

1944 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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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 [Repealed.]**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 [Repealed.]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.*

1/2. 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 fraudulent 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*, 207M 211, 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