

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.



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR. }
R. O. MASON } Assistant Editors
J. S. O'BRIEN }

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1936

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, 235NW373. 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.

½. 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. 4253, 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.

8622-1. Power and curtesy abolished in certain lands.

Act abolishing dower and curtesy and statutory interests in lieu thereof in all lands conveyed by guard-

ians of incompetent married persons prior to Jan. 1, 1929. Laws 1931, c. 29.

8623. Antenuptial contracts.
Antenuptial agreements are valid. Op. Atty. Gen. (300), Nov. 23, 1934.

CHAPTER 73

Adoption and Change of Name

8624. Adoption—Petition and consent.

Specific performance of oral contract to adopt. 16 MinnLawRev578.

8626. Consent, when necessary.

When a child has a guardian of the person appointed by the probate court, the consent of such guardian is necessary to permit an adoption by proceedings in the district court. In re Martinson, 184M29, 237NW596. See Dun. Dig. 99.

Decree of adoption reversed for lack of evidence sustaining finding that infant had been abandoned by mother, there being no consent to adoption by either parent. Anderson, 189M85, 248NW657. See Dun. Dig. 99.

Possible pecuniary advantage to child is immaterial as against natural rights of parents. Id.

Consent by parent may be withdrawn at any time before adoption. Id.

8630. Status of adopted child.

When the name of an adopted child is omitted from the will of the parent, the presumption is that the omission was not intentional and was occasioned by accident or mistake. 175M193, 220NW601.

Specific performance of pre-adoption contract in derogation of adoptive parents' rights. 15MinnLawRev 719.

8633. Change of name—Procedure—Penalty.

A person may change his name without any legal proceedings whatever and may give himself a nickname and have it printed on official ballot. Op. Atty. Gen. (28b-2), May 22, 1934.

CHAPTER 73A

Dependent, Neglected and Delinquent Children

See §§208-1 to 208-9.

8636. Definitions.

Juvenile delinquents are not criminals. State v. Zenzen, 178M394, 227NW356.

No appeal lies from a decision of a juvenile court under this chapter. State v. Zenzen, 178M394, 227NW356.

Sections 8636 to 8670 are constitutional. State v. Patterson, 247NW573, 188M492, 249NW187. See Dun. Dig. 1646, 4460a.

Dependent neglected, or delinquent children are proper subjects to be placed under guardianship by the probate court. Id. See Dun. Dig. 4460a, 4096.

Fact that maternal grandmother has money and would be able to support children does not negative a finding of dependency on the part of children and the right of mother to a pension. Op. Atty. Gen., Oct. 30, 1930.

Act does not contemplate any additional compensation by way of fees for making records per diem or for mileage to court. Op. Atty. Gen., Nov. 25, 1933.

8637. Jurisdiction of District Court—jurisdiction of Probate Court.—The District Court in counties now or hereafter having a population of more than 40,000 inhabitants except in such counties of the Seventh Judicial District shall have original and exclusive jurisdiction in all cases coming within the terms of this act. In all trials in the district court under this act, except as hereinafter provided, any person interested therein may demand a jury, or a judge of his own motion may order a jury to try the case. In counties now or hereafter having a population of not more than 40,000 inhabitants and in all counties of the Seventh Judicial District the probate court shall have jurisdiction over the appointment of guardians of dependent, neglected or delinquent children for the purpose of this act. The jurisdiction of both the district and probate courts over cases of dependency, neglect and delinquency arising under this act shall extend to all persons resident or found within the territorial limits of the court, although the evidentiary facts showing such dependency, neglect or delinquency may have occurred outside such territorial limits.

This Act shall apply to children under the age of eighteen years, except as hereinafter provided.

When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue for the purposes of this Act under the jurisdiction of the court until he becomes twenty-one years of age, unless discharged prior thereto by the court. ('17, c. 397, §2; '27, c. 192, §2; Apr. 20, 1931, c. 250, §1; Apr. 8, 1933, c. 184.)

Laws 1931, c. 250, §1, amends the first paragraph of this section to read as above.

Fact that probate court committed neglected child to guardianship until she should reach age of 21 years did not warrant her release on habeas corpus before she attained age of 19 years. State v. Patterson, 247NW573, 188M492, 249NW187. See Dun. Dig. 4431.

Legislature may fix the age at which a delinquent child shall attain majority different from that fixed for other children. Id.

Probate judge, also acting as judge of juvenile court, has no jurisdiction of prosecution of adult. Op. Atty. Gen., Mar. 31, 1932.

Judge of probate obtaining jurisdiction of a child before he has reached age of 18 has jurisdiction over him until he reaches 21 years of age and he may commit him to state training school after he has reached age of 19 years. Op. Atty. Gen., Nov. 2, 1933.

8638. Judges of juvenile court.—In counties having more than 40,000 except the Fourth Judicial District, and the counties in the Seventh Judicial District the judges of the district court shall at such times as they shall determine designate one of their number whose duty it shall be to hear all cases arising under this act, unless absent or disabled, in which case another judge shall be temporarily assigned for said purposes; and such designation shall be for the period of one year unless otherwise ordered. The judge of the juvenile court so designated shall devote his first service and all necessary time to the business of the juvenile court, and this work shall have precedence over all his other court work. When deemed advisable the district judges may designate two judges for the purposes and subject to the provisions specified in this section. A special court room, to be designated as the juvenile court room, shall be provided for the hearing of such cases, and the findings of the court shall be entered in a book or books to be kept for that purpose, and known as the "juvenile record," and the court may for convenience be called the juvenile court of the appropriate county. The title of proceedings in the juvenile court, excepting prosecutions under sections 27 and 28 of this act, shall be substantially as follows:

Juvenile Court, County of
In the matter of as a dependent (or neglected or delinquent, as the case may be) child. ('17, c. 397, §4; '27, c. 192, §3; Apr. 20, 1931, c. 250, §2.)
* * * * *

Laws 1931, c. 250, §2, amends the first paragraph of this section to read as above.

8640. Salary of bailiff in Juvenile Court in certain counties.—In all counties of this state having, or which hereafter shall have a population of not less