1941 Supplement

To

Mason's Minnesota Statutes, 1927

and

Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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Subsequent denial of a common-law marriage by the parties cannot destroy its validity any more than a subsequent denial of a ceremonial marriage can change status created by it, and if there is a common-law marriage a subsequent ceremonial marriage with a third person is necessarily void as of no force. Wilson v. Wilson, 139Neb153, 296NW766. Common law marriages were abolished by Laws 1941, c. 459.

A common law marriage in Minnesota may be proved by admissions of parties, evidence of general repute, evidence of cohabitation as married persons, and other circumstantial or presumptive evidence from which fact of marriage may be reasonably inferred. Id. But see Laws 1941, c. 459, abolishing common law marriages.

Common law marriages are recognized in State of Minnesota, and all that is necessary to render competent parties husband and wife is that they agree in the present tense to be such. Id. But common law marriages are now abolished, Laws 1941, c. 459.

Prosecution for bigamy cannot be based upon a common law marriage, since such a marriage cannot be established where some impediment exists. Op. Atty. Gen., (133B-10), Sept. 21, 1939.

Since enactment of Laws 1941, c. 459, it is exceedingly doubtful that courts would recognize a marriage by proxy. Op. Atty. Gen. (300), Apr. 27, 1942.

Boy under 18 cannot secure marriage license even with parents' consent. Op. Atty. Gen. (300a), Aug. 13, 1942.

8563. Persons capable of contracting.

Op. Atty. Gen. (300a) July 10, 1939, reversing Op. Atty. Gen. (300a), Nov. 27, 1937.

Common-law rule is that a marriage, where one of parties is under age of consent but otherwise competent, is not void but merely voidable. Von Felden v. Von Felden, 212M54, 2NW(2d)426. See Dun. Dig. 5788.

Boy under 18 cannot secure marriage license even with parents' consent. Op. Atty. Gen. (300a), Aug. 13, 1942.

A boy under eighteen years of age is incapable of contracting marriage, with or without consent. Op. Atty. Gen. (300a), April 1, 1943.

8564. Marriages prohibited.

One who has been adjudged an imcompetent may contract a valid marriage if he has in fact sufficient mental capacity for that purpose. Johnson v. Johnson, 214M462, 8NW(2d)620. See Dun. Dig. 5788.

Subsequent denial of a common-law marriage by the parties cannot destroy its validity any more than a subsequent denial of a ceremonial marriage can change status created by it, and if there is a common-law marriage a subsequent ceremonial marriage with a third person is necessarily void as of no force. Wilson v. Wilson, 139Neb153, 296NW766. Common law marriages are abolished by Laws 1941, c. 459.

License to marry may not be issued to a feeble-minded person though he has been sterilized. Op. Atty. Gen. (300J), Feb. 9, 1942.

Boy under 18 cannot secure marriage license even with parents' consent. Op. Atty. Gen. (300a), Aug. 13, 1942.

Cousins by the half blood may not marry. Op. Atty. Gen., 300(g), Apr. 29, 1943.

Person committed to guardianship of state board of control as feeble-minded is incapable of contracting marriage, but if marriage is contracted it is voidable, not void, and party capable of contracting marriage may not have it annulled if he knew that other party was feeble-minded. Op. Atty. Gen. (679k), June 16, 1943.

8565. By whom solemnized.

A licensed minister may solemnize a marriage, though not ordained. Op. Atty. Gen. (300c), Aug. 21, 1940.

8567. Parties examined.

Boy under 18 cannot secure marriage license even with parents' consent. Op. Atty. Gen. (300a), Aug. 13, 1942.

8568. License.

The validity of a marriage is not affected by the fact that the license therefor was procured by fraud or perjury. Johnson v. Johnson, 214M462, 8NW(2d)620. See Dun. Dig. 6786.

Boy under 18 cannot secure marriage license even with parents' consent. Op. Atty. Gen. (300a), Aug. 13, 1942.

8569. Marriageable age of females.

Op. Atty. Gen. (300a) July 10, 1939, reversing Op. Atty. Gen. (300a), Nov. 27, 1937.

Boy under 18 cannot secure marriage license even with parents' consent. Op. Atty. Gen. (300a), Aug. 13, 1942.

8572. Record and certificate.

Marriage license issued in Minnesota is not authority for performance of a marriage ceremony outside the state, but the clerk must file the marriage certificate if offered, regardless of its validity or effect. Op. Atty. Gen. (300d), Apr. 17, 1943.

8573. Record and certificate—Receipt.

Editorial note.—Mason's St. 1927, §§8572 and 8573, both originated in G. S. 1894, §4778. This section probably reflected the law from time of passage of Laws 1905, c. 294, to passage of Laws 1909, c. 386. Since both sections come from the same source, it would seem that the former superseded the latter, at least in so far as inconsistent. It therefore seems that certificates should be filed in county where license was issued, and not in county where marriage took place, but doubt should be eradicated by the Legislature.

CHAPTER 71

Divorce

8580. What marriages void.

Marriage by person committed as a feebleminded person to the guardianship of the state board of control was not void under §8580, but was voidable under §8581. Op. Atty. Gen., (679k), Sept. 22, 1939.

Person committed to guardianship of state board of control as feeble-minded is incapable of contracting marriage, but if marriage is contracted it is voidable, not void, and party capable of contracting marriage may not have it annulled if he knew that other party was feeble-minded. Op. Atty. Gen. (679k), June 16, 1943.

8581. What voidable.

Decree of annulment because party to marriage is incapable of assenting thereto for want of age or understanding operates only from date of decree, and may not relate retroactively to date of marriage. Von Felden v. Von Felden, 212M54, 2NW(2d)426. See Dun. Dig. 5797.

Evidence justified finding that 43 year-old husband's annual earning capacity of nearly $5,000 warranted alimony payments of $112.50 per month to his 50 year-old divorced wife, who had no income of her own. Martens v. Martens, 211M369, 1NW(2d)356. See Dun. Dig. 2803.

Marriage by person committed as a feebleminded person to the guardianship of the state board of control was not void under §8580 but was voidable under §8581. Op. Atty. Gen., (679k), Sept. 22, 1939.

A marriage may be annulled for want of age or for fraud, provided there is no subsequent voluntary cohabitation of parties, and whether there is fraud or subsequent voluntary cohabitation is a factual matter. Op. Atty. Gen. (300B), March 12, 1940.

Boy under 18 cannot secure marriage license even with parents' consent. Op. Atty. Gen. (300a), Aug. 13, 1942.

Person committed to guardianship of state board of control as feeble-minded is incapable of contracting marriage, but if marriage is contracted it is voidable, not void, and party capable of contracting marriage may not have it annulled if he knew that other party was feeble-minded. Op. Atty. Gen. (679k), June 16, 1943.

8582. Action to annul.

Where an annulment of a marriage is fraudulently obtained and husband immediately remarries and dies in a short time as a result of accident, and first wife brings action to set aside the judgment of annulment, in considering the equities of the parties, haste in remarriage was a factor to determine or consider as against second wife, who was acquainted with the deceased husband for only a short time, though she had no knowledge of the former marriage. Bloomquist v. Thomas, 215M35, 9NW(2d)337. See Dun. Dig. 5797.

8584. Not at suit of party capable.

Person committed to guardianship of state board of control as feeble-minded is incapable of contracting marriage, but if marriage is contracted it is voidable, not void, and party capable of contracting marriage may not have it annulled if he knew that other party was feeble-minded. Op. Atty. Gen. (679k), June 16, 1943.

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 or United States prison or any state or United States reformatory subsequent to the marriage; and in such 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, provided that 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 five 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.

8. Continuous separation under decree of limited divorce for more than five years next preceding the commencement of the action, and continuous separation under an order or decree of separate maintenance for a period of two years immediately preceding the commencement of the action. (As amended Act Apr. 24, 1941, c. 406, §1.)

½. In general.

In action to procure a divorce trial court determines credibility of the witnesses and weight to be given their testimony and can conclude that testimony is product of imagination and exaggeration rather than a recital of what actually took place. Rhoads v. R., 208M61, 292 NW760. See Dun. Dig. 2796.

Mere temperamental differences and nervousness of a woman do not require separate maintenance and custody of a child. Rhoads v. R., 208M61, 292NW760. See Dun. Dig. 2778.

It is unnecessary that the plaintiff be corroborated as to each item of evidence, being sufficient if evidence tends in some degree to confirm allegations replied upon for a divorce. Locksted v. L., 208M551, 295NW402. See notes under §9905. See Dun. Dig. 2795.

Divorces and grounds therefor are prescribed by the state where the action is instituted and not at all by the law of the state where the marriage was entered or contracted. Rogers v. Cordingley, 212M546, 4NW(2d)627. See Dun. Dig. 2784b.

A marriage may not be dissolved by agreement of the parties or by the say-so of one of them, and this applies as well to common law marriages as to those solemnized by a person thereto authorized by statute. Rogers v. Cordingley, 212M546, 4NW(2d)627. See Dun. Dig. 2786.

Tribal Indians residing on a reservation may go anywhere and get married, by anyone, including a justice of the peace, and return to the reservation and there become divorced according to usages and customs of the tribe, and without compliance with any state law. Rogers v. Cordingley, 212M546, 4NW(2d)627. See Dun. Dig. 4347a.

3. Cruel and inhuman treatment.

In action for divorce on ground of cruel and inhuman treatment, court might well have permitted testimony as to disposition and temper elements of defendant, but it was not reversible error to exclude where relationship of parties over a long period of time was dwelt upon at length. Locksted v. L., 208M551, 295NW402. See Dun. Dig. 2778.

Evidence held to sustain finding of cruel and inhuman treatment of wife. Id.

A wife beaten, hit, and choked by husband for 28 years was entitled to divorce though she at times fought back. Id.

In action for divorce for cruel and inhuman treatment for 28 years, plaintiff's failure to call as a witness her daughter was merely a factor to be considered. Id. See Dun. Dig. 2795.

5. Desertion.

Wilful desertion is voluntary separation of one of married parties from other or voluntary refusal to renew a suspended cohabitation without justification either in consent or wrongful conduct of other. Lewis v. L., 206M501, 289NW60. See Dun. Dig. 2776.

Rejection of an offer to return home, made by a husband who had previously left the marital domicile, does not constitute desertion when the offer was made during the pendency of a prior divorce action. Id. See Dun. Dig. 2776.

Separation by mutual consent is not grounds for divorce. Id. See Dun. Dig. 2776.

The refusal of a party to a marriage contract to restore a repentant spouse who had previously left the home constitutes desertion if, but only if, the latter attempts in good faith to effect a reconciliation. Id. See Dun. Dig. 2776.

Desertion as a ground for divorce cannot be predicated on a separation under an order or judgment of the court which authorizes or sanctions the same. Bliss v. B., 208M 84, 293NW94. See Dun. Dig. 2776.

6. Habitual drunkenness.

Indulgence in liquor must be so extensive that an enfeebled will, broken down through frequent acquiescence, either prevents or does not desire any active resistance to alcoholic opportunity, but this does not mean that alleged drunkard must have more drunken than sober hours, or become intoxicated every day or even every week, nor that drunkenness shall be at regular periods, nor occur every time one has access to intoxicating liquors, and one may refrain from drink for a considerable time and yet be an habitual drunkard, and an occasional, non-habitual consumption of alcohol, even to excess, does not make consumer an habitual drunkard. Hereid v. Hereid, 209M573, 297NW97. See Dun. Dig. 2777.

Fact that wife's treatment of husband was neither decorous nor refined did not warrant a finding that ill-treatment and not habit caused drinking. Id.

8. Continuous separation under decree.

It is doubtful if statute applies where one is living apart under a decree for separate maintenance and not a decree of limited divorce. Bliss v. B., 208M84, 293NW 94. See Dun. Dig. 2776.

8588. Action—How and where brought—Venue.

District court has power to punish as for contempt wrongful refusal of a husband to pay an allowance ordered for benefit of his wife in an action for separate maintenance. Sybilrud v. S., 207M373, 291NW607. See Dun. Dig. 1703(40).

Reopening of divorce case for taking of additional testimony or to order a new trial is a matter primarily for trial court. Locksted v. L., 208M551, 295NW402. See Dun. Dig. 2799b.

Haddock v. Haddock,201US562, 22SupCtRep525, 50 L.Ed. 867, 5 Ann. Cas. 1 overruled insofar as the theory of that case is that the court of the state where wife resided need not give full force and effect to divorce obtained by the husband in another state wherein husband had established a separate domicile because husband had wrongfully left his wife in the matrimonial domicile and obtained service upon her only by publication. Williams v. North Carolina, 317US287, 63SCR207, 143ALR1273, rev'g 220NC445, 17SE(2d)769. See Dun. Dig. 1530, 1557, 1698, 2784, 5207.

8593. Alimony pending suit.

Plaintiff on appeal from a judgment denying a divorce was allowed attorney's fees and disbursements, though she was unsuccessful, where appeal appeared to be made in good faith and upon reasonable grounds. Rhoads v. R., 208M61, 292NW760. See Dun. Dig. 2804.

Where divorced woman's appeal from partial denial of motion for modification of divorce decree was without merit, she was allowed no attorneys' fees. Coddon v. Coddon, 209M1, 295NW74. See Dun. Dig. 2804.

Attorney's fees of $600 were excessive, but were allowed to stand to include appeal of case. Locksted v. L., 208M551, 295NW402. See Dun. Dig. 2804.

Temporary alimony must be paid without delay. Id. See Dun. Dig. 2802.

A decree of divorce which adjudged allowance of attorney's fees directly to the divorced wife's attorney is an adjudication of the reasonableness of such fees and estops both parties to the divorce action as between them and the attorney from challenging the reasonable value of the services as so determined. Whipple v. Mahler, 215M578, 10NW(2d)771. See Dun. Dig. 2799.

While it is the primary obligation of the husband under a decree of divorce to pay attorney fees adjudicated, nevertheless the reasonableness of the value of the services rendered must be determined by the court, and if there is a promise by the wife to pay for them, express or implied from the request to perform them, the reasonable value is determined by the decree and, in the absence of agreement to the contrary, she is estopped to challenge it. Id.

8596. Custody of children.

Where decree of divorce is silent with respect to support of a child, divorced mother has cause of action against divorced father quasi ex contractu for support furnished child arising out of natural and legal duty of father. Quist v. Q., 207M257, 290NW561. See Dun. Dig. 2800.

Duty of supporting a child rests primarily on the father, even after divorce of parents. Id. See Dun. Dig. 2800.

A divorced wife who has been awarded custody of a child cannot enforce accrued instalments of obligation to support child as provided for in decree when she has intentionally violated its provisions by taking child outside territorial limits of court's jurisdiction. Anderson v. A., 207M338, 291NW508. See Dun. Dig. 2800.

Disposition of custody of children in a divorce case made by trial court will not be reversed upon appeal except for abuse of broad discretion with which court is invested. Locksted v. L., 208M551, 295NW402. See Dun. Dig. 2800.

When there is a contest between parents and courts are required to determine matter of a child's custody, whether in a divorce or a separation case, or a habeas

corpus proceeding, best interest of child is paramount consideration. State v. Price, 211M565, 2NW(2d)39. See Dun. Dig. 2800.

Future welfare of child is principal question to be considered in determining custody of child in a divorce case; part time or divided custody of a child is not desirable; ordinarily, the mother, if a fit person, is given custody of a child of tender years. Menke v. Menke, 213M311, 6NW(2d)470. See Dun. Dig. 2800.

8597. Order may be revised.

Order of trial court modifying divorce decree as to custody of a child will not be disturbed on appeal unless it appears there was an abuse of discretion. Menke v. Menke, 213M311, 6NW(2d)470. See Dun. Dig. 2800.

Evidence justified modification of decree so as to grant custody of child of parties to mother during the summer months. Id.

8602. Property of husband—Permanent alimony.

The allowance of attorneys' fees and other expenses in divorce proceedings is largely a matter of discretion with trial court, and it is established policy of supreme court to be conservative in matter of such allowances and they are to be allowed cautiously and only when necessary. Burke v. B., 208M1, 292NW426. See Dun. Dig. 2804.

An award of alimony to a 30-year old woman of $125.00 a month for thirty months was modified to do away with the time limitation. Id.

Finding of trial court in divorce case that certain realty of defendant might be worth as much as $12000 above encumbrances, was not to be commended when highest figure given, and by plaintiff, was $11500, but was not prejudicial with respect to finding by court that plaintiff was entitled to permanent alimony of $2825, a matter well within discretion of court. Locksted v. L., 208M551, 295NW402. See Dun. Dig. 2803.

Permanent alimony of $2825 with a lien on a farm was modified so as to require payment in installments of $60 a month. Id.

Court in divorce case should at least make such award to wife for support of minor children as will be reasonably adequate to meet father's statutory duty to support his own children. Krueger v. Krueger, 210M144, 297NW 566. See Dun. Dig. 2800.

An award of $10 per month for care, custody, and education of children ranging from 4 to 11 years was clearly inadequate to wife obtaining a divorce and attempting to carry on with a quarter section of land encumbered for $9,600. Id.

Prior to enactment of L. 1901, c. 144, an allowance of alimony could be made out of husband's property but not out of his income, that statute, which is now this section, authorizes an award of alimony out of income in first instance. Dahl v. Dahl, 210M361, 298NW361. See Dun. Dig. 2803(32).

Whether court rightly determined that wife should have a lien upon husband's property was unimportant where court had justifiably enjoined husband from transferring his property until payment of wife's award, compliance with such an order being enforceable in contempt proceedings. Daw v. Daw, 212M507, 4NW(2d)313. See Dun. Dig. 2809.

If defendant's property to be acquired under a will is in form of real estate, it appropriately may be subjected to a specific lien. Id.

Where husband obtained a divorce in another state on constructive service while wife was a resident of this state, a court of this state had jurisdiction of an action to determine alimony where it had the jurisdiction of both parties by personal service, foreign decree having made no provision for alimony. Sheridan v. Sheridan, 213M24, 4NW(2d)785. See Dun. Dig. 2784b.

An annulment decree destroyed marriage relation so that former husband was no longer a "husband" within meaning of Pennsylvania statute placing liability for maintenance on husband of an inmate in an institution maintained in whole or in part by the commonwealth, though the decree provided that the former husband should maintain the former wife during her lifetime at the Pennsylvania hospital or some other suitable place, following which the formed husband paid all bills presented by the county hospital and had no knowledge that commonwealth was making weekly contribution to such county hospital or certified indigents. Commonwealth of Pennsylvania v. Tappan, 215M22, 9NW(2d)18. See Dun. Dig. 7426.

8603. Order for alimony, etc., revised.

To warrant a modification of an allowance fixed by a divorce decree there must be proof of such substantial change in situation of parties from that in which they were when decree was rendered as to justify a modification. Quist v. Q., 207M257, 290NW561. See Dun. Dig. 2805.

Power of court to revise or alter a decree for alimony is very broad. Burke v. B., 208M1, 292NW426. See Dun. Dig. 2805.

Inheritance received by woman obtaining divorce and reduction of defendant's professional and non-professional income held not to justify interference with order fixing alimony. Horeish v. H., 208M588, 295NW53. See Dun. Dig. 2805.

Where husband sued wife for absolute divorce and custody of two children, boys 16 and 10 years old, and defendant defaulted but signed a stipulation that plaintiff have custody of children and that she receive $60 a month alimony for 2 years, and decree followed stipulation, court did not abuse its discretion on defendant's motion for modification in denying change of custody and increasing alimony to 3 years instead of two. Coddon v. C., 209M1, 295NW74. See Dun. Dig. 2805.

Modification of alimony was refused where it appeared divorced husband had assets of same value as at time of decree and substantial earning power. Ellenstein v. Ellenstein, 210M265, 297NW848. See Dun. Dig. 2805.

A wife's misconduct subsequent to granting of divorce is proper element to be considered upon motion by husband for reduction or termination of alimony payments. Martens v. Martens, 211M369, 1NW(2d)356. See Dun. Dig. 2805.

Court's authority to modify alimony allowance is to be exercised cautiously and is to be determined by new facts occurring after judgment, or upon facts existing before judgment of which a party was excusably ignorant at time when judgment was rendered, but a lack of diligence and effort in attemptting to discover and produce that evidence at former trial is a bar to relief by way of a new trial later. Hagen v. Hagen, 212M488, 4NW(2d)100. See Dun. Dig. 2805a.

To warrant modification of an alimony allowance fixed by a divorce decree, there must be proof of substantial changes in the situation of the parties from that in which they were when decree was entered. Id. See Dun. Dig. 2805.

A divorced husband's second marriage is not, standing alone, a circumstance warranting a modification of his duties to his divorced wife as imposed by divorce decree. Id. See Dun. Dig. 2805.

One may not, under the guise of modification of a divorce decree, ask for or obtain the advantages of a new trial in the original suit. Id. See Dun. Dig. 2805a.

On application for modification of alimony plaintiff cannot go behind a decree entered pursuant to his own solemn agreement, approved by his counsel, and determined by court when matter was initially heard and decided, no fraud or inadvertence being charged by anyone in procurement of decree. Id. See Dun. Dig. 2805.

Where court granting divorce and granting property and alimony to wife reserved right to award additioinal alimony when property rights of husband should be ascertained in a probate proceedings, it had jurisdiction to order additional alimony based upon service of order to show cause by mail to defendant in another state if he actually received the order within time required for personal service. Daw v. Daw, 212M507, 4NW(2d)313. See Dun. Dig. 2805.

Power of divorce court is not spasmodic or intermittent, but is broad and comprehensive, not only as to the property rights and remedies of the husband and wife, but even more so as to custody, support, education and right to visit the children. Id. See Dun. Dig. 2800, 2805.

Generally, where right subsequently to apply for alimony is preserved by reservation in decree itself, an application for alimony may be made after rendition of judgment of divorce. Id. See Dun. Dig. 2803.

8604. Security—Sequestration—Contempt.

A divorced husband charged with contempt for disobedience in failing to pay alimony allowed to the wife by the judgment of divorce may excuse the disobedience by showing his inability to obey; but the burden of showing such fact is on him. Ekblad v. E., 207M346, 291NW511. See Dun. Dig. 1703(40).

District court has power to punish as for contempt wrongful refusal of a husband to pay an allowance ordered for benefit of his wife in an action for separate maintenance. Sybilrud v. S., 207M373, 291NW607. See Dun. Dig. 1703(40).

Inability to pay is a good defense. Id. See Dun. Dig. 1703(40).

Court was justified in sentencing defendant for contempt of court for failure to pay alimony, as against his contention that plaintiff did not come into equity with clean hands in that she failed to turn over custody of a son awarded to defendant and that defendant was unable to pay because of his lack of employment. Martin v. Martin, 210M1, 297NW113. See Dun. Dig. 1703.

A husband who has available income may be punished as for contempt for disobedience of an order to pay temporary alimony awarded in an action for separate maintenance, and statute does not require that there be a further order to comply with order making such award. Dahl v. Dahl, 210M361, 298NW361. See Dun. Dig. 1703.

Evidence held to sustain finding of ability to pay temporary alimony and that failure to pay was willful. Id.

Where husband's disobedience of an order awarding wife temporary alimony prejudices her remedy, he may, in discretion of court, be punished by imprisonment under §9794, Mason St. 1927. Id. See Dun. Dig. 1708.

An order adjudging a husband guilty of civil contempt is reviewable on appeal, but not by certiorari. Id. See Dun. Dig. 302, 1400, 1708a.

Sentence of thirty days in county jail was not excessive for willful refusal to pay temporary alimony in suit for separate maintenance. Id. See Dun. Dig. 1708.

Violation by defendant in divorce case of order restraining transfer of property to be acquired under a will may be treated as contempt of court and compliance enforced by coercive means of such a proceedings. Daw v. Daw, 212M507, 4NW(2d)313. See Dun. Dig. 2811.

8607. Effect of divorce—name of wife.
Each state may determine for itself what effect is to be given to divorce decree rendered against one of its own citizens by the court of a foreign state where personal service of process upon defendant is wholly lacking and there is no property belonging to defendant that can be reached within the jurisdiction of such foreign court. Minnesota has recognized foreign divorces insofar as they affect the marriage status, but treats such judgments as in rem and not binding as to alimony and support money. Sheridan v. Sheridan, 213M24, 4NW(2d) 785. See Dun. Dig. 1698, 2784b, 2799, 5207.

LIMITED DIVORCES

8608. Separation. [Repealed.]
Equitable power of court to grant separate maintenance was not abolished by L. 1933, c. 165, abolishing limited divorces. Bliss v. B., 208M84, 293NW94. See Dun. Dig. 2798.

8613. As to alimony and wife's property. [Repealed.]
Allowance of separate maintenance in the sum of $120 a month to wife living in family home and burden of keeping place insured and taxes paid held not excessive where husband was a physician and surgeon in a small community with a gross annual income of $8,000, though he was spending $2,000 to $2,500 a year for maintenance and education of two minor daughters. Sybilrud v. S., 207M371, 291NW606. See Dun. Dig. 2803.

CHAPTER 72
Married Women

8616. Separate legal existence.
Settled policy of Minnesota is that one spouse may not maintain a civil action against other for personal injury caused by other's tort, and that policy forbids a wife from maintaining action for personal injury sustained while a passenger in husband's car in state of Wisconsin where an action would be maintainable. Kyle v. Kyle, 210M204, 297NW744. See Dun. Dig. 4288.

A wife cannot sue her husband for a personal tort, either negligent, or intentional, perpetrated during coverture. Karalis v. Karalis, 213M31, 4NW(2d)632. See Dun. Dig. 4288.

Interest of wife in real estate of her husband is such as to render her a proper party defendant where the title to her husband's real estate is in issue. Cocker v. Cocker, 215M565, 10NW(2d)734. See Dun. Dig. 2818, 4289a.

Wisconsin does not prohibit actions for personal injuries by wife against husband. Darian v. McGrath, 215M389, 10NW(2d)403. See Dun. Dig. 4288.

The marriage relationship, does not, as a matter of law, constitute one spouse driving an automobile the agent or servant of the other present therein as a guest passenger, and consequently in such cases the negligence of the one driving is not imputable to the other. Christensen v. Hennepin Transp. Co., 215M394, 10NW(2d)406. See Dun. Dig. 4262.

Contributory negligence of a husband operating upon a public highway an automobile, of which his wife was a co-owner and in which she was riding at the time of its collision with the truck of a third person, is not imputable to the wife merely because of such facts, either under the common law or the safety responsibility act, in an action by her to recover damages for personal injuries against the third party because of his negligence. Id.

Existence of the marriage relation between the parties does not change their relationship or liabilities with respect to bailed property. Id. See Dun. Dig. 4271a.

8620. Liability of husband and wife.
Christensen v. Hennepin Transp. Co., 10NW(2d)406, 147ALR945.

8621. Contracts between husband and wife.
Conveyances of real property prior to December 29, 1926, by married man to his wife, declared legal and valid. Laws 1941, c. 343.

½. Agency.
Marriage does not of itself create the relation of principal and agent between husband and wife, and agency must be established by contract expressed in words or conduct, as it must be between persons who are not married. Darian v. McGrath, 215M389, 10NW(2d)403. See Dun. Dig. 4262.

1. Contracts relating to realty.
A power of attorney to convey land cannot be granted by a husband to a wife. Op. Atty. Gen. (393b-9-a), June 14, 1943.

3. Notice as to creditors—Burden of proof.
A transfer from husband to wife which renders husband insolvent is fraudlent as to creditors without regard to actual intent if made without a fair consideration, and wife will be held to have notice of contract and debts of husband. Brennan v. Friedell, 212M115, 2NW(2d)547. See Dun. Dig. 3859.

CHAPTER 73
Adoption and Change of Name

8626. Consent, when necessary.
If mother is of sufficient age and discretion to fully realize consequences of her consent, fact that she is a minor and is unmarried would not incapacitate her, nor render consent unnecessary. Op. Atty. Gen., (840B-2), April 11, 1940.

8628. Notice of hearing.—When the parents of any minor child are dead or have abandoned him, and he has no guardian in the state, the court shall order three weeks' published notice of the hearing on such petition to be given; the last publication to be at least ten days before the time set therefor. In every such case the court shall cause such further notice to be given to the known kindred of the child as shall appear to be just and practicable; provided that if there be no duly appointed guardian, a parent who has lost custody of a child through divorce proceedings, and the father of an illegitimate child who has acknowledged his paternity in writing or against whom paternity has been duly adjudged shall be served with notice in such manner as the court shall direct in all cases where the residence is known or can be ascertained. (As amended Apr. 9, 1941, c. 151, §1.)

8629. Decree—Change of name.
Judgment of adoption, though entered after death of one of adoptive parents could not be collaterally attacked. Op. Atty. Gen., (840B), March 12, 1940.

Mineral reservation to the state on registration of land title. Op. Atty. Gen. (311f), Dec. 2, 1942.

8630. Status of adopted child.
Where property is given in trust to pay income to a beneficiary for life with remainder to "lawful issue" of life beneficiary, gift in remainder is to a class, which, absent context or circumstances to show a contrary intention, includes adopted children. Holden's Trust, 207M211, 291NW104. See Dun. Dig. 2722a.

Where alleged adopted father made provision in his will for "my foster daughter", having been prepared by a competent lawyer of long experience, technical words "foster daughter" will be presumed to have been used in that sense. Norman's Estate, 209M19, 295NW63. See Dun. Dig. 2722d.

Section applies to all adopted children, whether adopted prior or subsequent to its passage. Id.

Absent adoption pursuant to statute, a child received into home of foster parents and by them reared as their natural child is allowed to share in estate of foster parents only when a contract to adopt or to give it a share in such estate is clearly proved. Id.

An oral contract to adopt must be established by proof that is clear, cogent and convincing. Id. See Dun. Dig. 99a.

There being no contract to adopt, there can be no estoppel against asserting its non-existence. Id. See Dun. Dig. 99a, 2722d.

8633. Application for change of name.—A person who shall have resided in any county for one year may apply to the district court thereof to have his