

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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§ 30. (Sec. 20.) Ward's estate — Powers and duties of guardian.

As to discretion of the guardian in respect to board for, and education of, the ward, see *Gott v. Culp*, (Mich.) 7 N. W. Rep. 767. See, also, *In re Mells*, (Iowa,) 20 N. W. Rep. 486.

As to a charge by a guardian for the support of the ward whom he had taken into his family, see *Moyer v. Fletcher*, (Mich.) 23 N. W. Rep. 193; *Latham v. Myers*, (Iowa,) 10 N. W. Rep. 924; *In re Besondy*, 32 Minn. 385, 20 N. W. Rep. 366.

***§ 46. Accounting.**

Guardians of minor children, spendthrifts, insane persons, and all persons under guardianship, shall be required to render an account, on oath, of the property, money, and effects in their hands, or which shall have come to their hands, as such guardian, and all proceeds and interest derived therefrom, and the management and disposition thereof, within one year after their appointment, or within one year from the passage of this act, and at such other times as the judge of probate of the county having jurisdiction of the person and estate of their said wards, may require. (1875, c. 38, § 1, *as amended* 1885, c. 32.)

***§ 47. Order for examination of account — Service—Publication.**

An order appointing a time and place for examining an account filed by a guardian is sufficiently served on him by publication under this section. If it is procured by him, he must take notice of its contents. *Brown v. Huntsman*, 32 Minn. 466, 21 N. W. Rep. 555.

The failure of the probate court to appoint guardians *ad litem* for the infant legatees is not fatal to the validity and conclusiveness of the judgment upon accounting. The statute does not require this. *Balch v. Hooper*, 32 Minn. 162, 20 N. W. Rep. 124.

CHAPTER 61.

MARRIAGE.

§ 1. Marriage a civil contract.

A mutual agreement between competent parties, *per verba de presenti*, to take each other for husband and wife, deliberately made and acted upon by living together professedly in that relation, is sufficient, without any formal solemnization or ceremony, to give it validity in law. *State v. Worthingham*, 23 Minn. 529.

§ 4. Marriages, by whom solemnized.

Marriages may be solemnized by any justice of the peace in the county in which he is elected; and, throughout the state, by any judge of a court of record, the superintendent of the department for the deaf and dumb in the Minnesota Deaf, Dumb, and Blind Institute, or any ordained minister of the gospel, in regular communion with any religious society. (*As amended* 1885, c. 38.)

§ 11. Record and certificate of marriage.

Every person solemnizing a marriage shall make a record thereof, and within one month make and deliver to the clerk of the district court of the county where the marriage took place, or of the county to which said county is attached for judicial purposes, a certificate under his hand containing the particulars mentioned in the preceding section, which certificate shall be filed and

the court for that purpose, shall be forever barred from recovering such demand, or from setting off the same in any action whatever. (1876, c. 77, § 5, as amended 1885, c. 105, § 1.)

***§ 18. Action against guardian.**

No action shall be instituted against the guardian of any person except for the recovery of real estate or the possession of personal property; nor any attachment or execution be issued against the estate of any person under guardianship until after the expiration of the time allowed for the payment by the guardian of claims allowed by the court, as aforesaid. (1876, c. 77, § 6, as amended 1885, c. 105, § 1.)

***§ 19. Application of laws.**

The right of appeal, the time for the payment of claims allowed by the court, and contingent claims and the distribution of assets among the creditors of any person under guardianship, shall be governed by the same rules applicable in proceedings for the payment of debts of a deceased person, substituting the probate court for the commissioners, and the guardian for the executor and administrator: *provided*, that the provisions of said sections fourteen, seventeen, eighteen, and nineteen shall not apply to minors under guardianship. (1876, c. 77, § 7, as amended 1885, c. 105, § 1.)

OF PERSONS OUT OF THE STATE.

§ 21. (Sec. 13.) Petition—Notice—Hearing.

The notice is jurisdictional, and it is only upon notice that the judge of probate is authorized to appoint. *Davis v. Hudson*, 29 Minn. 27, 11 N. W. Rep. 136.

A probate court of this state may properly appoint a guardian for a non-resident minor, as respects any estate which the minor may have in the county where such probate court is established. If a general guardian be appointed in such circumstances, the appointment is good to the extent of the minor's estate within the jurisdiction in which it is made. *Id.*

§ 22. (Sec. 14.) Powers and duties.

See *Davis v. Hudson*, *supra*.

GENERAL PROVISIONS.

§ 27. (Sec. 17.) Guardian's bond.

Where the guardian is also administrator, he may charge himself as guardian with the funds to which the heir is entitled on distribution, though without an order of the probate court, and will thereby bind his sureties upon his guardian's bond. *Scott's Account*, 36 Vt. 297.

The theory of the law of guardianship is that the guardian shall settle with the judge of probate, or with the ward, if of full age, or with his legal representatives, and, upon settlement, pay over and deliver all the property in his hands belonging to the ward, including all moneys due; or that the ward shall have his action upon his guardian's bond for breach of the condition to settle and pay over and deliver. *Jacobs v. Fouse*, 23 Minn. 51.

§ 28. (Sec. 18.) Inventory—Appraisal—Accounting.

As to correction of inventory, see *Martin v. Sheridan*, (Mich.) 8 N. W. Rep. 822.

A guardian may sell to a *bona fide* purchaser the personal property of his ward without any leave of court. *Humphrey v. Buisson*, 19 Minn. 221, (Gil. 132.)

See *Jacobs v. Fouse*, *supra*.

§ 29. (Sec. 19.) Payment of debts.

A creditor of a spendthrift, under guardianship, has a right to be heard in the matter of allowing the guardian's account, and, if aggrieved, has a right to appeal from the judgment of the probate court upon such accounting. No previous allowance of his claim by the probate judge or by commissioners is required in order to give him the *status* of creditor. *In re Hause*, 32 Minn. 155, 19 N. W. Rep. 973.

recorded by said clerk in a book kept by him for that purpose; and said clerk shall be entitled to receive the sum of twenty-five cents for recording said duplicate certificate from the person offering the same for record. (*As amended* 1883, c. 68, § 1.)

§ 17. Illegitimate children—Marriage of parents.

Cited, *McArthur v. Craigie*, 22 Minn. 358.

CHAPTER 62.

DIVORCE.

TITLE 1.

DIVORCES DISSOLVING THE MARRIAGE CONTRACT.

§ 1. Void marriages.

When the husband has deserted the wife, the fact that he has heard nothing from her for seven years will not create a presumption of her death so as to render a second marriage by him innocent. *Williams v. Williams*, (Wis.) 23 N. W. Rep. 110. No presumption of law as to the dissolution by divorce of a former marriage arises from the fact that a second marriage was contracted by one of the parties to the first marriage during the life-time of the other. *Id.*

§ 2. Voidable marriages.

Concealment of the previous unchaste character of the woman, or false representations made to induce the man to believe her chaste, are not such fraud as will render the marriage void. *Varney v. Varney*, (Wis.) 8 N. W. Rep. 739. And see *Williams v. Williams*, (Wis.) 23 N. W. Rep. 110.

See, as to duress, *Smith v. Smith*, (Mich.) 17 N. W. Rep. 76.

§ 6. Divorce a vinculo.

Cruel and inhuman treatment. *Sackrider v. Sackrider*, (Iowa.) 14 N. W. Rep. 736; *Wheeler v. Wheeler*, (Iowa.) 5 N. W. Rep. 689; *Lockwood v. Lockwood*, (Mich.) 5 N. W. Rep. 96; *Stafford v. Stafford*, (Mich.) 19 N. W. Rep. 201; *Friend v. Friend*, *Id.* 176; *Beyer v. Beyer*, (Wis.) 6 N. W. Rep. 807; *Sharp v. Sharp*, (Ill.) 6 N. E. Rep. 15; *Whaley v. Whaley*, (Iowa.) 27 N. W. Rep. 809; *German v. German*, (Mich.) 23 N. W. Rep. 802; *Walsh v. Walsh*, (Mich.) 28 N. W. Rep. 718.

A district court judgment, in an action between a wife and her husband, adjudging that the latter shall pay monthly to the former the sum of \$30 for her separate support and maintenance, until the further order of the court, is an implied authority for the wife to live separately and apart from her husband; and such living on her part, while the judgment remains in force, is not, though accompanied with a refusal to live and cohabit with her husband, an act of desertion within the meaning of this section. *Weld v. Weld*, 28 Minn. 33, 8 N. W. Rep. 900. And see, as to desertion, *Pilgrim v. Pilgrim*, (Iowa.) 10 N. W. Rep. 750; *Beller v. Beller*, (Mich.) 14 N. W. Rep. 696; *Rose v. Rose*, (Mich.) 14 N. W. Rep. 711; *Holmes v. Holmes*, (Mich.) 7 N. W. Rep. 228.

§ 9. Recrimination—Connivance—Condonation.

In an action for divorce upon any other ground than that of adultery, the adultery of the plaintiff is not a bar to the action. But if plaintiff, in her complaint, claims alimony, her adultery may be pleaded and proved as a defense, in whole or in part, to that claim. *Buerfening v. Buerfening*, 23 Minn. 563. As to plaintiff's adultery, see *Smith v. Smith*, (Iowa.) 21 N. W. Rep. 137.

Connivance. *Robbins v. Robbins*, (Mass.) 5 N. E. Rep. 837.

Condonation. *Harnett v. Harnett*, (Iowa.) 7 N. W. Rep. 394, 13 N. W. Rep. 408; *Stuart v. Stuart*, (Mich.) 11 N. W. Rep. 388.