

1934 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1934)

(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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CHAPTER 71

Divorce

See §§208-1 to 208-9.

8580. What marriages void.

One who married during the existence of a voidable marriage was guilty of bigamy. 175M498, 221NW867. Evidence held not to show common-law marriage. 175M547, 221NW911.

8581. What voidable.

175M498, 221NW867; note under §8580. Marriage may be annulled where it took place within six months after divorce of defendant, through false representation. 171M340, 214NW650. Denial of intercourse is not ground for annulment of marriage unless at the time of the marriage the offending spouse entertained an intention not to fulfill her marital obligations. *Osbon v. O.*, 185M300, 240NW894. See Dun. Dig. 5797.

8585. Grounds for divorce.—A divorce from the bonds of matrimony may be adjudged by the district court for any of the following causes:

1. Adultery.
2. Impotency.
3. Cruel and inhuman treatment.
4. Sentence to imprisonment in any state or United States prison or any state or United States Reformatory subsequent to the marriage; and in such a case a pardon shall not restore the conjugal rights.
5. Wilful desertion for one year next preceding the commencement of the action.
6. Habitual drunkenness for one year immediately preceding the commencement of the action.
7. Incurable insanity. But no divorce shall be granted upon this ground unless the insane party shall have been under regular treatment for insanity, and because thereof, confined in an institution for a period of at least five years immediately preceding the commencement of the action. In granting a divorce upon this ground, notice of the pendency of the action shall be served in such manner as the court may direct, upon the nearest blood relative and guardian of such insane person, and the superintendent of the institution in which he is confined. Such relative or guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues. The status of the parties as to the support and maintenance of the insane person shall not be altered in any way by the granting of the divorce. (R. L. '05, §3574; '09, c. 443, §1; '27, c. 304; Apr. 15, 1933, c. 262, §1; Apr. 20, 1933, c. 324; Jan. 9, 1934, Ex. Ses., c. 78.)
8. Continuous separation under a decree of limited divorce for more than 5 years next preceding the commencement of the action. (Added by Act Apr. 15, 1933, c. 262, §2.)

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

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

3. Cruel and inhuman treatment.

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

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

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

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

Cruel treatment held not established. *Taylor v. T.*, 177M453, 225NW287.

Evidence held insufficient to show desertion, but to show cruel and inhuman treatment. 179M266, 229NW128.

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

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

5. Desertion.

Nonsupport. 172M250, 215NW181.

Complaint failed to establish desertion arising out of wife's qualified refusal to live with plaintiff while depending upon the benevolence of his father. *Taylor v. T.*, 177M453, 225NW287.

Evidence held sufficient to establish willful desertion. *Graml v. G.*, 184M324, 238NW683. See Dun. Dig. 2776.

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

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

8587. Denial, though adultery proved.

Condonation of adultery held sufficiently shown. 171M65, 212NW738.

8588. Action—how and where brought—venue.

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

In view of §9311, plaintiff was entitled to have the facts found and the conclusions of law separately stated in writing, and judgment entered accordingly. 172M72, 214NW783.

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

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

8593. Alimony pending suit.

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

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

Show cause order served with summons in divorce action, held to give court jurisdiction to mere motion for temporary alimony. 179M106, 238NW351.

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

8595. Custody of children, etc.

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

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

8596. Custody of children.

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

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

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

In a judgment decreeing a divorce the court may com-

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

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

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

8597. Order may be revised.

176M393, 223NW609; note under §8596.

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

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

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

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

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

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

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

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

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

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

8602. Property of husband—Permanent alimony.

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

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

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

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

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

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

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

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

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

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

8603. Order for alimony, etc., revised.

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

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

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

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

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

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

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

8604. Security—Sequestration—Contempt.

Contempt is not a "crime" within §9934, and, in view of §9802, punishment can only be by imprisonment in county jail and not in a workhouse. 175M57, 220NW414.

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

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

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

The alimony obligations of a nonresident husband personally served out of the state may be enforced out of his property in this state when the custodian thereof is made a party defendant, and the court has entered a preliminary order enjoining him from delivering to the husband any of the money or other personal property in his possession, and restraining the husband from disposing of any of his property in the state; such order and procedure constituting an effective seizure of the property. 181M564, 233NW312. See Dun. Dig. 1553, 2811.

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

LIMITED DIVORCES

8608 to 8615 [Repealed].

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

§8600.

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

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

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

§8613.

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

On decree of separation from husband earning \$115 monthly, court properly awarded wife use of homestead during five years separation and \$25 per month alimony, the wife having an income of \$57.50. 171M213, 213NW919.

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

§8614.

177M178, 225NW104.
Court may require father to pay support of child to wife even though she has no legal cause to live apart from him. 174M159, 218NW559.

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

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

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

§8615.

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

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

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

CHAPTER 72

Married Women

8616. Separate legal existence.

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

8617. Property rights.

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

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

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

8618. Contracts—Torts—Etc.

Contract whereby plaintiff was employed at a stipulated compensation per month as a farm hand was not abrogated by marriage of plaintiff to his employer, but remained a binding obligation upon her, and he could recover for work performed after the marriage. *Archer v. M.*, 183M306, 236NW455. See Dun. Dig. 4258.

8620. Liability of husband and wife.

A county which furnishes necessary support to a woman, deserted by her husband, may recover of the husband. 175M39, 220NW156.

Verdict against parent for services of daughter, held not excessive, and evidence as to previous earnings of daughter, held admissible on issue of value. 180M100, 230NW478.

Wife was not liable for negligence of her husband in driving a car registered in her name. *Cewe v. S.*, 182M126, 233NW805. See Dun. Dig. 5834b.

Wife who signed contract of sale of lot merely to bar her inchoate right of dower was not liable in action by purchaser to recover money paid because of fraud of seller. *McDermott v. R.*, 247NW683. See Dun. Dig. 4270.

Service of an attorney for wife in divorce case amicably withdrawn was not a necessity for which husband was liable. *Melin v. R.*, 249NW194. See Dun. Dig. 4276.

8621. Contracts between husband and wife.

Archer v. M., 183M306, 236NW455; note under §8618.

½. Agency.

In action by woman for fraud in sale of stock of financial corporation, evidence held to show that plaintiff's husband acted as her agent. *Watson v. G.*, 183M233, 236NW213. See Dun. Dig. 8612.

Evidence held to sustain verdict that deceased farmer, through his wife, agreed to pay daughter and son for work if they remained on farm. *Holland v. M.*, 248NW750. See Dun. Dig. 3593g.

Farmer's wife had authority to employ persons doing housework as agent of her husband. *Holland v. M.*, 248NW750. See Dun. Dig. 4286.

1. Contracts relating to realty.

Transaction whereby husband and wife executed a trust deed and put it in escrow to be delivered upon condition that wife be granted an absolute divorce did not violate the law. *First Minneapolis Trust Co. v. L.*, 185M121, 240NW459. See Dun. Dig. 4282(2).

2. Other contracts.

Evidence held to show conveyance by husband and wife to daughter rendered husband insolvent, and conveyance fraudulent as to creditors. 171M284, 213NW911.

Where the promises of the husband under an antenuptial contract, to make payments to his wife have matured and the money has become due, the causes of action so perfected are not defeated by the wife's subsequent desertion of the husband. 172M91, 214NW791.

8622. Barring interest of spouse.

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

8622-1. Power and curtesy abolished in certain lands.

Act abolishing dower and curtesy and statutory interests in lieu thereof in all lands conveyed by guardians of incompetent married persons prior to Jan. 1, 1929. Laws 1931, c. 29.

CHAPTER 73

Adoption and Change of Name

8626. Consent, when necessary.

When a child has a guardian of the person appointed by the probate court, the consent of such guardian is necessary to permit an adoption by proceedings in the district court. In re *Martinson*, 184M29, 237NW596. See Dun. Dig. 99.

Decree of adoption reversed for lack of evidence sustaining finding that infant had been abandoned by mother, there being no consent to adoption by either parent. *Anderson*, 248NW657. See Dun. Dig. 99.

Possible pecuniary advantage to child is immaterial as against natural rights of parents. Id.

Consent by parent may be withdrawn at any time before adoption. Id.

8630. Status of adopted child.

When the name of an adopted child is omitted from the will of the parent, the presumption is that the omission was not intentional and was occasioned by accident or mistake. 175M193, 220NW601.

CHAPTER 73A

Dependent, Neglected and Delinquent Children

See §§208-1 to 208-9.

8636. Definitions.

Juvenile delinquents are not criminals. *State v. Zenzen*, 178M394, 227NW356.

No appeal lies from a decision of a juvenile court under this chapter. *State v. Zenzen*, 178M394, 227NW356.

Sections 8636 to 8670 are constitutional. *State v. Patterson*, 247NW573, 249NW187. See Dun. Dig. 1646, 4460a.

Dependent neglected, or delinquent children are proper subjects to be placed under guardianship by the probate court. Id. See Dun. Dig. 4460a, 4096.

Fact that maternal grandmother has money and would be able to support children does not negative a finding of dependency on the part of children and the right of mother to a pension. Op. Atty. Gen., Oct. 30, 1930.

8637. Jurisdiction of District Court—jurisdiction of Probate Court.—The District Court in counties now

or hereafter having a population of more than 40,000 inhabitants except in such counties of the Seventh Judicial District shall have original and exclusive jurisdiction in all cases coming within the terms of this act. In all trials in the district court under this act, except as hereinafter provided, any person interested therein may demand a jury, or a judge of his own motion may order a jury to try the case. In counties now or hereafter having a population of not more than 40,000 inhabitants and in all counties of the Seventh Judicial District the probate court shall have jurisdiction over the appointment of guardians of dependent, neglected or delinquent children for the purpose of this act. The jurisdiction of both the district and probate courts over cases of dependency,