

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

BY

JNO. F. KELLY,

OF THE ST. PAUL BAR.

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CHAPTER. 46 (G. S. ch. 62).

DIVORCE.

- TITLE 1. DIVORCE DISSOLVING MARRIAGE CONTRACT.
2. LIMITED DIVORCES.

Divorce is the dissolution of marriage contract: (1) *A vinculo matrimonii*; (2) *a mensa et thoro*. The former was allowed at common law for pre-existing causes only — *pre-contractus, metus, impotentia, seu-frigiditatis, affinitatis et consanguinitatis*,— and bastardized the issue and barred dower (Co. Litt. 235; 3 P. Wms. 276; Stat. 3 Ed. I., c. 34; Midmay's Case, Co. Litt. 28); the latter for causes arising during marriage. American statutes abolished this distinction, allowing *a vinculo* for pre-existing and subsequent causes, and *a mensa et thoro* for improper treatment. See Story, Conf. L. §§ 115, 200; 39 E. C. L. 425; Gospel St. Luke, xvi, 18; Deut. 24, 1.

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TITLE 1.

DIVORCES DISSOLVING THE MARRIAGE CONTRACT.

VOID MARRIAGES.

SEC. 3889. **Void ab initio — Absent husband or wife.**— 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.

Marriage during absence.— *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 pronounced by a court of competent authority.

G. S. ch. 63, § 1. By the common law, marriage outside of the jurisdiction which made the marriage void — not merely voidable — did not make such marriage valid within such jurisdiction. *Stevenson v. Gray*, 17 B. Mon. 192; *Kinney v. Com.*, Va. Ct. Appeals; *Story, Conf. L. § 113a*; 9 H. L. C. 193; 76 N. C. 251; 10 La. Ann. 411.

SEC. 3890. **Void for want of consent.**— 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.

G. S. ch. 62, § 2.

SEC. 3891. **Same — Subsequent consent.**— 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,

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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.

G. S. ch. 62, § 4.

SEC. 3892. **Action to annul void marriages.**—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.

G. S. ch. 62, § 3.

SEC. 3893. **Same — By whom.**—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.

G. S. ch. 62, § 5.

VOIDABLE MARRIAGES.

SEC. 3894. **Causes for divorce.**—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. Wilful 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.

G. S. ch. 62, § 6. 27 M. 330; 40 N. W. 167. Under a similar provision as that in fourth cause it was decided that it did not embrace convictions out of the state. 4 Sneed, 423.

SEC. 3895. **When adultery not sufficient.**—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 offence 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 offence;

Third. When the action has not been brought within three years after the discovery, by the complainant, of the offence 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.

G. S. ch. 62, § 9. 23 M. 563.

PROCEEDINGS FOR DIVORCE.

SEC. 3896. **Residence.**—No divorce shall be granted, unless the complainant has resided in this state one year immediately preceding the time of

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

G. S. ch. 62, § 8. At common law divorces were only granted in the jurisdiction of the domicile, and the domicile of the wife followed that of the husband. 9 Bligh, 29; R. & R. Cr. Cas. 237; 2 R. & Mylne, 614. Hence jurisdiction was not obtained by removing from the domicile to another jurisdiction for the purpose of securing a divorce. 7 Dana, 181; Story, Conf. L. §§ 113, 201, 230.

SEC. 3897. **Summons.**—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.

G. S. ch. 62, § 10.

SEC. 3898. **Complaint.**—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.

G. S. ch. 62, § 11. 18 M. 90.

SEC. 3899. **Service.**—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.

G. S. ch. 62, § 12. 17 M. 181.

SEC. 3900. **Answer — Time to.**—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.

G. S. ch. 62, § 13.

SEC. 3901. **Failure to answer.**—If, after service duly made and proved, the defendant does not appear, the court, at a general or special term, or the judge out of term, may proceed to hear and determine the action: **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.

G. S. ch. 62, § 14, as amended 1875, ch. 58 (March 4); 1878, ch. 13 (February 28). Acts 1875, ch. 58, inserted "or the judge out of term." Acts 1878, ch. 13, inserted matter between * *. 18 M. 90.

The policy of all jurisdictions is to decree divorce only on proof of the cause alleged, as at common law. 3 Greenl. 135; 2 Mass. 154.

SEC. 3902. **Protection of wife pending suit.**—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.

G. S. ch. 62, § 16.

CUSTODY OF CHILDREN.

SEC. 3903. **Pending suit.**—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.

G. S. ch. 62, § 17.

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SEC. 3904. **In final decree.**— 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.

G. S. ch. 62, § 18.

SEC. 3905. **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.

G. S. ch. 62, § 19.

ALIMONY.

SEC. 3906. **Pending suit — Costs.**— 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.

G. S. ch. 62, § 15. 34 M. 442.

This was authorized at common law, but the wife must be innocent, and husband guilty of breach of matrimonial duty. Bish. M. & D. 564; 2 Story, Eq. Jur. §§ 1421, 1472.

SEC. 3907. **Permanent.**— 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.

G. S. ch. 62, § 23.

SEC. 3908. **Security for payment of.**— 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.* Or the court whenever it shall find the fact to be that 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, may order or direct the husband 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 or direction, such person or party may be punished by the court as for a contempt; the proceedings therefor are prescribed in chapter eighty-seven (87) of the general statutes, one thousand eight hundred and seventy-eight (1878), respecting the punishment of contempt.

G. S. ch. 62, § 26, as amended 1881, ch. 78. Approved February 25, 1881. Amendment below*.

SEC. 3909. **Trustee.**—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 circumstances 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.

G. S. ch. 62, § 22.

SEC. 3910. **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.

G. S. ch. 62, § 25. 23 M. 214; 28 M. 35.

WIFE'S PROPERTY — DOWER.

SEC. 3911. **Restored.**—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.

G. S. ch. 62, § 20.

SEC. 3912. **Same—Further order.**—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.

G. S. ch. 62, § 21.

SEC. 3913. **Dower.**—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.

G. S. ch. 62, § 24.

DECREE.

SEC. 3914. **Effect — Change wife's name.**— 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.

G. S. ch. 62, § 29. Divorce *a vinculo* annuls the marriage and restores the parties to all the rights of unmarried persons, but the divorce must be by court of competent jurisdiction; it cannot be done by consent or writing. 1 Pars. Cont. 566; 2 Eng. C. L. & Eq. 570.

SEC. 3915. **Revocation of.**— 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.

G. S. ch. 62, § 27.

SEC. 3916. **Cohabitation after decree.**— 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.

G. S. ch. 62, § 28.

SEC. 3917. **Effect of pardon of convict.**— After a divorce on account of imprisonment in the state prison, a pardon shall not restore the party imprisoned to his conjugal rights.

G. S. ch. 62, § 7.

TITLE 2.

LIMITED DIVORCES.

The revisers of G. S. 1866 reported this title, but legislature rejected it. Acts 1876, ch. 118, substantially enacted it as reported by revisers.

SEC. 3918. **When allowed.**— A separation from bed and board forever, or for a limited time, may be decreed by the district court or court of common pleas, on the complaint of a married woman, in the following cases:

First. Between any husband and wife inhabitants of this state.

Second. When the marriage shall have been solemnized, or shall have taken place, within this state, and the wife shall be an actual resident at the time of exhibiting her complaint.

Third. When the marriage shall have taken place out of this state, and the parties have become and remain inhabitants of this state at least one year, and the wife shall be an actual resident at the time of exhibiting her complaint.

1876, ch. 118, § 1: "An act to provide for limited divorce." Approved March 6, 1876. Such divorce confers upon the wife all the rights of property, business and contracts, as if unmarried, and releases husband from obligation to maintain her except as may be required by the decree. 2 Kent, Com. 136; 1 Pars. Cont. 567; 22 Gratt. 168.

SEC. 3919. **Causes.**— Such separation may be decreed for the following causes:

First. The cruel and inhuman treatment, by the husband, of his wife.

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

Third. The abandonment of the wife by the husband, and his refusal or neglect to provide for her.

1876, ch. 118, § 2. Under substantially same statutes it was held that an actual breaking off of the matrimonial cohabitation, combined with the intent to desert in the mind of the offender, established desertion, without regard to length of time. 21 Gratt. 43; 22 Gratt. 172. And that cruel and inhuman treatment or unsafe and improper conduct does not consist in rude, coarse, petulant, exacting, penurious and unkind and negligent treatment. 22 Gratt. 168; 2 Sneed, 716.

SEC. 3920. **Complaint.**—The bill of the complainant in every such case shall specify particularly the nature and circumstances of the complaint on which she relies, and shall set forth times and places with reasonable certainty.

1876, ch. 118, § 3.

SEC. 3921. **Defence.**—The defendant in any such suit may be permitted to prove, in his justification, the ill-conduct of the complainant, and, on establishing such defence to the satisfaction of the court, the bill shall be dismissed.

1876, ch. 118, § 4.

SEC. 3922. **Proceedings — Alimony pendente lite.**—Proceedings under this act shall be commenced and conducted in the same manner as is now prescribed by law in actions for a divorce from the bond of marriage; and the court in which the application is made, may, upon motion, award such sum for counsel fees, and temporary alimony during the pending of the action, as the circumstances and the situation of the parties appear to warrant.

1876, ch. 118, § 5. 36 M. 240.

SEC. 3923. **Permanent alimony — Wife's property.**—Upon decreeing a separation in any such suit, the court may make such further decree as the nature and circumstances of the case may require, and may make such order and decree for the suitable support and maintenance of the wife and her children, or any of them, by the husband, or out of his property, as may appear just and proper;* and may, by such decree, give the wife absolute control of her separate property, with power of alienation.

1876, ch. 118, § 6, as amended 1877, ch. 70. Amendment below*.

SEC. 3924. **Support without separation.**—Although a decree for separation from bed and board be not made, the court may make such order or decree for the support and maintenance of the wife and her children, or any of them, by the husband, or out of his property, as the nature of the case renders suitable and proper.

1876, ch. 118, § 7. 28 M. 35.

SEC. 3925. **Reconciliation — Decree revoked.**—When a decree for a separation forever, or for a limited period, shall have been pronounced, it may be revoked at any time thereafter by the same court by which it was pronounced, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and upon their producing satisfactory evidence of their reconciliation.

1876, ch. 118, § 8.