

THE
STATUTES AT LARGE
OF THE
STATE OF MINNESOTA

COMPRISING

THE GENERAL STATUTES OF 1866

As amended by subsequent Legislation to the close of the Session of 1873

TOGETHER WITH

ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, A.D. 1873

WITH REFERENCES TO

JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER
STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT,
THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA

VOL. I.

COMPILED AND ARRANGED BY

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TITLE I.

OF MARRIAGE.

(This Title is Chapter LXI. of the Statutes of 1866.)

SECTION 1. *Marriage a civil contract.*—Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties, capable in law of contracting, is essential.

1 Wis. 209.

SEC. 2. *Who is capable of contracting marriage.*—Every male person who has attained the full age of eighteen years, and every female who has attained the full age of fifteen years, is capable in law of contracting marriage, if otherwise competent.

SEC. 3. *Persons prohibited from marrying.*—No marriage shall be contracted while either of the parties has a husband or wife living, nor between parties who are nearer of kin than first cousins, computing by the rules of the civil law, whether the half or the whole blood.

SEC. 4. *Marriages, by whom solemnized.*—Marriages may be solemnized by any justice of the peace in the county in which he is elected; and throughout the state, by any judge of a court of record, or any ordained minister of the gospel, in regular communion with any religious society.

SEC. 5. *Ministers shall file copy of credentials with clerk of court.*—Ministers of the gospel, before they are authorized to perform the marriage rite, shall file a copy of their credentials of ordination with the clerk of the district court of some county in this state, who shall record the same, and give a certificate thereof; and the place where such credentials are recorded, shall be indorsed upon each certificate of marriage, granted by any minister and recorded with the same.

SEC. 6. *One of parties may be examined on oath.*—All judges, justices of the peace, and ministers of the gospel, may, before solemnizing any marriage, examine at least one of the parties on oath, which oath they are authorized to administer as to the legality of such intended marriage; and in no case shall such judge, justice, or minister, solemnize a marriage, if he is satisfied that there is any legal impediment thereto.

SEC. 7. *License to be obtained, when.*—Previous to persons being joined in marriage, a license shall be obtained from the clerk of the district court of the

county in which the female resides, or if not a resident of this state, then from the clerk of the district court in the county where the marriage is to take place in this state; but if there shall be no such clerk in the county where such female resides, or where the marriage is to be solemnized, then no such license shall be required.

SEC. 8. *Clerk to make inquiries, and be satisfied that there is no legal impediment.*—The clerk of the district court as aforesaid, may inquire of the party applying for marriage license as aforesaid, upon oath or affirmation, relative to the legality of such contemplated marriage, and if the clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license, and shall make a record thereof; and if any persons intending to marry shall be under age, and shall not have had a former wife or husband, the consent of the parents or guardians shall be personally given before the clerk, or certified under the hand of such parent or guardian, attested by two witnesses, one of whom shall appear before said clerk, and make oath or affirmation that he saw said parent or guardian subscribe, or heard him or her acknowledge the same; and said clerk is hereby authorized to administer such oath or affirmation, and thereupon issue and sign such license, and affix thereto the seal of the court. The clerk shall be entitled to receive as his fee for administering the oath and granting the license with the seal affixed thereto, recording the certificate of marriage, and filing the necessary papers, the sum of two dollars; and if any clerk shall in any other manner issue or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars to, and for the use of, the parties aggrieved.

SEC. 9. *No particular form of marriage required.*—In the solemnization of marriage, no particular form is required, except that the parties shall declare, in the presence of the judge, minister, or magistrate, and the attending witnesses, that they take each other as husband and wife; and in every case there shall be at least two witnesses present, besides the person performing the ceremony.

SEC. 10. *Certificate to be given.*—Whenever a marriage is solemnized, the person solemnizing the same shall give to each of the parties, if requested, a certificate thereof, specifying therein the names and residence of the parties, and of at least two of the witnesses present, and the time and place of such marriage.

SEC. 11 (AS AMENDED BY ACT OF MARCH 6, 1871). *Record to be made and certificate delivered to clerk of court—certificate to be recorded.*—Every person solemnizing a marriage shall make a certificate under his hand, containing the particulars specified in the next preceding section, and shall deliver the same to the clerk of the district court in the same county where the license was issued, and a duplicate with the clerk in the county where the marriage was solemnized, which certificate shall be filed and recorded by said clerk in a book to be kept by him for that purpose, and said clerk shall be entitled to receive the sum of twenty-five cents for recording said duplicate certificate from the person offering the same for record.

S. L. 1871, 159.

SEC. 12. *Failure to deliver certificate—penalty.*—Every person solemnizing a marriage, who neglects to make and deliver to the clerk a certificate thereof within the time above specified, shall forfeit a sum not more than one hundred dollars; and every clerk who neglects to record such certificate so delivered shall forfeit the like penalty.

SEC. 13. *Penalty for solemnizing marriage contrary to law, or making false*

certificate.—If any person authorized by law to join persons in marriage knowingly solemnizes any marriage contrary to the provisions of this title (chapter), or willfully makes any false certificate of any marriage, or pretended marriage, he shall forfeit for every such offense a sum not exceeding five hundred dollars, or may be imprisoned not exceeding one year.

SEC. 14. *Penalty on persons undertaking to join others in marriage when not authorized, etc.*—If any person undertakes to join others in marriage, knowing that he is not lawfully authorized to do so, or knowing of any legal impediment to the proposed marriage, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not more than one year, or by a fine not more than five hundred dollars, or by both such fine and imprisonment, in the discretion of the court.

SEC. 15. *When marriage not void although person officiating was not authorized.*—No marriage solemnized before any person professing to be a judge, justice of the peace, or minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority in such supposed judge, justice, or minister, provided the marriage is consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

SEC. 16. *Marriages among quakers valid—duty of clerk—penalty.*—All marriages solemnized among the people called friends or quakers, in the form heretofore practised and in use in their meetings, are valid, and not affected by any of the foregoing provisions; and the clerk of the meeting in which such marriage is solemnized shall, within one month after every such marriage, deliver a certificate of the same to the clerk of the district court of the county where such marriage took place, or of the county to which such county is attached for judicial purposes, on penalty of forfeiting not more than one hundred dollars, which certificate shall be filed and recorded by such clerk under a like penalty; and if such marriage does not take place in such meeting, such certificate shall be signed by the parties and at least six witnesses present, and filed and recorded as above provided, under a like penalty.

SEC. 17. *Illegitimate children legitimized by marriage of parents.*—Illegitimate children become legitimized by the subsequent marriage of their parents with each other, and the issue of marriages declared null in law shall nevertheless be legitimate.

TITLE II.

OF DIVORCE.

(This Title is Chapter LXII. of the Statutes of 1866.)

SEC. 18 (1). *Marriages void, when.*—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 state, 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 suc-

cessive 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 pronounced by a court of competent authority.

SEC. 19 (2). *When marriages are void from time of decree of nullity.*—When either of the parties to a marriage, for want of age or understanding, is incapable of assenting thereto, or when the consent of either party has been obtained by force or fraud, and there is no subsequent voluntary cohabitation of the parties, the marriage shall be void from the time its nullity is declared by a court of competent authority.

SEC. 20 (3). *Action to annul marriage, brought when.*—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 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.

SEC. 21 (4). *When marriage shall not be declared a nullity or void.*—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, after they had attained such age, had voluntarily cohabited together as husband and wife; 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 insane person was restored to a sound mind.

SEC. 22 (5). *When marriage shall not be declared a nullity at suit of party capable of contracting.*—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.

SEC. 23 (6). *Divorce from bonds of matrimony, when and for what causes decreed.*—A divorce from the bonds of matrimony may be adjudged and decreed by the district court, on suit brought in the county where the parties, or either of them, reside, for either of the following causes:

First. Adultery;

Second. Impotency;

Third. Cruel and inhuman treatment;

Fourth. When either party, subsequent to the marriage, has been sentenced to imprisonment in the state prison;

Fifth. Willful desertion of one party by the other, for the term of three years next preceding the filing of the complaint;

Sixth. Habitual drunkenness for the space of one year immediately preceding the filing of the complaint.

22 Wis. 256.

SEC. 24 (7). *Effect of pardon after divorce on account of imprisonment in state prison.*—After a divorce on account of imprisonment in the state prison a pardon shall not restore the party imprisoned to his conjugal rights.

SEC. 25 (8). *Divorce not granted, when—exception.*—No divorce shall be granted unless the complainant has resided in this state one year immediately pre-

ceding the time of exhibiting the complaint, except for adultery, committed while the complainant was a resident of this state.

3 Wis. 662; 4 Wis. 64.

SEC. 26 (9). *When court may deny a divorce, although adultery is established.*—In any action brought for a divorce on the ground of adultery, although the fact of adultery is established, the court may deny a divorce in the following cases:

First. When it appears that the offense was committed by the procurement or with the connivance of the complainant;

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

Third. When the action has not been brought within three years after the discovery by the complainant of the offense charged;

Fourth. 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.

Young v. Young, 18 Minn. 90.

SEC. 27 (10). *Action, how and where brought.*—An action for a 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.

SEC. 28 (11). *Complaint shall contain, what.*—The complaint shall contain the names and ages of the parties, the name of the court in which the action is brought, and a statement of the facts constituting the cause or grounds of action, in ordinary and concise language, without repetition.

SEC. 29 (12). *Summons and complaint, how served.*—Copies of the summons and complaint shall be served on the defendant personally, and when such service is made out of this state, 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; but if personal service cannot well be made, the court may order service of the summons by publication, as in other actions.

SEC. 30 (13). *Time to answer, action heard and determined—when.*—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.

SEC. 31 (14). *Proceedings on default and after issue joined.*—If, after service duly made and proved, the defendant does not appear, the court may proceed at a general or special term, to hear and determine the action. When issue is joined, like proceedings shall be had as in civil actions.

True v. True, 6 Minn. 458.

SEC. 32 (15). *Court may require husband to furnish wife with money.*—In every action brought, either for a divorce or separation, the court may in its discretion 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 for the same, or it may direct such

costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

20 Wis. 686 ; 23 Wis. 354.

SEC. 33 (16). *Court may prohibit husband from imposing restraint on 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, 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 action.

SEC. 34 (17). *Court may make order concerning care and custody of children.*—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 action, and may make such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper.

SEC. 35 (18). *Further order may be made.*—Upon granting a decree of nullity of marriage, or of 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 the children, or any of them, shall remain ; having due regard to the age and sex of such children.

SEC. 36 (19). *Order concerning children may be revised.*—The court may from time to time afterward, 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 such new order concerning the same as the circumstances of the parents and the benefit of the children require.

SEC. 37 (20). *Wife entitled to possession of her real estate, when.*—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, is ordered, and when the husband is sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband was dead.

SEC. 38 (21). *Court may order wife's personal estate to be restored to her, etc.*—Upon every such dissolution of 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 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.

SEC. 39 (22). *Court may appoint trustees.*—The court has power to appoint trustees whenever it is 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 circum-

stances of such wife, and also the children; if there are 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 trust.

SEC. 40 (23). *When wife shall have part of husband's personal estate.*—Upon every divorce for any cause excepting that of adultery committed by the wife, if the estate and property restored or awarded to the wife is 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 is no such estate and property, the court may further order and decree to her such part of the personal estate of the husband, not exceeding one-third part thereof in value, and such real estate of the husband not exceeding the value of her dower, as it deems 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. The court may also in the cases provided for in this section decree to the wife such alimony out of the estate of the husband as it may 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, and may by its decree make the same a specific lien upon any specified parcels of the real estate of the husband, 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 her husband, under the provisions of this section, shall not in any case exceed in present value the one-third part of the personal estate of the husband and the value of her dower in his real estate.

7 Wis. 296; 20 Wis. 586.

SEC. 41 (24). *When wife shall have dower in case of divorce.*—When the marriage is dissolved by the husband being sentenced to imprisonment, and when a divorce is 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 was dead.

SEC. 42 (25). *Order for alimony or other allowance may be revised.*—After an order or decree for alimony, or other allowance for the wife and children, or either of them, and also 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 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 such court might have made in the original action.

SEC. 43 (26). *Court may require husband to give security for payment of alimony or other allowance.*—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 the neglect or refusal of the husband 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.

SEC. 44 (27). *Parties intermarrying after decree of divorce, court may revoke decree, etc.*—When an order of 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.

SEC. 45 (28). *Persons cohabiting after divorce—penalty.*—If any persons after being divorced from the bond of matrimony, for any cause whatever, cohabit together before intermarriage, they shall be liable to all the penalties provided by law against adultery.

SEC. 46 (29). *Effect of order of divorce—court may change name of female when.*—Whenever an order of divorce from the bond of matrimony is granted in this state by a court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties. And in all actions for a divorce brought by a female, if a divorce is 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 designates in its order or decree.

Belden v. Munger, 5 Minn. 211. Contract between husband and wife concerning divorce.

TITLE III.

MARRIED WOMEN (RIGHTS OF).

(*This Title is the Act of March 5, 1869, which superseded and was substituted for Chapter LXIX. of the Statutes of 1866. S. L. 1869, 69.*)

SEC. 47 (1). *Married women to control their own property.*—All property, real, personal, and mixed, and choses in action, owned by any married woman, or owned or held by any woman at the time of her marriage, shall continue to be her separate property notwithstanding such marriage; and any married woman may, during coverture, receive, take, hold, use, and enjoy property of any and every description, and the rents, issues, and profits thereof, and all avails of her contracts and industry, free from the control of her husband, and from any liability on account of his debts, as fully as if she were unmarried.

Carpenter et al. v. Leonard, 5 Minn. 155; *Same v. Wilverschied*, *ib.* 170; *Tulles v. Fridley*, 9 Minn. 79; *Wilder et al. v. Brooks*, 10 Minn. 50; *Rich v. Rich*, 12 Minn. 468; *Williams v. McGrade*, 13 Minn. 46; *Leighton et al. v. Sheldon*, 16 Minn. 59.

SEC. 48 (2). *To be responsible for torts—may make contracts.*—A married woman shall be bound by her contracts and responsible for torts committed by her, and her property shall be liable for her debts and torts to the same extent as if she were unmarried. Any married woman shall be capable of making any contract, either by parol or under seal, which she might make if unmarried, and shall be bound thereby, except that no conveyance or contract for the sale of real estate, or of any interest therein by a married woman, other than mortgages on lands to secure the purchase money of such lands, and leases, for terms not exceeding three years, shall be valid unless her husband shall join with her in such conveyance, save as provided in section fifty-one (five) of this title (chapter). And no right to an estate by the curtesy shall attach as against a mortgage given by a married woman to secure the purchase money of the land so mortgaged.

Brazil v. Moran, 8 Minn. 236; *Kingsley v. Gilman*, 15 Minn. 59.

SEC. 49 (3). *Not liable for each other's debts.*—No married woman shall be

liable for any debts of her husband, nor shall any married man be liable for any debts or contracts of his wife, entered into either before or during coverture, except for necessaries furnished to the wife after marriage, where he would be liable at common law.

SEC. 50 (4). *What contracts between husband and wife valid.*—No contract between a husband and wife, the one with the other, relative to the real estate of either or any interest therein, shall be valid, nor shall any power of attorney or other authority from the one to the other to convey real estate or any interest therein be of any force; but in relation to all other subjects either may be constituted the agent of the other, or contract each with the other as fully as if the relation of husband and wife did not exist. But in all cases where the rights of creditors or purchasers in good faith come in question, the husband shall be held to have notice of the contracts and debts of his wife, and the wife shall be held to have notice of the contracts and debts of her husband as fully as if a party thereto.

Teller v. Bishop, 8 Minn. 226; *Tulles v. Fridley*, 9 Minn. 79; *Wilder et al. v. Brooks*, 10 Minn. 50; *Brown et al. v. Mathews*, 14 Minn. 205.

SEC. 51 (5). *In case of desertion, wife to have full control of her property—decree to be recorded.*—Whenever a married woman shall be deserted by her husband for the space of one year, or whenever she would for any cause be entitled to a divorce from her husband under the laws of this state, she may bring an action against him in the district court, asking for a decree which shall debar him from having any right or estate by the curtesy or otherwise in her lands, and which shall give her full authority to alien, sell, and convey, and dispose of her lands without the interference of her husband. And the court may grant such decree whenever it shall appear just or expedient, and thereupon the wife shall have full control of her real estate, with power to convey the same without her husband joining in the conveyance and as fully as if she were unmarried, or the court may by such decree make such limitations upon the power to convey such real estate as it may seem meet. A certified copy of such decree may be recorded in the deed records in the office of the register of deeds of any county wherein such lands may lie.

SEC. 52 (6). *Not to affect ante-nuptial contracts.*—Nothing in this title (act) shall be construed to affect ante-nuptial contracts or settlements, nor to exempt a husband from liabilities for torts committed by his wife.

Act went into effect June 1, 1869.

TITLE IV.

OF GUARDIAN AND WARD.

(This Title is Chapter LIX. of the Statutes of 1866.)

SEC. 53 (1). *Judge of probate may appoint guardians.*—The judge of probate in each county, when it appears to him necessary, or convenient, may appoint guardians to minors and others, being inhabitants or residents in the same county, and also to such as reside out of the state, and have any estate within the same.

OF MINORS.

SEC. 54 (2). *Minors, who are.*—Males of the age of twenty-one years and females of the age of eighteen years shall be considered of full age for all purposes; before those ages they shall be considered minors.

SEC. 55 (3). *Minors may appoint guardian, when.*—If the minor is under the age of fourteen years, the judge of probate may nominate and appoint his guardian; if he is above that age, he may nominate his own guardian, who if approved by the judge shall be appointed accordingly. If not so approved, or if the minor resides out of this state, or if after being cited by the judge, he neglects for ten days to nominate a suitable person, the judge may nominate and appoint his guardian, in the same manner as if he was under the age of fourteen years.

SEC. 56 (4). *May appoint before justice of the peace, when.*—A minor above the age of fourteen years may nominate his guardian before a justice of the peace, or the city or town clerk, who shall certify the fact to the probate court.

SEC. 57 (5, AS AMENDED BY ACT OF FEBRUARY 27, 1873). *Powers of guardian.*—The guardian of a minor shall have the custody and tuition of his ward and the care and management of all his estate, and unless sooner discharged according to law, shall continue in office until the minor arrives at full age. But the father of the minor, if living, and in case of his death the mother, they being respectively competent to transact their own business and not otherwise unsuitable, shall be entitled to the custody of the person of the minor and the care of his education. A married woman, by reason of such marriage, shall not be disqualified from holding the position of guardian either of the person or estate of a minor the same as if she were unmarried.

S. L. 1873.

SEC. 58 (6). *Testamentary guardian may be appointed—powers and duties.*—A father may, by his last will in writing, appoint guardians for his children whether born at the time of making the will or afterwards, to continue during the minority of the child or a less time. Such testamentary guardian shall have the same powers and perform the same duties with regard to the person and estate of the ward, as a guardian appointed by the probate court.

SEC. 59 (7). *Guardian shall give bond—exception.*—The guardian so appointed shall give the bond prescribed in section sixty-nine (seventeen), except that when the testator has ordered or requested in his will that a bond be not given, it shall not be required, unless from a change in the situation or circumstances of the guardian, or for other sufficient cause, the probate court deems it proper to require it.

OF INSANE PERSONS AND SPENDTHRIFTS.

SEC. 60 (8). *Court may appoint guardians of insane persons.*—The probate court may appoint guardians of insane persons, on the application of a relative or friend of any person, or of the county commissioners of the county in which such person resides, representing to the probate court that such person is insane and incapable of taking care of himself, and praying that a guardian may be appointed.

SEC. 61 (9). *County commissioners may apply to have guardian of spendthrift appointed.*—When a person by excessive drinking, gaming, idleness, or debauchery of any kind, so spends, wastes, or lessens his estate, as to expose himself or his family to want or suffering, or any place to charge or expense for the support of himself or his family, the county commissioners of the county of which such spendthrift is an inhabitant or resident, or upon which he is or may become chargeable, may present a complaint to the probate court, setting forth the fact and circumstances of the case, and praying to have a guardian appointed.

SEC. 62 (10). *Notice of application to be given.*—The court shall cause notice of not less than fourteen days to be given to the supposed spendthrift, of the time and place appointed for the hearing; and if after a full hearing, it appears that he comes within the above description, the court shall appoint a guardian of his person and estate.

SEC. 63 (11). *Copy of complaint and order to be recorded—contracts, etc., void, when.*—The complainants under the preceding section may cause a copy of the complaint with the order of notice to be filed in the registry of deeds of their county; and if a guardian is appointed upon such complaint, all contracts, except for necessities, and all gifts, sales, or transfers of real or personal estate made by the spendthrift, after such filing of the complaint and order and before the termination of the guardianship, shall be void.

SEC. 64 (12). *Powers of guardian—shall give bond.*—The guardian of an insane person or spendthrift shall have the care and custody of the person of his ward and the management of all his estate; and shall give the bond prescribed in section sixty-nine (seventeen), except that the provisions relating to the education of the ward shall be omitted.

OF PERSONS OUT OF THE STATE.

SEC. 65 (13). *Guardian of absent person appointed, when.*—When a person liable to be put under guardianship, according to the provisions of this title (chapter), resides without this state, and has any estate therein, any friend of such person, or any one interested in his estate in expectancy, or otherwise, may apply to the judge of probate of any county in which there is any estate of such absent person, and after such notice to all persons interested as the judge shall order, and a full hearing and examination, a guardian may be appointed for such absent person.

SEC. 66 (14). *Powers and duties.*—Such guardian shall have the same powers and duties with respect to any estate of the ward found within this state, and also with respect to the person of the ward, if he comes to reside therein, as are prescribed with respect to other guardians appointed under this chapter.

SEC. 67 (15). *Shall give bond.*—He shall give the bond prescribed in section seventeen, except that the provisions respecting the inventory, the disposal of the estate, and effects, and the account to be rendered by the guardian, shall be confined to such estate and effects as shall come to his hands in this state, and that the provisions respecting the custody of the ward shall not be applicable unless he comes to reside within the state.

SEC. 68 (16). *Extent of guardianship first granted.*—The guardianship first lawfully granted, of any person residing out of this state, shall extend to all the

estate of the ward within the same, and exclude the jurisdiction of the probate court in every other county.

GENERAL PROVISIONS.

SEC. 69 (17). *Conditions of bond.*—Before appointing, any person guardian of a minor, the judge of probate shall require of such person a bond with sureties to be approved by him, and in such sum as he shall order, conditioned as follows :

First. To make a true inventory of all the estate, real personal, of his ward, that shall come to his possession or knowledge, and to return the same into the probate court at such time as the judge shall order.

Second. To dispose of and manage all such estate according to law, and for the best interests of the ward : and faithfully to discharge his trust in relation thereto, and also in relation to the custody, education, and maintenance of the ward.

Third. To render an account on oath, of the property, estate, and moneys of the ward in his hands, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within one year after his appointment, and at such other times as the probate court shall direct ; and

Fourth. At the expiration of his trust to settle his accounts with the judge of probate, or with the ward, if he is of full age, or his legal representatives, and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the persons lawfully entitled thereto.

SEC. 70 (18). *Appraisal of estate—guardian to account for effects.*—Upon the taking of an inventory, the estate and effects comprised therein shall be appraised by three suitable persons to be appointed and sworn, as is required with respect to the inventory of the estate of a deceased person ; and every guardian shall account for and dispose of the personal estate of the ward, in like manner as is directed with respect to executors and administrators.

SEC. 71 (19). *Debts, out of what estate paid.*—Every guardian shall pay all just debts due from his ward out of the personal estate, if sufficient, and if not, out of the real estate, upon obtaining license for the sale thereof, and disposing of the same in the manner provided by law. He shall also settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor on receiving a fair and just dividend of his estate and effects ; and he shall appear for and represent his ward in all legal proceedings, unless another person is appointed for that purpose, as guardian or next friend.

SEC. 72 (20). *Powers and duties.*—He shall manage the estate of his ward, frugally and without waste, and apply the income and profits thereof, as far as may be necessary for the comfortable and suitable maintenance and support of the ward and his family, if there is any ; and if such income and profits are insufficient for that purpose, the guardian may sell the real estate upon obtaining a license therefor, as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family.

SEC. 73 (21, AS AMENDED BY ACT OF FEB. 11, 1870). *Guardians may make partition, when.*—Whenever real property is owned by any ward or wards in this

state, jointly or in common with any other person or persons, the guardian of such ward or wards may have partition thereof, either by proceedings in court for that purpose, or, except when he has an adverse interest to that of the ward in the estate to be divided, by amicable agreement with the adult joint owner or owners, and upon such amicable agreement for partition the guardian shall have the right to release and quit-claim to such joint or common owner or owners all the right, title, and interest of such ward or wards in and to the portion of the property to be taken by such joint or common owner pursuant to such agreement; upon receiving from such joint or common owner a like release and quit-claim to such ward or wards of all his right, title, and interest in and to the portion of the property to be taken by them, and may also assign and set out dower in his ward's estate to any widow entitled thereto. And whenever any guardian shall think it for the interest of his ward to lay out and plat the property of such ward, or any part thereof, as a part of an addition to any town or city, he may cause the same to be done pursuant to the chapter relating to "town plats," but shall execute such plat as such guardian, and when so executed and filed for record it shall have the same force and effect as if executed and recorded by such ward if under no disability. A guardian duly appointed in any other state for a ward or wards owning property in this state, upon filing with the probate judge of any county in this state where such property is situated a certified copy of his or her appointment as such guardian, shall have the same power and authority over the property of the ward in such county as if duly appointed in this state.

S. L. 1870, 122.

SEC. 74 (22). *Education of minor defrayed out of his estate in certain cases.*—If a minor who has a father living has property sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of his own property, in whole or in part, as shall be deemed reasonable by the probate court; and when necessary his real estate may be sold for that purpose by the guardian upon obtaining license therefor, as provided in other cases of sales by guardians. The charges for such expenses may be allowed in the settlement of the accounts of the guardian.

SEC. 75 (23). *Personal estate, how disposed of.*—The judges of probate, in their respective counties, on the application of a guardian, or any person interested in the estate of any ward, after such notice to all persons interested therein, as the judges of probate shall direct, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank or other corporation, or any other personal estate or effects held by him, as guardian, and to invest the proceeds of such sale, and also any other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and the said judges may make such further order and give such directions as the case may require for managing, investing, and disposing of the estate and effects in the hands of the guardian.

SEC. 76 (24). *When ward removes out of state, guardian may pay over and transfer property.*—When a person under guardianship removes out of this state, his guardian may pay over and transfer the whole or any part of his property to any guardian or trustee appointed by competent authority in the state to which the

residence of the ward is removed, upon such terms and in such manner as the probate court upon petition therefor shall decree.

SEC. 77 (25). *Guardian may resign or be removed, when.*—When a guardian appointed either by the testator or by the judge of probate, becomes insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate, after notice to him and all others interested, may remove him. Upon the request of a guardian the probate court, in its discretion, may allow him to resign his trust. Upon such removal or resignation, and upon the death of a guardian, another may be appointed in his stead.

SEC. 78 (26). *Marriage of female guardian extinguishes her authority.*—When a female guardian marries, her husband shall not be guardian in her right, but the marriage shall extinguish her authority, and the other guardian, if there is any, may proceed in discharging the trust. If there is no other guardian the probate court may appoint one, or make such other order in the premises as the case requires.

SEC. 79 (27). *Marriage of female ward terminates the guardianship.*—The marriage of a female under guardianship as a minor, shall terminate such guardianship; and the guardian of an insane person or spendthrift may be discharged by the judge of probate, when it appears on the application of the ward, or otherwise, that such guardianship is no longer necessary.

SEC. 80 (28). *Guardian to give new bond, when.*—The judge of probate may require a new bond to be given by a guardian, whenever he deems it necessary, and may discharge the existing sureties from future responsibility, after due notice given, as such court may direct, when it satisfactorily appears that no injury can result therefrom, to those interested in the estate.

SEC. 81 (29). *Party suspected of embezzlement may be cited before judge of probate and examined.*—Upon complaint to the judge of probate, by a guardian, ward, creditor, or other person interested in the estate of a ward, or by any person having any prospective interest therein, as heir or otherwise, against any one suspected of having fraudulently concealed, embezzled, or conveyed away any of the money, goods, or effects, or any instrument in writing, belonging to the ward, the judge may cite and examine such suspected person, although he is the guardian, and proceed with him as to such charge, in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased person.

SEC. 82 (30). *Expenses and compensation of guardians.*—Every guardian shall be allowed his reasonable expenses, incurred in the execution of his trust, and such compensation for his services, as the court in which his accounts are settled deems just and reasonable.

TITLE V.

OF MASTERS, APPRENTICES, AND SERVANTS.

(This Title is Chapter LX. of the Statutes of 1866.)

SEC. 83 (1). *Who may be bound as apprentices.*—All children under the age of fourteen years, may be bound as apprentices or servants until that age, and all minors above the age of fourteen years, may be bound as apprentices or servants,

males to the age of twenty-one years, and females to the age of eighteen years, or to the time of their marriage within that age, in the manner prescribed in this title (chapter).

SEC. 84 (2). *Who may bind.*—Children under the age of fourteen years may be bound by their father, or, in case of his death or incompetency, by their mother, or by their legal guardian; and, if illegitimate, they may be bound by their mother; and, if they have no parent competent to act, and no guardian, they may bind themselves with the approbation of the county commissioners of the county where they reside: but the power of a mother to bind her children, whether legitimate or illegitimate, shall cease upon her subsequent marriage, and shall not be exercised by herself or her husband, at any time during such marriage.

SEC. 85 (3). *Consent of minor to be expressed in indenture, when.*—Minors, above the age of fourteen years, may be bound in the same manner: *provided*, that when they are bound by their parent or guardian, the consent of the minor shall be expressed in the indenture, and testified by his signing the same.

SEC. 86 (4). *Minors to be bound by indenture.*—No minor shall be bound, as aforesaid, unless by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the county commissioners, their approbation shall be certified in writing, signed by them, upon each part of the indenture.

SEC. 87 (5). *Age of minor to be inserted in indentures.*—The age of every infant, bound pursuant to the provisions of this title (chapter), shall be inserted in the indentures, and be taken to be the true age without further proof thereof; and whenever any public officers are authorized to execute any indentures, or their consent is required to the validity of the same, they shall inform themselves fully of the infant's age, and deposit the counterpart of any indentures executed by themselves in the registry of deeds of their county.

SEC. 88 (6). *Indentures shall contain, what.*—Provisions shall be made in every indenture specified in this title (chapter), for teaching the apprentice to read and write, and to be instructed in the general rules of arithmetic. When, however, any minor is bound for a less term than three years, such agreement in reference to the instruction of such minor may be made as shall be deemed right.

SEC. 89 (7). *Moneys, etc., paid by master to be secured to minor.*—All considerations of money or other things, paid or allowed by the master, upon any indenture of apprenticeship or service, made in pursuance of this title (chapter), shall be paid or secured to the sole use of the minor bound thereby.

SEC. 90 (8). *Who shall inquire into treatment of apprentices.*—All persons shall inquire into the treatment of apprentices bound by them respectively, or with their approbation, and of all bound by their predecessors in office, and defend them from all cruelty, neglect, and breach of contract on the part of their masters.

SEC. 91 (9). *Complaints for misconduct of master, how made and determined.*—Complaints by parents, guardians, or county commissioners, for misconduct or neglect of the master, and by the master for gross misbehavior or refusal to do his duty, or willful neglect thereof on the part of the apprentice or servant, may be made to the court of the county where the master resides, setting forth the facts and circumstances of the case. The court shall order notice to the adverse party, and if the complaint is by the master, to all persons who have covenanted in behalf of the apprentice or servant, and to the county commissioners who approved of the

indenture, or their successors in office, and shall hear and determine the case, and render judgment accordingly.

SEC. 92 (10). *What judgment may be rendered.*—The court may render a judgment or decree that the minor be discharged from his apprenticeship or service, or the master from his contract, and the minor thus discharged may be bound out anew.

SEC. 93 (11). *Costs, how awarded and recovered.*—Costs may be awarded to the prevailing party and execution issued therefor; but no costs shall be awarded against county commissioners unless it appears that the complaint was made without just and reasonable cause. Costs in favor of the master may be recovered of the parent or guardian who executed the indenture, or if there is no parent or guardian liable therefor, such costs may be recovered against the minor when he arrives at full age.

SEC. 94 (12). *Master liable to action—when maintainable and how brought.*—Every master is also liable to an action on the indenture for the breach of any covenant on his part therein contained; which action shall be brought in the name of the minor, by his guardian or next friend, or by himself after his majority; but no such action can be maintained unless commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

SEC. 95 (13). *Damages to belong to minor.*—If such action is brought and a recovery had during the minority of such apprentice or servant, the damages recovered in such action, after paying the necessary charges of the prosecution, shall be the property of the minor, and may be appropriated to his use, or invested for his benefit, in the same manner as any other property belonging to him.

SEC. 96 (14). *Minor may be discharged from apprenticeship, when.*—If judgment in such action upon the final determination thereof is rendered for the plaintiff, the court in which the same is prosecuted may, thereupon, by an order to be entered on its minutes, discharge the minor from his apprenticeship or service, if it has not already been done in the manner before provided; and the minor may thereupon be bound out anew.

SEC. 97 (15). *Power of court in certain cases.*—When any servant, apprentice, or master, is discharged from any indenture, in pursuance of the provisions of this chapter, and any sum of money has been paid or agreed for by either party on the execution of such indenture, the court may, at the time they discharge such person from the indenture, also order such sum of money, or any part thereof, as the equity of the case may require, to be refunded, if paid, to him who advanced the same, or his personal representative; and if not paid, they may, by order, discharge the same, and direct any securities given therefor to be delivered up or canceled.

SEC. 98 (16). *Death of master discharges apprentice.*—No indenture of apprenticeship or service, made in pursuance of this title (chapter), shall bind the minor after the death of the master; but the minor shall be thenceforth discharged therefrom, and may be bound out anew.

SEC. 99 (17). *Provisions of title (chapter) to apply to mistresses.*—All the foregoing provisions shall apply as well to mistresses as to masters.

SEC. 100 (18). *Title (chapter) not to affect common law right of father.*—Nothing contained in this title (chapter) shall affect a father's right at common law to assign or contract for the service of his children during their minority.