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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THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED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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CHAPTER 71

DIVORCE

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8580. What marriages void—All marriages which are prohibited by law on account of consanguinity, or on account of either party having a former husband or wife then living, if solemnized within this state, shall 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 life-time of such absent husband or wife, the marriage shall be void only from the time that its nullity is duly adjudged. (3569) [7106]

41-201, 42+935; 55-464, 57-205; 144-95, 174+611.
 Legality of marriage of divorced persons within six months of date of divorce as basis for bigamy (113-503, 130+10).

8581. What voidable—When either party to a marriage is incapable of assenting thereto for want of age or understanding, or when the consent of either has been obtained by force or fraud, and there is no subsequent voluntary cohabitation of the parties, the marriage may be annulled at the suit of the injured party, and shall be void from the time its nullity is adjudged. (3570) [7107]

44-124, 46+323; 78-166, 80+877; 144-95, 174+611.
 Action to annul marriage procured by fraud and duress not action for divorce (102-405, 113+1013).

Concealment or deception by one of the parties as to defects of character, morality, chastity, habits, and temper are not grounds for annulment. 163-501, 204+329.
 Failure, under the circumstances stated in the opinion, to disclose past insanity is not ground for annulment of the marriage contract. 163-501, 204+329.

Defendant for many years lived as the wife of a man whose lawful wife was still living. After the death of plaintiff's wife, defendant, by falsely representing that she had secured a divorce from the man with whom she had been living, induced him to marry her. It is held,

that the facts found justified an annulment of the marriage on the ground of fraud. 212+808.

8582. Action to annul—When the validity of a marriage is disputed for any of the causes mentioned in §§ 8580, 8581, either party may begin an action in the district court of the county where either resides, to annul the same. In such action the complaint shall be filed and proceedings had thereon as in actions for divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void. (3571) [7108]
 41-201, 42+935; 95-464, 104+300.

8583. When not annulled—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 had voluntarily cohabited together as husband and wife after having attained such age; 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 restoration. (3572) [7109]
 44-124, 46+323; 78-166, 80+877.

8584. Not at suit of party capable—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. (3573) [7110]
 44-124, 46+323.

8585. Grounds for divorce—A divorce from the bonds of matrimony may be adjudged by the district court for any of the following causes:

1. Adultery.
2. Impotency.
3. Cruel and inhuman treatment.
4. Sentence to imprisonment in any state prison or state reformatory subsequent to the marriage; and in such a case a pardon shall not restore the conjugal rights.
5. Wilful desertion for one year next preceding the commencement of the action.
6. Habitual drunkenness for one year immediately preceding the commencement of the action.
7. Incurable insanity. But no divorce shall be granted upon this ground unless the insane party shall have been under regular treatment for insanity, and because thereof, confined in an institution for a period of at least ten years immediately preceding the commencement of the action. In granting a divorce upon this ground, notice of the pendency of the action shall be served in such manner as the court may direct, upon the nearest blood relative and guardian of such insane person, and the superintendent of the institution in which he is confined. Such relative or guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues. The status of the parties as to the support and maintenance of the insane person shall not be altered in any way by the granting of the divorce. (R. L. '05, § 3574; amended '09, c. 443, § 1; '27, c. 304)

Adultery of plaintiff is not a bar to an action on any of the other grounds (23-563). A decree for limited divorce is not a bar to an action for absolute divorce (43-31, 44-524. Cited 102-405, 113+1013). Subd. 1 (27-299, 7+144). Subd. 2 (46-467, 49+230). Subd. 3 (36-239, 30+766; 39-258, 39+492; 46-461, 49+198; 56-264, 57+651; 62-212, 64+561; 81-242, 83+988; 85-383, 88+1103; 86-249, 90+390; 88-94, 92+1130; 91-165, 97+671; 92-278, 100+4, 1101; 93-284, 101+179; 101-400, 112+528; 102-235, 113+332; 111-403, 127+391; 126-65, 147+825; 132-340, 156+664; 135-179, 160+494). Subd. 4 (92-278, 100+4, 11-1). Subd. 5 (27-330, 7+267; 39-258, 39+492; 39-394, 40+360; 53-502, 55+630; 64-234, 66+983; 76-292, 79+172, 668; 80-373, 83+342; 114-510, 131+1135). Subd. 6 (43-31, 44+524; 44-132, 46+236; 85-383, 88+1103; 88-94, 92+1130).

The finding that the defendant deserted the plaintiff is sustained by the evidence; and the testimony of defendant did not require a finding that her refusal to live with him was justified by his ill treatment of her. 166-137, 207+200.

The evidence did not require a finding that the plaintiff treated the defendant in a cruel and inhuman manner. 166-137, 207+200.

The evidence is conclusive that the charge of adultery, made by plaintiff against defendant as a ground for divorce, was unfounded to his knowledge, and that plaintiff was guilty of cruel and inhuman treatment of defendant, which entitled her to an absolute divorce, as asked for in her answer and cross-bill. 165-291, 206+450. Action for an absolute divorce upon the grounds of cruel and inhuman treatment. Held: The findings of fact are justified by the evidence. 210+393.

The evidence sustains the findings to the effect that defendant was not guilty of the cruel and inhuman treatment alleged as ground for divorce. 210+878.

Plaintiff by allegation and proof made defendant's disposition and temper an issue, and there was no error in permitting witnesses who had for many years known, and been in personal contact with, defendant to state what his disposition and temper were. 210+878.

The evidence supports the finding that a husband was guilty of cruelty, entitling his wife to a divorce. In that he had frequently and unjustifiably accused her of marital infidelity. 161-293, 201+289.

The trial court's finding in a divorce case that the defendant did not cruelly or inhumanly treat the plaintiff is sustained by the evidence. 163-400, 204+465.

8586. Residence of complainant—No divorce shall be granted unless the plaintiff has resided in this state one year immediately preceding the filing of the complaint, except for adultery committed while the plaintiff was a resident of this state. (3575) [7112]
73-474, 76+268; 75-433, 78+108; 81-287, 83+1088; 95-464, 104+300.

8587. Denial, though adultery proved—In any action brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

1. When it appears that the offence was committed by the procurement or with the connivance of the plaintiff.

2. When there has been an express forgiveness of the adultery charged, or a voluntary cohabitation of the parties, with knowledge thereof.

3. When the action has not been brought within three years after the discovery of the offence charged.

4. 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. (3576) [7113]

8588. Action, how and where brought—Venue—An action for 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, subject to the power of the court to change the place of trial by consent of parties, or when it shall appear that an impartial trial cannot be had in the county where the action is pending, or that the convenience of witnesses and ends of justice would be promoted by the change. (3577) [7114]

18-90, 72; 73-474, 76+268; 93-284, 101+179.
Rule in 80-373, 83+342, changed. Ch. 77 does not apply (110-501, 126+133); 140-385, 168+135. Subd. 4 (92-278, 100+4, 1101; 135-259, 160+687). Subd. 5 (27-330, 7+267;

39-258, 39+492; 39-394, 40+360; 53-502, 55+630; 64-234, 66+983; 76-292, 79+172, 668; 80-373, 83+342; 114-510, 131+1135; 189+447; 132-321, 156+348). Subd. 6 (43-31, 44+524; 44-132, 46+236; 85-383, 88+1103; 88-94, 92+1130).

Either party to a divorce proceeding, who asks for an absolute divorce, may withdraw the demand any time before the decree is granted. After such withdrawal, the court has no authority to grant a divorce to such party. 164-102, 204+915.

Abatement on death of party. 166-468, 207+180.

8589. Requisites of complaint—The complaint shall state the names and ages of the parties, the name of the court in which the action is brought, and the facts constituting the cause or grounds of action, in ordinary and concise language, without repetition. (3578) [7115]

Residence in state for statutory period must be alleged (75-433, 78+108; 81-287, 83+1088), but it is unnecessary to allege that plaintiff resides in the county where the action is brought (18-90, 72). Not necessary to anticipate defenses of condonation, procurement or connivance (18-90, 72. See 46-461, 49+198). Mode of charging adultery (39-370, 40+167). Mode of charging cruelty (39-258, 39+492; 81-242, 83+988). Mode of charging desertion (76-292, 79+172, 668). Allegations of fitness for custody of children (32-499, 18+832, 21+736). Facts justifying a limited divorce may be joined in a complaint with those justifying an absolute divorce and relief may be sought in the alternative (36-233, 30+766; 53-181, 54+1059). Unnecessary to anticipate claim for alimony or make any allegations as to property of plaintiff (73-474, 76+268). Divorce held properly granted on supplemental answer without proof first being made of offence charged in original answer (96-329, 104+976); 130-472, 153+864.

8590. Service—Publication—Copies of the summons and complaint shall be served on the defendant personally, and, when such service is made out of this state and within the United States, 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, and when made without the United States it may be proved by the affidavit of the person making the same, taken before and certified by any United States minister, charge d'affaires, commissioner, consul or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officer authorized to perform their duties; or before an officer authorized to administer an oath with the certificate of an officer of a court of record of the country wherein such affidavit is taken as to the identity and authority of the officer taking the same, but, if personal service cannot well be made, the court may order service of the summons by publication, which publication shall be made as in other actions. (R. L. § 3579, amended '09 c. 434; '13 c. 57 § 1) [7116]

58-279, 287, 59+1017; 94-301, 102+861.
No substantial change as to service by publication (99-307, 109+243). Sufficiency of judgment roll as showing that personal service could not well be made (107-498, 120+902). Where summons is served personally out of state, return of sheriff and affidavit required by Ch. 77, not pre-requisites (117-366, 135+998); 190+989.
Cited: 161-246, 201+323.

8591. Time for answering—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. (3580) [7117]

9-72, 61; 94-301, 102+861.

8592. Failure to answer—Reference—If the defendant does not appear after service duly made and proved, the court may hear and determine the action at a

general or special term, or in vacation: Provided, that the court or judge, upon application, may refer said action to a referee to take and report the evidence therein. When issue is joined, like proceedings shall be had as in civil actions. (3581) [7118]

Reference (18-90, 72). Necessity of proof and findings (6-458, 315; 68-1, 70+776).

8593. Alimony pending suit—Costs—In every action brought either for a divorce or separation, the court, in its discretion, may 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 therefor, or it may direct such costs to be paid out of any property sequestered or in the power of the court. (3582) [7119]

Allowance largely a matter of discretion. Allowable though plaintiff has some means of her own (69-461, 72+708). Not allowable after judgment for defendant (34-441, 26+450. See 91-165, 97+671). Held allowable though part of the attorney's fees were for a prior trial. Order allowing appealable (84-403, 87+1014). Effect of dismissal on commitment for contempt for not paying (40-4, 41+1076). Cited (73-474, 76+268); 136-190, 161+525; 151-458, 185+509, 187+227; 145-499, 177+491. 210+393; 210+878.

A conveyance of land in lieu of motion for temporary alimony and attorneys' fees was considered by the court, and properly so. 160-224, 199+908.

Where the husband brings a suit for annulment, and the wife defends, asserting the validity of the marriage, she may claim alimony, pendente lite, and allowance for expenses of the suit and for counsel fees. 160-477, 200+465.

Order in a divorce action denying an allowance to the wife for suit money, attorney's fees, and temporary alimony is appealable as one denying a provisional remedy. 166-283, 207+616.

After the entry of judgment annulling the marriage in the court below and the subsequent death of the husband, this court on appeal from the judgment, is without authority to award the wife alimony or attorney's fees. 212+808.

8594. Protection of wife—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, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the action. (3583) [7120]

8595. Custody of children, etc.—The court, on the application of either party, may 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 such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper. (3584) [7121]

73-474, 479, 76+268; 85-401, 89+3; 135-307, 160+778; 136-190, 161+525.

A state has the right to determine the status of persons domiciled within its territory. 163-435, 204+324.

An order concerning the custody of minor children, pendente lite, is not appealable. 166-283, 207+616.

8596. Same—On judgment—Upon adjudging the nullity of a marriage, or a 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 children of the parties, and may determine with which of the parents they, or any of them, shall remain, having due regard to the age and sex of such children. (3585) [7122]

73-474, 479, 76+268; 85-401, 89+3; 97-56, 105+483; 97-76, 106+100; 136-190, 161+525. 166-495, 206+954.

8597. Order may be revised—The court may afterward, from time to time, on the petition of either parent, revise and alter such order concerning the care, custody, and maintenance of the children, or any of them, and make such new order concerning them, as

the circumstances of the parents and the benefit of the children shall require. (3586) [7123]

73-474, 479, 76+268; 85-401, 89+3; 135-473, 159+1068; 151-458, 185+509, 187+227.

8598. Possession of wife's real estate—What may be decreed to husband—Whenever a divorce is granted from the bonds of matrimony for any cause, except adultery committed by the wife, or from bed and board, or the husband is sentenced to imprisonment for life, or the marriage is adjudged null, the wife shall be entitled to the immediate possession of all her real estate. But in case of a divorce obtained by a husband any real or personal property to which she procures title through her husband, not exceeding one-half thereof, may be decreed to be and belong to the husband; the court having regard to the ability, character and situation of the parties, and other circumstances of the case. (R. L. § 3587, amended '13 c. 189 § 1) [7124]

148-381, 182+433; 149-285, 183+354.

167-489, 209+636.

Where the property received through the husband has been converted into other property, a part of such other property may be decreed to him. 167-80, 208+643.

8599. Same—Pending proceedings—The provisions of this act shall apply to all proceedings that are now pending as well as those hereafter commenced. ('13 c. 189 § 2) [7125]

8600. Order as to wife's property—Upon every such dissolution of marriage as is specified in § 8598, 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. (3588) [7126]

Cited (113-503, 130+10).

8601. Trustee of alimony—The court may appoint trustees, whenever it is deemed expedient, to receive any money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support 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 the children if there are any, provided for in the order; and such trustees shall give such bond, as the court shall require, for the faithful performance of their trust. (3589) [7127]

Cited (103-241, 114+762).

8602. Property of husband—Permanent alimony—Upon a divorce for any cause except that of adultery committed by the wife, if the estate and property restored or awarded to her is insufficient for the suitable support 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 and real estate of the husband, not exceeding in value one-third thereof, as it deems just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all 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, earnings, and income of the husband as it may deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and other circumstances of the case, and may by its decree make the same a specific lien upon any specified parcels of his real estate, 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 the husband under this section shall not in any case exceed in present value one-third of the personal estate, earnings, and income of the husband, and one-third in value of his real estate. (3590) [7128]

R. L. § 3591 was repealed by 1909 c. 292, 39-258, 39+492; 59-347, 61+334; 67-444, 70+154 (overruled in part by 1901 c. 144); 69-427, 72+451; 73-474, 76+268; 90-471, 97+122; 93-188, 101+70; 96-329, 104+976; 103-241, 114+762; 115-1, 131+784; 116-10, 132+1129.

Action for divorce and alimony and to have recovery declared specific lien on real property placed in name of third person (103-5, 114+87). Enforcement of judgment (106-357, 119+51). In general, alimony is not awarded as penalty, but as substitute for marital support; right thereto being wholly statutory and subject to revision as provided by R. L. 1905 §§ 3590, 3592 [8602, 8603] (119-484, 138+787). Court has no power to make allowance to be paid by husband for support of minor child lien on personal property (119-139, 137+387); 127-96, 148+1074; 135-397, 161+148; 140-385, 168+135; 196+646; 197+261.

Section 7128, Gen. St. 1913, grants discretionary power to give permanent alimony and the amount thereof. 157-422, 196+646.

Courts are authorized to award permanent alimony to the wife, even though her conduct has been such as to justify granting a divorce to the husband. 157-422, 196+646.

Permanent alimony cannot be determined by any fixed standards. Alimony is not allowed as a penalty but as a substitute for marital support. 157-422, 196+646.

It cannot be held that the trial court abused its discretion, where each of the parties owned property valued at \$30,000, and the husband is a professional man earning \$10,000 per year, and the divorce is granted to the husband, and he is required to pay the wife \$2,500. 157-422, 196+646.

The findings as to the value of defendant's property justify the award of permanent alimony, since it does not exceed the limit set. 158-296, 197+261.

In awarding alimony to a wife, while it is proper to consider the property she owns, regard may also be had as to whose efforts and labors accumulated the property held by either party. 158-296, 197+261.

Alimony is a substitute for marital support. 160-224, 199+908.

An award of permanent alimony of \$24,000 to a wife whose husband's property is of the value of \$125,000 approved. 160-224, 199+908.

In such an action, which was on trial four days \$2,000 is a reasonable amount to be allowed as attorneys' fees. 160-224, 199+908.

Not necessary to make finding as to income of husband. 160-224, 199+908.

The court did not err in modifying a judgment for the payment of alimony by making the installments immediately payable, and sequestering the defendant's personal property and applying its proceeds in payment. 163-331, 203+966.

The amount of alimony allowed is within the limits prescribed by the statute. 210+393.

Under the statute in force when the decree of divorce was entered, the wife could have claimed and might have been awarded alimony, although the divorce was procured by her husband for her desertion of him. 210+385.

In consideration of her release of all claims against him and his estate, he promised to create a trust fund for her support, and, in addition, to pay her a stipulated sum of money monthly, the release thereof was a sufficient consideration for the contract. 210+385.

8603. Order for alimony, etc., revised—After an order or decree for alimony, or other allowance for the wife and children, or either of them, or for the appointment of trustees to receive and hold any property for the use of the wife or children, the court, from time to time, on petition of either of the parties, may 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 it might have made in the original action. (3592) [7129]

23-214; 28-33, 8+900; 77-67, 79+648; 88-105, 92+522; 90-466, 97+147; 91-193, 97+669; 97-56, 105+483; 103-241, 114+762; 114-389, 121+379.

Authority to modify judgment for alimony, whether payable in gross or in installments, when substantial change in circumstances (116-10, 132+1129). May make modifications respecting alimony, notwithstanding that judgment was founded on stipulation, entered into pending action, fixing award (116-458, 133+1009). Application to action for limited divorce (116-128, 133+460). Where contract for procurement of divorce and for payment to wife of agreed sum in lieu of alimony, was void as against public policy, wife after judgment of divorce, who has not offered to return sum paid under contract, could not secure an allowance for alimony (97-76, 106+100); 135-397, 161+148; 140-385, 168+135; 142-274, 171+925; 145-27, 176+180.

163-331, 203+966, note under § 8602. Under the facts stated in the opinion, there was such a change of conditions that the decree should have been modified. 163-236, 263+786.

A judgment in a divorce action awarding alimony against the husband, to continue during the life of the wife though her husband should predecease her, and charge as a lien upon his property, may be modified in a proper case upon the application of his heirs after his death. 163-236, 293+786.

Under the facts stated in the opinion, the court properly denied defendant's motion for a modification of a portion of a decree of divorce which required him to make weekly payments of alimony to his former wife. 163-394, 204+161.

8604. 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 his neglect or refusal 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. If 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, the court may order him 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, he may be punished by the court as for contempt. (3593) [7130]

63-443, 65+728.

163-331, 203+966, note under § 8602.

His earnings being from \$20 to \$30 a week, and it appearing that he is able to support an automobile for pleasure purposes, appellant was properly convicted of contempt for failure to comply with a decree of divorce requiring him to pay \$9 a week for the support of his minor daughter. 166-262, 207+617.

Defendant appealed from an order committing him for contempt for failing to comply with an order requiring him to contribute toward the support of his child. The default being admitted, the burden was on him to show inability to comply with the order. 209+901.

8605. Remarriage—Revocation—When a 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. (3594) [7131]

8606. Cohabiting after divorce—Persons who shall cohabit together before intermarriage, after having been divorced from the bonds of matrimony, shall be liable to all the penalties provided by law against adultery. (3595) [7132]

8607. Effect of divorce—Name of wife—Whenever a decree of divorce from the bonds of matrimony is granted in this state, such decree shall completely dissolve the marriage contract as to both parties. And in all actions for a divorce brought by a woman, if a divorce is granted, the court may change the name of such woman, who shall thereafter be known by such name as the court designates in its decree. (3596) [7133]

Collateral attack on foreign divorce (108-291, 120+540).

A judgment in a divorce suit between the parties, it not appearing that the facts involved here and essential to a recovery were involved there, is not a bar. 160-431, 200+480.

LIMITED DIVORCES

8608. Separation—A separation from bed and board forever, or for a limited time, may be adjudged by the district court, on the complaint of a married woman, in the following cases:

1. Between any husband and wife, inhabitants of this state.

2. When the marriage shall have taken place within this state, and the wife shall be an actual resident at the time of filing her complaint.

3. When the marriage shall have taken place out of this state, and the parties have been inhabitants of this state at least one year, and the wife shall be an actual resident at the time of filing her complaint. (3597) [7134]

See generally as to limited divorces (36-239, 30+766; 43-31, 44+524; 53-181, 54+1059; 77-67, 79+648; 81-287, 83+1088; 87-136, 91+432; 91-165, 97+671). Under complaint for absolute divorce for cruel and inhuman treatment, may grant limited divorce (107-43, 119+489). Who is "actual resident" (101-511, 112+883); 189+447.

A motion to amend an amended complaint, asking for an absolute divorce, so as to ask for a limited divorce and support, amounts to a withdrawal of the demand for a divorce, and should be granted as a matter of right. 164-102, 204+915.

8609. For what causes—Such separation may be adjudged for the following causes:

1. Cruel and inhuman treatment by the husband.

2. Such conduct on the part of the husband towards his wife as may render it unsafe and improper for her to cohabit with him.

3. The abandonment of the wife by the husband, and his refusal or neglect to provide for her. (3598) [7135]

53-181, 54+1059. Subd. 1 (116-128, 133+460). Subd. 2 (107-43, 119+489). See 190+343.

8610. Complaint—The complaint in every such case shall specify particularly the facts and circumstances on which the plaintiff relies, and shall set forth times and places with reasonable certainty. (3599) [7136]

8611. Defences—The defendant may prove in his justification the ill conduct of the plaintiff, and, on establishing such defence to the satisfaction of the court, the complaint shall be dismissed. (3600) [7137]

8612. Alimony, etc.—Such proceedings shall be commenced and conducted in the same manner as actions for a divorce from the bonds of matrimony, and the court, upon motion, may award such sum for counsel fees and temporary alimony during the pendency of the action as the circumstances and situation of the parties appear to warrant. (3601) [7138]

36-239, 30+766.

In husband's divorce suit, where defendant asked for separate maintenance, court, on finding that she was justified in living apart from plaintiff though not entitled to divorce, should have retained case to determine what support plaintiff should pay her during such time, though trial did not proceed on theory that separate maintenance would be sought. 163-509, 203+769.

8613. As to alimony and wife's property—Upon adjudging a separation in any such suit, the court may make such order and decree for the suitable support of the wife and her children by the husband, or out of his property or earnings, as may appear just and proper, and by such decree may give the wife absolute control of her separate property, with power of alienation, and may make such further decree as the nature and circumstances of the case require. (3602) [7139]

Modification of judgment as to alimony and property rights (116-128, 133+460).

A court of equity, though an action for divorce or separation is not pending, and though grounds for such action do not exist, may award the wife support and maintenance, when the husband unjustifiably refuses to live with or support her. 160-431, 200+480.

8614. When separation not granted—Although a decree for separation from bed and board be not made, the court may make such decree for the support of the wife and her children, or any of them, by the husband, or out of his property or earnings, as the nature of the case renders suitable and proper. (3603) [7140]

28-33, 8+900; 142-279, 171+933; 136-190, 161+525.

8615. Revocation—Upon a joint application of the parties, and satisfactory proof of their reconciliation, the court granting any decree of separation may revoke the same, under such regulations and restrictions as it shall prescribe. (3604) [7141]

CHAPTER 72

MARRIED WOMEN

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8616 Separate legal existence—Women shall retain the same legal existence and legal personality after marriage as before, and every married woman shall re-

ceive the same protection of all her rights as a woman which her husband does as a man, including the right to appeal to the courts in her own name alone for protection or redress; but this section shall not confer upon the wife a right to vote or hold office, except as is otherwise provided by law. (3605) [7142]

A married woman may sue her husband in her own name in any form of action to enforce any right affecting her property (64-381, 67+20. See 96-294, 104+969). If living apart from her husband she may sue him for support without seeking a divorce (91-165, 97+671). The object of this section is obscure. It does not authorize a wife to convey her realty independently of her husband (48-18, 50+1018); or to maintain an action for criminal conversation against another woman (60-372, 62+433). It does not relieve a husband of liability for his