

CHAPTER 518

DIVORCE

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518.01 WHAT MARRIAGES VOID. All marriages which are prohibited by law on account of consanguinity, or on account of either or both parties being under the age of 15 years, 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 lifetime of such absent husband or wife, the marriage shall be void only from the time that its nullity is duly adjudged.

[R. L. s. 3569; 1937 c. 407 s. 2] (8580)

518.02 WHAT MARRIAGES 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.

[R. L. s. 3570] (8581)

518.03 ACTION TO ANNUL. When the validity of a marriage is disputed for any of the causes mentioned in section 518.01 or 518.02, 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.

[R. L. s. 3571] (8582)

518.04 INSUFFICIENT GROUNDS FOR ANNULMENT. 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.

[R. L. s. 3572] (8583)

518.05 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.

[R. L. s. 3573] (8584)

518.06 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 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, 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.

[R. L. s. 3574; 1909 c. 443 s. 1; 1927 c. 304; 1933 c. 262 s. 1; 1933 c. 324; Ex. 1934 c. 78; 1935 c. 295; 1941 c. 406] (8585)

518.07 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.

[R. L. s. 3575] (8586)

518.08 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 offense 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 offense 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.

[R. L. s. 3576] (8587)

518.09 ACTION; HOW AND WHERE BROUGHT; VENUE. An action for divorce or separate maintenance 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.

[R. L. s. 3577; 1931 c. 226 s. 1] (8588)

518.10 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.

[R. L. s. 3578] (8589)

518.11 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, com-

missioner, 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. s. 3579; 1909 c. 434; 1913 c. 57 s. 1] (8590)

518.12 TIME FOR ANSWERING. The defendant shall have 30 days in which to answer the complaint. In case of service by publication, the 30 days shall not begin to run until the expiration of the period allowed for publication.

[R. L. s. 3580; 1945 c. 7 s. 1] (8591)

518.13 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 the action to a referee to take and report the evidence therein. When issue is joined, like proceedings shall be had as in civil actions.

[R. L. s. 3581] (8592)

518.14 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.

[R. L. s. 3582] (8593)

518.15 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.

[R. L. s. 3583] (8594)

518.16 CUSTODY OF CHILDREN DURING PENDENCY. 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.

[R. L. s. 3584] (8595)

518.17 CUSTODY OF CHILDREN 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.

[R. L. s. 3585] (8596)

518.18 REVISION OF ORDER. 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.

[R. L. s. 3586] (8597)

518.19 POSSESSION OF WIFE'S REAL ESTATE; WHAT MAY BE DECREED TO HUSBAND. When 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. 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. s. 3587; 1913 c. 189 s. 1] (8598)

518.20 ORDER AS TO WIFE'S PROPERTY. Upon every such dissolution of marriage as is specified in section 518.19, 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.

[R. L. s. 3588] (8600)

518.21 COURT MAY APPOINT TRUSTEE OF ALIMONY. The court may appoint trustees, when 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.

[R. L. s. 3589] (8601)

518.22 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.

[R. L. s. 3590] (8602)

518.23 REVISION, AS TO ALIMONY, AFTER DECREE. 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 these matters which it might have made in the original action.

[R. L. s. 3592] (8603)

518.24 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 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. If any person or party shall disobey such order, he may be punished by the court as for contempt.

[R. L. s. 3593] (8604)

518.25 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.

[R. L. s. 3594] (8605)

518.26 COHABITING AFTER DIVORCE PROHIBITED. 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.

[R. L. s. 3595] (8606)

518.27 EFFECT OF DIVORCE; NAME OF WIFE. When 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. 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.

[R. L. s. 3596] (8607)

518.28 CORROBORATING TESTIMONY REQUIRED. Divorces shall not be granted on the sole confessions, admissions, or testimony of the parties, either in or out of court.

[R. L. s. 4746] (9905)

518.29 ADVERTISEMENT SOLICITING DIVORCE BUSINESS PROHIBITED. Every person who shall advertise, print, publish, distribute, or circulate, or cause to be advertised, printed, published, distributed, or circulated, any pamphlet, card, handbill, circular, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure or obtain, or to aid in procuring or obtaining, any divorce, or the severance, dissolution, or nullity of any marriage, or offering to engage, appear, or act as attorney, counsel, or referee in any suit for divorce, alimony, or the severance, dissolution, or nullity of any marriage, either in this state or elsewhere, shall be guilty of a gross misdemeanor, and punished by imprisonment in the county jail for not more than six months, or by fine of not less than \$100, nor more than \$500.

[R. L. s. 5166] (10461)