

Domestic Relations

CHAPTER 517

MARRIAGE

517.01 MARRIAGE A CIVIL CONTRACT.

HISTORY. 1849 c. 61; R.S. 1851 c. 65 s. 1; P.S. 1858 c. 52 s. 1; G.S. 1866 c. 61 s. 1; G.S. 1878 c. 61 s. 1; G.S. 1894 s. 4768; R.L. 1905 s. 3552; G.S. 1913 s. 7088; G.S. 1923 s. 8562; M.S. 1927 s. 8562; 1941 c. 459.

Laws 1941, Chapter 459, abrogates the rule or custom of common law marriages.

The policy of the law favors matrimony and legitimacy rather than concubinage and illegitimacy, and every reasonable presumption should be allowed to support the former. Under the statute marriage is a civil contract of which consent is the essence. A mutual agreement between competent parties, per verba de presenti, to take each other for husband and wife, deliberately made and acted on by living together professedly in that relation, is sufficient, without formal solemnization or ceremony, to give it validity in law. *State v Worthingham*, 23 M 528; *Estate of Babertha Noser*, 180 M 463, 231 NW 199.

It is mutual, present consent, lawfully expressed, which constitutes a marriage. Cohabitation as husband and wife is evidence of marriage, but not conclusive evidence. It may be rebutted by the conduct of the parties. The finding of the trial court that appellant was not the lawful wife of the decedent sustained by the evidence. *LeSuer v LeSuer*, 122 M 407, 142 NW 593; *Estate of Welker*, 196 M 447, 265 NW 273; *Gultil v Dahlquist*, 197 M 211, 266 NW 748.

An action for breach of promise of marriage is in form a contract, but damages are awarded as in tort actions, and exemplary damages may be awarded based on circumstances and the conduct of the defendant. *Drobnich v Bach*, 159 M 258, 198 NW 669.

Marriage is a civil contract. The statute providing for annulment for fraud does not attempt to limit or characterize the fraud necessary to an annulment. A marriage may be annulled when the defendant, recently divorced, and prohibited by law from remarriage for six months, falsely held himself out to be capable of contracting a legal marriage. *Reynolds v Reynolds*, 171 M 340, 214 NW 650.

The husband under an antenuptial contract agreed to pay to the woman who became his wife \$5,000 in five annual instalments. The marriage took place and after seven years the plaintiff abandoned her husband and brought this action. The contract was good. It had been performed on the part of the wife. Her desertion of her husband did not invalidate the agreement. *Sparrow v Sparrow*, 172 M 91, 214 NW 791.

In order to recover damages for the alienation of the affections of his wife, the husband must show that the defendant took an active and intentional part in causing the estrangement and the loss of the wife's affections; that he acted wrongfully and intentionally. *Johnson v Lindquist*, 177 M 270, 224 NW 839.

Prior to their marriage plaintiff contracted with defendant to do certain work at a stipulated salary per month. The contract ran from April 1, 1925, to April 1, 1928. During the time of employment plaintiff and defendant married. Of the total agreed price part was paid, leaving a balance of \$800.00, for which plaintiff sues. Held, a married woman is free to contract with her husband on all subjects except those relating to real estate of either. The defendant was bound by her contract after as well as before her marriage. The contract was not abrogated by the marriage. She must pay the balance due. *Archer v Moulton*, 183 M 306, 236 NW 455.

Where there is no proof of express written or oral agreement of marriage, and a common law marriage is to be proved by circumstantial evidence, there must be evidence of cohabitation as man and wife, or assumption openly of marital duties and obligations continuing over a period to such an extent as to sustain the conclusion or inference that the parties are husband and wife. General reputation as to marriage is admissible, but not conclusive; admissions by the other party are admissible, as are those of other party to third persons, and income tax statements, and declarations by the claimant that she is single. Application for passport, holographic will, and hospital records are not admissible. *Estate of Lust*, 186 M 405, 243 NW 443.

Under the common law, a marriage where one of the parties is under age of consent but otherwise competent is not void but merely voidable. If the marriage is set aside it is effective from the time its nullity is adjudged. *VonFelden v VonFelden*, 212 M 55, 2 NW(2d) 426.

One who has been adjudged incompetent may contract a valid marriage if he has in fact sufficient mental capacity for that purpose; and a marriage celebrated in Iowa between residents of Minnesota is governed by the law of Iowa. *Johnson v Johnson*, 214 M 462, 8 NW(2d) 620.

The validity of a marriage is not affected by the fact that the license therefor was procured by fraud. *Johnson v Johnson*, 214 M 462, 8 NW(2d) 620.

To each state belongs the exclusive right and power to determine the status of its resident and domiciled citizens and subjects in respect to the question of marriage and divorce. *Warner v Warner*, 219 M 59, 17 NW(2d) 58.

Defendant married Flannery in 1923. He was a veteran and died in 1924. His widow drew a pension until June, 1939. She became the common law wife of Michaelson during the year 1927. The federal government brings action to recover pension payments since May 31, 1937. Prior to Minnesota statute abolishing common law marriages, if persons competent to marry agreed between themselves in the present tense to become husband and wife, marriage was complete. As the checks were cashed by the corporations with full knowledge of the facts, the government obtained a judgment against all defendants. *United States v Michaelson*, 58 F. Supp. 796.

In view of Laws 1941, Chapter 459, it is doubtful if our courts would recognize a marriage by proxy as valid. 1942 OAG 93, April 27, 1942 (300).

A boy under 18 cannot secure a marriage license even with parents' consent. 1942 OAG 92, Aug. 13, 1942 (300-a).

Where the marriage license is wrongfully obtained, the marriage is not void provided both parties are over 15 years of age. OAG March 13, 1945 (300a).

Validity of marriage celebrated in foreign state in violation of statute of domicile. 16 MLR 172.

Common law marriage. 22 MLR 177.

Common law marriage prohibited. 26 MLR 223.

517.02 PERSONS CAPABLE OF CONTRACTING.

HISTORY. R.S. 1851 c. 65 s. 2; P.S. 1858 c. 52 s. 2; G.S. 1866 c. 61 s. 2; G.S. 1878 c. 61 s. 2; G.S. 1894 s. 4769; R.L. 1905 s. 3553; G.S. 1913 s. 7089; G.S. 1923 s. 8563; 1927 c. 166; M.S. 1927 s. 8563.

Marriage emancipates a minor child from parental control, and is treated as valid for all civil purposes until set aside. Where one of the parties is under age the marriage is not void, but voidable only by a judicial decree at the election of the party under the age of consent. *Scott v Lowell*, 78 M 166, 80 NW 877; *Lindstrom v Mample*, 205 M 91, 285 NW 83.

The "age of consent statute" is a penal statute and does not apply to relations between married persons within the ages authorized by law for entering upon the marriage contract. *State v Rollins*, 80 M 216, 83 NW 141.

An indictment charging the defendant with feloniously taking for the purpose of marriage a named child of the age of 15 years from the custody of its parents without their consent is valid. *State v Sager*, 99 M 54, 108 NW 812.

It is the duty of the clerk of the district court to examine a male applicant for a marriage license under oath as to age and residence of the woman he in-

tends to marry, and a knowingly false answer may be made the basis for a criminal prosecution for perjury. *State v Randall*, 166 M 381, 208 NW 14.

A promise to marry made by a boy over 18 years of age is binding on him in a prosecution for "seduction under promise of marriage." OAG Sept. 19, 1905 (223).

A boy of 18 and a girl of 16 eloped from Wisconsin and began living as husband and wife in Minnesota. If they are living together under an agreement entered into at the time they commenced to do so, to be husband and wife, they are husband and wife, even though no license was procured or ceremony performed. The lack of parental consent does not change their status. OAG July 23, 1918 (373).

The marriage of a person who has not reached the age of competency as established by statute, but is competent by common law, is not void, but voidable only by a judicial decree of nullity at the election of the party under the age of consent. OAG March 10, 1922 (442).

A male over 18 but under 21 years of age, and a female over 16 but under 18 years of age, cannot procure a marriage license without the consent of parents or guardians. OAG Feb. 13, 1930.

The expression "under age," as used in section 517.08, is construed to mean 21 years in a man, and 18 years in a woman. OAG July 13, 1930 (306).

The clerk of the court should refuse a marriage license to any boy under 18 years or any girl under 15 years, even though the parents consent. OAG July 10, 1939 (151); *Lindstrom v Mample*, 205 M 91, 285 NW 83.

Domestic relations. 22 MLR 230.

Age of majority of females. 23 MLR 853.

517.03 MARRIAGES PROHIBITED.

HISTORY. R.S. 1851 c. 65 s. 3; P.S. 1858 c. 52 s. 3; G.S. 1866 c. 61 s. 3; G.S. 1878 c. 61 s. 3; G.S. 1894 s. 4770; 1901 cc. 208, 234; R.L. 1905 s. 3554; 1911 c. 222 s. 1; G.S. 1913 s. 7090; G.S. 1923 s. 8564; M.S. 1927 s. 8564; 1937 c. 407 s. 1; 1945 c. 12 s. 1.

The statutes prohibiting marriage between persons nearly related, and declaring such marriage void, must necessarily be a basis for prosecutions for the crime of incest. *State v Herges*, 55 M 464, 57 NW 205.

Defendant obtained a divorce, and within three months remarried his wife. Subsequently they separated and defendant married another woman, and was indicted for bigamy. Held, a marriage contract is a nullity ab initio where expressly so declared by statute. In such a case it is absolutely void, requiring no judicial decree for its dissolution. In the instant case defendant's remarriage to his divorced wife was voidable only, but valid until dissolved by judicial decree. His marriage to the second woman was bigamous. *State v Yoder*, 113 M 503, 130 NW 10; *Estate of Nick Ommang*, 183 M 92, 235 NW 579.

In an action for breach of promise of marriage, to justify recovery of punitive damages the complaint must contain appropriate allegations of the intent or purpose of defendant in doing the alleged wrongful act, as that he acted maliciously, wantonly to oppress or injure plaintiff. *Hively v Golnick*, 123 M 498, 144 NW 213.

Defendant was an epileptic from the age of two. Plaintiff and defendant married in 1907 and the defendant was declared insane through epilepsy in 1915. In an action to annul the marriage on the ground that defendant was an epileptic at the time of marriage, held that the legislature not having prescribed epilepsy as a ground for annulment of marriage, denial of relief by the trial court was proper. *Behsman v Behsman*, 144 M 95, 174 NW 611.

Defendant was rightfully convicted of child abandonment. His marriage subsequent to the divorce proceedings could not be pleaded in defense. *State v Lewis*, 157 M 250, 195 NW 901.

Age and residence are material facts in an application for a marriage license, and false answers may be a basis for criminal prosecution. *State v Randall*, 166 M 381, 208 NW 14.

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Except when there are children or other similar circumstances, a marriage may be annulled where there is proof that the marriage took place less than six months after divorce, and plaintiff was induced to marry through concealment of that fact. *Reynolds v Reynolds*, 171 M 340, 214 NW 650.

At common law the father was not charged with the support of his illegitimate child. It is by statute that the duty is imposed and the remedy prescribed. Section 617.56 refers to legitimate children. *State v Lindskog*, 175 M 533, 221 NW 911.

A marriage between Nick and Henrietta Ommang would have been null and void in Wisconsin, where they resided, so they came to Minnesota and were married. They returned to Wisconsin and separated after living there two years. Twenty years later the husband died. Held, the marriage was legal and Henrietta entitled to petition for administration of the estate. *Estate of Ommang*, 183 M 92, 235 NW 529.

Marriage of a divorced woman and a soldier, residents of Wisconsin, but married in Minnesota less than a year after the woman's divorce in Wisconsin, is void and she cannot recover on a war risk insurance policy, as the Wisconsin laws make such a marriage void even though the ceremony was performed without the state. *Cummings v United States*, 34 F(2d) 284.

The father of the man applying for the license was the cousin of the mother of the proposed bride, and the mothers of the man and woman were first cousins. This does not make the applicants nearer of kin than first cousins, and a license may be granted. OAG Nov. 5, 1909 (527).

Persons are second cousins who have the same great grandfather or great grandmother, and it would therefore follow that a person could not marry a child of his first cousin. OAG May 6, 1911 (470).

The marriage of first cousins is valid in the absence of a decision of some court setting aside the marriage. It is voidable, not void. OAG Jan. 23, 1912 (471).

Since the enactment of Laws 1911, Chapter 222, a woman cannot marry the first cousin of her father. The relation is nearer than permitted by statute. OAG April 27, 1912 (472).

The parties desiring marriage are descended from the same grandfather, but have different grandmothers of the whole blood. One party is descended from issue of the grandfather's first wife, and the other party from issue of the second wife. The parties are within the degree of kinship forbidden by statute. OAG Aug. 26, 1920.

The clerk should not issue a license to parties desirous of marriage where one of the parties had been previously married and said marriage annulled less than six months prior to the application. OAG Dec. 19, 1921 (443).

A marriage license may be granted for the marriage of a stepfather to his stepdaughter, the daughter of his deceased wife, by a former marriage. OAG Aug. 20, 1923 (184).

The statute prohibits the remarriage within the prohibited time of persons who have been divorced from each other. OAG Sept. 3, 1931.

A woman and her mother's first cousin may not marry. OAG Feb. 26, 1935.

Marriage between first cousins who marry outside the state would probably be valid in Minnesota. OAG Sept. 7, 1935.

A marriage license cannot be issued to a person under guardianship, adjudged feeble-minded, and sterilized. 1942 OAG 94, Feb. 9, 1942 (300-j).

Injunction against remarriage of divorced persons. 10 MLR 255.

Validity of marriage celebrated in foreign state in violation of statute of domicile. 16 MLR 172, 179.

Annulment of marriage. 16 MLR 398, 406.

Effect of marriage on jurisdiction over minor. 23 MLR 286.

517.04 WHO MAY SOLEMNIZE.

HISTORY. R.S. 1851 c. 65 s. 4; P.S. 1858 c. 52 s. 4; G.S. 1866 c. 61 s. 4; G.S. 1878 c. 61 s. 4; 1885 c. 38; G.S. 1894 s. 4771; 1897 c. 311; 1901 c. 261; R.S. 1905 s. 3555; G.S. 1913 s. 7091; G.S. 1923 s. 8565; M.S. 1927 s. 8565.

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Fees earned by judges of probate need not be turned over to the county treasurer. OAG June 22, 1933.

517.05 CREDENTIALS OF MINISTER.

HISTORY. R.S. 1851 c. 65 s. 5; P.S. 1858 c. 52 s. 5; G.S. 1866 c. 61 s. 5; G.S. 1878 c. 61 s. 5; G.S. 1894 s. 4772; 1901 c. 261; R.L. 1905 s. 3556; G.S. 1913 s. 7092; G.S. 1923 s. 8566; M.S. 1927 s. 8566.

A minister need not be a citizen of the United States. 1926 OAG 220, Oct. 27, 1925.

Commissioned officers of the salvation army may file credentials and perform the marriage ceremony. OAG Jan. 17, 1944 (300c).

517.06 PARTIES EXAMINED.

HISTORY. R.S. 1851 c. 65 s. 6; P.S. 1858 c. 52 s. 6; G.S. 1866 c. 61 s. 6; G.S. 1878 c. 61 s. 6; G.S. 1894 s. 4773; R.L. 1905 s. 3557; G.S. 1913 s. 7093; G.S. 1923 s. 8567; M.S. 1927 s. 8567.

517.07 LICENSE.

HISTORY. R.S. 1951 c. 65 s. 7; P.S. 1858 c. 52 s. 7; G.S. 1866 c. 61 s. 7; G.S. 1878 c. 61 s. 7; G.S. 1894 s. 4774; R.L. 1905 s. 3558; G.S. 1913 s. 7094; G.S. 1923 s. 8568; M.S. 1927 s. 8568.

Age and residence are material, and the clerk is required to examine a male applicant under oath regarding the facts, and one knowingly giving a false answer is guilty of perjury. *State v Randall*, 166 M 381, 208 NW 14.

No marriage can be solemnized without a license being first issued therefor, notwithstanding preexisting common law marriage. OAG Feb. 17, 1933.

Persons cohabiting under a common law marriage are required to obtain a license to marry in case they desire solemnization before one qualified to perform the ceremony. OAG June 22, 1933.

A female may apply for and obtain a second license to a different man, no ceremony having been performed under a first issued license, and that even if the first license be not surrendered. OAG Nov. 27, 1933.

A male resident may obtain a license to marry a non-resident, but the marriage must be performed in the county wherein the license was issued. OAG April 6, 1939.

517.08 APPLICATION FOR LICENSE.

HISTORY. R.S. 1851 c. 65 s. 8; P.S. 1858 c. 52 s. 8; G.S. 1866 c. 61 s. 8; G.S. 1878 c. 61 s. 8; G.S. 1894 s. 4775; R.L. 1905 s. 3559; G.S. 1913 s. 7095; G.S. 1923 s. 8569; M.S. 1927 s. 8569; 1931 c. 401 s. 1; 1939 c. 243.

A girl aged 15 years under charge of delinquency before the Hennepin county juvenile court, before adjudication was enjoined by the court from marrying. She obtained the consent of her parents, and was married. Held, the disobedience was not contempt of court. *Evans v District Court*, 118 M 170, 136 NW 746.

The clerk of the district court is required to examine the male applicant under oath as to the age and residence of the female, and false answers may be made the basis for a charge of perjury. *State v Randall*, 166 M 381, 208 NW 14.

In the absence of issue, a marriage may be annulled where the defendant was prohibited by law from marrying by the six months' period limitation and who fraudulently induced the defendant to consent to the marriage by concealing the facts. *Reynolds v Reynolds*, 171 M 340, 214 NW 650.

Prior to the passage of Laws 1939, Chapter 243, the clerk of court was not authorized to issue a marriage license, the man being aged 21 and the female aged 20 years, without the parents of the female giving their consent. *Lindstrom v Mample*, 205 M 91, 285 NW 83.

Males between the ages of 18 and 21 years, and females between 16 and 18, require the consent of parents or guardians to procure license to marry. OAG Feb. 13, 1930 (306).

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The day on which an application is made is to be excluded, and the day of issuance included, in computing the five-day waiting period, and fractions of days are not to be taken into consideration. OAG April 29, 1931; OAG May 9, 1931.

The consent of the parents may be given on any day of the five-day period. OAG June 2, 1931.

The clerk shall issue the license only upon the personal appearance of the applicant. OAG June 2, 1931; OAG Feb. 4, 1938 (300M).

The license may be mailed to the applicant by the clerk, the five-day period having expired. OAG June 19, 1931.

A license may not issue for a marriage between a woman and her mother's first cousin. OAG Feb. 26, 1935 (300j).

A court commissioner had power to waive the five-day waiting period, even after the refusal of the district judge to grant waiver. 1936 OAG 138, June 21, 1935 (128b).

Laws 1937, Chapter 79, and Laws 1937, Chapter 435, do not affect the marriage consent statute as to a female between the ages of 15 and 18 years. 1938 OAG 307, May 13, 1937 (300a); OAG May 3, 1938 (498c).

A boy 17 years of age, under the order of the juvenile court, and with the consent of his parents, may marry. OAG Nov. 27, 1937 (300a).

The clerk of court should refuse a marriage license to any boy under 18, or girl under 15 years, even though the parents consent. 1940 OAG 151, July 10, 1939.

Five-day waiting period, Laws 1927, Chapter 401. 16 MLR 90.

Age of majority of females. 23 MLR 853.

Minimum age at which persons may be licensed to marry. 24 MLR 249.

517.09 CEREMONIAL REQUISITES.

HISTORY. R.S. 1851 c. 65 s. 9; P.S. 1858 c. 52 s. 9; G.S. 1866 c. 61 s. 9; G.S. 1878 c. 61 s. 9; G.S. 1894 s. 4776; R.L. 1905 s. 3560; G.S. 1913 s. 7096; G.S. 1923 s. 8570; M.S. 1927 s. 8570; 1945 c. 409 ss. 1 to 3.

517.10 CERTIFICATE; WITNESSES.

HISTORY. R.S. 1851 c. 65 ss. 10, 11; P.S. 1858 c. 52 ss. 10, 11; G.S. 1866 c. 61 s. 10; G.S. 1878 c. 61 s. 10; G.S. 1894 s. 4777; R.L. 1905 s. 3561; G.S. 1913 s. 7097; G.S. 1923 s. 8571; M.S. 1927 s. 8571.

517.11 OFFICIATING PERSON SHALL RECORD CERTIFICATE.

HISTORY. R.S. 1851 c. 65 s. 12; P.S. 1858 c. 52 s. 12; G.S. 1866 c. 61 s. 11; 1871 c. 94 s. 1; G.S. 1878 c. 61 s. 11; 1883 c. 68 s. 1; G.S. 1894 s. 4778; 1905 c. 294; R.L. 1905 s. 3562; 1909 c. 386 s. 1; G.S. 1913 s. 7098; G.S. 1923 s. 8572; M.S. 1927 s. 8572.

517.12 CLERK SHALL RECORD CERTIFICATE AND DELIVER RECEIPT.

HISTORY. R.S. 1851 c. 65 s. 12; P.S. 1858 c. 52 s. 12; G.S. 1866 c. 61 s. 11; 1871 c. 94 s. 1; G.S. 1878 c. 61 s. 11; 1883 c. 68 s. 1; G.S. 1894 s. 4778; 1905 c. 294 s. 1; G.S. 1913 s. 7099; G.S. 1923 s. 8573; M.S. 1927 s. 8573; 1945 c. 7 s. 1.

A license should not be issued to any person under the age designated in section 517.02. 1940 OAG 151, July 10, 1939 (300a).

517.13 PENALTY FOR FAILURE TO DELIVER AND FILE CERTIFICATE.

HISTORY. R.S. 1851 c. 65 s. 13; P.S. 1858 c. 52 s. 13; G.S. 1866 c. 61 s. 12; G.S. 1878 c. 61 s. 12; G.S. 1894 s. 4779; R.L. 1905 s. 3563; G.S. 1913 s. 7100; G.S. 1923 s. 8574; M.S. 1927 s. 8574.

517.14 ILLEGAL MARRIAGE; FALSE CERTIFICATE; PENALTY.

HISTORY. R.S. 1851 c. 65 s. 14; P.S. 1858 c. 52 s. 14; G.S. 1866 c. 61 s. 13; G.S. 1878 c. 61 s. 13; G.S. 1894 s. 4780; R.L. 1905 s. 3564; G.S. 1913 s. 7101; G.S. 1923 s. 8575; M.S. 1927 s. 8575.

517.15 BY UNAUTHORIZED PERSONS; PENALTY.

HISTORY. R.S. 1851 c. 65 s. 15; P.S. 1858 c. 52 s. 15; G.S. 1866 c. 61 s. 14; G.S. 1878 c. 61 s. 14; G.S. 1894 s. 4781; R.L. 1905 s. 3565; G.S. 1913 s. 7102; G.S. 1923 s. 8576; M.S. 1927 s. 8576.

517.16 IMMATERIAL IRREGULARITY OF OFFICIATING PERSON NOT TO VOID.

HISTORY. R.S. 1851 c. 65 s. 16; P.S. 1858 c. 52 s. 16; G.S. 1866 c. 61 s. 15; G.S. 1878 c. 61 s. 15; G.S. 1894 s. 4782; R.L. 1905 s. 3566; G.S. 1913 s. 7103; G.S. 1923 s. 8577; M.S. 1927 s. 8577.

517.17 SOLEMNIZING UNLAWFUL MARRIAGES.

HISTORY. 1886 Penal Code 315; G.S. 1894 s. 6609; R.L. 1905 s. 5165; G.S. 1913 s. 8970; G.S. 1923 s. 10460; M.S. 1927 s. 10460.

517.18 MARRIAGE AMONG QUAKERS.

HISTORY. R.S. 1851 c. 65 s. 18; P.S. 1858 c. 52 s. 18; G.S. 1866 c. 61 s. 16; G.S. 1878 c. 61 s. 16; G.S. 1894 s. 4783; R.L. 1905 s. 3567; G.S. 1913 s. 7104; G.S. 1923 s. 8578; M.S. 1927 s. 8578.

517.19 ILLEGITIMATE CHILDREN.

HISTORY. R.S. 1851 c. 65 s. 18; P.S. 1858 c. 52 s. 18; G.S. 1866 c. 61 s. 17; G.S. 1878 c. 61 s. 17; G.S. 1894 s. 4784; R.L. 1905 s. 3568; G.S. 1913 s. 7105; G.S. 1923 s. 8579; M.S. 1927 s. 8579.

In a trial where the decision hinged upon the legitimacy of the plaintiff the expressions used by the court in his charge are sustained as unobjectionable as applied to the evidence. *McArthur v Craigie*, 22 M 351.

An illegitimate child is legitimized by the marriage of his parents. *Hendrickson v Town of Queen*, 149 M 79, 182 NW 952.

The fact of legitimacy is provable by family history, reputation, and tradition and by declarations of deceased members of the family; an heir interested in the estate may give evidence. The marriage of the mother of an illegitimate child to its father legitimates the child, and a child so legitimated is an heir of other children born to its parents. *Geisler v Geisler*, 160 M 463, 200 NW 742.

While at common law the father was not charged with the support of his illegitimate child, the statute does so, and furnishes the procedure for enforcement. *State v Lindskog*, 175 M 533, 221 NW 911.

The mother of the child was married at the time of the conception of the child, but living apart. Later the husband and wife were divorced, and the child was born after the divorce. Held, the presumption of the legitimacy of a child conceived during wedlock, while strong, is not conclusive. In this case, where proceedings are brought to hold a man other than the husband for support of the child, both the mother of the child and her ex-husband may testify. *State v Soyka*, 181 M 533, 233 NW 300.

In adoption proceedings, possible pecuniary advantage to the child is immaterial as against the natural rights of the parents. A decree of adoption in this case was set aside or reversed because of lack of evidence of abandonment by the parents, and there being no consent to adoption by either parent. *Dwinnell v Fallon*, 189 M 85, 248 NW 657; *State v VanGuilder*, 199 M 214, 271 NW 473.

The issue of a bigamous marriage are legitimate. 1934 OAG 46, July 25, 1933.

Following the birth of an illegitimate child, the father signed an affidavit of paternity and married the mother. After two years they were divorced. Held, the father may be prosecuted for desertion of the child. OAG Sept. 17, 1935 (494b-27).