

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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8501. Notice of lis pendens in certain cases.

Evidence held sufficient to support findings as to timeliness of filing and commencing action to foreclose lien. *Steele v. Vernes*, 212M281, 3NW(2d)425. See Dun. Dig. 6087, 6100.

Two actions to foreclose mechanics' liens brought in good faith were properly consolidated by the trial court. *Id.* See Dun. Dig. 6098.

8504. Judgment, sale, redemption, etc.

Where personal liability for debt in a lien foreclosure action is found against two defendants jointly and severally and judgment is entered against only one of them, latter may not complain since he may seek contribution from other defendant for his proportionate share of any sum he has paid on judgment. *Smude v. Amidon*, 214M266, 7NW(2d)776. See Dun. Dig. 1920, 6113.

In foreclosure actions, court retains jurisdiction after entry of judgment and after time to appeal therefrom has expired for purpose of supervising and controlling the foreclosure sale, and in exercise of such control may permit a lien claimant to waive completely worthless lien rights included in such judgment and order entry of personal judgment against a defendant personally liable for the debt without first requiring a foreclosure sale. *Id.* See Dun. Dig. 6113.

Lien claimants, parties to a foreclosure action, before finally submitting their cause to the court, may waive their lien rights and limit recovery sought to personal judgments against a defendant personally liable for the debt. *Id.* See Dun. Dig. 6113.

Judgment need not specifically provide for a deficiency judgment in order to authorize later entry of a personal judgment against a defendant found personally liable, for the balance due after the foreclosure sale. *Id.* See Dun. Dig. 6113.

In actions to foreclose mechanics' liens or mortgages, ordinarily personal judgment may not be entered against a defendant found personally liable for the debt until lien rights covered by judgment have first been exhausted by foreclosure sale. *Id.* See Dun. Dig. 6113.

Language of judgment in lien action that "plaintiff and the defendant lien claimants are entitled to no other or further relief hereon" held not to restrict plaintiff from applying for entry of personal judgment against defendants personally liable. *Id.* See Dun. Dig. 6113.

In ordinary action, after time for appeal expires, court cannot modify a judgment except for clerical error or misprision, or except as prescribed in statute, but there is a distinction in mortgages and mechanics' lien foreclosure action. *Id.* See Dun. Dig. 6113.

PERSONALTY IN POSSESSION**8507. For keeping, repairing, etc.**

Possessory lien for repair of an automobile is lost if possession is unconditionally resumed by owner. *Bongard v. Nellen*, 210M392, 298NW569. See Dun. Dig. 5579a.

Where garage man purchased oil at such a cheap price that he thought it was stolen and turned it over to the police, and suspected thief escaped, oil should be returned to garage man after reasonable time and after any possibility of its being needed as evidence is gone. *Op. Atty. Gen.* (605B-40), Mar. 27, 1942.

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.*, 208M502, 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.

Possessory lien for repair of an automobile under *Mason Minn. St.* 1927, §8507, is lost if possession is unconditionally resumed by owner. *Bongard v. Nellen*, 210M392, 298NW569. See Dun. Dig. 5579a.

Disposition by municipal authority of vehicles abandoned upon street, highway, or city owned property. *Op. Atty. Gen.* (632d-1), Sept. 17, 1942.

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.*, 208M502, 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.*, 208M502, 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), 36FSuppl.

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.*, 207M52, 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.*, 207M537, 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.*, 207M537, 292NW770. See Dun. Dig. 7744.

8561 1/2.**COMMON LAW
DECISIONS RELATING TO LIENS
IN GENERAL**

Pledgee of automobile who paid sight draft accompanying bill of lading and received delivery abandoned or relinquished his rights as pledgee, as against a good faith purchaser for value, by permitting pledgor to expose it for sale in his show room. *Goebel v. Heesch*, 212M424, 4NW(2d)104. See Dun. Dig. 7740.

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.)

The quality of a marriage, as to its being void or voidable, is to be tested by law of place where ceremony was performed. *Von Felden v. Von Felden*, 212M54, 2NW(2d)426. See Dun. Dig. 1557.

A marriage may not be dissolved by agreement of the parties or by the say-so of one of them, and this applies as well to common law marriages as to those solemnized by a person thereto authorized by statute. *Rogers v. Cordingley*, 212M546, 4NW(2d)627. See Dun. Dig. 2786.

The validity of a marriage celebrated in Iowa between residents of Minnesota is governed by the law of Iowa. *Johnson v. Johnson*, 214M462, 8NW(2d)620. See Dun. Dig. 1557, 5784.

A marriage contracted prior to enactment of Laws 1941, c. 459, amending this section, is not affected by the provisions thereof. *Id.* See Dun. Dig. 5785.

One who has been adjudged an incompetent may contract a valid marriage if he has in fact sufficient mental capacity for that purpose. *Id.* See Dun. Dig. 5788.

The rule is the same in Iowa as in other states that a person under guardianship as an incompetent may have capacity to contract a marriage. *Id.* See Dun. Dig. 5788.

Subsequent denial of a common-law marriage by the parties cannot destroy its validity any more than a subsequent denial of a ceremonial marriage can change status created by it, and if there is a common-law marriage a subsequent ceremonial marriage with a third person is necessarily void as of no force. *Wilson v. Wilson*, 139Neb153, 296NW766. Common law marriages were abolished by Laws 1941, c. 459.

A common law marriage in Minnesota may be proved by admissions of parties, evidence of general repute, evidence of cohabitation as married persons, and other circumstantial or presumptive evidence from which fact of marriage may be reasonably inferred. *Id.* But see Laws 1941, c. 459, abolishing common law marriages.

Common law marriages are recognized in State of Minnesota, and all that is necessary to render competent parties husband and wife is that they agree in the present tense to be such. *Id.* But common law marriages are now abolished, Laws 1941, c. 459.

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.

Since enactment of Laws 1941, c. 459, it is exceedingly doubtful that courts would recognize a marriage by proxy. *Op. Atty. Gen.* (300), Apr. 27, 1942.

Boy under 18 cannot secure marriage license even with parents' consent. *Op. Atty. Gen.* (300a), Aug. 13, 1942.

8563. Persons capable of contracting.

Op. Atty. Gen. (300a) July 10, 1939, reversing *Op. Atty. Gen.* (300a), Nov. 27, 1937.

Common-law rule is that a marriage, where one of parties is under age of consent but otherwise competent, is not void but merely voidable. *Von Feiden v. Von Feiden*, 212M54, 2NW(2d)426. See *Dun. Dig.* 5788.

Boy under 18 cannot secure marriage license even with parents' consent. *Op. Atty. Gen.* (300a), Aug. 13, 1942.

A boy under eighteen years of age is incapable of contracting marriage, with or without consent. *Op. Atty. Gen.* (300a), April 1, 1943.

8564. Marriages prohibited.

One who has been adjudged an incompetent may contract a valid marriage if he has in fact sufficient mental capacity for that purpose. *Johnson v. Johnson*, 214M462, 8NW(2d)620. See *Dun. Dig.* 5788.

Subsequent denial of a common-law marriage by the parties cannot destroy its validity any more than a subsequent denial of a ceremonial marriage can change status created by it, and if there is a common-law marriage a subsequent ceremonial marriage with a third person is necessarily void as of no force. *Wilson v. Wilson*, 139Neb153, 296NW766. Common law marriages are abolished by Laws 1941, c. 459.

License to marry may not be issued to a feeble-minded person though he has been sterilized. *Op. Atty. Gen.* (300J), Feb. 9, 1942.

Boy under 18 cannot secure marriage license even with parents' consent. *Op. Atty. Gen.* (300a), Aug. 13, 1942.

Cousins by the half blood may not marry. *Op. Atty. Gen.*, 300(g), Apr. 29, 1943.

Person committed to guardianship of state board of control as feeble-minded is incapable of contracting marriage, but if marriage is contracted it is voidable, not void, and party capable of contracting marriage may not have it annulled if he knew that other party was feeble-minded. *Op. Atty. Gen.* (679k), June 16, 1943.

8565. By whom solemnized.

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

8567. Parties examined.

Boy under 18 cannot secure marriage license even with parents' consent. *Op. Atty. Gen.* (300a), Aug. 13, 1942.

8568. License.

The validity of a marriage is not affected by the fact that the license therefor was procured by fraud or perjury. *Johnson v. Johnson*, 214M462, 8NW(2d)620. See *Dun. Dig.* 6786.

Boy under 18 cannot secure marriage license even with parents' consent. *Op. Atty. Gen.* (300a), Aug. 13, 1942.

8569. Marriageable age of females.

Op. Atty. Gen. (300a) July 10, 1939, reversing *Op. Atty. Gen.* (300a), Nov. 27, 1937.

Boy under 18 cannot secure marriage license even with parents' consent. *Op. Atty. Gen.* (300a), Aug. 13, 1942.

8572. Record and certificate.

Marriage license issued in Minnesota is not authority for performance of a marriage ceremony outside the state, but the clerk must file the marriage certificate if offered, regardless of its validity or effect. *Op. Atty. Gen.* (300d), Apr. 17, 1943.

8573. Record and certificate—Receipt.

Editorial note.—Mason's St. 1927, §§8572 and 8573, both originated in G. S. 1894, §4778. This section probably reflected the law from time of passage of Laws 1905, c. 294, to passage of Laws 1909, c. 386. Since both sections come from the same source, it would seem that the former superseded the latter, at least in so far as inconsistent. It therefore seems that certificates should be filed in county where license was issued, and not in county where marriage took place, but doubt should be eradicated by the Legislature.

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.

Person committed to guardianship of state board of control as feeble-minded is incapable of contracting marriage, but if marriage is contracted it is voidable, not void, and party capable of contracting marriage may not have it annulled if he knew that other party was feeble-minded. *Op. Atty. Gen.* (679k), June 16, 1943.

8581. What voidable.

Decree of annulment because party to marriage is incapable of assenting thereto for want of age or understanding operates only from date of decree, and may not relate retroactively to date of marriage. *Von Feiden v. Von Feiden*, 212M54, 2NW(2d)426. See *Dun. Dig.* 5797.

Evidence justified finding that 43 year-old husband's annual earning capacity of nearly \$5,000 warranted alimony payments of \$112.50 per month to his 50 year-old divorced wife, who had no income of her own. *Martens v. Martens*, 211M369, 1NW(2d)356. See *Dun. Dig.* 2803.

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.

Boy under 18 cannot secure marriage license even with parents' consent. *Op. Atty. Gen.* (300a), Aug. 13, 1942.

Person committed to guardianship of state board of control as feeble-minded is incapable of contracting marriage, but if marriage is contracted it is voidable, not void, and party capable of contracting marriage

may not have it annulled if he knew that other party was feeble-minded. *Op. Atty. Gen.* (679k), June 16, 1943.

8582. Action to annul.

Where an annulment of a marriage is fraudulently obtained and husband immediately remarries and dies in a short time as a result of accident, and first wife brings action to set aside the judgment of annulment, in considering the equities of the parties, haste in remarriage was a factor to determine or consider as against second wife, who was acquainted with the deceased husband for only a short time, though she had no knowledge of the former marriage. *Bloomquist v. Thomas*, 215M35, 9NW(2d)337. See *Dun. Dig.* 5797.

8584. Not at suit of party capable.

Person committed to guardianship of state board of control as feeble-minded is incapable of contracting marriage, but if marriage is contracted it is voidable, not void, and party capable of contracting marriage may not have it annulled if he knew that other party was feeble-minded. *Op. Atty. Gen.* (679k), June 16, 1943.

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.