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1941 Supplement

To

**Mason's Minnesota Statutes**

**1927**

**1939 to 1941**

**(Supplementing Mason's 1940 Supplement)**

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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An award of alimony to a 30-year old woman of \$125.00 a month for thirty months was modified to do away with the time limitation. *Id.*

Finding of trial court in divorce case that certain realty of defendant might be worth as much as \$12000 above encumbrances, was not to be commended when highest figure given, and by plaintiff, was \$11500, but was not prejudicial with respect to finding by court that plaintiff was entitled to permanent alimony of \$2825, a matter well within discretion of court. *Locksted v. L.*, 295NW402. See Dun. Dig. 2803.

Permanent alimony of \$2825 with a lien on a farm was modified so as to require payment in installments of \$60 a month. *Id.*

#### 8603. Order for alimony, etc., revised.

To warrant a modification of an allowance fixed by a divorce decree there must be proof of such substantial change in situation of parties from that in which they were when decree was rendered as to justify a modification. *Quist v. Q.*, 290NW561. See Dun. Dig. 2805.

Power of court to revise or alter a decree for alimony is very broad. *Burke v. B.*, 292NW426. See Dun. Dig. 2805.

Inheritance received by woman obtaining divorce and reduction of defendant's professional and non-professional income held not to justify interference with order fixing alimony. *Horeish v. H.*, 295NW53. See Dun. Dig. 2805.

Where husband sued wife for absolute divorce and custody of two children, boys 16 and 10 years old, and defendant defaulted but signed a stipulation that plaintiff have custody of children and that she receive \$60 a month alimony for 2 years, and decree followed stipulation, court did not abuse its discretion on defendant's motion for modification in denying change of custody

and increasing alimony to 3 years instead of two. *Coddon v. C.*, 295NW74. See Dun. Dig. 2805.

#### 8604. Security—Sequestration—Contempt.

A divorced husband charged with contempt for disobedience in failing to pay alimony allowed to the wife by the judgment of divorce may excuse the disobedience by showing his inability to obey; but the burden of showing such fact is on him. *Ekblad v. E.*, 291NW511. See Dun. Dig. 1703(40).

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).

Inability to pay is a good defense. *Id.* See Dun. Dig. 1703(40).

#### LIMITED DIVORCES

#### 8608. Separation. [Repealed.]

Equitable power of court to grant separate maintenance was not abolished by L. 1933, c. 165, abolishing limited divorces. *Bliss v. B.*, 293NW94. See Dun. Dig. 2798.

#### 8613. As to alimony and wife's property. [Repealed.]

Allowance of separate maintenance in the sum of \$120 a month to wife living in family home and burden of keeping place insured and taxes paid held not excessive where husband was a physician and surgeon in a small community with a gross annual income of \$8,000, though he was spending \$2,000 to \$2,500 a year for maintenance and education of two minor daughters. *Sybilrud v. S.*, 291NW606. See Dun. Dig. 2803.

## CHAPTER 72

### Married Women

#### 8621. Contracts between husband and wife.

Conveyances of real property prior to December 29, 1926, by married man to his wife, declared legal and valid. *Laws 1941, c. 343.*

## CHAPTER 73

### Adoption and Change of Name

#### 8626. Consent, when necessary.

If mother is of sufficient age and discretion to fully realize consequences of her consent, fact that she is a minor and is unmarried would not incapacitate her, nor render consent unnecessary. *Op. Atty. Gen.*, (840B-2), April 11, 1940.

**8628. Notice of hearing.**—When the parents of any minor child are dead or have abandoned him, and he has no guardian in the state, the court shall order three weeks' published notice of the hearing on such petition to be given; the last publication to be at least ten days before the time set therefor. In every such case the court shall cause such further notice to be given to the known kindred of the child as shall appear to be just and practicable; provided that if there be no duly appointed guardian, a parent who has lost custody of a child through divorce proceedings, and the father of an illegitimate child who has acknowledged his paternity in writing or against whom paternity has been duly adjudged shall be served with notice in such manner as the court shall direct in all cases where the residence is known or can be ascertained. (As amended Apr. 9, 1941, c. 151, §1.)

#### 8629. Decree—Change of name.

Judgment of adoption, though entered after death of one of adoptive parents could not be collaterally attacked. *Op. Atty. Gen.*, (840B), March 12, 1940.

#### 8630. Status of adopted child.

Where property is given in trust to pay income to a beneficiary for life with remainder to "lawful issue" of life beneficiary, gift in remainder is to a class, which, absent context or circumstances to show a contrary intention, includes adopted children. *Holden's Trust*, 291 NW104. See Dun. Dig. 2722a.

Where alleged adopted father made provision in his will for "my foster daughter", having been prepared by a competent lawyer of long experience, technical words

"foster daughter" will be presumed to have been used in that sense. *Norman's Estate*, 295NW63. See Dun. Dig. 2722d.

Section applies to all adopted children, whether adopted prior or subsequent to its passage. *Id.*

Absent adoption pursuant to statute, a child received into home of foster parents and by them reared as their natural child is allowed to share in estate of foster parents only when a contract to adopt or to give it a share in such estate is clearly proved. *Id.*

An oral contract to adopt must be established by proof that is clear, cogent and convincing. *Id.* See Dun. Dig. 99a.

There being no contract to adopt, there can be no estoppel against asserting its non-existence. *Id.* See Dun. Dig. 99a, 2722d.

**8634. Order—Filing copies—County auditor.**—If it shall appear to the court to be proper, it shall grant the application, and shall set forth in the order a description of the lands, if any, in which the applicant claims to have an interest. The clerk shall file such order, and record the same in the judgment book. If lands be described therein, a certified copy of the order shall be filed for record, by the clerk, with the Register of Deeds of each county wherein any of the same are situated. Provided that before doing so he shall present the same to the county auditor, who shall enter the change of name in his official records and shall note upon the instrument, over his official signature, the words change of name recorded. Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the clerk the cost of such record. The fees of the clerk shall be two dollars, and for each certified copy of the order fifty cents. (As amended Act Apr. 10, 1941, c. 178, §1.)

Act Apr. 28, 1941, c. 540, §1, validates final decrees of adoption heretofore entered pursuant to sections 8624 to 8634, inclusive.