

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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Transfer to directors of bank to secure payment of a debt of grantor, the managing officer of the bank, to the bank, was given upon a fair consideration and was not void, though it rendered grantor insolvent. 172M 149, 214NW787.

Evidence held to support finding that conveyances to wife and daughter were made in good faith for adequate consideration and not with intent to defraud creditors. 173M468, 217NW593.

Conveyance, held not to have been given in payment of antecedent debt. 179M7, 228NW177.

In an action by a creditor, who furnished material for improvement of a homestead, to set aside as fraudulent a transfer thereof by the husband to his wife through a third party, evidence sustains findings that the transfer was supported by a fair consideration and was made without any actual intention of defrauding. *Steinke-Seidl Lumber Co. v. N.*, 183M491, 237NW194. See Dun. Dig. 3859.

Satisfaction of an antecedent debt may constitute a fair consideration. *Steinke-Seidl Lumber Co. v. N.*, 183M491, 237NW194.

That a transfer of property in part payment of an antecedent debt results in a preference does not constitute fraud as against attacking creditors. *National Surety Co. v. W.*, 184M21, 237NW585. See Dun. Dig. 3852 (7).

Evidence held to show an antecedent debt owing by husband which was sufficient consideration for transfer of property to wife. *National Surety Co. v. W.*, 184M21, 237NW585. See Dun. Dig. 3859.

Evidence held not to show that consideration for conveyance was unfair. *Larson v. T.*, 185M366, 241NW43. See Dun. Dig. 3928a.

8478. Conveyance by insolvent.

172M149, 214NW787; note under §8477.

173M576, 218NW108; note under §8475.

174M423, 219NW550; note under §8481.

Where Minnesota corporation, to avoid double liability of stockholders, organized a Delaware corporation, to which it transferred all of the assets of the corporation, in exchange for stock in the Delaware corporation, the creditors of the Minnesota corporation could not have the transfer set aside in a federal court of equity as fraudulent, to the prejudice of the creditors of the Delaware corporation, the federal court applying equitable principles independent of the state statutes. *Brill v. W.*, (CCA8), 65F(2d)420. See Dun. Dig. 3866a.

In such case the Delaware creditors having secured the appointment of a receiver before the Minnesota creditors had taken any action or had reduced their claims to judgment, had a superior equity against the assets, and both sets of creditors would be treated alike. *Id.*

Evidence held to show conveyance from husband and wife to daughter rendered husband insolvent. 171M284, 213NW911.

Evidence held not to show agreement for repayment of advances made by wife to husband. 171M284, 213NW 911.

Payment of an honest debt is not fraudulent although it operates as a preference, in view of the federal bankruptcy act (Mason's Code, Title 11). 171M284, 213NW911.

Evidence held to support finding that conveyances to wife and daughter were made in good faith for adequate consideration and not with intent to defraud creditors. 173M468, 217NW593.

The consideration must be one which fairly represents the value of the property. 179M7, 228NW177.

Evidence held not to show that conveyance rendered grantor insolvent. *Larson v. T.*, 185M366, 374, 241NW43, 47. See Dun. Dig. 3928a.

Evidence held not to require finding that transfer of land rendered grantor insolvent. *National Surety Co. v. W.*, 184M21, 242NW545. See Dun. Dig. 3846.

8479. Conveyances by persons in business.

4½. Subd. 3. Statement showing that materials were furnished by subcontractor to owner, though actually furnished to principal contractor, held sufficient. 199NW 475, 47SD494.

8481. Conveyance made with intent to defraud.

½. In general.

Brill v. W., (CCA8), 65F(2d)420; note under §8478.

Evidence held to show that makers of note to bank were not estopped as against creditors to deny that note was given for valid consideration. *Grant Co. State Bk. v. S.*, 178M556, 228NW150.

6. Subsequent creditors.

Creditors could not impress proceeds of life insurance policies with claims based on fraud of insured after issuance of policies. *Cook v. P.*, 182M496, 235NW9. See Dun. Dig. 4801, 3876a.

In action to set aside conveyance as fraudulent evidence held to establish that claim upon which judgment rested arose prior to transfer. *Larson v. T.*, 185M370, 241NW45. See Dun. Dig. 3928a.

In action to set aside conveyance as fraudulent, evidence held to establish that intervenor's claim upon which his judgment rested arose prior to the conveyance attacked. *Larson v. T.*, 185M374, 241NW47.

31. Chattel mortgages.

Title that passes on foreclosure of prior and paramount mortgage. 171M197, 213NW892.

Evidence sustained finding that chattel mortgage given by father to son was not executed in good faith. 177M84, 224NW457.

35. Action to set aside.

In action to set aside fraudulent conveyances, grantee cannot set up defenses which were available to the grantor in the original action. *Weber v. A.*, 176M120, 222NW646.

A change procured by misrepresentations in form of indebtedness held not to relieve defendant from his obligation. 176M550, 224NW237.

Causes of action set forth in complaint in intervention in action to set aside conveyances as fraudulent held not well pleaded. *Larson v. T.*, 185M370, 241NW45. See Dun. Dig. 3925.

Court was not justified in vacating mortgage foreclosure proceedings in action to set aside transfer of mortgage as fraudulent as to creditors. *Larson v. T.*, 185M370, 241NW45. See Dun. Dig. 3930.

38. Burden of proof.

175M157, 220NW560.

Transfer of real estate in full value for payment of a debt was not fraudulent in absence of showing of actual interest to hinder, delay or defraud plaintiff. 174M423, 219NW550.

39. Degree of proof required.

Finding of fraudulent intent in transfer of real estate, supported by evidence. 176M550, 224NW237.

40. Evidence.

Evidence, held to show that conveyance from father to daughter was not in fraud of creditors. 181M71, 231NW397.

Evidence held to sustain finding that conveyance left grantor insolvent and that grantee had knowledge of intent to defraud creditors of grantor. *Larson v. T.*, 185M374, 241NW47. See Dun. Dig. 3928a.

In action to set aside fraudulent conveyance, finding of good faith held supported by evidence. *National Surety Co. v. W.*, 186M93, 242NW545. See Dun. Dig. 3848.

Evidence held to support finding that transfer of real estate was fraudulent as to creditors and that crops did not belong to grantee. *Joop v. S.*, 247NW526. See Dun. Dig. 3910.

8483. Rights of creditors with matured claims.

Rights of holder of prior and paramount mortgage, and a purchaser at foreclosure sale. 171M197, 213NW 892.

8484. Creditors whose claims have not matured.

A receiver cannot attack a chattel mortgage as void to creditors because not recorded, without showing that he occupies a status to assail it. 175M47, 220NW400.

G. S. 1923, §8345, does not apply to general creditors, but to such as are armed with process, or to a receiver representing creditors and vested with the right to attack. 175M47, 220NW400.

A surety upon a fidelity bond becomes an existing creditor from the date of the taking effect of the bond for the purpose of attacking as fraudulent a transfer of property by his principal obligor. *National Surety Co. v. W.*, 184M44, 237NW690. See Dun. Dig. 3901.

CHAPTER 69

Liens for Labor and Material

FOR IMPROVEMENT OF REAL ESTATE

8490. Mechanics, laborers and materialmen.

½. In general.

A surety bond to protect the owner of land against mechanic's liens, held not discharged by a transfer of the land where the grantee was made a party to the bond. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d)950. See Dun. Dig. 9094, 9107.

The surety on a bond to protect the owner of land against mechanic's liens cannot complain of a change

in the title taking place after liability on the bond had attached by the filing of a lien. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d)950. See Dun. Dig. 9094, 9107.

The surety on a bond to protect land from mechanics' liens is not discharged by a transfer of the land where the principals on the bond are not released. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d)950. See Dun. Dig. 9094.

That obligee in a surety bond to protect against mechanics' liens compelled a lienor to elect between his lien and the taking of a lease on a part of the building in satisfaction of the lien, held not to discharge the

surety. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d)950. See Dun. Dig. 9099.

That mortgagee protected by surety bond against mechanics' liens paid a balance of the proceeds of the mortgage to the surety to discharge the liens other than that of a lienor who had an option to take a lease on part of the premises, held not to discharge the surety. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d)950.

Surety on bond to protect mortgagee against mechanics' liens held to have no rights with respect to fund obtained by the mortgagee and was not released because fund was applied in payment of other than lienable claims. 176M281, 223NW139.

Where one on accepting contract includes new conditions there is no contract unless the maker of original offers consents to the new conditions. *Johnson v. O'N.*, 182M232, 234NW16. See Dun. Dig. 1740(24).

Evidence held to show that contractor plumber had been paid for fixtures and had paid plaintiff therefor before plaintiff filed liens. *A. Y. McDonald Mfg. Co. v. L.*, 187M240, 244NW804. See Dun. Dig. 6061.

2. Nature of lien.

The condition of a bond given to a mortgagee to protect his security against mechanics' liens was broken by the entry of a judgment perfecting the liens and subjecting the property to sale, and an action begun after judgment, but before expiration of period to redeem from mortgage foreclosure, was not premature. 172M320, 215NW67.

3. Basis of lien.

Finding that door and wall rail were not sold and furnished for construction of certain building upon which seller asserted mechanic's lien, held sufficiently sustained by evidence. *Lake Street Sash & Door Co. v. D.*, 186M316, 243NW110. See Dun. Dig. 6049.

Evidence held to show that plumber who installed plaintiff's fixtures did so for owners, as affecting mechanic's lien. *A. Y. McDonald Mfg. Co. v. L.*, 187M240, 244NW804. See Dun. Dig. 6037.

S. Nature of work or material.

Where lienable fixture proves defective before paid for and is taken back and replaced by materialman, he may claim lien for new fixture, no claim being made for defective one. *A. Y. McDonald Mfg. Co. v. L.*, 187M240, 244NW804. See Dun. Dig. 6046.

A towel bar and a tumbler holder did not contribute to any improvement of realty and were not lienable. *A. Y. McDonald Mfg. Co. v. N.*, 187M237, 244NW806. See Dun. Dig. 6045.

18. Release and waiver.

Mechanic's lien, satisfied in order that first mortgage loan might be negotiated, was subordinate to mortgage and other liens superior to mortgage. *Minneapolis Builders' Sup. Co. v. C.*, 186M635, 244NW53. See Dun. Dig. 6065.

21. Held not entitled to lien.

Where materialman waived lien on materials furnished prior to certain date, and subsequently filed lien, which, through mistake, contained certain items delivered before the waiver date, owner who paid the lien could recover the amount of items delivered prior to waiver, the lien statement constituting a false representation. 171M274, 213NW917.

One installing wiring, lights, poles and appliances for lighting miniature golf course, held charged with knowledge of terms of lease which he was handed for examination by lessee. *Johnson v. G.*, 187M104, 244NW409. See Dun. Dig. 5402, 6037.

8494. When lien attaches—Notice.

Finding that trust deed was recorded before any mechanics' liens attached to the property, held sustained by the evidence. 171M445, 214NW503.

"Without notice" means without notice of an existing lien. 171M445, 214NW503.

Obligatory advances made under a mortgage securing future advances have priority over mechanics' liens arising after the recording of the mortgage but before the making of the advances. 171M445, 214NW503.

Advances made in reliance on representations that the mortgagor had performed the precedent conditions to be performed by him retain their right of priority although such representations were in fact false. 171M445, 214NW503.

Where parties for whose benefit conditions are imposed waive them, strangers thereto cannot complain. 171M445, 214NW503.

Where a mortgagee has agreed to make future advances, a breach of the contract by the other party does not bring advances thereafter made within the doctrine of optional advances. 171M445, 214NW503.

Bonds which are secured by a trust deed and are sold on the markets as instruments of commerce take priority over all incumbrances arising subsequent to the recording of the trust deed. 171M445, 214NW503.

Priority between recorded mortgage and mechanic's lien where such lien attached from time of "actual and visible beginning of an improvement on the ground?" "Without notice" means without notice of an existing lien. 176M1, 225NW507.

Release of lien rights in favor of mortgage, held to apply to material subsequently furnished. 177M132, 224NW847.

Materialman held to have waived lien as against subsequent mortgage. *Thompson Lumber Co. v. G.*, 177M111, 224NW849.

Evidence held to sustain finding that lien claimants had actual notice of unrecorded mortgage before delivery of materials. *Anderson v. I.*, 187M308, 245NW365. See Dun. Dig. 6037.

8495. Vendors, consenting owners, etc.

Evidence held to sustain finding that building and loan association agreed to obtain lien waivers and negligently failed to do so. 171M343, 214NW56.

1. Forfeiture of executory contracts.

Evidence held insufficient to show that vendor effected forfeiture before accrual of mechanic's lien. 179M280, 228NW934.

8497. Mechanic's lien—Filing—Etc.

2. Time of filing.

Finding as to coverage of an express plumber's contract held not supported by evidence. *Bossenmaier v. E.*, 182M200, 234NW303. See Dun. Dig. 6112a.

Time for filing mechanic's lien for furnishing sink and attachments was not extended by later separate contract for small items for household use. *A. Y. McDonald Mfg. Co. v. N.*, 187M240, 244NW806. See Dun. Dig. 6087.

2½. Mistake in name.

Naming as owner husband of real owner of premises sought to be charged is not fatal, where it appears that this was according to lienor's best information at time lien statement was filed. *Nelson v. S.*, 186M271, 243NW105. See Dun. Dig. 6078.

3. Description of premises.

Mechanic's lien statement which described premises as government subdivision in fractional northeast quarter of certain section on which was erected "White City Resort" was not defective for lack of certainty. *Nelson v. S.*, 186M271, 243NW105. See Dun. Dig. 6079.

8499. Foreclosure of liens.

Hartford A. & I. Co. v. F., (CCA8), 59F(2d)950. Liability to owner under contractor's bond. 178M388, 227NW205.

8500. Summons, pleadings, etc.

Denial of application to open foreclosure judgment and to permit a defendant to answer on the ground of mistake, inadvertence, and excusable neglect of applicant's attorney, held proper. 172M462, 215NW859.

8501. Notice of lis pendens in certain cases.—At the beginning of the action the plaintiff shall file for record with the register of deeds of the county in which it is brought, and of the several counties if the lien be claimed under Section 8493, a notice of the pendency thereof, embracing therein a copy of the summons, omitting the caption. After such filing, no other action shall be commenced for the enforcement of any lien arising from the improvement described, but all such lienholders shall intervene in the original action by answer, as provided in Section 8500. Any such lienholder not named as a defendant may nevertheless answer the complaint and be admitted as a party. If more than one action shall be commenced in good faith, all shall be consolidated and tried as one, under such order of the court as may best protect the rights of all parties concerned. But no lien shall be enforced in any case unless the holder thereof shall assert the same, either by complaint or answer, within one year after the date of the last item of his claim as set forth in the recorded lien statement; and, as to a bona fide purchaser, mortgagee or encumbrancer without notice, the absence from the record of a notice of lis pendens of an action after the expiration of said year in which said lien could be so asserted shall be conclusive evidence that said lien may no longer be enforced and, in the case of registered land, the registrar of titles shall refrain from carrying forward to new certificates of title the memorials of lien statements when no such notice of lis pendens has been registered within said period; nor shall any person be bound by the judgment in such action unless he is made a party thereto within said year. (R. L. '05, §3515; G. S. '13, §7030; Apr. 21, 1933, c. 362, §1.)

Sec. 2 of Act Apr. 21, 1933, cited, provides that the act shall take effect from its passage. 172M462, 215NW859; note under §8500.

8503. Postponement, judgment, subrogation, etc.

In mechanic's lien foreclosure, court did not err in refusing to reopen case to permit plaintiff to show how towel bar and tumbler holder were attached to wall. *A. Y. McDonald Mfg. Co. v. N.*, 187M237, 244NW806. See Dun. Dig. 6114a.

8504. Judgment, sale redemption, etc.

Where remainderman participated in transaction which wrongfully disabled life tenant from redeeming from mechanic's lien foreclosure, redemption by one to whom they had given a sham mortgage was in effect redemption by remainderman and on annulment of the foreclosure. 173M128, 216NW798.

One obtaining new certificate under Torrens Act, after purchase at mechanic's lien foreclosure, had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW246.

Where suit on mechanic's lien claim is brought in name of two partners and it develops that one has assigned all of his interest in claim to his copartner, court may properly decree foreclosure in behalf of assignee. *Blatterman v. C.*, 246NW532. See Dun. Dig. 571, 7407.

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

One repairing automobile at instance of conditional vendee has a lien under §8507 prior to the right of the vendor, but his lien is lost by surrender of possession and he has a lien under §8524, but no priority over conditional vendor. 177M217, 225NW15.

One in possession of horse under claim of lien may be convicted under §10443 if he permits it to starve to death. *State v. Maguire*, 248NW216. See Dun. Dig. 279.

MOTOR VEHICLES**8524. To whom given—For what services rendered.**

One repairing automobile at instance of conditional vendee has a lien under §8507 prior to the right of the vendor, but his lien is lost by surrender of possession, and he has a lien under §8524, but no priority over conditional vendor. 177M217, 225NW15.

Material and labor lien is superior to title acquired through an execution sale upon a levy made before the filing of the lien statement but after the furnishing of labor or material. *Stegmeir v. L.*, 184M194, 238NW328. See Dun. Dig. 5579a, 5584a.

8526. Foreclosure.

Holder of lien on motor vehicle was not entitled to possession until the commencement of the action to foreclose and where machine was converted by lien claimant, his lien is not a defense in trover. 174M11, 218NW172.

8527. Sheriff to serve copy of notice of sale.—At or before posting the notice of sale, the sheriff shall serve a copy of said notice of sale on the judgment debtor—if he be a resident of the county, or can be found therein, in the manner required by law for the service of a summons in a civil action in the district court. ('11, c. 320, §4; G. S. '13, §7056; '25, c. 352, §1; Apr. 23, 1929, c. 302, §1.)

ON LOGS AND TIMBER**8532. Action—Attachment.**

Note in 1927 edition should read: "Governed by §9342 as to time," etc.

IN OTHER CASES**8553. Lien for services.**

See §§5855 to 5871 for registration of stallions and jacks.

8555. Lien for threshing grain, etc.—Any person owning or operating a threshing machine, clover huller, corn picking machine, corn sheller, corn shredder or hay baler shall have a lien upon the grain threshed, clover hulled, corn shelled or shredded, or picked, or hay baled, as the case may be, for the price or value of such service, which shall be preferred to all other liens or incumbrances except those given for seed from which said grain was grown. (R. L. '05, §3546; G. S. '13, §7082; '23, c. 132, §1; Apr. 24, 1929, c. 314, §1.)

8556. How preserved and enforced.—Within fifteen days after such threshing, clover hulling, corn picking, corn shelling or shredding, or hay baling is completed the claimant of such lien shall file with the Register of Deeds of the County in which it was done a verified statement of the amounts and kinds of grain threshed, clover hulled, corn picked, corn shelled or shredded, or hay baled, the time and place of doing the same, giving the first and last days thereof, the rates per bushel, per day, per hour or other terms of the con-

tract and the total charge therefor, the amounts paid thereon, if any, and the balance due, the name of the reputed owner and of the person requesting the work to be done, and a notice that a lien is claimed for the amount remaining unpaid. A certified copy of such statement shall authorize the seizure and sale of so much of the grain, clover, corn or hay covered by the lien as may be necessary to satisfy the same, with reasonable costs and expenses, but such seizure must be made, or an action to foreclose be commenced, within six months after such filing. The cost and the expenses above referred to shall include an attorney's fee amounting to 15 per cent of the amount of the lien claimed in the event such lien is not paid within 90 days after the filing thereof and the lien claimant employs an attorney-at-law to collect the same. So far as applicable thereto, the laws relating to the enforcement of chattel mortgages shall govern the foreclosure of liens hereunder. Any person secreting or disposing of property covered by such lien, without the consent of the lienholder, shall be guilty of a misdemeanor, the minimum penalty thereof shall be a fine of \$25.00. (R. L. '05, §3547; G. S. '13, §7083; '21, c. 248, §1; '23, c. 132, §2; Apr. 24, 1929, c. 314, §2.)

8556-3. Lien for hospital charges.—Any person, firm or corporation operating a hospital in this state shall have a lien for the reasonable charges for hospital care of an injured person upon any and all causes of action accruing to the person to whom such care was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and which necessitated such hospital care, subject, however, to any attorney's lien. (Act Apr. 20, 1933, c. 345, §1.)

8556-4. Claim to be filed with clerk of the District Court.—In order to perfect such lien, the operator of such hospital, before, or within ten days after, such person shall have been discharged therefrom, shall file in the office of the clerk of the district court of the county in which such hospital shall be located a verified statement in writing setting forth the name and address of such patient, as it shall appear on the records of such hospital, the name and location of such hospital and the name and address of the operator thereof, the dates of admission to and discharge of such patient therefrom, the amount claimed to be due for such hospital care, and, to the best of claimant's knowledge, the names and addresses of all persons, firms or corporations claimed by such injured person, or the legal representatives of such person, to be liable for damages arising from such injuries; such claimant shall also, within one day after the filing of such claim or lien, mail a copy thereof, by registered mail, to each person, firm or corporation so claimed to be liable for such damages to the address so given in such statement. The filing of such claim or lien shall be notice thereof to all person, firms or corporations liable for such damages whether or not they are named in such claim or lien. (Act Apr. 20, 1933, c. 345, §2.)

8556-5. Clerk to provide record.—The clerk of court shall endorse thereon the date and hour of filing and, at the expense of the county, shall provide a hospital lien book with proper index in which he shall enter the date and hour of such filing, the names and addresses of such hospital, the operators thereof and of such patient, the amount claimed and the names and addresses of those claimed to be liable for damages. He shall be paid one dollar as his fee for such filing. (Act Apr. 20, 1933, c. 345, §3.)

8556-6. Release.—No release of such causes of action, or any of them, or of any judgment thereon shall be valid or effectual as against such lien unless such lienholder shall join therein, or execute a release of such lien, and the claimant, or assignee of such lien, may enforce such lien by action against the person, firm or corporation liable for such damages, which action shall be commenced and tried in the

county in which such lien shall be filed, unless ordered removed to another county by the court for cause. If the claimant shall prevail in such action, the court may allow reasonable attorneys' fees and disbursements. Such action shall be commenced within two years after the filing of such lien. (Act Apr. 20, 1933, c. 345, §4.)

8556-7. Not to apply to workmen's compensation.—The provisions of this act shall not apply to any moneys becoming due under the Workmen's Com-

pensation Act of this state. (Act Apr. 20, 1933, c. 345, §5.)

Sec. 6 of Act Apr. 20, 1933, cited, provides that the act shall take effect from its passage.

GENERAL PROVISIONS

8561. Pledgee permitted to buy pledge where sold at public sale.

Sheriff is entitled to fees of \$4.50 for posting notices and making sale. Op. Atty. Gen., May 20, 1929.

CHAPTER 70

Marriage

8562. Marriage a civil contract.

Marriage may be annulled where the defendant was prohibited by law from entering into it because he had been divorced from a former wife within six months, and induced the consent of plaintiff by a false representation of no divorce within the six-month period. 171M340, 214NW650.

Where the promises of the husband, under an antenuptial contract, to make payments of money to his wife have matured and the money has become due, the causes of action so perfected are not defeated by the wife's subsequent desertion of the husband. 172M91, 214NW791.

Alienation of affections and damages therefor. 177M270, 224NW839.

Essentials of common-law marriage between single man and married woman by cohabitation and consent following death of husband of woman. 180M463, 231NW199.

Contract whereby plaintiff was employed at a stipulated compensation per month as a farm hand was not abrogated by marriage of plaintiff to his employer, but remained a binding obligation upon her, and he could recover for work performed after the marriage. Archer v. M., 183M306, 236NW455. See Dun. Dig. 4258.

Circumstantial evidence necessary to show common-law marriage estate. Ghelin v. J., 186M405, 243NW443. See Dun. Dig. 5796.

General reputation alone that parties are married is not alone sufficient to show common-law marriage. Ghelin v. J., 186M405, 243NW443.

8563. Persons capable of contracting.

A male person 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. Op. Atty. Gen., Feb. 13, 1930.

8564. Marriages prohibited.

Marriage may be annulled where it took place within six months after divorce of defendant, through false representation. 171M340, 214NW650.

Evidence held not to show common-law marriage. 175M547, 221NW911.

State v. Yoder, 113M503, 130NW10, L. R. A. 1916C, 686, followed to the effect that a marriage within the time during which the parties may not remarry, may be voidable but is not void under our laws. Ommang's Estate, 183M92, 235NW529. See Dun. Dig. 5788(68).

Marriage in Minnesota within one year after divorce in Wisconsin was valid, though it would be void under Wisconsin law. Ommang's Estate, 183M92, 235NW529. See Dun. Dig. 1557, 5788(68).

Marriage to woman who had been divorced less than a year, and who was prohibited from remarrying by the laws of Wisconsin, held invalid under this section. 34F(2d)284.

This statute prohibits the remarriage within six months of persons who have been divorced from each other. Op. Atty. Gen., Sept. 3, 1931.

8565. By whom solemnized.

Probate judge performing marriage ceremonies is not required to turn over fee to county. Op. Atty. Gen., June 22, 1933.

8568. License.

No marriage can be solemnized without a license being first issued therefor, notwithstanding pre-existing common-law marriage. Op. Atty. Gen., Feb. 17, 1933.

8569. Marriage licenses.—Application for a marriage license shall be made at least five days before a license shall be issued. The clerk shall examine upon oath the party applying for license relative to

the legality of such contemplated marriage, and if, at the expiration of said five-day period, satisfied that there is no legal impediment thereto, he shall issue such license, with his official seal attached, and make a record thereof, provided, that in case of emergency, or extraordinary circumstances, the judge of the probate court or any judge of the district court of the county in which the application is made may authorize the license to be issued at any time before the expiration of said five days. If any person intending to marry shall be under age, and shall not have had a former husband or wife, such license shall not be issued unless the consent of the parents or guardians shall be personally given before the clerk, or certified under the hand of such parents or guardians, attested by two witnesses, one of whom shall appear before such clerk and make oath that he saw said parents or guardians subscribe, or heard them acknowledge, the same. The clerk shall be entitled to a fee of two dollars for administering the oath, and issuing, recording, and filing all papers required. Any clerk who shall knowingly issue or sign a marriage license in any other manner than in this section provided shall forfeit and pay for the use of the parties aggrieved not to exceed one thousand dollars. (R. L. '05, §3559; G. S. '13, §7095; Apr. 25, 1931, c. 401, §1.)

Marriage may be annulled where it took place within six months after divorce of defendant, through false representation. 171M340, 214NW650.

A male person 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. Op. Atty. Gen., Feb. 13, 1930.

In computing the five-day period, the day on which the application is made is to be excluded and the day the license is issued is to be included. Op. Atty. Gen., Apr. 29, 1931.

Fractions of days may not be considered in determining five days after which a marriage license may be issued. Op. Atty. Gen., May 9, 1931.

Consent of parents may be given any time during the five-day period. Op. Atty. Gen., June 2, 1931.

A party applying for a license must appear personally before the clerk. Op. Atty. Gen., June 2, 1931.

After the five-day period has expired, it is proper to mail the license to the applicant. Op. Atty. Gen., June 19, 1931.

The mother of two dependent children born of a bigamous marriage may receive a county allowance to enable her to care for these children in her home. Op. Atty. Gen., Sept. 26, 1931.

8579. Illegitimate children.

This statute does not refer to the children of one marrying while still having a spouse by a prior voidable marriage. 175M547, 221NW911.

The presumption of the legitimacy of a child conceived during wedlock, while strong, is not conclusive. State v. Soyka, 181M533, 233NW300. See Dun. Dig. 3432.

Marriage of parents legitimized child and purged begetting of all meretricious aspect, as affecting necessity of consent to adoption. Anderson, 248NW657. See Dun. Dig. 844(19).

Issue of bigamous marriage is legitimate. Op. Atty. Gen., July 25, 1933.