

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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CHAPTER 45 (G. S. ch. 61).

MARRIAGE.

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CIVIL CONTRACT.

SEC. 3872. **Civil contract.**—Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential.

G. S. ch. 61, § 1. 23 M. 528. This is the common law (2 Kent, Com. 75), even without ceremony; merely agreement and cohabitation. Bish. M. & D. § 167; Tyler on Inf. & Cov. § 652. Being a civil contract, if valid where contract made — where celebrated — is valid everywhere, and if invalid by that law, is invalid everywhere, except when incestuous or polygamous, prohibited by the law of the country where the parties belong, and celebrated by *lex domicilii* and not *lex loci*. Story, Conf. L. §§ 87, 113, 117, 121; 2 Kent, Com. 91; 2 Pars. Cont. 104; 2 Hagg. 54; 13 M. & W. 264; 9 H. L. C. 193; 76 N. C. 251. The *lex loci* governs the form, the essentials depend upon *lex domicilii*; hence if contrary to law of domicile, it is void or voidable, as that law determines. Story, Conf. L. § 113a; 9 H. L. C. 193; Stevenson v. Gray, 17 B. Mon. 192; Stone v. Keeling, 5 Call, 148.

SEC. 3873. **Marriageable age.**—Every male person who has attained the full age of eighteen years, and every female who has attained the full age of fifteen years, is capable in law of contracting marriage, if otherwise competent.

G. S. ch. 61, § 2.

SEC. 3874. **Prohibited from marrying.**—No marriage shall be contracted while either of the parties has a husband or wife living, nor between parties who are nearer of kin than first cousins, computing by the rules of the civil law, whether the half or the whole blood.

G. S. ch. 61, § 3. It has been held that the inoffending party in such cases could marry again without a divorce. 6 How. 550; 54 Ill. 332.

LICENSE.

SEC. 3875. **License.**—Previous to persons being joined in marriage, a license shall be obtained from the clerk of the district court of the county in which the female resides, or, if not a resident of this state, then from the clerk of the district court in the county where the marriage is to take place in this state; but if there shall be no such clerk in the county where such female resides, or where the marriage is to be solemnized, then no such license shall be required.

G. S. ch. 61, § 7. License statutes have been held to be directory only. 1 Tuck. Bl. 99; 15 E. C. L. 29; 2 Steph. Com. 288. Hence marriage without a license held valid. 2 Kent, Com. 86, note b.

SEC. 3876. **Issuance of license.**—The clerk of the district court, as aforesaid, may inquire of the party applying for marriage license, as aforesaid, upon oath or affirmation, relative to the legality of such contemplated marriage; and if the clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license, and shall make a record thereof; and if any persons intending to marry shall be under age, and shall not have had a former wife or husband, the consent of the parents or guardians shall be personally given before the clerk, or certified under the hand of such parent.

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or guardian, attested by two witnesses, one of whom shall appear before said clerk, and make oath or affirmation that he saw said parent or guardian subscribe, or heard him or her acknowledge the same; and said clerk is hereby authorized to administer such oath or affirmation, and thereupon issue and sign such license, and affix thereto the seal of the court. The clerk shall be entitled to receive, as his fee for administering the oath, and granting the license with the seal affixed thereto, recording the certificate of marriage, and filing the necessary papers, the sum of two dollars; and if any clerk shall in any other manner issue or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars to, and for the use of, the parties aggrieved.

G. S. ch. 61, § 8. At common law, falsely swearing to be of the required age was a misdemeanor, not perjury (2 Russ. on Cr. 599; 8 East, 364); and no liability until marriage consummated. 50 Ill. 171; 53 Ill. 361.

SOLEMNIZATION.

SEC. 3877. **Who may solemnize.**—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.

G. S. ch. 61, § 4, as amended 1885, ch. 38. Approved March 2d. Amendment between * *.

SEC. 3878. **Same — By unauthorized person — Penalty.**—If any person undertakes to join others in marriage, knowing that he is not lawfully authorized to do so, or knowing of any legal impediment to the proposed marriage, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not more than one year, or by a fine not more than five hundred dollars, or by both such fine and imprisonment, in the discretion of the court.

G. S. ch. 61, § 14.

SEC. 3879. **Solemnized without authority not void.**—No marriage solemnized before any person professing to be a judge, justice of the peace, or minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed judge, justice or minister: *provided*, the marriage is consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

G. S. ch. 61, § 15.

SEC. 3880. **Credentials to solemnize.**—Ministers of the gospel, before they are authorized to perform the marriage rite, shall file a copy of their credentials of ordination with the clerk of the district court of some county in this state, who shall record the same, and give a certificate thereof; and the place where such credentials are recorded shall be endorsed upon each certificate of marriage granted by any minister, and recorded with the same.

G. S. ch. 61, § 5.

SEC. 3881. **Duty before solemnizing marriage.**—All judges, justices of the peace, and ministers of the gospel may, before solemnizing any marriage, examine at least one of the parties on oath, which oath they are authorized to administer, as to the legality of such intended marriage; and in no case shall such judge, justice or minister solemnize a marriage, if he is satisfied that there is any legal impediment thereto.

G. S. ch. 61, § 6.

SEC. 3882. **Form of solemnization.**—In the solemnization of marriage, no particular form is required, except that the parties shall declare, in the presence of the judge, minister or magistrate, and the attending witnesses,

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that they take each other as husband and wife; and in every case there shall be at least two witnesses present, besides the person performing the ceremony.

G. S. ch. 61, § 9.

SEC. 3883. Illegal solemnization.—If any person authorized by law to join persons in marriage, knowingly solemnizes any marriage contrary to the provisions of this chapter, or wilfully makes any false certificate of any marriage, or pretended marriage, he shall forfeit for every such offence a sum not exceeding five hundred dollars, or may be imprisoned not exceeding one year.

G. S. ch. 61, § 13.

CERTIFICATE.

SEC. 3884. Certificate of marriage.—Whenever a marriage is solemnized, the person solemnizing the same shall give to each of the parties, if requested, a certificate thereof, specifying therein the names and residence of the parties, and of at least two of the witnesses present, and the time and place of such marriage.

G. S. ch. 61, § 10.

SEC. 3885. Record 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 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.

G. S. ch. 61, § 11, as amended 1871, ch. 94 (March 6th); 1883, ch. 68 (February 19th). Above * is section before amended. Acts 1871 required certificate to be delivered to clerk of district court where license was issued, and "duplicate with clerk in the county where marriage solemnized," and added matter below *.

SEC. 3886. Same — Failure — Penalty.—Every person solemnizing a marriage, who neglects to make and deliver to the clerk a certificate thereof, within the time above specified, shall forfeit a sum not more than one hundred dollars; and every clerk who neglects to record such certificate so delivered, shall forfeit the like penalty.

G. S. ch. 61, § 12.

ILLEGITIMATE CHILDREN.

SEC. 3887. Legitimized.—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.

G. S. ch. 61, § 17.

QUAKERS.

SEC. 3888. Form of solemnization.—All marriages solemnized among the people called friends or quakers, in the form heretofore practised 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.

G. S. ch. 61, § 16.