

1936 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1936)  
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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laws of Wisconsin, held invalid under this section. 34F (2d)284.

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. 175 M547, 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).

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

Marriage is forbidden between a woman and her mother's first cousin. Op. Atty. Gen. (300j), Feb. 26, 1935.

#### 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.

Clerk of court may issue a second marriage license when any female decides to marry a different man, though first man refuses to surrender the first license. Op. Atty. Gen., Nov. 27, 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.

Marriage is forbidden between a woman and her mother's first cousin. Op. Atty. Gen. (300j), Feb. 26, 1935.

A court commissioner has power to waive five-day waiting period for marriage license, and express desire of judge of district court that court commissioners do not exercise such power is of no force and effect. Op. Atty. Gen. (128b), June 21, 1935.

#### 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, 189M85, 248NW657. See Dun. Dig. 844(19).

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

## 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. 175M498, 221NW867.

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

A widow of a member of fire department relief association, recipient of a pension under its constitution and by-laws, terminated her right to such pension by a marriage and is not entitled to reinstatement as a pensioner upon such marriage being annulled by a judgment of a court of competent jurisdiction. Northrup v. S., 193 M623, 259NW185. See Dun. Dig. 6605a.

#### 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, 214NW650.

Denial of intercourse is not ground for annulment of marriage unless at the time of the marriage the offending spouse entertained an intention not to fulfill her marital obligations. Osbon v. O., 185M300, 240NW894. See Dun. Dig. 5797.

A widow of a member of fire department relief association, recipient of a pension under its constitution and by-laws, terminated her right to such pension by a marriage and is not entitled to reinstatement as a pensioner upon such marriage being annulled by a judgment of a court of competent jurisdiction. Northrup v. S., 193M 623, 259NW185. See Dun. Dig. 6605a.

#### 8582. Action to annul.

Jurisdiction to annul a marriage—Conflict of laws. 16 MinnLawRev398.

#### 8583. When not annulled.

Application of clean hands doctrine to annulment of void marriages. 16MinnLawRev215.

**8585. 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 or United States prison or any state or United States 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 commencement of the action.
6. Habitual drunkenness for one year immediately preceding the commencement of the action.
7. Incurable insanity; provided that no divorce shall be granted upon this ground unless the insane party shall have been under regular treatment for insanity, and because thereof, confined in an institution for a period of at least five years immediately preceding the commencement of the action. In granting a divorce upon this ground, notice of the pendency of the action shall be served in such man-

ner as the court may direct, upon the nearest blood relative and guardian of such insane person, and the superintendent of the institution in which he is confined. Such relative or guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues. The status of the parties as to the support and maintenance of the insane person shall not be altered in any way by the granting of the divorce.

8. Continuous separation under decree of limited divorce for more than five years next preceding the commencement of the action.
9. That Laws 1933, Chapter 262 be and the same hereby is repealed. (R. L. '05, §3574; '09, c. 443, §1; '27, c. 304; Apr. 15, 1933, c. 262, §1; Apr. 20, 1933, c. 324; Jan. 9, 1934, Ex. Ses., c. 78; Apr. 25, 1935, c. 295.)

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.

Amendments covered or attempted to be covered by Laws 1933, c. 262, were not repealed by Laws 1933, c. 324, approved five days later. Op. Atty. Gen., Nov. 18, 1933.

Amendments covered or attempted to be covered by Laws 1933, c. 262, were not repealed by Laws 1933, c. 324 approved five days later. Op. Atty. Gen., Nov. 18, 1933.

Amendments provided for in Laws 1933, c. 262, were not repealed nor superseded by Laws 1933, c. 324. Op. Atty. Gen., Jan. 2, 1934.

### 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. 171M 253, 213NW906.

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

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

Cruel treatment held not established. Taylor v. T., 177M453, 225NW287.

Evidence held insufficient to show desertion, but to show cruel and inhuman treatment. 179M266, 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., 183M133, 233NW 823. See Dun. Dig. 2778.

Divorce for cruel and inhuman treatment will be denied where parties were equally to blame. Thorem v. T., 188M153, 246NW674. See Dun. Dig. 2778.

Association with opposite sex may constitute cruel and inhuman treatment. Tschida v. T., 170M235, 212NW193. See Dun. Dig. 2778(92).

Evidence that wife nagged, scolded and upbraided husband and called him names at all times, even when he was convalescing from a major operation, held to warrant divorce for cruel and inhuman treatment. Gordon v. G., 193M97, 259NW529. See Dun. Dig. 2778(87).

Cruel and inhuman treatment may consist in actual or threatened personal violence, or a systematic course of ill treatment consisting of continued scolding and fault-finding, using unkind language, and petty acts of a malicious nature. Bickle v. B., 194M375, 260NW361. See Dun. Dig. 2778.

Cruelty as a ground for divorce in Minnesota. 16Minn LawRev256.

### 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., 177M453, 225NW287.

Evidence held sufficient to establish willful desertion. Graml v. G., 184M324, 238NW683. See Dun. Dig. 2776.

Complaint held to sufficiently state cause of action for desertion. Hoogesteger v. W., 186M419, 243NW716. See Dun. Dig. 2791.

Evidence held to support finding of desertion. Hoogesteger v. W., 186M419, 243NW716. See Dun. Dig. 2776.

### 8587. Denial, though adultery proved.

Condonation of adultery held sufficiently shown. 171 M65, 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 par-

ties, 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. (R. L. '05, §3577; G. S. '13, §7114; 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.

Whether the place of trial should be changed is largely discretionary with trial court. State v. District Court, 186M513, 243NW692. See Dun. Dig. 2788.

Denial of a motion to change place of trial of an action for divorce, brought in proper county, upon ground that convenience of witnesses and ends of justice will be promoted, may be reviewed on mandamus. State v. District Court, 186M513, 243NW692. See Dun. Dig. 2788.

In matters of divorce and alimony, district court has no jurisdiction not delegated to it by statute. Ostrander v. O., 190M547, 252NW449. See Dun. Dig. 2784b.

### 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. 173M 165, 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. 178M 75, 226NW211.

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

Service of an attorney for wife in divorce case amicably withdrawn was not a necessity for which husband was liable. Melin v. R., 189M638, 249NW194. See Dun. Dig. 2804.

### 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., 177M194, 225NW111.

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

Jurisdiction to award custody of minor child. 18Minn LawRev591.

### 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. 173 M177, 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. 176M 393, 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.

Only court of state in which minor is domiciled can fix or change custody. State v. Larson, 190M489, 252NW 329. See Dun. Dig. 4433b.

Though unemancipated minor generally has his father's domicile, where mother and father are divorced, minor's domicile follows that of parent to whose custody it has been legally given. Id. See Dun. Dig. 2813.

A wife may after divorce acquire a separate domicile. Id. See Dun. Dig. 2814.

Where mother is able to and does properly keep, care for, and control child in her own suitable home, its custody should not be divided so as to permit divorced father to transport child to another home in a different town and surroundings for a week's visit each month, where it is not shown that such other home is suitable. McDermott v. M., 192M32, 255NW247. See Dun. Dig. 2800.

Evidence abundantly supported trial court's conclusion that welfare and best interests of children required that they remain in custody of their mother. Brown v. B., 193M211, 258NW150. See Dun. Dig. 2800.

### 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 controversy 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. 179M 520, 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.

Where divorce decree of Iowa awarded custody of minor child to each parent alternately for six months of each year and mother subsequently established her domicile in Minnesota, Minnesota court has jurisdiction to determine minor's custody during mother's six months and is not bound by full faith and credit clause of federal constitution. *State v. Larson*, 190M489, 252NW329. See Dun. Dig. 2800.

Evidence held to show a change of circumstances sufficient to warrant awarding custody of a minor child to the mother in contravention of an earlier divorce decree of the Iowa court. *Id.*

#### 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.*, 182 M492, 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 refers 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, 225NW 104.

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.

Settlement agreement pending divorce, held not obtained from wife by duress, threats or undue influence. *McCormick v. H.*, 186M380, 243NW392. See Dun. Dig. 1813a.

A discharge in bankruptcy does not discharge an assigned matured claim for alimony. *Cederberg v. G.*, 193 M421, 258NW574. See Dun. Dig. 749.

A past-due sum or installment of alimony payable to a divorced wife is assignable. *Id.* See Dun. Dig. 569.

A separation agreement between husband and wife which in terms obligated each to join with other in execution of future conveyances or incumbrances of real property belonging to either, was illegal. *Simmer v. S.*, —M—, 261NW481. See Dun. Dig. 4282.

Availability of equitable relief in enforcing foreign alimony decrees. 18MinnLawRev589.

Separation agreements and effect of adultery. 19Minn LawRev218.

#### 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.*, 178M15, 225NW 913.

Alimony allowance, held properly modified on account of husband's changed financial condition, and evidence of wife's misconduct may be considered. 180M33, 230NW 117.

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, 232 NW793. 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. *Hollida v. H.*, 183M396, 237NW2. See Dun. Dig. 2805.

Obligation imposed upon a divorced husband by a South Dakota decree to pay alimony to the divorced wife will be considered here as remaining one for alimony and not an ordinary debt. *Ostrander v. O.*, 190M 547, 252NW449. See Dun. Dig. 2811, 5207.

Showing warranted reduction made in alimony. *Erickson v. E.*, 194M634, 261NW397. See Dun. Dig. 2805.

Denial of a prior application to reduce alimony is not a bar to a subsequent application, if a change of financial ability is shown to have occurred after denial of the first. *Id.*

Fact that applicant for reduction of alimony is in arrears in his payments, so that judgments have been rendered therefor, does not preclude court from acting on application. *Id.*

#### 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. 173M 75, 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.

Defendant in divorce cannot, by contempt proceedings, be compelled to pay encumbrances against his homestead, especially where not indispensable for shelter of plaintiff. *Newell v. N.*, 189M501, 250NW49. See Dun. Dig. 2799.

Husband should not be adjudged guilty of contempt in failing to pay money to divorced wife where such failure resulted from refusal of divorced wife to join in mortgage. *Feltmann v. F.*, 189M584, 250NW457. See Dun. Dig. 2811.

A local statute authorizing resort to sequestration and contempt proceedings to compel payment of alimony includes an action brought to compel payment of unpaid installments under a foreign judgment for alimony; local action on that judgment being itself a case where "alimony" is decreed. *Ostrander v. O.*, 190M547, 252NW 449. See Dun. Dig. 2811, 5207.

A defendant in a divorce action against whom an award for alimony and for support of minor children has been decreed cannot, when he has voluntarily placed himself in a position where he is unable to conform to court's order, purge himself of contempt for failure to comply with order by establishing his inability to pay installments provided for in decree. *Ryerson v. R.*, 194 M350, 260NW530. See Dun. Dig. 1703(40).

Enforcement of payment of alimony by commitment. 18MinnLawRev45.

#### LIMITED DIVORCES

##### 8608 to 8615 [Repealed].

Repealed by Laws 1933, c.165, to take effect from its passage but not to apply to actions now pending in district courts. Filed Apr. 10, 1933, without approval.

88600. Evidence held to warrant decree of separation. 171 M213, 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.** 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, 213NW 919.

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.** 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.

In suit by guardian of insane ward against husband of ward, court held not to have abused its discretion in denying motion for allowance pending suit. Rutledge v. H., 186M369, 243NW385. See Dun. Dig. 4273.

**§8615.** 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.

Decree of separation from bed and board is subject to termination by consent of parties and aid of court. Bakula v. B., 186M488, 243NW703. See Dun. Dig. 2798.

Separation from bed and board is not a bar to an action for absolute divorce. Bakula v. B., 186M488, 243 NW703. See Dun. Dig. 2798(76).

## 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, 182M313, 233NW373. See Dun. Dig. 4258.

Though wife cannot maintain an action against her husband for a tort committed by him against the person of the wife, action by administrator of a child is not an action by wife against husband, and administrator may recover for death of child, though wife of defendant is sole beneficiary. Albrecht v. P., 192M557, 257NW377. See Dun. Dig. 2608, 4288.

### 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. Kehrer v. S., 182M596, 235NW386. See Dun. Dig. 4259(84).

Fact that wife, who was either joint tenant or tenant in common, did not join in writing authorizing tenant to cut and sell wood was immaterial where she substantially participated in contract. Morrow v. P., 186M516, 243NW785. See Dun. Dig. 4256.

Effect of marriage on contract existing between husband and wife at time of marriage. 16MinnLawRev108.

### 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 obligation upon her, and he could recover for work performed after the marriage. Archer v. M., 183M306, 236NW455. See Dun. Dig. 4258.

A farm may be owned and operated by wife, her husband functioning only as her agent. Durgin v. S., 192M 526, 257NW338. See Dun. Dig. 145, 4262.

In proceeding to recover for services rendered deceased by claimant, his daughter-in-law, pursuant to an alleged contract to pay her at his death, court erred in refusing to instruct jury that services of wife with respect to family household belong to husband; that he may waive his right to compensation therefor from another party and consent that wife receive same, provided there is no question of set-off or counterclaim against husband, but where such appears it must be shown that one to be charged with payment of compensation acquiesced in payment to wife. Empenger v. E., 194M219, 259NW795. See Dun. Dig. 4261.

### 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., 182 M126, 233NW805. See Dun. Dig. 5834b.

Wife who signed contract of sale of lot merely to bar her inchoate right of dower was not liable in action by purchaser to recover money paid because of fraud of seller. McDermott v. R., 188M501, 247NW683. See Dun. Dig. 4270.

Service of an attorney for wife in divorce case amicably withdrawn was not a necessity for which husband was liable. Melin v. R., 189M638, 249NW194. See Dun. Dig. 4276.

### 8621. Contracts between husband and wife.

Archer v. M., 183M306, 236NW455; note under §8618.

**1/2. Agency.**  
In action by woman for fraud in sale of stock of financial corporation, evidence held to show that plaintiff's husband acted as her agent. Watson v. G., 183M 233, 236NW213. See Dun. Dig. 8612.

Evidence held to sustain verdict that deceased farmer, through his wife, agreed to pay daughter and son for work if they remained on farm. Holland v. M., 189 M172, 248NW750. See Dun. Dig. 3593g.

Farmer's wife had authority to employ persons doing housework as agent of her husband. Id. See Dun. Dig. 4286.

### 1. Contracts relating to realty.

Transaction whereby husband and wife executed a trust deed and put it in escrow to be delivered upon condition that wife be granted an absolute divorce did not violate the law. First Minneapolis Trust Co. v. L., 185M121, 240NW459. See Dun. Dig. 4282(2).

Real estate may be conveyed from one spouse to the other through the medium of a third party. Williams v. W., 192M438, 257NW1. See Dun. Dig. 4282.

An equitable mortgage cannot be created by law to secure advances made by wife to husband on faith of latter's parol promise to give security on his real estate. Id. See Dun. Dig. 4282, 6153.

One spouse may transfer his real estate and all his personal property to the other through a third person, if rights of creditors are not prejudiced. Durgin v. S., 192M526, 257NW338. See Dun. Dig. 4258, 4282.

A transfer of a farm and all owner's personal property from husband to wife, having been found not fraudulent, considered absolute rather than mere security for indebtedness from husband to wife. Id. See Dun. Dig. 6154.

A separation agreement between husband and wife which in terms obligated each to join with other in execution of future conveyances or incumbrances of real property belonging to either, was illegal. Simmer v. S., —M—, 261NW481. See Dun. Dig. 4282.

Conveyance by one spouse to other spouse through medium of a third party is valid, but an executory agreement between spouses to make such a conveyance would be invalid. Id.

### 2. Other contracts.

Evidence held to show conveyance by husband and wife to daughter rendered husband insolvent, and conveyance fraudulent as to creditors. 171M284, 213NW911.

Where the promises of the husband under an antenuptial contract, to make payments 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.

If there was a contract between husband and wife whereby latter was bound to make agreed testamentary disposition of property left her by her husband, his will held of such nature that, coupled with other evidence of testator's intention, it was properly held that agreement between husband and wife had been abrogated, and that disposition made of his property by husband's will was intended to be absolute. Hanefeld v. F., 191M547, 254NW821. See Dun. Dig. 10207.

### 8622. Barring interest of spouse.

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.