

1941 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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8607. Effect of divorce—name of wife.

Each state may determine for itself what effect is to be given to divorce decree rendered against one of its own citizens by the court of a foreign state where personal service of process upon defendant is wholly lacking and there is no property belonging to defendant that can be reached within the jurisdiction of such foreign court. Minnesota has recognized foreign divorces insofar as they affect the marriage status, but treats such judgments as in rem and not binding as to alimony and support money. *Sheridan v. Sheridan*, 213M24, 4NW(2d) 785. See Dun. Dig. 1698, 2784b, 2799, 5207.

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 [Repealed.]**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.*, 208M84, 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 [Repealed.]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. *Syblirud v. S.*, 207M371, 291NW606. See Dun. Dig. 2803.

CHAPTER 72**Married Women****8616. Separate legal existence.**

Settled policy of Minnesota is that one spouse may not maintain a civil action against other for personal injury caused by other's tort, and that policy forbids a wife from maintaining action for personal injury sustained while a passenger in husband's car in state of Wisconsin where an action would be maintainable. *Kyle v. Kyle*, 210M204, 297NW744. See Dun. Dig. 4288.

A wife cannot sue her husband for a personal tort, either negligent, or intentional, perpetrated during coverture. *Karalis v. Karalis*, 213M31, 4NW(2d) 632. See Dun. Dig. 4288.

Interest of wife in real estate of her husband is such as to render her a proper party defendant where the title to her husband's real estate is in issue. *Cocker v. Cocker*, 215M565, 10NW(2d) 734. See Dun. Dig. 2818, 4289a.

Wisconsin does not prohibit actions for personal injuries by wife against husband. *Darian v. McGrath*, 215M389, 10NW(2d) 403. See Dun. Dig. 4288.

The marriage relationship, does not, as a matter of law, constitute one spouse driving an automobile the agent or servant of the other present therein as a guest passenger, and consequently in such cases the negligence of the one driving is not imputable to the other. *Christensen v. Hennepin Transp. Co.*, 215M394, 10NW(2d) 406. See Dun. Dig. 4262.

Contributory negligence of a husband operating upon a public highway an automobile, of which his wife was a co-owner and in which she was riding at the time of its collision with the truck of a third person, is not imputable to the wife merely because of such facts, either under the common law or the safety responsibility act, in an

action by her to recover damages for personal injuries against the third party because of his negligence. *Id.*

Existence of the marriage relation between the parties does not change their relationship or liabilities with respect to bailed property. *Id.* See Dun. Dig. 4271a.

8620. Liability of husband and wife.

Christensen v. Hennepin Transp. Co., 10NW(2d) 406, 147ALR945.

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.*

½. Agency.

Marriage does not of itself create the relation of principal and agent between husband and wife, and agency must be established by contract expressed in words or conduct, as it must be between persons who are not married. *Darian v. McGrath*, 215M389, 10NW(2d) 403. See Dun. Dig. 4262.

1. Contracts relating to realty.

A power of attorney to convey land cannot be granted by a husband to a wife. *Op. Atty. Gen.* (393b-9-a), June 14, 1943.

3. Notice as to creditors—Burden of proof.

A transfer from husband to wife which renders husband insolvent is fraudulent as to creditors without regard to actual intent if made without a fair consideration, and wife will be held to have notice of contract and debts of husband. *Brennan v. Friedell*, 212M115, 2NW(2d) 547. See Dun. Dig. 3859.

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.

Mineral reservation to the state on registration of land title. *Op. Atty. Gen.* (311f), Dec. 2, 1942.

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*, 207M 211, 291NW104. 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*, 209M19, 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.

8633. Application for change of name.—A person who shall have resided in any county for one year may apply to the district court thereof to have his

name changed in the manner herein specified. He shall state in his application the name and age of his wife and each of his children, if any, and shall describe all lands in the state in or upon which he claims any interest or lien, and shall appear personally before the court and prove his identity by at least two witnesses. If he be a minor, his guardian or next of kin shall also appear. If he be under the age of 14 years, the application may be made by his guardian or next of kin. Every person who, with intent to defraud, shall make a false statement in any such application shall be guilty of a misdemeanor. (As amended Feb. 15, 1943, c. 28, §1; Apr. 2, 1943, c. 292, §1.)

Statute does not change common law rule which permits a person to change his name without legal proceeding, but it does not follow that a candidate on eve of an election may assume a new name for purpose of furthering his candidacy or for advertising his business. *Op. Atty. Gen.*, (184e), May 12, 1941.

8634. Order—Filing copies.—If it shall appear to the court to be proper, it shall grant the application, and set forth in the order the name and age of his

wife and each child of the applicant, if any, and shall state a description of the lands, if any, in which the applicant and said wife and children, if any, claim 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. Before doing so he shall present the same to the county auditor who shall enter the change of name in his official records and 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 fee of the clerk shall be \$2.00, and for each certified copy of the order 50 cents. (As amended Act Apr. 10, 1941, c. 178, §1; Act Feb. 15, 1943, c. 28, §2.)

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

CHAPTER 73A

Dependent, Neglected and Delinquent Children

8636. Definitions.

Child born to prisoner at Women's State Reformatory may not be placed in a private charity or boarding home by director of public institution or superintendent of reformatory, but case should be referred to director of social welfare, who should institute a proceeding in juvenile court for commitment if child is a dependent. *Op. Atty. Gen.* (840a-6), July 13, 1940.

8637. Jurisdiction of District Court—Jurisdiction of Probate Court.—The District Court in counties now or hereafter having a population of more than 45,000 inhabitants except in such counties of the Seventh Judicial District shall have original and exclusive jurisdiction in all cases coming within the terms of this act. In all trials in the district court under this act, except as hereinafter provided, any person interested therein may demand a jury, or a judge of his own motion may order a jury to try the case. In counties now or hereafter having a population of not more than 45,000 inhabitants and in all counties of the Seventh Judicial District the probate court shall have jurisdiction over the appointment of guardians of dependent, neglected or delinquent children for the purpose of this act. The jurisdiction of both the district and probate courts over cases of dependency, neglect and delinquency arising under this act shall extend to all persons resident or found within the territorial limits of the court, although the evidentiary facts showing such dependency, neglect or delinquency may have occurred outside such territorial limits.

This act shall apply to children under the age of eighteen years, except as hereinafter provided.

When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue for the purposes of this act under the jurisdiction of the court until he becomes twenty-one years of age, unless discharged prior thereto by the court. (As amended Apr. 1, 1941, c. 110, §1.)

Jurisdiction of court is not affected by federal census until certified copies of official census are filed with secretary of state. *Op. Atty. Gen.* (56-a), July 26, 1940.

Where a boy was adjudged delinquent before he was 18 years of age, was placed on probation and on violation was committed to Home School for Boys, and then released on parole, and on violation of parole was committed to state training school with a stay on probation, court had jurisdiction to commit him to state training school at any time he was still under 21 years of age. *Op. Atty. Gen.* (345a-1), Jan. 25, 1943.

There is no minimum age for committing a boy to state training school for boys, but court imposing sentence or commitment has a wide range of discretion. *Op. Atty. Gen.* (345a-1), Jan. 25, 1943.

City attorney has no official duty before juvenile court, but county attorney shall assist when directed by juvenile court judge. *Op. Atty. Gen.* (59a-5), Nov. 2, 1943.

8638. Judges of juvenile court.—In counties having more than 45,000 except the Fourth Judicial District, and the counties in the Seventh Judicial District the judges of the district court shall at such times as they shall determine designate one of their number whose duty it shall be to hear all cases arising under this act, unless absent or disabled, in which case another judge shall be temporarily assigned for said purposes; and such designation shall be for the period of one year unless otherwise ordered. The judge of the juvenile court so designated shall devote his first service and all necessary time to the business of the juvenile court, and this work shall have precedence over all his other court work. When deemed advisable the district judges may designate two judges for the purposes and subject to the provisions specified in this section. A special court room, to be designated as the juvenile court room, shall be provided for the hearing of such cases, and the findings of the court shall be entered in a book or books to be kept for that purpose, and known as the "juvenile record," and the court may for convenience be called the juvenile court of the appropriate county. The title of proceedings in the juvenile court, excepting prosecutions under Sections 27 and 28 of this act, shall be substantially as follows:

Juvenile Court, County of
In the matter of as a dependent
(or neglected or delinquent, as the case may be)
child. (As amended Apr. 1, 1941, c. 110, §2.)

8641. Probate court as juvenile court—Record—Appeal.—In counties of not more than 45,000 population and in all counties in the Seventh Judicial District, the judge of probate shall provide himself with a suitable book, at the expense of the county, in which he shall enter minutes of all proceedings of the court in each case; he need not record any evidence taken except as it shall seem to him proper and necessary and he shall record therein all orders, decrees and judgments made by this court except non-appealable orders. The reasons for appointing a guardian shall be entered therein and any parent or the attorney for any child may appeal, from the final disposition of the guardianship matter by complying with the law regulating appeals from probate courts. When acting under the provisions of this act the pro-