

REVISED LAWS OF MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

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[3562—]1. **Record and certificate—Receipt.**—Every person solemnizing a marriage shall make a record thereof, and within one month make and deliver to the clerk of the district court of the county where the marriage took place, or of the county to which said county is attached for judicial purposes, a certificate under his hand containing the particulars mentioned in the preceding section, which certificate shall be filed and recorded by said clerk in a book by him kept for that purpose, and said clerk shall be entitled to receive the sum of twenty-five cents for recording said certificate from the person offering the same for record. And the clerk of said court shall execute a receipt to the person delivering said certificate, which said receipt shall be of even date with the delivery of said certificate, and shall contain substantially all of the facts set forth in said certificate; be signed by said clerk and have affixed thereto the seal of said court. (G. S. 1894, § 4778, as amended by Laws 1905, c. 294, § 1.)

Historical.—"An act to amend section four thousand seven hundred and seventy-eight of chapter sixty-one, of the General Statutes of 1894, relating to the recording of marriage certificates." Approved April 19, 1905.

Said section 4778 was G. S. 1866, c. 61, § 11, as amended by Laws 1871 c. 94, § 1, and Laws 1883, c. 68, § 1. Said acts were repealed by R. L. §§ 5518, 5524, 5535; the provisions of said section 4778 being incorporated in R. L. § 3562. This amended section appears to be superseded by R. L. § 3562, as amended.

CHAPTER 71.

DIVORCE.

3570. What voidable.

In general.—An action to annul a marriage on the ground that it was procured by fraud and duress is not an action for divorce. *Waller v. Waller*, 102 Minn. 405, 113 N. W. 1013.

See note under section 4160.

3574. Grounds for divorce.—A divorce from the bonds of matrimony may be adjudged by the district court for any of the following causes:

1. Adultery.
2. Impotency.
3. Cruel and inhuman treatment.
4. Sentence to imprisonment in any state prison or state reformatory subsequent to the marriage; and in such a case a pardon shall not restore the conjugal rights.
5. Wilful desertion for one year next preceding the filing of the complaint.
6. Habitual drunkenness for one year immediately preceding the filing of the complaint. (R. L. § 3574, as amended by Laws 1909, c. 443, § 1.)

Cited in *Waller v. Waller*, 102 Minn. 405, 113 N. W. 1013.

See note under section 3570.

Cruel and inhuman treatment.—Repeated charges, made by the wife against the husband, of infidelity, not shown to be based on reasonable or probable cause, published for many years in private and in public, taken in connection with circumstances of aggravation, held sufficient to constitute cruel and inhuman treatment. *Williams v. Williams*, 101 Minn. 400, 112 N. W. 528.

A finding that defendant was not guilty of cruel and inhuman treatment was sustained by the evidence. The court did not err in receiving evidence tending to show the conduct and manner of life of plaintiff. *Haver v. Haver*, 102 Minn. 235, 113 N. W. 382.

3579. Service—Publication.—Copies of the summons and complaint shall be served on the defendant personally, and, when such service is made out of this state and within the United States, 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, and when made without the United States it may be proved by the affidavit of the person making the same, taken before and certified by any United States minister charge d'affairs, commissioner, consul or commercial agent, or other counsellor or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officer authorized to perform their duties; but, if personal service cannot well be made, the court may order service of the summons by publication, which publication shall be made as in other actions. (R. L. § 3579, as amended by Laws 1909, c. 434, § 1.)

Service of summons.—R. L. §§ 3579, 4111, 4112, made no substantial change in the law as to service by publication of the summons. *Becklin v. Becklin*, 99 Minn. 307, 109 N. W. 243.

Sufficiency of judgment roll as showing that personal service could not well be made. *State v. Doyle*, 120 N. W. 902.

3585. Custody of children, etc.—On judgment.

Minor children—Support.—The obligation of a father for the support of his minor children is not impaired by a decree of divorce at the suit of his wife for his misconduct, which gives the custody to her, but is silent as to their support. If he neglects to support them, she may recover from him for necessities furnished for their support. *Spencer v. Spencer*, 97 Minn. 56, 105 N. W. 483, 2 L. R. A. (N. S.) 851, 114 Am. St. Rep. 695.

When a decree of divorce granted the wife awarded the custody of a minor child to her, but made no allowance for its maintenance, the power of the court extends to subsequent alteration of such decree, so as to secure the performance by the father of his duty to care for his offspring. *McAllen v. McAllen*, 97 Minn. 76, 106 N. W. 100.

3589. Trustee of alimony.

Cited in *Glaser v. Kaiser*, 103 Minn. 241, 114 N. W. 762.

See note under section 3591.

3590. Property of husband—Permanent alimony.

Cited in *Glaser v. Kaiser*, 103 Minn. 241, 114 N. W. 762.

See note under section 3591.

Alimony—Conveyance in fraud of wife.—In an action for divorce and alimony and to have the amount of recovery declared a specific lien upon real property alleged to have been placed by defendant in the name of a third person, impleaded as a party, to defraud plaintiff, the evidence supported findings that the premises were so fraudulently conveyed. *Rand v. Rand*, 103 Minn. 5, 114 N. W. 87.

Judgment, how enforced.—A judgment in divorce, in which alimony was declared a specific lien on specified land owned by defendant, authorized enforcement thereof by ordinary execution and sale. *Maki v. Maki*, 106 Minn. 357, 119 N. W. 51.

3591. [Repealed. Laws 1909, c. 292.]

Constitutionality.—This section is not unconstitutional as inflicting a cruel and unusual punishment. *Glaser v. Kaiser*, 103 Minn. 241, 114 N. W. 762.

Wife's interest.—Under G. S. 1894, § 4808, when divorce was granted to the wife on the ground of adultery, her interest in her husband's estate was the same as on his death. But if she consented to a division of the estate, and retained the amount so adjudged as permanent alimony, she was estopped from denying the validity of the judgment. *Linse v. Linse*, 98 Minn. 243, 108 N. W. 8.

Under the present section a wife divorced from her husband because of his adultery owns and is entitled to the possession of his real estate, if there be no living issue. *Glaser v. Kaiser*, 103 Minn. 241, 114 N. W. 762.

3592. Order for alimony, etc., revised.

G. S. 1894, § 4809, cited in *Spencer v. Spencer*, 97 Minn. 56, 105 N. W. 483, 2 L. R. A. (N. S.) 851, 114 Am. St. Rep. 695.

R. L. § 3592, cited in *Glaser v. Kaiser*, 103 Minn. 241, 114 N. W. 762.

See note under section 3591.

Alimony.—Where a contract for procurement of a divorce on the ground of desertion by the husband and for the payment to the wife of an agreed sum in lieu of alimony, was void as against public policy, the wife after judgment

of divorce, who has not offered to return the sum paid her under the contract, could not secure an allowance for alimony. *McAllen v. McAllen*, 97 Minn. 76, 106 N. W. 100.

3596. Effect of divorce—Name of wife.

Foreign divorce.—Collateral attack. *Sammons v. Pike*, 120 N. W. 540.

LIMITED DIVORCES.

3597. Separation.

Pleading.—Under a complaint for an absolute divorce on the ground of cruel and inhuman treatment, a court may grant a limited divorce. *Heinze v. Heinze*, 119 N. W. 489.

Who is "actual resident."—This section applies to a married woman having a legal domicile or established residence in this state, as distinguished from one having only a temporary abode therein. Where plaintiff was compelled by her husband, under threat of withdrawing all allowance for her support, to remove to another state, where she remained several years, she was an "actual resident." *Bechtel v. Bechtel*, 101 Minn. 511, 112 N. W. 883, 12 L. R. A. (N. S.) 1100.

3598. For what causes.

Subd. 2.—A finding that the conduct of a husband to his wife was "improper" held insufficient. *Heinze v. Heinze*, 119 N. W. 489.

CHAPTER 72.

MARRIED WOMEN.

3605. Separate legal existence.

Right to sue.—Under G. S. 1894, § 5530, a married woman could not, before or after divorce, maintain an action against her husband for a personal tort committed by him against her during coverture. *Strom v. Strom*, 98 Minn. 427, 107 N. W. 1047, 6 L. R. A. (N. S.) 191, 116 Am. St. Rep. 387.

3607. Contracts—Torts—Property rights and liabilities.—Every married woman is bound by her contracts and responsible for her torts, and her property shall be liable for her debts and torts to the same extent as if unmarried. She may make any contract which she could make if unmarried, and shall be bound thereby, except that every conveyance and contract for the sale of her real estate or any interest therein, shall be subject to and governed by the provisions of section 3335, Revised Laws, 1905, and acts amendatory thereof. (R. L. § 3607, as supplemented by Laws 1905, c. 255, as amended by Laws 1907, c. 417, § 1.)

Section 2 repeals inconsistent acts.

G. S. 1894, § 5532, cited in *Laythe v. Minnesota Loan & Investment Co.*, 101 Minn. 152, 112 N. W. 65.

3609. Contracts between husband and wife.

Contracts.—Where a husband, as sheriff, entered into an arrangement with his wife that she was to board prisoners and receive the compensation therefor allowed by law, he acquired no interest in the money, or in the property purchased by her therewith, and it was not impressed with a trust in favor of his creditors. *Bodkin v. Kerr*, 97 Minn. 301, 107 N. W. 137.

An agreement by a husband to enter into a contract at a stated time in the future for the sale of land owned by his wife is void. *Betcher v. Rinehart*, 106 Minn. 380, 118 N. W. 1026.

Where a husband contracts as his wife's agent to sell her land, and she confirms his act, the vendee cannot take advantage of this section. *Stromme v. Rieck*, 119 N. W. 948.

Notice as to creditors.—Cited and applied in *Quinn v. Minneapolis Threshing Mach. Co.*, 102 Minn. 256, 113 N. W. 689.

3610. Barring interest of spouse.

Action by deserted wife—Allowance for support.—A deserted wife may maintain an action against the husband, under this section for a decree debarring him from any interest in her real estate, and in the same action obtain an allowance for the support of herself and minor child. *Stephen v. Stephen*, 102 Minn. 301, 113 N. W. 913.