

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.



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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8608 to 8615 [Repealed].

Repealed by Laws 1933, c.165, to take effect from its passage but not to apply to actions now pending in district courts.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

and therefore she could not bring an action against herself. *Id.*

Effect of marriage on contract existing between husband and wife at time of marriage. 16MinnLawRev108.

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.

A farm may be owned and operated by wife, her husband functioning only as her agent. *Durgin v. S.*, 192M526, 257NW338. See Dun. Dig. 145, 4262.

In proceeding to recover for services rendered deceased by claimant, his daughter-in-law, pursuant to an alleged contract to pay her at his death, court erred in refusing to instruct jury that services of wife with respect to family household belong to husband; that he may waive his right to compensation therefor from another party and consent that wife receive same, provided there is no question of set-off or counterclaim against husband, but where such appears it must be shown that one to be charged with payment of compensation acquired in payment to wife. *Empenger v. E.*, 194M219, 259NW795. See Dun. Dig. 4261.

Where plaintiff's husband had lived apart from her for five years, during which time she had received no support from him, and she alone requested service of nurse, doctor, and hospital for which she alleged special damages, she is liable therefor and may recover from wrongdoer who necessitated her incurring the liability. *Paulos v. K.*, 195M603, 263NW913. See Dun. Dig. 4258.

Marital relation alone did not constitute wife agent of husband to surrender lease and make a new one for him. *Hildebrandt v. N.*, 199M124, 272NW257. See Dun. Dig. 4262a.

8620. Liability of husband and wife.

The term necessities as applied to a husband's obligations toward his wife includes not only food and clothing, but such articles of utility and even ornaments as are suitable to maintain the wife according to the estate and rank of her husband, though she has independent means, and though the husband has furnished her with money to pay for such necessities. *Hill v. C.*, (USCCA8), 88F(2d)941, aff'g 34BTA1288. See Dun. Dig. 4273.

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. 5334b.

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.*, 188M501, 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.*, 189M638, 249NW194. See Dun. Dig. 4276.

Absent fraud or plea for reformation of instruments, a wife cannot successfully defend against a note which she signed with her husband on ground that she signed it merely to bar her right of dower to premises which she and her husband mortgaged to secure note; extension of time for her husband to pay a debt being a valuable consideration running to her. *First State Bank of Gaylord v. H.*, 201M586, 277NW274. See Dun. Dig. 4270.

Husband is obligated to support wife and maintain family home whether wife has independent income or not. *Hill*, 33 U. S. Board of Tax Appeals 891.

Admission to tuberculosis sanatorium is not governed by rules applicable to settlement for poor relief purposes. *Op. Atty. Gen.* (556a-1), Dec. 29, 1936.

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.*, 189M172, 248NW750. See Dun. Dig. 3593g.

Farmer's wife had authority to employ persons doing housework as agent of her husband. *Id.* 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).

Real estate may be conveyed from one spouse to the other through the medium of a third party. *Williams v. W.*, 192M438, 257NW1. See Dun. Dig. 4282.

An equitable mortgage cannot be created by law to secure advances made by wife to husband on faith of latter's parol promise to give security on his real estate. *Id.* See Dun. Dig. 4282, 6153.

One spouse may transfer his real estate and all his personal property to the other through a third person, if rights of creditors are not prejudiced. *Durgin v. S.*, 192M526, 257NW338. See Dun. Dig. 4258, 4282.

A transfer of a farm and all owner's personal property from husband to wife, having been found not fraudulent, considered absolute rather than mere security for indebtedness from husband to wife. *Id.* See Dun. Dig. 6154.

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.

Conveyance by one spouse to other spouse through medium of a third party is valid, but an executory agreement between spouses to make such a conveyance would be invalid. *Id.*

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.

If there was a contract between husband and wife whereby latter was bound to make agreed testamentary disposition of property left her by her husband, his will held of such nature that, coupled with other evidence of testator's intention, it was properly held that agreement between husband and wife had been abrogated, and that disposition made of his property by husband's will was intended to be absolute. *Hanefeld v. F.*, 191M547, 254NW821. See Dun. Dig. 10207.

Before any inference of undue influence may be drawn from fact that donee is spouse of donor, it must also appear that such donee stood in a relation other than ordinary intimate, or even affectionate, relation existing between them, and it must be shown, in addition, that donee occupied a position to dominate donor, or exert an influence over him, by virtue of being intrusted with donor's business affairs. *Berg v. B.*, 201M179, 275NW836. See Dun. Dig. 4035.

Children of respective parties to an antenuptial contract held not parties to contract and to have no vested right which would prevent change by voluntary act of parties thereto. *Id.* See Dun. Dig. 4251, 4285.

Right of one spouse to accept by gift *inter vivos*, or take under will of other spouse, is not affected by an antenuptial agreement between them, except where it is found that by such gift or agreement it was intended that there be satisfaction or adoption thereof. *Id.*

3. Notice as to creditors—Burden of proof.

Transfers between husband and wife, whether made directly or indirectly, are *prima facie* fraudulent as to existing creditors; burden resting upon wife to show by clear and satisfactory evidence that a valuable consideration was paid by her or by some one in her behalf. *State Bank of New London v. S.*, 197M425, 267NW366. See Dun. Dig. 3907.

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.*

Act Apr. 8, 1939, c. 152, abolishes dower and curtesy or estates in lieu thereof as to land conveyed prior to Jan. 1, 1920, and limits actions to recover such estates.

8623. Antenuptial contracts.

Antenuptial agreements are valid. *Op. Atty. Gen.* (300), Nov. 23, 1934.