

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

IN FORCE

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COMPLETE IN TWO VOLUMES.

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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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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. 353.

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.

§ 11. Complaint.

A complaint for divorce need not show in what county the plaintiff resides, nor that the adultery upon which it is based has not been condoned, nor that it was not committed by the procurement or with the connivance of plaintiff. *Young v. Young*, 18 Minn. 90, (Gil. 72.)

§ 12. Summons and complaint—Service.

Any course of action by the plaintiff, which is intended to and does prevent the defendant from setting up and establishing a defense to the action, is a fraud upon the administration of justice, as well as upon the defendant, for which the judgment thereby procured will be set aside. *Young v. Young*, 17 Minn. 181, (Gil. 153.)

§ 14. Failure to answer.

A referee may be appointed under subd. 2, § 192, c. 66, Gen. St., to take and report the testimony in an action for divorce, as well when the defendant is in default as when defendant has appeared and issue is joined. This section does not pretend to regulate the manner in which such testimony shall be taken. *Young v. Young*, 18 Minn. 90, (Gil. 72.)

§ 15. Alimony pending suit.

The court has no authority to grant an application for an allowance for counsel fees and expenses to enable a wife to prosecute an action for divorce, after the determination of the suit, and judgment in favor of the defendant. *Wagner v. Wagner*, 34 Minn. 441, 26 N. W. Rep. 450.

§ 25. Order for alimony—Revising.

Authority to reverse and alter a judgment for alimony, under this section, is to be exercised only upon new facts occurring after judgment, or, perhaps, also upon facts occurring before the judgment, of which a party was excusably ignorant at the time when the judgment was rendered. *Semrow v. Semrow*, 23 Minn. 214; followed, *Weld v. Weld*, 28 Minn. 33, 8 N. W. Rep. 900.

§ 26. Alimony—Security—Sequestration—Contempt.

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.

Or the court, whenever it shall find the fact to be that the husband has an income from any source sufficient to enable him to pay such alimony or other allowance, and fails and refuses to pay the same, may order or direct the husband to pay such alimony or allowance for the use of the wife or the children, or both. And if any person or party shall disobey such order or direction, such person or party may be punished by the court as for contempt. The proceedings therefor are prescribed in chapter eighty-seven of the General Statutes Eighteen Hundred and Seventy-Eight, respecting the punishment of contempt. (*As amended* 1881, c. 78, § 1.)

TITLE 2.**LIMITED DIVORCES.**

See *Wagner v. Wagner*, 36 Minn. 239, 30 N. W. Rep. 766.

§ 36. Decree for maintenance.

See *Weld v. Weld*, 28 Minn. 35, 8 N. W. Rep. 900.