

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

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



Edited by
WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR., Assistant Editor

CITER-DIGEST CO.
ST. PAUL, MINNESOTA
1931

§8564. Marriages prohibited.

Marriage may be annulled where it took place within six months after divorce of defendant, through false representation. 171M340, 214NW 650.

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, 235. NW529. 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, 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.

§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. (As amended 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, 214NW 650.

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., April 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.

§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, 233NW300. See Dun. Dig. 3432.

CHAPTER 71

Divorce

See §§208-1 to 208-9.

§8580. What marriages void.

One who married during the existence of a voidable marriage was guilty of bigamy. 175M 498, 221NW867.

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

§8581. What voidable.

175M498, 221NW867; note under §8580.

Marriage may be annulled where it took place within six months after divorce of defendant, through false representation. 171M340, 214NW 650.

§8585. Grounds for divorce.

A husband sued for a limited divorce, held not estopped by the decision against him in a subsequent suit for absolute divorce from his wife. 178M1, 226NW412.

3. Cruel and inhuman treatment.

Conduct and associations of a spouse with one of the opposite sex, carried on against the

protest of the one wronged and of a character justifying the belief that the object is criminal may constitute cruel and inhuman treatment within the meaning of the divorce statute. 170M235, 212NW193.

Acts of cruel and inhuman treatment which result from a diseased mind are no cause for divorce. 171M258, 213NW906.

Husband granted divorce for cruelty of the wife. 172M250, 215NW181.

Finding of cruel and inhuman treatment sustained. 177M53, 224NW461.

Cruel treatment held not established. Taylor v. T., 225NW287.

Evidence held insufficient to show desertion, but to show cruel and inhuman treatment. 179 M266, 229NW128.

Finding that wife was guilty of cruel and inhuman treatment, though she used no physical force or violence held sustained by evidence. Eller v. E., 233NW823. See Dun. Dig. 2778.

5. Desertion.

Nonsupport. 172M250, 215NW181.

Complaint failed to establish desertion arising out of wife's qualified refusal to live with plaintiff while depending upon the benevolence of his father. Taylor v. T., 225NW287.

§8587. Denial, though adultery proved.

Condonation of adultery held sufficiently shown. 171M65, 212NW738.

§8588. Action—how and where brought—venue.—An action for divorce or separate maintenance 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, subject to the power of the court to change the place of trial by consent of parties, or when it shall appear that an impartial trial cannot be had in the county where the action is pending, or that the convenience of witnesses and ends of justice would be promoted by the change. (As amended Apr. 20, 1931, c. 226, §1.)

In view of §9311, plaintiff was entitled to have the facts found and the conclusions of law separately stated in writing, and judgment entered accordingly. 172M72, 214NW783.

§8593. Alimony pending suit.

Defendant in divorce in contempt of court in failing to obey order for payment of temporary alimony, is not for that reason deprived of the right of defense. 173M165, 216NW940.

Postnuptial agreements properly made between husband and wife after a separation, are not contrary to public policy, but the parties cannot, by a postnuptial agreement, oust the court of jurisdiction to award alimony or to punish for contempt a failure to comply with the judgment, though it followed the agreement. 178M75, 226NW211.

Show cause order served with summons in divorce action, held to give court jurisdiction to mere motion for temporary alimony. 179M106, 228NW351.

§8595. Custody of children, etc.

Husband could not attack a judgment granting alimony entered on stipulation because it provided for support of a child living with the parties, but not their own. Cary v. C., 225NW11.

Evidence held insufficient to show that mother was unfit person to have custody of infant child. 179M184, 228NW759.

§8596. Custody of children.

Custody of girl of 15 years and a boy of 12 years, held properly awarded to mother. 172M89, 214NW793.

Habeas corpus lies to determine right to possession of child but court will give effect to divorce judgment. 173M177, 216NW937.

Provision for custody of child in judgment is binding until changed but may be changed upon application in action where conditions warrant it. 173M177, 216NW937.

In a judgment decreeing a divorce the court may commit the custody of minor children to mother and may require father to pay specified sum monthly, and may make the same a lien upon specified real estate. 176M393, 223NW609.

Court abused its discretion in giving divided custody of a child six years of age, where it required frequent moving of the child between homes in different states. 176M490, 223NW789.

Where, at time of entry of divorce decree, the question of custody of the child cannot be determined, a determination of such matter should be made as soon as possible. 181M176, 231NW795.

§8597. Order may be revised.

176M393, 223NW609; note under §8596.

Provision for custody of child in judgment is binding until changed but may be changed upon application in action where conditions warrant it. 173M177, 216NW937.

If child was awarded to third party who has never had nor sought possession of him, on con-

troversy between parents, court will make such provision for his custody as it deems for the best interest of the child. 173M177, 216NW937.

Application to amend decree by changing custody of children, held properly denied; and letters by one of the children to his mother were properly excluded. 179M520, 229NW868.

Custody of minor child, held properly changed to aunt, sister of mother who had remarried. 180M182, 230NW479.

Provision for alimony and support of children may be changed and amended though incorporated in the decree by stipulation. 181M18, 231NW413.

§8598. Possession of wife's real estate, etc.

This section does not prevent determination of the rights of husband and wife in real estate so far as such issues are tendered by the pleadings or litigated by consent in the divorce action, and judgment vesting absolute title to certain land in the husband, is not open to collateral attack by the wife. 177M189, 222NW922.

Where a divorce is granted to the wife, on the ground of cruel and inhuman treatment, the court is not authorized to grant husband any alimony or allowance out of the property of the wife. 177M189, 224NW852.

Court properly divided property in the name of plaintiff, but coming from the defendant by giving a half to each. 179M266, 229NW128.

When the husband dies after the judgment of divorce in his favor, and pending the appeal in this court, and property rights are involved, his personal representative will be substituted and the case reviewed, notwithstanding the general rule as to the abatement of divorce actions by the death of either party. Swanson v. S., 234NW675. See Dun. Dig. 15.

§8602. Property of husband—Permanent alimony.

\$5,000 as permanent alimony and \$500 as attorney's fees was not excessive where husband was worth \$15,000 and had monthly income of \$300. 171M65, 212NW738.

Where husband had annual income of \$6,000 and property worth \$7,000 to \$8,000, court properly awarded plaintiff \$2,500, and also permanent alimony in the sum of \$50 per month, and an allowance of \$50 per month for support of two children. 172M89, 214NW793.

Where husband worth \$12,000 was granted divorce for wife's cruelty, court properly fixed alimony at one-third of that amount. 172M250, 215NW181.

Where the only resource for the payment of alimony is the income of a professional man the statutory limitation to the net income. 173M464, 217NW488.

Upon hearing of motion for reduction, the only issue is whether there has been such a change in the status of the parties since the last time, that court should reduce or cancel same. 173M464, 217NW488.

In a judgment decreeing a divorce, the court may commit the custody of minor children to mother and may require father to pay specified sum monthly, and may make the same a lien upon specified real estate. 176M393, 223NW609.

Alimony judgment cannot be taken on execution by wife's pre-existing judgment creditor. 177M178, 225NW104.

Court, held to have properly vacated amended judgment entered on stipulation for undue influence and over-reaching. 179M488, 229NW791.

Allowance supported by evidence, held not reviewable on appeal. 180M180, 230NW638.

§8603. Order for alimony, etc., revised.

Court has power to cancel accrued installments of alimony, but must use its discretion in doing so, there being no "vested rights." Plankers v. P., 225NW913.

Alimony allowance, held properly modified on account of husband's changed financial condition, and evidence of wife's misconduct may be considered. 180M33, 230NW117.

Provision for alimony and support of children may be changed by the court though incorporated in the decree by stipulation. 181M18, 231NW413.

Agreement between parties as to amount of alimony did not oust court of power to amend its judgment as to alimony. 181M421, 232NW793. See Dun. Dig. 2805.

Fact that income from a trust estate had not been paid over to defendant by trustees at time of hearing did not prevent court from taking such income into consideration in awarding additional alimony. 181M421, 232NW793. See Dun. Dig. 2805.

Fact that income from trust cannot be reached or attached by creditors while in hands of trustees did not prevent its consideration by court in determining alimony. 181M421, 232NW793. See Dun. Dig. 2803.

Court may modify alimony allowance where there has been a substantial change in the situation of the parties. *Holida v. H.*, 237NW2. See Dun. Dig. 2805.

§8604. Security—Sequestration—Contempt.

Contempt is not a "crime" within §9934, and, in view of §9802, punishment can only be by imprisonment in county jail and not in a workhouse. 175M57, 220NW414.

Postnuptial agreements properly made between husband and wife after a separation, are not contrary to public policy, but the parties cannot, by a postnuptial agreement, oust the court of jurisdiction to award alimony or to punish for contempt a failure to comply with the judgment though it followed the agreement. 178M75, 226NW211.

Postnuptial agreement to pay wife certain weekly amounts, incorporated in judgment of the court, may be enforced by contempt. 178M75, 226NW701.

The payment of attorney's fees allowed in a contempt proceeding to enforce a provision in a judgment of divorce for the payment of support money may be coerced by imprisonment. 178M75, 226NW701.

The alimony obligations of a nonresident husband personally served out of the state may be enforced out of his property in this state when the custodian thereof is made a party defendant, and the court has entered a preliminary order enjoining him from delivering to the husband any of the money or other personal property in his possession, and restraining the husband from disposing of any of his property in the state; such order and procedure constituting an effective seizure of the property. 181M564, 233NW312. See Dun. Dig. 1553, 2811.

LIMITED DIVORCES

§8609. For what causes.

Evidence held to warrant decree of separation. 171M213, 213NW919.

Evidence held to sustain finding that plaintiff could not reside with defendant with safety and self-respect, warranting separation. 172M96, 214NW771.

A judgment denying the wife absolute divorce for cruelty is not a bar to her action for separate maintenance and support for children, where she has legal cause for living apart from her husband, but there is an estoppel where maintenance action is grounded upon the same specific acts of cruelty. 174M159, 218NW559.

§8613. As to alimony and wife's property.

Finding as to value of homestead held sustained by the evidence. 171M213, 213NW919.

On decree of separation from husband earning \$115 monthly, court properly awarded wife use of homestead during five years separation and \$25 per month alimony, the wife having an income of \$57.50. 171M213, 213NW919.

Where the evidence of misconduct of husband does not justify either an absolute or a limited divorce, the court is not authorized to terminate the husband's inchoate interest in the wife's real estate even though the misconduct may legally justify her in living apart from him. 174M159, 218NW559.

§8614. When separation not granted.

177M178, 225NW104.

Court may require father to pay support of child to wife even though she has no legal cause to live apart from him. 174M159, 218NW559.

Irrespective of this section a court of equity may create a lien against real estate of a husband in favor of a wife for her separate maintenance while justifiably living apart from him, though the decree is not enforceable against the husband personally. 178M531, 227NW895.

A husband sued for a limited divorce held not estopped by the decision against him in a subsequent suit for absolute divorce from his wife. 178M1, 226NW412.

§8615. Revocation.

A husband sued for a limited divorce held not estopped by the decision against him in a subsequent suit for absolute divorce from his wife. 178M1, 226NW412.

CHAPTER 72

Married Women

§8616. Separate legal existence.

Status of marriage has not been modified by the Married Woman's Act, and only property rights and contracts are affected thereby. *State v. Arnold*, 235NW373. See Dun. Dig. 4258.

§8617. Property rights.

Wife by letting husband use and manage her property apparently as his own, may estop herself from asserting ownership as against a mortgagee of the husband. 171M276, 214NW45.

Recital in instrument concerning conveyance of land signed by defendant and husband of deceased were not conclusive as to the deceased when she was the real party in interest. *Keherer v. S.*, 235NW386. See Dun. Dig. 4259(84).

§8618. Contracts—Torts—Etc.

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 ob-

ligation upon her, and he could recover for work performed after the marriage. *Archer v. M.*, 236NW455. See Dun. Dig. 4258.

§8620. Liability of husband and wife.

A county which furnishes necessary support to a woman, deserted by her husband, may recover of the husband. 175M39, 220NW156.

Verdict against parent for services of daughter, held not excessive, and evidence as to previous earnings of daughter, held admissible on issue of value. 180M100, 230NW478.

Wife was not liable for negligence of her husband in driving a car registered in her name. *Cewe v. S.*, 233NW805. See Dun. Dig. 5834b.

§8621. Contracts between husband and wife.

Archer v. M., 236NW455; note under §8618.
½. Agency.