

Statutes  
1878

THE  
GENERAL STATUTES  
OF THE  
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY  
GEORGE B. YOUNG.

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EDITED AND PUBLISHED UNDER THE AUTHORITY OF CHAPTER 67 OF THE LAWS  
OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

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FOURTH EDITION.

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WITH SUPPLEMENTS,  
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF  
THE LEGISLATIVE SESSION OF 1883.

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SAINT PAUL:  
WEST PUBLISHING COMPANY.  
1883.

contrary to the provisions of this chapter, or wilfully makes any false certificate of any marriage, or pretended marriage, he shall forfeit for every such offence a sum not exceeding five hundred dollars, or may be imprisoned not exceeding one year.

§ 14. Solemnizing by unauthorized person, etc., penalty. If any person undertakes to join others in marriage, knowing that he is not lawfully authorized to do so, or knowing of any legal impediment to the proposed marriage, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not more than one year, or by a fine not more than five hundred dollars, or by both such fine and imprisonment, in the discretion of the court.

§ 15. Want of authority not to avoid marriage. No marriage solemnized before any person professing to be a judge, justice of the peace, or minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed judge, justice or minister: *provided*, the marriage is consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

§ 16. Marriage among quakers—duty of clerk—penalty. All marriages solemnized among the people called friends or quakers, in the form heretofore practised and in use in their meetings, are valid, and not affected by any of the foregoing provisions; and the clerk of the meeting in which such marriage is solemnized, shall, within one month after every such marriage, deliver a certificate of the same to the clerk of the district court of the county where such marriage took place, or of the county to which such county is attached for judicial purposes, on penalty of forfeiting not more than one hundred dollars; which certificate shall be filed and recorded by such clerk, under a like penalty; and if such marriage does not take place in such meeting, such certificate shall be signed by the parties, and at least six witnesses present, and filed and recorded as above provided, under a like penalty.

§ 17. Illegitimate children—marriage of parents. Illegitimate children become legitimized by the subsequent marriage of their parents with each other, and the issue of marriages declared null in law shall nevertheless be legitimate.

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DIVORCES DISSOLVING THE MARRIAGE CONTRACT.

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## TITLE 1.

## DIVORCES DISSOLVING THE MARRIAGE CONTRACT.

§ 1. **What marriages are void.** All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this state, be absolutely void, without any decree of divorce, or other legal proceedings: *provided*, that if any person whose husband or wife has been absent for five successive years, without being known to such person to be living during that time, marries during the lifetime of such absent husband or wife, the marriage shall be void only from the time that its nullity is pronounced by a court of competent authority.

§ 2. **What marriages are voidable.** When either of the parties to a marriage, for want of age or understanding, is incapable of assenting thereto, or when the consent of either party has been obtained by force or fraud, and there is no subsequent voluntary cohabitation of the parties, the marriage shall be void from the time its nullity is declared by a court of competent authority.

§ 3. **Action to annul marriage.** When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the district court of the county where the parties, or one of them, reside, for annulling the same; and such complaint shall be filed, and proceedings had thereon, as in the case of proceedings in said court for a divorce; and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

§ 4. **When marriage shall not be annulled.** No marriage shall be adjudged a nullity, on the ground that one of the parties was under the age of legal consent, if it appears that the parties, after they had attained such age, had voluntarily cohabited together as husband and wife; nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it appears that the parties freely cohabited together as husband and wife, after such insane person was restored to a sound mind.

§ 5. **Marriage not to be annulled at suit of party capable of contracting.** No marriage shall be adjudged a nullity, at the suit of the party capable of contracting, on the ground that the other party was under the age of legal consent, or was idiotic or insane, if such idiocy or insanity was known to the party capable of contracting, at the time of such marriage.

§ 6. **Divorce from bonds of matrimony.** A divorce from the bonds of matrimony may be adjudged and decreed by the district court, on suit brought in the county where the parties, or either of them, reside, for either of the following causes:

*First.* Adultery;

*Second.* Impotency;

*Third.* Cruel and inhuman treatment;

*Fourth.* When either party, subsequent to the marriage, has been sentenced to imprisonment in the state prison;

*Fifth.* Wilful desertion of one party by the other, for the term of three years next preceding the filing of the complaint;

*Sixth.* Habitual drunkenness for the space of one year, immediately preceding the filing of the complaint;

§ 7. **Divorce for imprisonment, not affected by pardon.** After a divorce on account of imprisonment in the state prison, a pardon shall not restore the party imprisoned to his conjugal rights.

§ 8. **Complainant must be a resident—exception.** No divorce shall be granted, unless the complainant has resided in this state one year immediately preceding the time of exhibiting the complaint, except for adultery committed while the complainant was a resident of this state.

§ 9. **Denial of divorce although adultery is proved.** In an action brought for a divorce

on the ground of adultery, although the fact of adultery is established, the court may deny a divorce in the following cases:

*First.* When it appears that the offence was committed by the procurement or with the connivance of the complainant;

*Second.* When there has been an express forgiveness of the adultery charged, or a voluntary cohabitation of the parties, with knowledge of the offence;

*Third.* When the action has not been brought within three years after the discovery, by the complainant, of the offence charged;

*Fourth.* When it is proved that the plaintiff has also been guilty of adultery, under such circumstances as would have entitled the defendant, if innocent, to a divorce.

23 M. 563.

§ 10. **Action, how and where brought.** An action for a divorce may be brought by a wife in her own name; and all actions for divorce shall be commenced by summons and complaint, in the county where the plaintiff resides, as hereinafter provided.

§ 11. **Requisites of complaint.** The complaint shall contain the names and ages of the parties, the name of the court in which the action is brought, and a statement of the facts constituting the cause or grounds of action, in ordinary and concise language; without repetition.

18 M. 90.

§ 12. **Service of summons and complaint—publication.** Copies of the summons and complaint shall be served on the defendant personally; and when such service is made out of this state, it may be proved by the affidavit of the person making the same, with the certificate of the clerk of the court of the county, to the identity of the officer taking the affidavit; but if personal service cannot well be made, the court may order service of the summons by publication, as in other actions.

17 M. 181.

§ 13. **Time for answering.** The defendant shall have thirty days in which to answer the complaint; in case of service by publication, said thirty days shall not begin to run until the expiration of the period allowed for publication; and in case of personal service out of the state, the court shall not permit the action to be heard and determined, as upon default, until the lapse of such reasonable time as will allow the defendant to appear and answer, which time shall be fixed by order, after proof of such service is made and filed in the action.

§ 14. **Proceedings on failure to answer—reference.** If, after service duly made and proved, the defendant does not appear, the court, at a general or special term, or the judge out of term, may proceed to hear and determine the action: *provided*, that the court or judge, upon application, may refer said action to a referee to take and report the evidence therein. When issue is joined, like proceedings shall be had as in civil actions. (*As amended 1878, c. 13, § 1.*)

18 M. 90.

§ 15. **Alimony pending suit—costs.** In every action brought, either for a divorce or separation, the court may, in its discretion, require the husband to pay any sum necessary to enable the wife to carry on or defend the action, or for her support during its pendency; and it may adjudge costs against either party, and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

§ 16. **Protection of wife pending suit, etc.** When an action is commenced or about to be commenced to annul a marriage, or for a divorce or separation, the court may at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the action.

§ 17. **Custody, etc., of children pending suit.** The court may, in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance during

the pendency of such action, and may make such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper.

§ 18. **Provision in decree for custody, etc., of children.** Upon granting a decree of nullity of marriage, or of divorce or separation, the court may make such further order as it deems just and proper concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them, shall remain, having due regard to the age and sex of such children.

§ 19. **Order concerning children may be revised.** The court may, from time to time afterward, on the petition of either of the parents, revise and alter such order concerning the care, custody and maintenance of the children, or any of them, and make such new order concerning the same as the circumstances of the parents, and the benefit of the children, require.

§ 20. **Wife entitled to possession of her real estate, when.** Whenever the nullity of a marriage, or a divorce from the bond of matrimony, for any cause, excepting that of adultery committed by the wife, is ordered, and when the husband is sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate, in like manner as if her husband was dead.

§ 21. **Order as to personal estate, etc., of wife.** Upon every such dissolution of marriage as is specified in the preceding section, the court may make a further order for restoring to the wife the whole, or such part as it deems just and reasonable, of the personal estate that has come to the husband by reason of the marriage, or for awarding to her the value thereof; and also the value of any real estate of the wife disposed of by the husband and wife during the coverture, to be paid by her husband in money; and such court may require the husband to disclose on oath what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof remains in his hands.

§ 22. **Court may appoint trustee of alimony.** The court has power to appoint trustees, whenever it is deemed expedient, to receive any sum or sums of money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support and maintenance of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct; or to pay over to the wife the principal sum, in such proportions and at such times as the court shall order, regard being had in all such cases to the situation and circumstances of such wife, and also the children, if there are any, provided for in the order; and such trustees shall give such bond with surety as the court shall require, for the faithful performance of their trust.

§ 23. **Property of husband to be transferred to wife—permanent alimony.** Upon every divorce for any cause, excepting that of adultery committed by the wife, if the estate and property restored or awarded to the wife is insufficient for the suitable support and maintenance of herself, and such children of the marriage as shall be committed to her care and custody, or if there is no such estate and property, the court may further order and decree to her such part of the personal estate of the husband, not exceeding one-third part thereof in value, and such real estate of the husband, not exceeding the value of her dower, as it deems just and reasonable, having regard to the ability of the husband, and the character and situation of the parties, and all the other circumstances of the case. The court may, also, in the cases provided for in this section, decree to the wife such alimony out of the estate of the husband as it may deem just and reasonable, having regard to the ability of the husband, and the character and situation of the parties, and all the other circumstances of the case; and may, by its decree, make the same a specific lien upon any specified parcels of the real estate of the husband, or authorize its enforcement by execution against his property, real and personal; but the aggregate award

and allowance made to the wife from the estate of her husband, under the provisions of this section, shall not in any case exceed, in present value, the one-third part of the personal estate of the husband, and the value of her dower in his real estate.

§ 24. **When wife shall have dower in case of divorce.** When the marriage is dissolved by the husband being sentenced to imprisonment, and when a divorce is ordered for the cause of adultery committed by the husband, the wife shall be entitled to her dower in his lands, in the same manner as if he was dead.

§ 25. **Order for alimony or other allowance may be revised.** After an order or decree for alimony, or other allowance for the wife and children, or either of them, and also for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may, from time to time, on petition of either of the parties, revise and alter such order or decree respecting the amount of such alimony or allowance and the payment thereof and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting any of the said matters which such court might have made in the original action.

23 M. 214.

§ 26. **Security for payment of alimony or other allowance.** In all cases when alimony or other allowance is ordered or decreed to the wife or children, the court may require sufficient security to be given by the husband for the payment thereof, according to the terms of the order or decree, and upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, the court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate, and the rents and profits of such real estate, to be applied according to the terms of such order or decree.

§ 27. **Remarriage after divorce—revocation of decree.** When an order of divorce has been granted, and the parties afterward intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all decrees and orders of divorce, alimony and subsistence, which will not affect the rights of third persons.

§ 28. **Persons cohabiting after divorce—penalty.** If any persons, after being divorced from the bond of matrimony, for any cause whatever, cohabit together before intermarriage, they shall be liable to all the penalties provided by law against adultery.

§ 29. **Effect of divorce—change of name of wife.** Whenever an order of divorce from the bond of matrimony is granted in this state by a court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties. And in all actions for a divorce brought by a female, if a divorce is granted, the court may, for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court designates in its order or decree.

## TITLE 2.

### LIMITED DIVORCES.\*

\*§ 30. **Separation—in what cases granted.** A separation from bed and board forever, or for a limited time, may be decreed by the district court or court of common pleas, on the complaint of a married woman, in the following cases:

*First.* Between any husband and wife inhabitants of this state.

*Second.* When the marriage shall have been solemnized, or shall have taken place, within this state, and the wife shall be an actual resident at the time of exhibiting her complaint.

\*An act to provide for limited divorce. Approved March 6, 1876, (Laws 1876, c. 118.)

*Third.* When the marriage shall have taken place out of this state, and the parties have become and remain inhabitants of this state at least one year, and the wife shall be an actual resident at the time of exhibiting her complaint. (1876, c. 118, § 1.)

\*§ 31. *For what causes.* Such separation may be decreed for the following causes:

*First.* The cruel and inhuman treatment, by the husband, of his wife.

*Second.* Such conduct on the part of the husband towards his wife as may render it unsafe and improper for her to cohabit with him.

*Third.* The abandonment of the wife by the husband, and his refusal or neglect to provide for her. (*Id.* § 2.)

\*§ 32. *Requisites of complaint.* The bill of the complainant in every such case shall specify particularly the nature and circumstances of the complaint on which she relies, and shall set forth times and places with reasonable certainty. (*Id.* § 3.)

\*§ 33. *Defences.* The defendant in any such suit may be permitted to prove, in his justification, the ill-conduct of the complainant, and, on establishing such defence to the satisfaction of the court, the bill shall be dismissed. (*Id.* § 4.)

\*§ 34. *Proceedings under this act—alimony, etc.* Proceedings under this act shall be commenced and conducted in the same manner as is now prescribed by law in actions for a divorce from the bond of marriage; and the court in which the application is made, may, upon motion, award such sum for counsel fees, and temporary alimony during the pending of the action, as the circumstances and the situation of the parties appear to warrant. (*Id.* § 5.)

\*§ 35. *Decree as to alimony and wife's property.* Upon decreeing a separation in any such suit, the court may make such further decree as the nature and circumstances of the case may require, and may make such order and decree for the suitable support and maintenance of the wife and her children, or any of them, by the husband, or out of his property, as may appear just and proper; and may, by such decree, give the wife absolute control of her separate property, with power of alienation. (*Id.* § 6, as amended 1877, c. 70, § 1.)

\*§ 36. *Same—when separation is not granted.* Although a decree for separation from bed and board be not made, the court may make such order or decree for the support and maintenance of the wife and her children, or any of them, by the husband, or out of his property, as the nature of the case renders suitable and proper. (*Id.* § 7.)

\*§ 37. *Revocation of decrees.* When a decree for a separation forever, or for a limited period, shall have been pronounced, it may be revoked at any time thereafter by the same court by which it was pronounced, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and upon their producing satisfactory evidence of their reconciliation. (*Id.* § 8.)

## CHAPTER LXIII

### SUPREME COURT.

SECTION.	SECTION.
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2. Power to enforce its judgments—rules to be published.	6. General terms.
3. Decisions to be in writing—entry of judgments.	7. Absence of two judges—adjournment.
4. Syllabus of each decision to be filed and published.	8. Absence of all the judges—adjournment.
	9. Special term—notice of holding.
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