

GENERAL STATUTES

OF

MINNESOTA

1913

PUBLISHED UNDER THE AUTHORITY OF THE
LEGISLATURE BY VIRTUE OF AN ACT
APPROVED APRIL 20, 1911
(LAWS 1911, CH. 299)

COMPILED AND EDITED BY
FRANCIS B. TIFFANY

ST. PAUL
WEST PUBLISHING CO.
1913

1. Cruel and inhuman treatment by the husband.
2. Such conduct on the part of the husband towards his wife as may render it unsafe and improper for her to cohabit with him.
3. The abandonment of the wife by the husband, and his refusal or neglect to provide for her. (3598)

53-181, 54+1059.

Subd. 1 (116-128, 133+460).

Subd. 2 (107-43, 119+489).

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

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

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

36-239, 30+766.

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

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

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

28-33, 8+900.

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

CHAPTER 72

MARRIED WOMEN

7142. Separate legal existence—Women shall retain the same legal existence and legal personality after marriage as before, and every married woman shall receive the same protection of all her rights as a woman which her husband does as a man, including the right to appeal to the courts in her own name alone for protection or redress; but this section shall not confer upon the wife a right to vote or hold office, except as is otherwise provided by law. (3605)

A married woman may sue her husband in her own name in any form of action to enforce any right affecting her property (64-381, 67+20. See 96-294, 104+969, 4 L. R. A. (N. S.) 786, 113 Am. St. Rep. 625, 6 Ann. Cas. 952). If living apart from her husband she may sue him for support without seeking a divorce (91-165, 97+671). The object of this section is obscure. It does not authorize a wife to convey her realty independently of her husband (48-18, 50+1018); or to maintain an action for criminal conversation against another woman (60-372, 62+438). It does not relieve a husband of liability for his wife's torts (62-348, 64+912. See § 7146).

Under G. S. 1894 § 5530 married woman could not, before or after divorce, maintain action against husband for personal tort committed during coverture (98-427, 107+1047, 6 L. R. A. [N. S.] 191, 116 Am. St. Rep. 387).

7143. Property rights—All property, real, personal, and mixed, and all choses in action, owned by any woman at the time of her marriage, shall con-

tinue to be her separate property, notwithstanding such marriage; and any married woman, during coverture, may receive, acquire, and enjoy property of 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. (3606)

This gives to the wife the same absolute right to the use and enjoyment of her separate property that she would have if unmarried (22-29; 22-34; 34-367, 25+803; 56-33, 57+219, 22 L. R. A. 481, 45 Am. St. Rep. 434; 64-381, 67+20; 85-83, 88+419; 112-270, 127+1120). She is entitled to the increase and product of her own estate, real or personal (13-46, 39; 28-469, 10+781; 34-107, 24+366). Her property is not liable for her husband's debts (66-108, 68+513). And to the avails of her contracts and industry (113-517, 130+8). Cited (36-3, 29+588; 62-348, 64+912, 30 L. R. A. 521, 54 Am. St. Rep. 647).

7144. Contracts—Torts—Property rights and liabilities—Every married woman is bound by her contracts and responsible for her torts, and her property shall be liable for her debts and torts to the same extent as if unmarried. She may make any contract which she could make if unmarried, and shall be bound thereby, except that every conveyance and contract for the sale of her real estate or any interest therein, shall be subject to and governed by the provisions of section 3335, Revised Laws, 1905 [6814], and acts amendatory thereof. (R. L. § 3607, supplemented '05 c. 255, amended '07 c. 417 § 1)

1905 c. 255 § 2 repeals inconsistent acts, etc.

Freedom to make contracts (23-337; 28-469, 10+781; 39-490, 40+568). Liability for conversion (46-80, 48+447). If a wife joins in the covenants of her husband's deed she is liable thereon (48-408, 51+379). She may lease her real property for a term not exceeding three years without her husband's consent (85-83, 88+419). In conveyances of a homestead both husband and wife must join (96-294, 104+969, 4 L. R. A. [N. S.] 786, 113 Am. St. Rep. 625, 6 Ann. Cas. 952).

G. S. 1894 § 5532 cited (101-152, 112+65).

7145. Property acquired by wife during separation—Conveyances—Certain conveyances legalized—That all property, real and personal, acquired by any woman in her own name during any period of time in which she shall have been or may hereafter be legally separated from her husband by a decree of any court of this state, shall be and remain her separate property during the continuance of such separation and any such real property may be conveyed by her without her husband joining in the deed of conveyance and all such property may be conveyed, sold and disposed of by her without her husband joining with her in the conveyance thereof, and any and all conveyances of such property heretofore made are hereby declared legal and valid and the same and all such are declared valid, provided, that nothing in this act contained shall apply to any action or proceedings now pending in any court in this state. ('13 c. 237 § 1)

Section 2 repeals inconsistent acts, etc.

7146. Liability of husband and wife—No married woman shall be liable for any debts of her husband, nor shall any married man be liable for any torts, debts, or contracts of his wife, committed or entered into either before or during coverture, except for necessaries furnished to the wife after marriage, where he would be liable at common law. But where husband and wife are living together, they shall be jointly and severally liable for all necessary household articles and supplies furnished to and used by the family. (3608)

This does not change the common law rule as to the implied authority of a wife to employ servants for household purposes (28-208, 9+759, 41 Am. Rep. 279; 33-348, 23+308); or to purchase household necessities (33-370, 23+539). Prior to 1897 c. 10 a husband was liable for his wife's torts (62-348, 64+912, 30 L. R. A. 521, 54 Am. St. Rep. 647).

7147. Contracts between husband and wife—No contract between husband and wife relative to the real estate of either, or any interest therein, nor any power of attorney or other authority from the one to the other to convey real estate, or any interest therein, shall be valid; but, in relation to all other subjects, either may be constituted the agent of the other, or contract with the other. But in all cases where the rights of creditors or purchasers in

good faith come in question, each spouse shall be held to have notice of the contracts and debts of the other as fully as if a party thereto. (3609)

1. Contracts relating to realty—Statute applicable though husband and wife are living apart (68-152, 70+1082). Not applicable to conveyance from one spouse to another through third party (10-50, 32, 88 Am. Dec. 49; 30-519, 16+404; 64-489, 67+364). A direct conveyance from a husband to a wife is void (32-228, 20+94; 63-5, 65+91; 72-57, 74+1109). See, prior to statute, 10-50, 32, 88 Am. Dec. 49). One spouse cannot make a valid lease of the other's realty acting as agent or attorney (24-172; 45-515, 53+404; 69-149, 154, 72+56; 88-116, 92+521; 117-519, 134+289). Wife cannot release to husband her statutory interest in his realty (35-291, 28+920). Earnest money paid on contract void under this section held not recoverable where husband and wife were ready to perform (55-537, 57+156). Where husband contracts as agent to sell, and wife confirms his act, vendee cannot take advantage of this section (107-177, 119+948, 131 Am. St. Rep. 452. See, also, 116-280, 133+862, 39 L. R. A. [N. S.] 324). Doctrine of estoppel applicable to contracts void under this section (41-165, 42+870, 4 L. R. A. 333, 16 Am. St. Rep. 683; 47-491, 50+533; 48-307, 51+375). Doctrine of trust ex maleficio also applicable (93-45, 100+656, 106 Am. St. Rep. 420. See 63-5, 65+91). Part performance does not take contract out of statute (93-45, 100+656, 106 Am. St. Rep. 420). Statute applied (63-5, 65+91; 83-362, 86+336; 97-301, 107+137; 106-380, 118+1026; 116-458, 133+1009). Assignment of mortgage by husband to wife not void (114-24, 129+1051). Agreement between husband and wife by which each releases to the other interests in real estate void (116-90, 133+164, 37 L. R. A. [N. S.] 1133, Ann. Cas. 1913A, 493).

2. Other contracts—34-367, 25+803; 36-3, 29+588; 51-353, 53+716.

3. Notice as to creditors—Burden of proof—34-107, 24+366; 34-367, 25+803; 39-490, 40+568; 56-469, 57+1136; 102-256, 113+689.

7148. Barring interest of spouse—Whenever a married man shall be deserted by his wife, or a married woman shall be deserted by her husband, for the space of one year, or whenever he or she would, for any cause, be entitled to a divorce from such husband or wife under the laws of this state, or whenever he or she has a husband or wife that has been insane for ten years immediately prior to the time of bringing the action hereinafter named, and upon the hearing thereof shall be found to be incurably insane, he or she may bring an action in the district court of the proper county, asking for a decree which shall debar him or her so deserting or furnishing grounds for a divorce, or so found to be incurably insane as aforesaid, from any right or estate by the curtesy or in dower, or otherwise, as the case may be, in or to his or her lands, and which will give such husband or wife full authority to alien, sell and convey, and dispose of his or her lands, without the interference of or signature of the husband or wife so deserting, or being guilty of acts which would entitle the person bringing such action to a divorce, or so found to be incurably insane as aforesaid; and the court may grant such decree whenever it shall appear just or expedient; and thereupon the husband or wife shall have full control of his or her real estate, with power to convey the same without the husband or wife joining in the conveyance, and as fully as if he or she were unmarried; or the court may, by such decree, make such limitations on the power to convey such real estate as may seem meet and proper in the premises. A certified copy of such decree may be recorded in the deed records in the office of the register of deeds in any county wherever such lands or any part thereof may be situated. (3610)

22-348; 27-330, 7+267.

Deserted wife may maintain action against husband, to debar him from interest in her real estate, and for an allowance for support of herself and minor child (102-301, 113+913).

7149. Separate conveyances—Curative—All conveyances of real property in this state made prior to the first day of April, 1900, in which a husband or wife, whose spouse had, not less than three years prior to the date of such conveyance, been adjudged insane or incompetent to transact business, and such insanity or incompetency had continued to the date of such conveyance, and where such husband or wife was then the duly appointed guardian for such insane spouse, has conveyed real property in this state, other than homestead property, by separate deed but has failed and neglected to join in said deed as such guardian or to endorse on said deed approval thereof as such guardian for such insane spouse, shall be and the same are hereby declared to be legal and valid and of the same force and effect as if such grantor were unmarried and the records thereof heretofore actually made in the office of the register of deeds of the proper county shall be in all respects valid and legal and such conveyances and the records thereof shall have the same force and effect in all respects for the

purpose of notice, evidence or otherwise, as may be provided by law in regard to conveyances in other cases; provided, that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state. ('13 c. 240 § 1)

7150. **Antenuptial contracts**—Nothing in this chapter shall be construed to affect antenuptial contracts or settlements. (3611)

CHAPTER 73

ADOPTION AND CHANGE OF NAME

7151. **Adoption—Petition and consent**—Any inhabitant of the state may petition the district court of his county for leave to adopt any child not his own. If the petitioner be married the spouse shall join in the petition. All petitions for the adoption of a child who is a ward or pupil of the state public school shall be made jointly by the person desiring to adopt such child and the superintendent of the said state public school. The board of managers of the said state public school may determine by resolution that the joinder of the said superintendent in such petition shall be its consent to the adoption of such ward or pupil, as prayed for in such petition. A person of full age may be adopted. (R. L. § 3612, amended '09 c. 81 § 1)

See following section.

7152. **Adoption—Petition and consent**—Any inhabitant of the state may petition the district court of this county for leave to adopt any child not his own. If the petitioner be married, the spouse shall join in the petition; provided, where the spouse has been adjudged insane, such insane spouse need not join in the petition if such petition is filed in the proper court within thirty days from the date this act shall take effect and in such case the decree of adoption shall not in any way confer any rights, duties or obligations upon the insane spouse in reference to the person adopted. A person of full age may be adopted. (R. L. § 3612, amended '09 c. 457 § 1)

See preceding section.

7153. **Consent, when necessary**—No adoption of a minor shall be permitted without consent of his parents, but the consent of a parent who has abandoned the child, or who cannot be found, or who is insane, or otherwise incapacitated from giving such consent, or who has lost custody of the child through divorce proceedings, may be dispensed with, and consent may be given by the guardian; and, if there be no guardian, it may be given by any of the next of kin residing in the state, or, if he have no known next of kin in the state, the consent may be given by the chairman of the county board. In case of illegitimacy, the consent of the mother alone shall suffice. In all cases where the child is over fourteen years old, his own consent must be had also. (3613)

7154. **Notice of hearing**—When the parents of any minor child are dead or have abandoned him, and he has no guardian or known next of kin in the state, the court shall order three weeks' published notice of the hearing on such petition to be given; the last publication to be at least ten days before the time set therefor. (3614)

7155. **Decree—Change of name**—If, upon the hearing, the court shall be satisfied as to the identity and relationship of the persons concerned, and that the petitioners are able to properly rear and educate the child, and that the petition should be granted, a decree shall be made and recorded in the office of the clerk, setting forth the facts, and ordering that from the date thereof the child shall be the child of the petitioners. If desired, the court, in and by said decree, may change the name of the child. (3615)

7156. **Status of adopted child**—Upon adoption such child shall become the legal child of the persons adopting him, and they shall become his legal parents, with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption, he shall inherit from his adopting parents or their relatives the same as though he were the legitimate child of such parents, and shall not owe his natural parents or their relatives any legal duty; and,