

MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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WILLIAM H. MASON,
Editor in Chief.

MARTIN S. CHANDLER,
RICHARD O. MASON,
Assistant Editors.

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her lands, and which will give such husband or wife full authority to alien, sell and convey, and dispose of his or her lands, without the interference of or signature of the husband or wife so deserting, or being guilty of acts which would entitle the person bringing such action to a divorce, or so found to be incurably insane as aforesaid; and the court may grant such decree whenever it shall appear just or expedient; and thereupon the husband or wife shall have full control of his or her real estate, with power to convey the same without the husband or wife joining in the conveyance, and as fully as if he or she were unmarried; or the court may, by such decree, make such limitations on the power to convey such real estate as may seem meet and proper in the premises. A certified copy of such decree may be recorded in the deed records in the office of the register of deeds in any county wherever such lands or any part thereof may be situated. (3610) [7148]

22-348; 27-330, 7+267.

Deserted wife may maintain action against husband, to debar him from interest in her real estate, and for an allowance for support of herself and minor child (102-301, 113+913).

8622-1. Dower and curtesy abolished in certain lands—All inchoate estates in dower and curtesy, and all inchoate estates or statutory interests in lieu of dower and curtesy, are hereby abolished in all lands in this state which have been conveyed prior to January 1, 1910, by the husband or wife of the one en-

titled to such inchoate dower or curtesy, or statutory interest, by a conveyance in writing. ('25, c. 174, § 1)

8622-2. Same—Actions not maintainable—No action for the recovery of real property, or of any right therein, or the possession thereof, shall be maintained by any person having any estate in dower or by the curtesy or any estate or statutory interest in lieu of dower or by the curtesy therein, or by anyone claiming, by, through or under any such person, where it appears that the husband and wife of such person conveyed such real property, or any interest therein, by a conveyance in writing, prior to the first day of January, 1910; and no action shall be maintained for the recovery of real property, or of any right therein, or the possession thereof, by any person claiming as heir of any person who has conveyed land claimed as a homestead at the time of the conveyance and where such conveyance was made prior to January 1st, 1910, unless such action shall be commenced on or prior to the first day of December, 1925, and notice thereof filed for record at the time of the commencement of said action in the office of the Register of Deeds in the county where said real property is situate. ('25, c. 174, § 2)

8623. Antenuptial contracts—Nothing in this chapter shall be construed to affect antenuptial contracts or settlements. (3611) [7150]

Conveyances prior to April 1, 1900, by husband or wife whose spouse was insane, legalized, '13 c. 240.

CHAPTER 73

ADOPTION AND CHANGE OF NAME

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8624. Adoption—Petition and consent—Any resident of the state may petition the district court of the county in which he resides for leave to adopt any child not his own. If the petitioner be married the spouse shall join in the petition. All petitions for the adoption of a child who is a ward or pupil of the state public school shall be made jointly by the person desiring to adopt such child and the superintendent of the state public school. The state board of control may determine by resolution that the joinder of the superintendent in the petition shall be its consent to the adoption of the ward or pupil, as prayed for in the petition. A person of full age may be adopted. (R. L. '05 § 3612, amended '09 c. 81 § 1; '17 c. 222 § 1) [7151]

No implied contract to adopt can be found, and no ground for invoking estoppel is in this record. 166-35, 207+17.

8625. Investigation by board of control—Probationary residence—Upon the filing of a petition for the adoption of a minor child the court shall notify the State Board of Control. It shall then be the duty of the board to verify the allegations of the petition; to

investigate the condition and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, and to make appropriate inquiry to determine whether the proposed foster home is a suitable home for the child. The board shall as soon as practicable submit to the court a full report in writing, with a recommendation as to the granting of the petition and any other information regarding the child or the proposed home which the court shall require. If the report of the Board of Control disproves of the adoption of the child the Board of Control may move the court to dismiss the petition. No petition shall be granted until the child shall have lived for six months in the proposed home. Provided, however, that such investigation and period of residence may be waived by the court upon good cause shown, when satisfied that the proposed home and the child are suited to each other. ('17, c. 222, § 1; amended '27, c. 170, § 1)

8626. Consent, when necessary—Except as herein provided no adoption of a minor shall be permitted without the consent of his parents, but the consent of a parent who has abandoned the child, or who cannot be found, or who is insane or otherwise incapacitated from giving such consent, or who has lost custody of the child through divorce proceedings or the order of a juvenile court, may be dispensed with, and consent may be given by the guardian, if there be one or if there be no guardian, by the state board of control. In case of illegitimacy the consent of the mother alone shall suffice. In all cases where the child is over fourteen years old his own consent must be had

also. (R. L. '05 § 3613; G. S. '13 § 7153, amended '17 c. 222 § 1).

147-224, 179+1006.

Mother's written consent and changed custody of child no bar to revocation before legal adoption. (149-437, 183+957).

8627. Hospital may consent to adoption—when— Any hospital incorporated under the laws of this state for the purpose of caring for unmarried women who are about to become mothers, and for illegitimate children born in such hospital or left in its care by the mothers for the purpose of being placed in suitable homes, may be the custodian of the persons of such children. (R. L. '05 § 3619, G. S. '13 § 7159, amended '17 c. 222 § 1).

8628. Notice of hearing—When the parents of any minor child are dead or have abandoned him, and he has no guardian in the state, the court shall order three weeks' published notice of the hearing on such petition to be given; the last publication to be at least ten days before the time set therefor. In every such case the court shall cause such further notice to be given to the known kindred of the child as shall appear to be just and practicable; provided that if there be no duly appointed guardian, a parent who has lost custody of a child through divorce proceedings, and the father of an illegitimate child who has acknowledged his paternity in writing or against whom paternity has been duly adjudged shall be served with notice in such manner as the court shall direct in all cases where the residence is known or can be ascertained. Provided, however, that when adoption proceedings for any such child are commenced in any other court than the court which originally committed such child, the notice of the filing of the petition in such adoption proceedings shall be filed in the office of the clerk of the court which originally committed such child, at least thirty days before any final decree of adoption shall be entered. (R. L. '05, § 3614; G. S. '13, § 7154; amended '17, c. 222, § 1; '27, c. 170, § 2)

8629. Decree—Change of name—If upon the hearing the court is satisfied as to the identity and relationship of the persons concerned, and that the petitioners are able to properly rear and educate the child, and that the petition should be granted, a decree shall be made and be recorded in the office of the clerk, setting forth the facts, and ordering that from the date thereof the child shall be the child of the petitioners. If desired, the court, in and by said decree, may change the name of the child, provided that for the purpose of information the clerk of the district court shall within twenty days after the decree is granted by the court, mail a copy of the recorded decree to the State Board of Control. (R. L. '05, § 3615; G. S. '13, § 7155; amended '17, c. 222; § 1; '27, c. 170, § 3)

A decree of a court of general jurisdiction cannot be attacked collaterally, unless upon the fact of the record want of jurisdiction is disclosed. Here the decree of adoption itself recites the existence of the very fact the absence of proof of which is now urged as the ground for attack. 161-426, 201+925.

Law does not require consent to be filed or found by the court. 161-426, 201+925.

Rights of orphan's grandparents as to prospective adoptive parents (147-472, 180+533). Heir of adoptive parents (148-436, 182+519).

8630. Status of adopted child—Upon adoption such child shall become the legal child of the persons adopting him, and they shall become his legal parents, with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption, he shall inherit from his adopting parents or their relatives the same as though he were the legiti-

mate child of such parents, and shall not owe his natural parents or their relatives any legal duty; and, in case of his death intestate the adopting parents and their relatives shall inherit his estate, as if they had been his parents and relatives in fact. (R. L. '05 § 3616, G. S. '13 § 7156, '17 c. 222 § 1).

Common-law adoption requisites (124-85, 144+455). Equity governing oral adoption (131-59, 154+742). Adoption by widow after death of husband and workmen's compensation act (133-266, 158+251). Purpose and effect (148-336, 182+519).

160-35, 207+17.
Evidence considered, and held to show that the trial court's refusal to find that plaintiff had been given to others under a verbal contract to adopt, and as a part of such contract that she should receive, upon the death of the adopting parents, all their property, is not manifestly and palpably contrary to the evidence. 157-90, 195+639.

Proof necessary to establish verbal agreements of this character must be clear, positive, and convincing; and relief should be cautiously granted. 157-90, 195+639.

Chapter 59, Special Laws, 1863, in addition to changing the name of Ann Jane Clark to Catharine Hack, provided, also:

"That said Catherine Hack is hereby declared to be the daughter and heir at law of John Hack, . . . and she shall enjoy all the rights and privileges, and be subject to the same care and guardianship as if she had been the daughter of said John Hack, born in lawful wedlock."

Held, following *Odenbreit v. Utheim*, 131 Minn. 56, 154 N. W. 741, L. R. A. 1916D. 421, that the law, assuming it to be a contract for adoption, performed by the adopted child, gave her the same right of inheritance, and no more, than a natural and legitimate child would have. 157-301, 196+180.

An adopted child inherits from his natural parent. 160-140, 199+581.

A second adoption under our statute does not change the status of the adopted child as heir of the first adoptive parents. 161-426, 201+925.

By virtue of the adoption, the child also inherits by right of representation from relatives of the adoptive parents. 161-426, 201+925.

8631. Annulment—If within five years after his adoption a child develops feeble-mindedness, epilepsy, insanity or venereal infection as a result of conditions existing prior to the adoption, and of which the adopting parents had no knowledge or notice, a petition setting forth such facts may be filed with the court which entered the decree of adoption, and if such facts are proved the court may annul the adoption and commit the child to the guardianship of the state board of control. In every such proceeding it shall be the duty of the county attorney to represent the interests of the child. ('17 c. 222 § 1).

8632. Records of adoption—The files and records of the court in adoption proceedings shall not be open to inspection or copy by other persons than the parties in interest and their attorneys and representatives of the state board of control, except upon an order of the court expressly permitting the same. ('17 c. 222 § 1).

8633. Change of name—Procedure—Penalty—A person who shall have resided in any county for one year may apply to the district court thereof to have his name changed in the manner herein specified. He shall describe in his application all lands in the state in or upon which he claims any interest or lien, and shall appear personally before the court and prove his identity by at least two witnesses. If he be a minor, his guardian or next of kin shall also appear. Every person who, with intent to defraud, shall make a false statement in any such application, shall be guilty of a misdemeanor. (R. L. '05 § 3620, G. S. '13 § 7160, amended '17 c. 222 § 1).

8634. Order—Filing copies—If it shall appear to the court to be proper, it shall grant the application, and set forth in the order a description of the lands, if any, in which the applicant claims to have an interest. The clerk shall file such order, and record the same in the

judgment book. If lands be described therein, a certified copy of the order shall be filed for record, by the clerk, with the register of deeds of each county wherein any of the same are situated. Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the clerk the cost of such record. The fee of the clerk shall be two dol-

lars, and for each certified copy of the order fifty cents. (R. L. '05 § 3621, G. S. '13 § 7161, amended '17 c. 222 § 1).

8635. Sections 7152, 7157, 7158, General Statutes, 1913, and all acts or parts of acts inconsistent herewith, are hereby repealed. ('17 c. 222 § 2).

CHAPTER 73A

DEPENDENT, NEGLECTED AND DELINQUENT CHILDREN

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relieved of his care and custody; or who is without a parent or lawful guardian able to adequately provide for his support, training and education, and is unable to maintain himself by lawful employment, except such children as are herein defined as "neglected" or "delinquent." The term "neglected child" shall mean a child who is abandoned by both parents, or, if one parent is dead, by the survivor, or by his guardian; or who is found living with vicious or disreputable persons, or whose home, by reason of improvidence, neglect, cruelty, or depravity on the part of the parents, guardian or other person in whose care he may be, is an unfit place for such child; or whose parents or guardian neglect and refuse, when able to do so, to provide medical, surgical or other remedial care necessary for his health or well being; or, when such child is so defective in mind as to require the custodial care and training of the state school for the feeble-minded, neglect and refuse to make application for his admission to said institution; or who, being under the age of twelve years, is found begging, peddling or selling any articles or singing or playing any musical instrument upon the street, or giving any public entertainment, or who accompanies or is used in aid of any person so doing. The term "delinquent child" shall mean a child who violates any law of this state or any city or village ordinance; or who is habitually truant or incorrigible; or who knowingly associates with vicious or immoral persons; or who without just cause and without the consent of his parents, guardian or other custodian absents himself from his home or place of abode, or who knowingly visits any place which exists, or where his presence is permitted, in violation of law; or who habitually uses obscene, profane or indecent language; or who is guilty of lewd or immoral conduct involving another person. The word "association" shall mean any corporation which includes in its purpose the care or disposition of children coming within the meaning of this Act. ('17, c. 397, § 1; amended '27, c. 192, § 1)

123-509, 144+157; 147-224, 179+1006; 149-437, 183+957; 150-17, 184+27; 151-468, 187+226; 153-310, 190+345; 194+943.

A nine year old child, whose father is temporarily disabled from supporting her, but is being suitably maintained in a proper environment by a stepmother, who is keeping the family intact, is not a dependent child within the meaning of the Juvenile Court Act. 163-312, 204+21. Does not permit an adjudication with respect to a child domiciled in another state, but at the time being in Minnesota for a temporary purpose. 163-312, 204+21.

8637. Jurisdiction of district court—Jury trial—Jurisdiction of probate court—Children to whom act applies—Termination of jurisdiction—The District court in counties now or hereafter having a popula-

8636. Definitions—For the purpose of this Act the term "dependent child" shall mean a child who is illegitimate; of whose parents, for good cause, desire to be