions of this chapter.

(27.) SEC. XXVII. The court shall, in all cases subject to the provisions of this chapter, regulate the division and distribution of the estate, real and personal, between the parties, and the allowance for alimony to the wife, or to her and the minor children committed to her care and custody, according to the provisions of this chapter. But nothing contained in this chapter shall authorize the court to divest any part of their title to or interest in any real estate, further than is expressly specified herein.

Children born before marriage legitimized by marriage, &c.

(28.) SEC. XXVIII. When a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimized; the issue also of marriages declared null in law, shall nevertheless be legitimate.

When court may revoke an order of divorce, &c.

(29.) SEC. XXIX. When an order of divorce has been granted, and the parties shall afterwards 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.

Cohabitation after divorce, how punished.

(30.) SEC. XXX. If any persons after being divorced from the bond of matrimony for any cause whatever, shall cohabit together before intermarriage, they shall be liable to all the penalties provided by law against adultery.

Order of divorce to dissolve the marriage contract as to both parties.

(31.) SEC. XXXI. Whenever an order of divorce from the bond of matrimony is granted in this territory by a court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties. And in all suits for a divorce brought by a female, if a divorce be granted, the court may for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court shall in its order or decree appoint.

Court may change name of wife.