

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE
ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

Edited and Published under the authority of Chapters 15 and 16 of
the Laws of 1866.

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Marriage among
quakers valid—
duty of clerk—
penalty.

SEC. 16. All marriages solemnized among the people called friends or quakers, in the form heretofore practiced and in use in their meetings, are valid, and not affected by any of the foregoing provisions; and the clerk of the meeting in which such marriage is solemnized, shall, within one month after every such marriage, deliver a certificate of the same to the clerk of the district court of the county where such marriage took place, or of the county to which such county is attached for judicial purposes, on penalty of forfeiting not more than one hundred dollars, which certificate shall be filed and recorded by such clerk under a like penalty; and if such marriage does not take place in such meeting, such certificate shall be signed by the parties and at least six witnesses present, and filed and recorded as above provided, under a like penalty.

Illegitimate children legitimized by marriage of parents.

SEC. 17. Illegitimate children become legitimized by the subsequent marriage of their parents with each other, and the issue of marriages declared null in law shall nevertheless be legitimate.

CHAPTER LXII

DIVORCE.

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TITLE I.*

DIVORCES DISSOLVING THE MARRIAGE CONTRACT.

Marriages void when.

SECTION 1. All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them hav-

*The revisors reported this chapter in two titles—the second being entitled "Limited Divorces," but the legislature rejected Title II and did not change or amend Title I. Hence the language of the title, as it now stands, is, in some sections, inappropriate and nugatory.

ing a former husband or wife then living, shall, if solemnized within this state be absolutely void, without any decree of divorce, or other legal proceedings: *provided*, that, if any person, whose husband or wife has been absent for five successive years without being known to such person to be living during that time, marries during the lifetime of such absent husband or wife, the marriage shall be void only from the time that its nullity is pronounced by a court of competent authority.

SEC. 2. When either of the parties to a marriage, for want of age or understanding, is incapable of assenting thereto, or, when the consent of either party has been obtained by force or fraud, and there is no subsequent voluntary cohabitation of the parties, the marriage shall be void from the time its nullity is declared by a court of competent authority.

When marriages are void from time of decree of nullity.

SEC. 3. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the district court of the county where the parties, or one of them, reside, for annulling the same; and such complaint shall be filed, and proceedings had thereon, as in the case of proceedings in said court for a divorce; and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

Action to annul marriage, brought when.

SEC. 4. No marriage shall be adjudged a nullity, on the ground that one of the parties was under the age of legal consent, if it appears that the parties after they had attained such age, had voluntarily cohabited together as husband and wife; nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it appears that the parties freely cohabited together as husband and wife, after such insane person was restored to a sound mind.

When marriage shall not be declared a nullity or void.

SEC. 5. No marriage shall be adjudged a nullity, at the suit of the party capable of contracting, on the ground that the other party was under the age of legal consent, or was idiotic or insane, if such idiocy or insanity was known to the party capable of contracting at the time of such marriage.

When marriage shall not be declared a nullity at suit of party capable of contracting.

SEC. 6. A divorce from the bonds of matrimony may be adjudged and decreed by the district court on suit brought in the county where the parties, or either of them, reside, for either of the following causes:

Divorce from bonds of matrimony, when and for what causes decreed.

First. Adultery;

Second. Impotency;

Third. Cruel and inhuman treatment;

Fourth. When either party, subsequent to the marriage, has been sentenced to imprisonment in the state prison;

Fifth. Willful desertion of one party by the other, for the term of three years next preceding the filing of the complaint;

Sixth. Habitual drunkenness for the space of one year, immediately preceding the filing of the complaint.

SEC. 7. After a divorce on account of imprisonment in the state prison a pardon shall not restore the party imprisoned to his conjugal rights.

Effect of pardon after divorce on account of imprisonment in state prison.

SEC. 8. No divorce shall be granted, unless the complainant has resided in this state one year immediately preceding the time of exhibiting the complaint, except for adultery, committed while the complainant was a resident of this state.

Divorce not granted, when—exception.

SEC. 9. In any action brought for a divorce, on the ground of adultery, although the fact of adultery is established, the court may deny a divorce in the following cases:

When court may deny a divorce, although adultery is established.

First. When it appears that the offense was committed by the procurement or with the connivance of the complainant;

Second. When there has been an express forgiveness of the adultery

charged, or a voluntary cohabitation of the parties, with knowledge of the offense ;

Third. When the action has not been brought within three years after the discovery by the complainant of the offense charged ;

Fourth. When it is proved that the plaintiff has also been guilty of adultery under such circumstances as would have entitled the defendant, if innocent, to a divorce.

Action, how and where brought.

SEC. 10. An action for a divorce 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.

Complaint shall contain, what.

SEC. 11. The complaint shall contain the names and ages of the parties, the name of the court in which the action is brought, and a statement of the facts constituting the cause or grounds of action, in ordinary and concise language, without repetition.

Summons and complaint, how served.

SEC. 12. Copies of the summons and complaint shall be served on the defendant personally, and when such service is made out of this state, 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 ; but if personal service cannot well be made, the court may order service of the summons by publication, as in other actions.

Time to answer, action heard and determined—when.

SEC. 13. The defendant shall have thirty days in which to answer the complaint ; in case of service by publication, said thirty days shall not begin to run until the expiration of the period allowed for publication, and in case of personal service out of the state, the court shall not permit the action to be heard and determined, as upon default, until the lapse of such reasonable time as will allow the defendant to appear and answer, which time shall be fixed by order after proof of such service is made and filed in the action.

Proceedings on default and after issue joined. 6 Min. 45S.

SEC. 14. If, after service duly made and proved, the defendant does not appear, the court may proceed at a general or special term, to hear and determine the action. When issue is joined, like proceedings shall be had as in civil actions.

Court may require husband to furnish wife with money.

SEC. 15. In every action brought, either for a divorce or separation, the court may in its discretion require the husband to pay any sum necessary to enable the wife to carry on or defend the action, or for her support, during its pendency, and it may adjudge costs against either party, and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

Court may prohibit husband from imposing restraint on wife.

SEC. 16. When an action is commenced or about to be commenced to annul a marriage, or for a divorce or separation, the court may at any time either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the action.

Court may make order concerning care and custody of children.

SEC. 17. The court may in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance during the pendency of such action, and may make such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper.

Further order may be made.

SEC. 18. Upon granting a decree of nullity of marriage, or of divorce or separation, the court may make such further order as it deems just and proper concerning the care, custody and maintenance of the minor chil-

dren of the parties, and may determine with which of the parents the children, or any of them, shall remain; having due regard to the age and sex of such children.

SEC. 19. The court may from time to time afterward, on the petition of either of the parents, revise and alter such order concerning the care, custody, and maintenance of the children, or any of them, and make such new order concerning the same, as the circumstances of the parents and the benefit of the children require.

Order concerning children may be revised.

SEC. 20. Whenever the nullity of a marriage or a divorce from the bond of matrimony, for any cause, excepting that of adultery committed by the wife, is ordered, and when the husband is sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband was dead.

Wife entitled to possession of her real estate, when.

SEC. 21. Upon every such dissolution of marriage, as is specified in the preceding section, the court may make a further order for restoring to the wife the whole or such part as it deems just and reasonable, of the personal estate that has come to the husband by reason of the marriage, or for awarding to her the value thereof; and also the value of any real estate of the wife disposed of by the husband and wife during the coverture, to be paid by her husband in money; and such court may require the husband to disclose on oath what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof remains in his hands.

Court may order wife's personal estate to be restored to her, &c.

SEC. 22. The court has power to appoint trustees whenever it is deemed expedient, to receive any sum or sums of money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support and maintenance of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct; or to pay over to the wife the principal sum in such proportions and at such times as the court shall order, regard being had in all such cases to the situation and circumstances of such wife, and also the children, if there are any provided for in the order; and such trustees shall give such bond with surety as the court shall require for the faithful performance of their trust.

Court may appoint trustees.

Trustees shall give bond.

SEC. 23. Upon every divorce for any cause excepting that of adultery committed by the wife, if the estate and property restored or awarded to the wife is insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, or if there is no such estate and property, the court may further order and decree to her such part of the personal estate of the husband, not exceeding one-third part thereof in value, and such real estate of the husband not exceeding the value of her dower, as it deems just and reasonable, having regard to the ability of the husband and the character and situation of the parties, and all the other circumstances of the case. The court may also in the cases provided for in this section decree to the wife such alimony out of the estate of the husband, as it may deem just and reasonable, having regard to the ability of the husband and the character and situation of the parties, and all the other circumstances of the case, and may by its decree make the same a specific lien upon any specified parcels of the real estate of the husband, or authorize its enforcement by execution against his property, real and personal; but the aggregate award and allowance made to the wife from the estate of her husband, under the provisions of this section, shall not in any case exceed in present value the one-third part of the personal estate of the husband and the value of her dower in his real estate.

When wife shall have part of husband's personal estate.

Court may decree alimony.

When wife shall have dower in case of divorce.

SEC. 24. When the marriage is dissolved by the husband being sentenced to imprisonment, and when a divorce is ordered for the cause of adultery committed by the husband, the wife shall be entitled to her dower in his lands in the same manner as if he was dead.

Order for alimony or other allowance may be revised.

SEC. 25. After an order or decree for alimony, or other allowance for the wife and children, or either of them, and also for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may from time to time, on petition of either of the parties, revise and alter such order or decree respecting the amount of such alimony or allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting any of the said matters which such court might have made in the original action.

Court may require husband to give security for payment of alimony or other allowance.

SEC. 26. In all cases when alimony or other allowance is ordered or decreed to the wife or children, the court may require sufficient security to be given by the husband for the payment thereof, according to the terms of the order or decree, and upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, the court may sequester his personal estate and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate to be applied according to the terms of such order or decree.

Parties intermarrying after decree of divorce, court may revoke decree, &c.

SEC. 27. When an order of divorce has been granted, and the parties afterward intermarry, the court, upon their joint application and upon satisfactory proof of such marriage, may revoke all decrees and orders of divorce, alimony and subsistence, which will not affect the rights of third persons.

Persons cohabiting after divorce—penalty.

SEC. 28. If any persons after being divorced from the bond of matrimony, for any cause whatever, cohabit together before intermarriage, they shall be liable to all the penalties provided by law against adultery.

Effect of order of divorce.

SEC. 29. Whenever an order of divorce from the bond of matrimony is granted in this state by a court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties. And in all actions for a divorce brought by a female, if a divorce is granted, the court may for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court designates in its order or decree.

Court may change name of female, when.