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Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

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transaction is fraudulent as to both present and future creditors. *McDonald v. B.*, 148SW(2d)(Tenn)385.

31. Chattel mortgages.

Mortgaging of chattels and then transferring them to a corporation subject to the mortgage did not constitute fraud, where parties were contemplating a profitable business, and creditors attacking validity of mortgage were required to prove fraud in fact. *Club Evergreen*, (DC-NJ)33FSupp536.

32. Who may assail.

A surety may bring an action to set aside a fraudulent conveyance of its principal before any loss occurred or payments were made. *McDonald v. B.*, 148SW(2d)(Tenn)385.

40. Evidence.

On record trial court was not bound to find that transfer of property covered by so-called Torrens title was fraudulent. *Andrews v. W.*, 292NW251. See Dun. Dig. 3910.

42. Findings.

A finding that a transfer was made without intent to hinder, delay or defraud existing or subsequent creditors implies good faith on part of transferor. *Andrews v. W.*, 292NW251. See Dun. Dig. 3929.

8483. Rights of creditors with matured claims.

The Uniform Fraudulent Conveyance Act, so far as it purports to authorize action to set aside fraudulent conveyance without existence of lien is unconstitutional. *F. W. Horstmann Co. v. R.*, 15Atl(2d)(NJ)623.

Action to set aside transfer by corporate debtor made through judicial proceeding, and not one based on disregard of conveyance, and is governed as to limitations by statute relating to suits in equity to avoid transfer, and not by limitations applicable to fraud actions. *Hearn*,

45 St. Corp. v. J., 27NE(2d)814, 283NY139, rev'g 16NYS(2d)778, 17NYS(2d)1000, 258 AppDiv923, 965.

(1).

Good faith grantee may not continue payments to his fraudulent grantor upon learning that conveyance to him was designed to hinder, delay or defraud creditors of the grantor, and assuming fraudulent purpose of grantor, conveyance is subject to be set aside by creditors of the latter. *Angers v. S.*, 293NW(Wis)173.

(2).

Grantees who are guilty of no actual fraud are entitled to a lien for payments made for maintenance and preservation of property from tax and other liens, even if those payments are made after learning of fraudulent purpose of grantor, and the better rule would seem to be to protect even guilty grantees in such respect. *Angers v. S.*, 293NW(Wis)173.

Where a grantee innocently makes part payments upon purchase price prior to learning of fraudulent purpose of conveyance, he may have a lien upon premises as security for those payments. *Id.*

An innocent grantee paying part of purchase price and making payments to preserve property may maintain an action to establish his lien against property conveyed to him. *Id.*

8484. Creditors whose claims have not matured.

Where there was nothing in allegations of complaint to indicate that ancestor in title in disposing of assets involved any fraud as to future creditors, plaintiff as a successor in title to real estate, had no cause of action against transferee of such ancestor in title arising from fact that he was an innocent purchaser of real estate and would have some rights if transfer to him were set aside, at suit of creditors of the ancestor. *Angers v. S.*, 293NW(Wis)173.

CHAPTER 69

Liens for Labor and Material

FOR IMPROVEMENT OF REAL ESTATE

8494. When lien attaches—Notice.

A mechanic's lien, in proper form, filed with registrar of title, attaches to land as of commencement of improvements, the same as a lien filed in office of register of deeds for improvement upon land not registered under Torrens Act. *Armstrong v. L.*, 296NW405. See Dun. Dig. 6062.

No notice of lien is required to be given owner by person who contracts directly with owner and furnishes materials under such contract to owner in order to establish lien as between owner and material men. *Roughan v. R.*, 199So(Fla)572.

Notice of lien is sufficient to meet statutory requirements though it is drawn in rather slipshod fashion. *Id.*

Person furnishing materials for construction of building on married woman's separate property under contract with married woman may avail himself of Uniform Mechanic's Lien Act, but he must follow provisions of act. *Id.*

MOTOR VEHICLES

8524. To whom given—For what services rendered.

Holder of a motor vehicle lien for storage or repairs is not estopped by his mere silence to assert his superior right against a purchaser with notice at foreclosure sale under chattel mortgage, though such purchaser believed lien to be outlawed. *Conner v. C.*, 294NW650. See Dun. Dig. 5579a.

A subsequent bona fide encumbrancer of an automobile takes subject to motor vehicle lien given by this act. *Id.* See Dun. Dig. 5584a.

8525. Statement of claim for lien; etc.

Record of an unsatisfied and undischarged lien, which was filed and upon which foreclosure was commenced within time allowed by statute, is notice not only of lien but of action to foreclose it, although statute does not require filing of a notice of lis pendens and none is filed. *Conner v. C.*, 294NW650. See Dun. Dig. 5579a.

8526. Foreclosure.

Chattel mortgagee foreclosing and selling automobile in exclusion and defiance of lien rights of one furnishing storage or repairs, may be held in conversion. *Conner v. C.*, 294NW650. See Dun. Dig. 5579a.

Proceedings for foreclosure commenced within period allowed need not be brought to final adjudication within such period. *Id.*

IN OTHER CASES

8548. For wages as against attachment, etc.

In bankruptcy proceeding, claims for wages earned within 6 months but more than 3 months before filing of petition were not entitled to priority of payment over claim of United States for taxes due under Social Security Act. *Penticoff*, (DC-Minn), 36FSupp1.

GENERAL PROVISIONS

8558. Inaccuracies in lien statement.

Evidence held to sustain finding that materialman knowingly by lien statement demanded more than was justly due, where it appeared owner gave check payable to contractor and materialman, and materialman credited materials for amount of check and then gave contractor a check and added it to material account. *Standard Lumber Co. v. A.*, 289NW827. See Dun. Dig. 6074.

8561. Pledgee permitted to buy pledge where sold at public sale.

In case of a pledged commercial paper, foreclosure is not permitted, where a sale would result in sacrifice, especially when obligor is insolvent. *First & Am. Nat. Bank of D. v. W.*, 292NW770. See Dun. Dig. 7751.

A pledgee of tangible personalty may not resort to it for his own purposes prior to foreclosure of pledge, but a pledgee of a chose in action pursuant to his duty to conserve collateral must use reasonable diligence to collect. *First & Am. Nat. Bank of D. v. W.*, 292NW770. See Dun. Dig. 7744.

CHAPTER 70

Marriage

8562. Marriage a civil contract.—Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties, capable in law of contracting, is essential. Lawful marriage hereafter may be contracted only when a license has been obtained therefor as provided by law and when such

marriage is contracted in the presence of two witnesses and solemnized by one authorized, or who the parties in good faith believe to be authorized, so to do. Marriages subsequent to the passage of this act not so contracted shall be null and void. (As amended Act Apr. 26, 1941, c. 459, §1.)

Prosecution for bigamy cannot be based upon a common law marriage, since such a marriage cannot be established where some impediment exists. *Op. Atty. Gen.*, (133B-10), Sept. 21, 1939.

8565. By whom solemnized.

A licensed minister may solemnize a marriage, though not ordained. *Op. Atty. Gen.* (300c), Aug. 21, 1940.

CHAPTER 71

Divorce

8580. What marriages void.

Marriage by person committed as a feeble-minded person to the guardianship of the state board of control was not void under §8580, but was voidable under §8581. *Op. Atty. Gen.*, (679k), Sept. 22, 1939.

8581. What voidable.

Marriage by person committed as a feeble-minded person to the guardianship of the state board of control was not void under §8580 but was voidable under §8581. *Op. Atty. Gen.*, (679k), Sept. 22, 1939.

A marriage may be annulled for want of age or for fraud, provided there is no subsequent voluntary cohabitation of parties, and whether there is fraud or subsequent voluntary cohabitation is a factual matter. *Op. Atty. Gen.* (300B), March 12, 1940.

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 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, and continuous separation under an order or decree of separate maintenance for a period of two years immediately preceding the commencement of the action. (As amended Act Apr. 24, 1941, c. 406, §1.)

½. In general.

In action to procure a divorce trial court determines credibility of the witnesses and weight to be given their testimony and can conclude that testimony is product of imagination and exaggeration rather than a recital of what actually took place. *Rhoads v. R.*, 292NW760. See *Dun. Dig.* 2796.

Mere temperamental differences and nervousness of a woman do not require separate maintenance and custody of a child. *Rhoads v. R.*, 292NW760. See *Dun. Dig.* 2778.

It is unnecessary that the plaintiff be corroborated as to each item of evidence, being sufficient if evidence tends in some degree to confirm allegations replied upon for a divorce. *Locksted v. L.*, 295NW402. See notes under §9905. See *Dun. Dig.* 2795.

3. Cruel and inhuman treatment.

In action for divorce on ground of cruel and inhuman treatment, court might well have permitted testimony as to disposition and temper elements of defendant, but it was not reversible error to exclude where relationship of parties over a long period of time was dwelt upon at length. *Locksted v. L.*, 295NW402. See *Dun. Dig.* 2778.

Evidence held to sustain finding of cruel and inhuman treatment of wife. *Id.*

A wife beaten, hit, and choked by husband for 28 years was entitled to divorce though she at times fought back. *Id.*

In action for divorce for cruel and inhuman treatment for 28 years, plaintiff's failure to call as a witness her daughter was merely a factor to be considered. *Id.* See *Dun. Dig.* 2795.

5. Desertion.

Wilful desertion is voluntary separation of one of married parties from other or voluntary refusal to renew a suspended cohabitation without justification either in consent or wrongful conduct of other. *Lewis v. L.*, 289NW60. See *Dun. Dig.* 2776.

Rejection of an offer to return home, made by a husband who had previously left the marital domicile, does not constitute desertion when the offer was made during the pendency of a prior divorce action. *Id.* See *Dun. Dig.* 2776.

Separation by mutual consent is not grounds for divorce. *Id.* See *Dun. Dig.* 2776.

The refusal of a party to a marriage contract to restore a repentant spouse who had previously left the home constitutes desertion if, but only if, the latter attempts in good faith to effect a reconciliation. *Id.* See *Dun. Dig.* 2776.

Desertion as a ground for divorce cannot be predicated on a separation under an order or judgment of the court which authorizes or sanctions the same. *Bliss v. B.*, 293NW94. See *Dun. Dig.* 2776.

8. Continuous separation under decree.

It is doubtful if statute applies where one is living apart under a decree for separate maintenance and not a decree of limited divorce. *Bliss v. B.*, 293NW94. See *Dun. Dig.* 2776.

8588. Action—How and where brought—Venue.

District court has power to punish as for contempt wrongful refusal of a husband to pay an allowance ordered for benefit of his wife in an action for separate maintenance. *Sybilrud v. S.*, 291NW607. See *Dun. Dig.* 1703(40).

Reopening of divorce case for taking of additional testimony or to order a new trial is a matter primarily for trial court. *Locksted v. L.*, 295NW402. See *Dun. Dig.* 2799b.

8593. Alimony pending suit.

Plaintiff on appeal from a judgment denying a divorce was allowed attorney's fees and disbursements, though she was unsuccessful, where appeal appeared to be made in good faith and upon reasonable grounds. *Rhoads v. R.*, 292NW760. See *Dun. Dig.* 2804.

Where divorced woman's appeal from partial denial of motion for modification of divorce decree was without merit, she was allowed no attorneys' fees. *Coddon v. Coddon*, 295NW74. See *Dun. Dig.* 2804.

Attorney's fees of \$600 were excessive, but were allowed to stand to include appeal of case. *Locksted v. L.*, 295NW402. See *Dun. Dig.* 2804.

Temporary alimony must be paid without delay. *Id.* See *Dun. Dig.* 2802.

8596. Custody of children.

Where decree of divorce is silent with respect to support of a child, divorced mother has cause of action against divorced father quasi ex contractu for support furnished child arising out of natural and legal duty of father. *Quist v. Q.*, 290NW561. See *Dun. Dig.* 2800.

Duty of supporting a child rests primarily on the father, even after divorce of parents. *Id.* See *Dun. Dig.* 2800.

A divorced wife who has been awarded custody of a child cannot enforce accrued instalments of obligation to support child as provided for in decree when she has intentionally violated its provisions by taking child outside territorial limits of court's jurisdiction. *Anderson v. A.*, 291NW508. See *Dun. Dig.* 2800.

Disposition of custody of children in a divorce case made by trial court will not be reversed upon appeal except for abuse of broad discretion with which court is invested. *Locksted v. L.*, 295NW402. See *Dun. Dig.* 2800.

8602. Property of husband—Permanent alimony.

The allowance of attorneys' fees and other expenses in divorce proceedings is largely a matter of discretion with trial court, and it is established policy of supreme court to be conservative in matter of such allowances and they are to be allowed cautiously and only when necessary. *Burke v. B.*, 292NW426. See *Dun. Dig.* 2804.