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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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CHAPTER LXII.

DIVORCE.

TITLE I.

DIVORCES DISSOLVING THE MARRIAGE CONTRACT.

1 SECTION 1. All marriages which are prohibited by law,
 2 on account of consanguinity between the parties, or on ac-
 3 count of either of them having a former husband or wife then
 4 living, shall, if solemnized within this state be absolutely void,
 5 without any decree of divorce, or other legal proceedings;
 6 *Provided*, that, if any person, whose husband or wife has
 7 been absent for five successive years without being known
 8 to such person to be living during that time, marries during
 9 the lifetime of such absent husband or wife, the marriage shall
 10 be void only from the time that its nullity is pronounced by
 11 a court of competent authority.

C. S. p. 403, Sect. 1.
 Amended.

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1 SECT. 2. When either of the parties to a marriage; for
 2 want of age or understanding, is incapable of assenting
 3 thereto, or, when the consent of either party has been ob-
 4 tained by force or fraud, and there is no subsequent vol-
 5 untary cohabitation of the parties, the marriage shall be void
 6 from the time its nullity is declared by a court of competent
 7 authority.

C. S. p. 403, Sect. 2.

1 SECT. 3. When a marriage is supposed to be void, or
 2 the validity thereof is disputed, for any of the causes men-
 3 tioned in the two preceding sections, either party may file
 4 a complaint in the district court of the county where the
 5 parties, or one of them reside, for annulling the same; and
 6 such complaint shall be filed, and proceedings had thereon,
 7 as in the case of proceedings in said court for a divorce;
 8 and upon due proof of the nullity of the marriage, it shall
 9 be adjudged null and void.

C. S. p. 403, Sect. 3.

1 SECT. 4. No marriage shall be adjudged a nullity, on
 2 the ground that one of the parties was under the age of
 3 legal consent, if it appears that the parties after they had
 4 attained such age, had voluntarily cohabited together as
 5 husband and wife; nor shall the marriage of any insane
 6 person be adjudged void, after his restoration to reason, if
 7 it appears that the parties freely cohabited together as hus-
 8 band and wife, after such insane person was restored to a
 9 sound mind.

C. S. p. 403, Sect. 5.

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C. S. p. 463, Sect. 6.
Amended.

1 SECT. 5. No marriage shall be adjudged a nullity, at
2 the suit of the party capable of contracting, on the ground
3 that the other party was under the age of legal consent, or
4 was idiotic or insane, if such idiocy or insanity was known
5 to the party capable of contracting at the time of such mar-
6 riage.

C. S. p. 463, Sect. 7.
Amended.

1 SECT. 6. A divorce from the bonds of matrimony, may
2 be adjudged and decreed by the district court on suit
3 brought in the county where the parties, or either of them,
4 reside, for either of the following causes :
5 *First.*—Adultery ;
6 *Second.*—Inpotency ;
7 *Third.*—Cruel and inhuman treatment.
8 *Fourth.*—When either party, subsequent to the marriage,
9 has been sentenced to imprisonment in the state prison.
10 *Fifth.*—Wilful desertion of one party by the other, for
11 the term of three years next preceding the filing of the
12 complaint ;
13 *Sixth.*—Habitual drunkenness for the space one year, im-
14 mediately preceding the filing of the complaint.

C. S. p. 463, Sect. 7,
sub. 3. Amended.

1 SECT. 7. After a divorce on account of imprisonment in
2 the state prison a pardon shall not restore the party imprison-
3 ed to his conjugal rights.

C. S. p. 464, Sect. 8.
Amended.

1 SECT. 8. No divorce shall be granted, unless the com-
2 plainant has resided in this state one year immediately pre-
3 ceding the time of exhibiting the complaint, except for adul-
4 tery, committed whilst the complainant was a resident of
5 this state.

C. S. p. 464, Sect. 9.
Amended.

1 SECT. 9. In any action brought for a divorce, on the
2 ground of adultery, although the fact of adultery is estab-
3 lished, the court may deny a divorce in the following cases :
4 *First.*—When it appears that the offense was committed
5 by the procurement or with the connivance of the com-
6 plainant.
7 *Second.*—When there has been an express forgiveness
8 of the adultery charged, or a voluntary cohabitation of the
9 parties, with knowledge of the offense.
10 *Third.*—When the action has not been brought within
11 three years after the discovery by the complainant of the
12 offense charged.
13 *Fourth.*—When it is proved that the plaintiff has also
14 been guilty of adultery under such circumstances as would
15 have entitled the defendant, if innocent, to a divorce.

C. S. p. 464, Sect. 10,
in part.

1 SECT. 10. An action for a divorce may be brought by
2 a wife in her own name, and all actions for divorce shall be

3 commenced by summons and complaint, in the county
4 where the plaintiff resides, as hereinafter provided.

1 SECT. 11. The complaint shall contain the names and
2 ages of the parties, the name of the court in which the ac- C. S. p. 464, Sect. 10,
3 tion is brought, and a statement of the facts constituting in part, & Sect. 11,
4 the cause or grounds of action, in ordinary and concise lan- combined.
5 guage, without repetition. c 53

1 SECT. 12. Copies of the summons and complaint shall
2 be served on the defendant personally, and when such ser- C. S. p. 464, Sect. 12.
3 vice is made out of this state, it may be proved by the affi- Amended.
4 davit of the person making the same, with the certificate of
5 the clerk of the court of the county, to the identity of the
6 officer taking the affidavit; but if personal service cannot
7 well be made, the court may order service of the summons
8 by publication, as in other actions.

1 SECT. 13. The defendant shall have thirty days in
2 which to answer the complaint; in case of service by pub- New.
3 lication, said thirty days shall not begin to run until the ex-
4 piration of the period allowed for publication, and in case
5 of personal service out of the state, the court shall not per-
6 mit the action to be heard and determined, as upon default,
7 until the lapse of such reasonable time as will allow the de-
8 fendant to appear and answer, which time shall be fixed by
9 order after proof of such service is made and filed in the
10 action.

1 SECT. 14. If, after service duly made and proved, the New.
2 defendant does not appear, the court may proceed at a gen-
3 eral or special term, to hear and determine the action.
4 When issue is joined, like proceedings shall be had as in
5 civil actions.

1 SECT. 15. In every action brought, either for a divorce
2 or separation, the court may in its discretion require the hus- C. S. p. 464, Sect. 15.
3 band to pay any sums necessary to enable the wife to carry Amended.
4 on or defend the action, or for her support, during its pen-
5 dency, and it may adjudge costs against either party, and
6 award execution for the same, or it may direct such costs
7 to be paid out of any property sequestered, or in the power
8 of the court, or in the hands of a receiver.

1 SECT. 16. When an action is commenced or about to C. S. p. 464, Sect. 16.
2 be commenced to annul a marriage, or for a divorce or sep- Amended.
3 aration, the court may at any time either in term or vaca-
4 tion, on the petition of the wife, prohibit the husband from
5 imposing any restraint on her personal liberty during the
6 pendency of the action.

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C. S. p. 465, Sect. 17. 1 SECT. 17. The court may in like manner, on the ap-
2 plication of either party, make such order concerning the
3 care and custody of the minor children of the parties, and
4 their suitable maintenance during the pendency of such ac-
5 tion, and may make such temporary orders relative to the
6 persons or property of the parties, as shall be deemed nec-
7 essary and proper.

C. S. p. 465, Sect. 18. 1 SECT. 18. Upon granting a decree of nullity of mar-
2 riage, or of divorce or separation, the court may make such
3 further order as it deems just and proper concerning the
4 care, custody and maintenance of the minor children of the
5 parties, and may determine with which of the parents the
6 children, or any of them, shall remain; having due regard
7 to the age and sex of such children.

C. S. p. 465, Sect. 19. 1 SECT. 19. The court may from time to time afterwards,
2 on the petition of either of the parents, revise and alter
3 such order concerning the care, custody, and maintenance
4 of the children, or any of them, and make such new order
5 concerning the same, as the circumstances of the parents
6 and the benefit of the children require.

C. S. p. 465, Sect. 20.
Amended. 1 SECT. 20. Whenever the nullity of a marriage or a divorce
2 from the bond of matrimony, for any cause excepting that of
3 adultery committed by the wife, is ordered, and when the
4 husband is sentenced to imprisonment for life, and also upon
5 every divorce from bed and board, the wife shall be en-
6 titled to the immediate possession of all her real estate in
7 like manner as if her husband was dead.

C. S. p. 465, Sect. 21. 1 SECT. 21. Upon every such dissolution of a marriage,
2 as is specified in the preceding section, the court may make
3 a further order for restoring to the wife the whole or such
4 part as it deems just and reasonable, of the personal estate
5 that has come to the husband by reason of the marriage, or
6 for awarding to her the value thereof; and also the value of
7 any real estate of the wife disposed of by the husband and
8 wife during the coverture, to be paid by her husband in
9 money; and such court may require the husband to dis-
10 close on oath what personal estate has come to him by rea-
11 son of the marriage, and how the same has been disposed
12 of, and what portion thereof remains in his hands.

C. S. p. 465, Sect. 22. 1 SECT. 22. The court has power to appoint trustees
2 whenever it is deemed expedient, to receive any sum or
3 sums of money ordered to be paid to the wife, upon trust
4 to invest the same, and pay over the income for the sup-
5 and maintenance of the wife, or of the wife and minor
6 children of the parties, or any of them, in such manner as

7 the court shall direct; or to pay over to the wife the prin-
 8 cipal sum in such proportions and at such times as the court
 9 shall order, regard being had in all such cases to the situa-
 10 tion and circumstances of such wife, and also the children,
 11 if there are any provided for in the order; and such trus-
 12 tees shall give such bond with surety as the court shall re-
 13 quire for the faithful performance of their trust.

1 SECT. 23. Upon every divorce for any cause excepting
 2 that of adultery committed by the wife, if the estate and
 3 property restored or awarded to the wife is insufficient for
 4 the suitable support and maintenance of herself and such
 5 children of the marriage as shall be committed to her care
 6 and custody, or if there is no such estate and property, the
 7 court may further order and decree to her such part of the
 8 personal estate of the husband, not exceeding one third part
 9 thereof in value, and such real estate of the husband not
 10 exceeding the value of her dower, as it deems just and rea-
 11 sonable, having regard to the ability of the husband and
 12 the character and situation of the parties, and all the other
 13 circumstances of the case. The court may also in the cases
 14 provided for in this section decree to the wife such alimony
 15 out of the estate of the husband, as it may deem just and
 16 reasonable, having regard to the ability of the husband and
 17 the character and situation of the parties, and all the other
 18 circumstances of the case, and may by its decree make the
 19 same a specific lien upon any specified parcels of the real
 20 estate of the husband, or authorize its enforcement by exe-
 21 cution against his property, real and personal; but the ag-
 22 gregate award and allowance made to the wife from the es-
 23 tate of her husband, under the provisions of this section,
 24 shall not in any case exceed in present value the one-third
 25 part of the personal estate of the husband and the value of
 26 her dower in his real estate.

C. S. p. 465, Sect. 23
 & 1865—p. 95, Sect.
 1, combined &
 amended.

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1 SECT. 24. When the marriage is dissolved by the hus-
 2 band being sentenced to imprisonment, and when a divorce
 3 is ordered for the cause of adultery committed by the hus-
 4 band, the wife shall be entitled to her dower in his lands in
 5 the same manner as if he was dead.

C. S. p. 466, Sect. 24.

1 SECT. 25. After an order or decree for alimony, or
 2 other allowance for the wife and children, or either of them,
 3 and also for the appointment of trustees to receive and hold
 4 any property for the use of the wife or children, as before
 5 provided, the court may from time to time, on petition of
 6 either of the parties, revise and alter such order or decree
 7 respecting the amount of such alimony or allowance, and
 8 the payment thereof, and also respecting the appropriation
 9 and payment of the principal and income of the property so

C. S. p. 466, Sect. 25.

10 held in trust, and may make any order respecting any of
11 the said matters which such court might have made in the
12 original action.

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1 SECT. 26. In all cases when alimony or other allowance
2 is ordered or decreed to the wife or children the court may
3 require sufficient security to be given by the husband for
4 the payment thereof, according to the terms of the order or
5 decree, and upon the neglect or refusal of the husband to
6 give such security, or upon his failure to pay such alimony
7 or allowance, the court may sequester his personal estate
8 and the rents and profits of his real estate, and may appoint
9 a receiver thereof, and cause such personal estate and the
10 rents and profits of such real estate to be applied according
11 to the terms of such order or decree.

C. S. p. 466, Sect. 20.

1 SECT. 27. When an order of divorce has been granted,
2 and the parties afterwards intermarry, the court, upon their
3 joint application and upon satisfactory proof of such mar-
4 riage, may revoke all decrees and orders of divorce, alimo-
5 ny, and subsistence, which will not affect the rights of third
6 persons.

C. S. p. 466, Sect. 30.

1 SECT. 28. If any persons after being divorced from the
2 bond of matrimony for any cause whatever, cohabit togeth-
3 er before intermarriage, they shall be liable to all the pen-
4 alties provided by law against adultery.

C. S. p. 466, Sect. 31.

1 SECT. 29. Whenever an order of divorce from the bond
2 of matrimony is granted in this state by a court of compe-
3 tent authority, such order shall fully and completely dis-
4 solve the marriage contract as to both parties. And in all
5 actions for a divorce brought by a female, if a divorce is
6 granted, the court may for just and reasonable cause, change
7 the name of such female, who shall thereafter be known and
8 called by such name as the court designates in its order or
9 decree.

TITLE II.

LIMITED DIVORCES.

1863—p. 97, Sect. 1.
Amended.

1 SECT. 30. A separation from bed and board forever, or
2 for a limited time may be decreed by the district court on
3 the complaint of a married woman, in an action brought in
4 her own name in the following cases:
5 *First.*—Between any husband and wife, inhabitants of
6 this state.

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7 *Second.*—Where the parties were married within this
8 state, and the wife is an actual resident at the time of com-
9 mencing her action.

10 *Third.*—Where the marriage took place out of this state,
11 and the parties, or one of them have become and remained
12 inhabitants of this state, at least one year; and the wife is
13 an actual resident at the time of commencing her action.

1 SECT. 31. Such separations may be decreed for the fol-
2 lowing causes:

3 *First.*—Cruel and inhuman treatment by the husband of ^{New.}
4 his wife.

5 *Second.*—Such conduct on the part of the husband to-
6 wards his wife as renders it unsafe and improper for her to
7 cohabit with him.

8 *Third.*—The abandonment of the wife by the husband,
9 and his refusal or neglect to provide for her.

1 SECT. 32. The complaint shall specifically and particu- ^{New.}
2 larly set forth the acts and conduct on which the action is
3 founded, with times and places as far as possible, and the
4 defendant may take issue thereon; he may also allege with
5 like particularity, and prove by way of defense the ill con-
6 duct of the plaintiff, and if he establishes his defense, the
7 action shall be dismissed.

1 SECT. 33. The provisions of sections eleven to twenty-
2 three inclusive, and sections twenty-five, twenty-six and ^{New.}
3 twenty-eight, of the preceding title shall apply to and gov-
4 ern cases arising under this title.

1 SECT. 34. Where a decree for a separation forever, or
2 for a limited period has been granted, it may be revoked at ^{New.}
3 any time thereafter by the same court which granted it,
4 under such regulations and restrictions as the court may im-
5 pose, upon the joint application of the parties, and upon
6 their producing satisfactory evidence of their reconciliation.

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CHAPTER LXIII.

SUPREME COURT.

1 SECTION 1. The supreme court has power to issue writs
2 of error, certiorari, mandamus, prohibition, and all other
3 writs and processes, not especially provided for by law, to
4 all courts of inferior jurisdiction, to corporations and to in-

C. S. p. 47, Sect. 4.
Amended.

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