

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



Edited by
William H. Mason
Assisted by
The Publisher's Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

male, and shall not have had a former husband or wife, such license shall not be issued unless the consent of the parents or guardians shall be personally given before the clerk, or certified under the hand of such parents or guardians, attested by two witnesses, and duly verified by an officer duly authorized to take oaths and duly attested by a seal, where such officer has a seal. The clerk shall be entitled to a fee of two dollars for administering the oath, and issuing, recording, and filing all papers required. Any clerk who shall knowingly issue or sign a marriage license in any other manner than in this section provided shall forfeit and pay for the use of the parties aggrieved not to exceed one thousand dollars. (R. L. '05, §3559; G. S. '13, §7095; Apr. 25, 1931, c. 401, §1; Apr. 14, 1939, c. 243.)

Marriage may be annulled where it took place within six months after divorce of defendant, through false representation. 171M340, 214NW650.

Where either party intending to marry is under legal age as defined in Mason's Stat., §8992-185, clerk of court is unauthorized to issue a license for marriage of such persons under Mason's Stat., §8569, without consent of parents or guardian as case may be. *Lundstrom v. M.*, 285NW83. See *Dun. Dig.* 5788.

A male person over 18 but under 21 years of age and a female over 16 but under 18 years of age cannot procure a marriage license without the consent of parents or guardians. *Op. Atty. Gen.*, Feb. 13, 1930.

In computing the five-day period, the day on which the application is made is to be excluded and the day the license is issued is to be included. *Op. Atty. Gen.*, Apr. 29, 1931.

Fractions of days may not be considered in determining five days after which a marriage license may be issued. *Op. Atty. Gen.*, May 9, 1931.

Consent of parents may be given any time during the five-day period. *Op. Atty. Gen.*, June 2, 1931.

A party applying for a license must appear personally before the clerk. *Op. Atty. Gen.*, June 2, 1931.

After the five-day period has expired, it is proper to mail the license to the applicant. *Op. Atty. Gen.*, June 19, 1931.

The mother of two dependent children born of a bigamous marriage may receive a county allowance to enable her to care for these children in her home. *Op. Atty. Gen.*, Sept. 26, 1931.

Marriage is forbidden between a woman and her mother's first cousin. *Op. Atty. Gen.* (300j), Feb. 26, 1935.

A court commissioner has power to waive five-day waiting period for marriage license, and express desire of judge of district court that court commissioners do not exercise such power is of no force and effect. *Op. Atty. Gen.* (128b), June 21, 1935.

Neither Laws 1937, c. 79, nor Laws 1937, c. 435, affect §8569, or any other provisions of marriage law of state, and consent to marriage is required from guardian or parent where female is of full age of 15 years and under 18. *Op. Atty. Gen.* (300a), May 13, 1937.

Boy seventeen years of age can marry with consent of parents and an order of Juvenile Court. *Op. Atty. Gen.* (300a), Nov. 27, 1937.

Application for license must be made in person. *Op. Atty. Gen.* (300m), Feb. 4, 1938.

Consent to marriage by parent or guardian was not affected by Laws 1937, c. 435, §24, amending §8992-185. *Op. Atty. Gen.* (493c), May 3, 1938.

Clerk of court should not issue marriage licenses, without consent of parents or guardian of either party who is under 21 years of age. *Op. Atty. Gen.* (300a), Jan. 30, 1939.

8579. Illegitimate children.

This statute does not refer to the children of one marrying while still having a spouse by a prior voidable marriage. 175M547, 221NW911.

The presumption of the legitimacy of a child conceived during wedlock, while strong, is not conclusive. *State v. Soyka*, 181M533, 233NW300. See *Dun. Dig.* 3432.

Marriage of parents legitimized child and purged begetting of all meretricious aspect, as affecting necessity of consent to adoption. *Anderson*, 189M85, 248NW657. See *Dun. Dig.* 844(19).

In bastardy proceedings wherein there was no exception or objection to charge, court did not err in submitting case to jury in absence of proof that child was born alive or was still living, and no proof that defendant was not husband of complaining witness, since it is not conceivable that defendant would not attempt to decide state by setting forth his rights under §8579, §514(1). *State v. Van Guilder*, 199M214, 271NW473. See *Dun. Dig.* 840.

Issue of bigamous marriage is legitimate. *Op. Atty. Gen.*, July 25, 1933.

Where following birth of illegitimate father signed affidavit of admission of paternity and thereafter married mother and two years later a divorce was obtained, child was legitimate and father could be prosecuted for desertion. *Op. Atty. Gen.* (494b-27), Sept. 17, 1935.

CHAPTER 71

Divorce

See §§208-1 to 208-9.

8580. What marriages void.—All marriages which are prohibited by law on account of consanguinity, or on account of either or both parties being under the age of 15 years, or on account of either party having a former husband or wife then living, if solemnized within this state, shall 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 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 duly adjudged. (As amended Apr. 24, 1937, c. 407, §2.)

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.

A widow of a member of fire department relief association, recipient of a pension under its constitution and by-laws, terminated her right to such pension by a marriage and is not entitled to reinstatement as a pensioner upon such marriage being annulled by a judgment of a court of competent jurisdiction. *Northrup v. S.*, 193M623, 259NW185. See *Dun. Dig.* 6605a.

Marriage between first cousins solemnized outside of the state would probably be valid in Minnesota. *Op. Atty. Gen.* (133b-46), Sept. 7, 1935.

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.

A widow of a member of fire department relief association, recipient of a pension under its constitution and by-laws, terminated her right to such pension by a marriage and is not entitled to reinstatement as a pensioner upon such marriage being annulled by a judgment of a court of competent jurisdiction. *Northrup v. S.*, 193M623, 259NW185. See *Dun. Dig.* 6605a.

Settlement of married woman follows that of husband, and annulment of marriage does not void pauper settlement. *Op. Atty. Gen.* (339o-2), Aug. 4, 1938.

8582. Action to annul.

Jurisdiction to annul a marriage—Conflict of laws. 16 *MinnLawRev*398.

Allowance of alimony on annulment of marriage. 23 *MinnLawRev*387.

8583. When not annulled.

Application of clean hands doctrine to annulment of void marriages. 16 *MinnLawRev*215.

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, provided that 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.
8. Continuous separation under decree of limited divorce for more than five years next preceding the commencement of the action.
9. That Laws 1933, Chapter 262 be and the same hereby is repealed. (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; Apr. 25, 1935, c. 295.)

½. In general.

Suit for divorce or separate maintenance is not maintainable after husband's death. *Maruska v. E.*, (USDC-Minn.), 21FSupp841.

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.

Divorce jurisdiction is purely statutory, and court has no power in premises except as delegated to it by statute. *Sivertsen v. S.*, 198M207, 269NW413. See Dun. Dig. 2784b.

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.

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.

Amendments provided for in Laws 1933, c. 262, were not repealed nor superseded by Laws 1933, c. 324. Op. Atty. Gen., Jan. 2, 1934.

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, 225NW237.

Evidence held insufficient to show desertion, but to show cruel and inhuman treatment. 179M266, 229NW123.

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.*, 183M153, 246NW674. See Dun. Dig. 2778.

Association with opposite sex may constitute cruel and inhuman treatment. *Tschida v. T.*, 170M235, 212NW193. See Dun. Dig. 2778(92).

Evidence that wife nagged, scolded and upbraided husband and called him names at all times, even when he was convalescing from a major operation, held to warrant divorce for cruel and inhuman treatment. *Gordon v. G.*, 193M97, 259NW529. See Dun. Dig. 2778(87).

Cruel and inhuman treatment may consist in actual or threatened personal violence, or a systematic course of ill treatment consisting of continued scolding and fault-finding, using unkind language, and petty acts of a malicious nature. *Bickle v. B.*, 194M375, 260NW361. See Dun. Dig. 2778.

Evidence held sufficient to sustain divorce to husband on ground of cruel and inhuman treatment. *Monson v. M.*, 195M257, 262NW641. See Dun. Dig. 2778.

Evidence held to sustain finding that there was no cruelty although defendant became intoxicated and quarreled with his wife. *Tompkins v. T.*, 204M323, 283NW485. See Dun. Dig. 2778(87).

A continuous contemptuous treatment of a spouse may constitute cruel and inhuman treatment just as truly as physical violence. *Id.* See Dun. Dig. 2778(87, 88).

Cruelty as a ground for divorce in Minnesota. 16MinnLawRev256.

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, 225NW237.

Evidence held sufficient to establish willful desertion. *Graml v. G.*, 134M324, 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.

8. Continuous separation under decree.

Chapter 324, Laws 1933, approved five days after approval of c. 262, Laws 1933, did not repeal latter. *Gerdtz v. G.*, 196M599, 265NW811.

Laws 1933, c. 262, adding a ground for absolute divorce, is retrospective as well as prospective. *Id.*

Right to absolute divorce after continuous separation under a decree of limited divorce is to either spouse regardless of ground upon which decree of limited divorce was granted. *Id.*

Separation for a period in excess of five years, only three years of which was under a decree of limited divorce, does not constitute grounds for absolute divorce. *Moravitz v. M.*, 285NW884.

5586. Residence of complainant.

Where both parties in divorce action in another state voluntarily appear and submit to jurisdiction of court, they are bound by judgment as to all matters litigated therein and cannot avoid it in a collateral proceeding in this state by proof that when action was brought and judgment rendered neither of them was a resident in that state, and that both were residents in this state, following *In re Ellis' Estate*, 55M401, 56NW1056, 23LRA287, 43AmStRep514. *Norris v. N.*, 273NW708. See Dun. Dig. 2789.

Since there was no settled case on appeal from order denying motion to dismiss divorce action it must be assumed that there was evidence to sustain lower court's determination that plaintiff was a resident of state for required year. *Meddick v. M.*, 204M113, 282NW676. See Dun. Dig. 2789.

Some problems in jurisdiction to divorce. 13MinnLawRev525.

5587. Denial, though adultery proved.

Condonation of adultery held sufficiently shown. *Howard v. H.*, 171M65, 212NW738.

Knowledge or belief as a prerequisite to condonation. 21MinnLawRev408.

5588. 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, 214NW735.

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.

In matters of divorce and alimony, district court has no jurisdiction not delegated to it by statute. *Ostrander v. O.*, 190M547, 252NW449. See Dun. Dig. 2784b.

Equitable action for separate maintenance was not abolished by Laws 1933, c. 165, repealing statute authorizing actions by wife for a limited divorce. *Barich v. B.*, 201M34, 275NW421. See Dun. Dig. 2793.

5502. Failure to answer—Reference.

A final judgment in an action for divorce cannot be vacated on ground that defendant failed to answer through mistake or excusable neglect. *Wilhelm v. W.*, 201M462, 276NW804. See Dun. Dig. 2799b, 5025, 5027, 5123a.

Motion to vacate divorce decree and grant leave to answer based upon alleged fraud held properly denied. *Wilhelm v. W.*, 201M462, 276NW804. See Dun, Dig. 5122. Attack on decrees of divorce. 34MichLawRev749.

8598. 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, 228NW351.

Service of an attorney for wife in divorce case amicably withdrawn was not a necessity for which husband was liable. *Melin v. R.*, 189M638, 249NW194. See Dun, Dig. 2804.

Where wife sued for divorce and her prayer was denied but husband was given a divorce on cross-bill, wife was not entitled to receive additional allowance on account of attorney's fees on her appeal which was entirely without merit. *Monson v. M.*, 195M257, 262NW641. See Dun, Dig. 2804.

Final determination of a suit for divorce supersedes any power on part of court to grant further temporary alimony and an order granting temporary alimony terminates then even if order provides that it is to be paid until further order of court. *Bickle v. E.*, 196M392, 265NW276. See Dun, Dig. 2802.

Appellate court and lower court from which an appeal is taken in an action for divorce have concurrent jurisdiction to award temporary alimony pending appeal. *Id.*

Temporary alimony, paid pending appeal, may be applied as pro tanto payment on a permanent alimony award. *Id.* See Dun, Dig. 2803.

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.

Jurisdiction to award custody of minor child. 18Minn LawRev591.

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 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.

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.

Only court of state in which minor is domiciled can fix or change custody. *State v. Larson*, 190M489, 252NW329. See Dun, Dig. 4433b.

Though unemancipated minor generally has his father's domicile, where mother and father are divorced, minor's domicile follows that of parent to whose custody it has been legally given. *Id.* See Dun, Dig. 2813.

A wife may after divorce acquire a separate domicile. *Id.* See Dun, Dig. 2814.

Where mother is able to and does properly keep, care for, and control child in her own suitable home, its custody should not be divided so as to permit divorced father to transport child to another home in a different town and surroundings for a week's visit each month, where it is not shown that such other home is suitable. *McDermott v. M.*, 192M32, 255NW247. See Dun, Dig. 2800.

Evidence abundantly supported trial court's conclusion that welfare and best interests of children required that they remain in custody of their mother. *Brown v. E.*, 193M211, 258NW150. See Dun, Dig. 2800.

Court properly struck from original judgment provision for support and maintenance of children after reaching majority. *Sivertsen v. S.*, 198M207, 269NW413. See Dun, Dig. 2800.

Plaintiff's financial situation held so changed as to justify substantial modification of original judgment. *Id.* See Dun, Dig. 2805.

A minor child's domicile follows that of his divorced parent to whom his custody was awarded by decree of divorce, and a judgment of a court of this state decreeing adoption of such child by his stepfather does not impair full faith and credit of divorce decree entered in court of another state, permitting father to see child. *Buckman v. H.*, 202M460, 278NW908. See Dun, Dig. 2813.

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.

Where divorce decree of Iowa awarded custody of minor child to each parent alternately for six months of each year and mother subsequently established her domicile in Minnesota, Minnesota court has jurisdiction to determine minor's custody during mother's six months and is not bound by full faith and credit clause of federal constitution. *State v. Larson*, 190M489, 252NW329. See Dun, Dig. 2800.

Evidence held to show a change of circumstances sufficient to warrant awarding custody of a minor child to the mother in contravention of an earlier divorce decree of the Iowa court. *Id.*

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.*, 182M492, 234NW675. See Dun, Dig. 15.

Following *Nelson v. Nelson*, 149Minn285, 183NW354, in absence of statutory authority courts have no power in divorce proceedings to deal with property rights of parties, and where wife obtains a divorce court may not award to husband property standing in name of wife on the theory of joint enterprise or partnership. *Hutson v. H.*, 204M601, 284NW780. See Dun, Dig. 2799.

8601. Trustee of alimony.

Trust agreement made in contemplation of divorce, held to derive its force from court's approval, and payments thereunder were alimony. *Douglas v. Willcuts*, 296US1, 56SCR59, aff'g 73F(2d)130.

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.

A discharge in bankruptcy does not discharge an assigned matured claim for alimony. Cederberg v. G., 193M421, 258NW574. See Dun. Dig. 743.

A past-due sum or installment of alimony payable to a divorced wife is assignable. *Id.* See Dun. Dig. 569.

A separation agreement between husband and wife which in terms obligated each to join with other in execution of future conveyances or incumbrances of real property belonging to either, was illegal. Simmer v. S., 195M1, 261NW481. See Dun. Dig. 4282.

Where contract between parties, entered into many years after they were divorced, recites a valuable consideration, and facts show a valuable consideration, past-due installments of alimony constitute a legal indebtedness and may be recovered in an independent action. Koch v. K., 196M312, 264NW791. See Dun. Dig. 2807.

Interest may be allowed on a judgment for alimony. Bickle v. B., 196M392, 265NW276. See Dun. Dig. 2803.

Temporary alimony, paid pending appeal may be applied as pro tanto payment on a permanent alimony award. *Id.*

Where plaintiff's right to alimony was litigated in a divorce action brought against her in another state, she cannot thereafter maintain an action therefor in this state. Norris v. N., 200M246, 273NW708. See Dun. Dig. 2807(81).

In suit to set aside divorce judgment, whether defendant's decedent falsely represented to plaintiff that district judge stated that he would only allow \$500 alimony, held for jury. Osbon v. H., 201M347, 276NW270. See Dun. Dig. 5131.

Without determining whether 10-year limitations is applicable, upon a decree of divorce awarding alimony until child should reach 18 years of age and imposing lien on real estate, a motion for an order requiring execution of a certificate of satisfaction of judgment made more than 6 years after child obtained age of 18 was denied on theory that 6-year limitation was not applicable. Akerson v. A., 202M356, 278NW577. See Dun. Dig. 2811.

Agreement as to alimony was wholly superseded and rendered void by stipulation for alimony provisions embodied in decree. Vassar v. V., 204M326, 283NW483. See Dun. Dig. 2803.

Availability of equitable relief in enforcing foreign alimony decrees. 18MinnLawRev589.

Separation agreements and effect of adultery. 19MinnLawRev218.

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, 232NW793. 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. Hollida v. H., 183M396, 237NW2. See Dun. Dig. 2805.

Obligation imposed upon a divorced husband by a South Dakota decree to pay alimony to the divorced wife will be considered here as remaining one for alimony and not an ordinary debt. Ostrander v. O., 190M547, 252NW449. See Dun. Dig. 2811, 5207.

Showing warranted reduction made in alimony. Erickson v. E., 194M634, 261NW397. See Dun. Dig. 2805.

Denial of a prior application to reduce alimony is not a bar to a subsequent application, if a change of financial ability is shown to have occurred after denial of the first. *Id.*

Fact that applicant for reduction of alimony is in arrears in his payments, so that judgments have been rendered therefor, does not preclude court from acting on application. *Id.*

A motion by defendant to modify decree was properly denied, where it appears that plaintiff, now 80 years of age, is receiving under a contract with defendant \$70 per month, which amount is reasonably necessary for her support, and defendant has sufficient property and income to make such payments. Koch v. K., 196M312, 264NW791. See Dun. Dig. 2805.

Pending motion for reduction of alimony in a divorce action did not bar or abate suit to recover money past due under contract. *Id.* See Dun. Dig. 2807.

After affirmance of divorce decree fixing alimony court could not order continuance of payment of monthly temporary alimony, in absence of showing of any change in circumstances. Bickle v. B., 196M392, 265NW276. See Dun. Dig. 2805.

Court properly struck from original judgment provision for support and maintenance of children after reaching majority. Sivertsen v. S., 198M207, 269NW413. See Dun. Dig. 2800.

Plaintiff's financial situation held so changed as to justify substantial modification of original judgment. *Id.* See Dun. Dig. 2805.

It is within discretion of trial court, upon a proper showing, to relieve a defendant in a divorce action from default in making of payments for alimony and support money, even though there has been a delay in making application therefor, and where defendant paid and plaintiff accepted without complaint \$25 per month instead of \$40 per month, court did not abuse its discretion in cancelling a substantial part of deficiency, particularly upon a showing that defendant's financial ability to pay was materially changed. Kumlin v. K., 200M26, 273NW253. See Dun. Dig. 2805.

While divorce jurisdiction is purely statutory and as such court possesses only powers so delegated, court on change in circumstances may cut off unpaid accumulations of alimony. Wilhelm v. W., 201M462, 276NW804. See Dun. Dig. 2805.

Fact that parties are in pari delicto, does not excuse court from duty with respect to alteration of decree with respect to alimony. *Id.* See Dun. Dig. 2805.

Authority to modify alimony allowances is discretionary, and is to be exercised cautiously, only upon new facts occurring after judgment, or upon facts existing before judgment, of which a party was excusably ignorant at time judgment was rendered. Clarizio v. C., 201M590, 277NW262. See Dun. Dig. 2805.

To justify elimination of all alimony from a divorce decree there must be proof of a substantial change in pecuniary situation of parties. Vassar v. V., 204M326, 283NW483. See Dun. Dig. 2805.

Notwithstanding a stipulation as to alimony incorporated in decree, court has power to modify it as changed conditions may require. *Id.* See Dun. Dig. 2805.

An order modifying alimony and barring every future claim to alimony or support indicates an erroneous conception of statutory power of court over alimony by attempting to bar all future control by any court. *Id.* See Dun. Dig. 2805.

Power of court to modify accrued installments. 20 MinnLawRev314.

8604. Security—Sequestration—Contempt.

Contempt is not a "crime" within §934, and, in view of §9302, 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. 1653, 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., 189M501, 250NW49. See Dun. Dig. 2799.

Husband should not be adjudged guilty of contempt in failing to pay money to divorced wife where such failure resulted from refusal of divorced wife to join in mortgage. Feltmann v. F., 189M584, 250NW457. See Dun. Dig. 2811.

A local statute authorizing resort to sequestration and contempt proceedings to compel payment of alimony includes an action brought to compel payment of unpaid installments under a foreign judgment for alimony; local action on that judgment being itself a case where "alimony" is decreed. Ostrander v. O., 190M547, 252NW449. See Dun. Dig. 2811, 5207.

A defendant in a divorce action against whom an award for alimony and for support of minor children has been decreed cannot, when he has voluntarily placed himself in a position where he is unable to conform to court's order, purge himself of contempt for failure to

comply with order by establishing his inability to pay installments provided for in decree. *Ryerson v. R.*, 194 M350, 260NW530. See Dun. Dig. 1703(40).

Neither corpus nor income of spendthrift trust could be reached to satisfy claims for alimony or support money for children. *Erickson v. E.*, 197M71, 266NW161. See Dun. Dig. 2809a.

Evidence held to justify denial of motion that plaintiff be adjudged in contempt for failure to pay alimony. *Zeches v. Z.*, 198M488, 272NW380. See Dun. Dig. 1703.

Upon ex parte application for a declaratory judgment for unpaid alimony and for execution, trial court may, in its discretion, require notice of application to be given to other party to proceedings, even though statutes do not require giving of notice in such cases. *Kumlin v. K.*, 200M26, 273NW253. See Dun. Dig. 2811.

Defendant is not relieved from paying alimony and support money because of plaintiff's action in keeping children with relatives outside of state rendered necessary because of defendant's failure to make payments, distinguishing *Eberhart v. E.*, 153Minn66, 189NW592, *Fjeld v. F.*, 201M512, 277NW203. See Dun. Dig. 2803.

Defendant cannot purge himself of contempt by showing that he assumed additional burdens by remarriage. *Fjeld v. F.*, 201M512, 277NW203. See Dun. Dig. 1703.

Default in payment of alimony being admitted, defendant had burden of showing inability to make payments ordered to be made by him. *Id.* See Dun. Dig. 1703.

Following *State ex rel. Hurd v. Willis*, 61 Minn. 120, 63NW169, supreme court will not review by writ of certiorari an order of the district court adjudging the relator guilty of a civil contempt. *Guleson v. G.*, 286 NW721.

Enforcement of payment of alimony by commitment. 18MinnLawRev45.

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.

ANNOTATIONS UNDER REPEALED SECTIONS

8608. Separation.

Equitable action for separate maintenance was not abolished by Laws 1933, c. 165, repealing statute authorizing actions by wife for a limited divorce. *Barich v. B.*, 201M34, 275NW421. See Dun. Dig. 2798.

8609. For what causes.

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. As to alimony and wife's property.

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, 213NW 919.

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. When separation not granted.

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. Revocation.

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.

Husband has absolute power to dispose of his personal property, providing that no fraud be committed against his wife's marital rights. *Maruska v. E.*, (USDC-Minn), 21FSupp841.

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.

Though wife cannot maintain an action against her husband for a tort committed by him against the person of the wife, action by administrator of a child is not an action by wife against husband, and administrator may recover for death of child, though wife of defendant is sole beneficiary. *Albrecht v. P.*, 192M557, 257NW377. See Dun. Dig. 2608, 4288.

Neither wife nor minor child may recover damages for personal injuries to husband and father, remedy being solely in husband and father. *Eschenbach v. B.*, 195 M378, 263NW154. See Dun. Dig. 4288b, 7305b.

A married woman cannot maintain an action against her husband for damages claimed to have been caused to her by the negligence of her husband prior to their marriage. *Patenaude v. P.*, 195M523, 263NW546. See Dun. Dig. 4288.

Fact that, prior to their marriage, plaintiff commenced and action against defendant for same cause which action she thereafter dismissed, does not create any estoppel or entitle her to any relief in suit brought after marriage. *Id.*

Immunity of husband from suit in tort on part of his wife does not inure to benefit of owner of automobile driven by husband. *Miller v. J.*, 196M438, 265NW324. See Dun. Dig. 4258(77).

Where a husband is driving his automobile with his wife as passenger, his negligence cannot be imputed to wife on basis of joint venture unless it is shown that wife jointly controlled, or had right to join in controlling, driving of automobile at time of collision. *Olson v. K.*, 199M493, 272NW381. See Dun. Dig. 4262.

An inference that husband is acting as agent or servant of his wife in driving her in his automobile to a doctor for medical attention does not arise from fact of marital relation alone, nor from fact that husband acts at wife's request. *Id.*

In Minnesota a wife cannot maintain an action in tort against her husband, but a Wisconsin court cannot refuse to take jurisdiction of such an action between persons domiciled in that state. *Bourestom v. B.*, 285NW(Wis) 426.

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.

Neither husband nor wife have separate actions for damages to property owned only by one of them. *Eschenbach v. B.*, 195M378, 263NW154. See Dun. Dig. 4288a.

When a husband acquires possession of the separate property of the wife, whether with or without her consent, he must be deemed to hold it in trust for her benefit in the absence of evidence that she intended to make a gift of it to him. *Reifsteck's Estate*, 197M315, 267NW 259. See Dun. Dig. 4259.

That widow as administratrix listed property in inventory as belonging to estate does not estop her from making claim that it was held in trust for her. *Id.*

Complaint filed by widow against estate of which she was administratrix to recover property held in trust for her by deceased stated a cause of action as against claim that administratrix and claimant were same person