CHAPTER 518

DIVORCE

518.01 WHAT MARRIAGES VOID.

HISTORY. R.S. 1851 c. 66 s. 1; P.S. 1858 c. 53 s. 1; G.S. 1866 c. 62 s. 1; G.S. 1878 c. 62 s. 1; G.S. 1894 s. 4785; R.L. 1905 s. 3569; G.S. 1913 s. 7106; G.S. 1923 s. 8580; M.S. 1927 s. 8580; 1937 c. 407 s. 2.

Where a person, whose husband or wife has been absent for five successive years without being known to be living, marries another and later the deserting spouse appears, the later marriage is valid to the time of an annulment by the court. The validity of the later marriage cannot be attacked collaterally. Charles v Charles, 41 M 201, 42 NW 935.

An offense committed prior to the enactment of Laws 1893, Chapter 90, held to be incest. State v Herges, 55 M 464, 57 NW 205.

A marriage contract is a nullity ab initio only where expressly so declared by statute. Being void, it requires no judicial decree for its dissolution. A voidable marriage is valid until dissolved by judicial decree. Either may be the basis of a prosecution for bigamy. The remarriage of persons within six months of their divorce is valid until dissolved by decree. State v Yoder, 113 M 503, 130 NW 10.

The administration of the estate of a deceased person being a proceeding in rem, in case letters of administration be issued to a person not entitled thereto they are voidable and may be revoked, but are not void ab initio. They are effective to the extent necessary to protect those who in good faith have acted in reliance upon them. Fridley v Bank, 136 M 335, 162 NW 455.

In an action to annul a marriage contract upon the ground that one of the parties thereto was an epileptic at the time of the marriage, proof of the fact, in the absence of a showing of fraud, is not sufficient to warrant a decree of annulment, the legislature not having prescribed epilepsy as a ground for annulment. Behsman v Behsman, 144 M 95, 174 NW 611.

Annulment of the first marriage on voidable grounds, and after the date of the second marriage ceremony, did not relieve the second marriage of its bigamous character. State v Richards, 175 M 498, 221 NW 867.

In a prosecution for desertion and non-support of children it appeared that the prosecutrix was married to Warner, who abandoned her. Subsequently and for several years she resided with defendant. Two children were born. Held, the statute on which the prosecution rests refers to legitimate children, and this prosecution must be dismissed. State v Lindskog, 175 M 533, 221 NW 911.

Plaintiff for some years received a pension as the widow of a city fireman. She married Sutton and within a week thereafter instituted an action for annulment of the marriage, which was granted. Held, as the annulment was on voidable grounds, the marriage was sufficiently valid as long as it lasted, so that she forfeited her rights to a pension. Northrup v St. Paul, 193 M 623, 259 NW 185.

Divorce jurisdiction is purely statutory, and the court has no power in the premises except as delegated to it by statute. Held, in the instant case the court, based upon changed financial statute, properly struck from the original decree provision for support of children after majority. Sivertson v Sivertson, 198 M 207, 269 NW 413.

A final judgment in an action for divorce cannot be vacated on the ground that defendant failed to answer through mistake or excusable neglect. While divorce jurisdiction is purely statutory and as such the court possesses only the powers so delegated, it has adequate powers to grant relief to parties. The strict rule of res judicata does not apply to motions in a pending case. Wilhelm v Wilhelm, 201 M 462, 276 NW 804.

Children of bigamous marriages are legitimate. 1934 OAG 46, July 25, 1933.

Where the ceremony is performed outside the state, the marriage of first cousins is probably valid. OAG Sept. 7, 1935 (133b-46).

The clerk may not issue a license to marry to a boy of 17 and a girl of 14, even though they have the consent of parents or guardians. 1940 OAG 151, July 10, 1939.

Notwithstanding the provisions of Laws 1935, Chapter 68, the place of settlement of an illegitimate child follows that of the mother, the place of settlement of the wife that of the husband, even though the marriage was a voidable one. 1940 OAG 233, Sept. 22, 1939.

Application of the doctrine of clean hands to annulment of void marriages. 16 MLR 215.

Effect of marriage on jurisdiction of juvenile courts over a minor. 22 MLR 285.

Descent of homesteads. 25 MLR 73.

A boy under 18 years of age cannot secure a marriage license even with his parents' consent. 1942 OAG 92, Aug. 13, 1942 (300a).

If each of the parties is over 15 years of age the marriage is not void because of fraud or misrepresentation in wrongfully obtaining a license. OAG March 13, 1945 (300a).

518.02 WHAT MARRIAGES VOIDABLE.

HISTORY. R.S. 1851 c. 66 s. 2; P.S. 1858 c. 53 s. 2; G.S. 1866 c. 62 s. 2; G.S. 1878 c. 62 s. 2; G.S. 1894 s. 4786; R.L. 1905 s. 3570; G.S. 1913 s. 7107; G.S. 1923 s. 8581; M.S. 1927 s. 8581.

A contract of marriage may be avoided when brought about by artifice or fraudulent practices, but concealment of personal traits or habits, or vices or bodily health or other infirmities like the habit of kleptomania, is not ground for avoiding a marriage. Lewis v Lewis, 44 M 124, 46 NW 323.

Marriage emancipates a minor child from parental control. The marriage of a person who is not of competent marriageable age is not void but is voidable by a court of competent jurisdiction on the petition and election of the party under the age of consent. State v Lowell, 78 M 166, 80 NW 877.

An action to annul a marriage upon the ground that same was induced by fraud and duress is not an action for a divorce, and the trial court did not abuse its discretion in opening a judgment annulling a marriage and permitting the defendant to answer. Waller v Waller, 102 M 405, 113 NW 1013.

It is present mutual consent, lawfully expressed, which constitutes marriage. Cohabitation is not conclusive evidence. LeSuer v LeSuer, 122 M 407, 142 NW 593.

Concealment by the female of the fact that she was an epileptic is not sufficient warrant for a decree of annulment. Behsman v Behsman, 144 M 95, 174 NW 611.

When the consent of a party to a marriage contract has been obtained by fraud, and there is no subsequent voluntary cohabitation of the parties, the marriage may be annulled at the suit of the injured party, but failure to disclose past insanity, or defect of character or morals, habits and temper does not go to the essence of the contract, and not grounds for annulment. Robertson v Roth, 163 M 501, 204 NW 329.

Defendant lived with Stallings for many years as husband and wife. Stallings at the time had another wife living. After plaintiff's wife died, and Stallings had deserted the defendant, plaintiff and defendant married. Plaintiff was granted an annulment on the ground of fraud on the part of the defendant in keeping from plaintiff the fact of her illicit cohabitation with Stallings. Wemple v Wemple, 170 M 305, 212 NW 808.

In the absence of issue or probable issue, a marriage may be annulled when the defendant was prohibited by law from entering into it because he had been divorced less than six months previously, and he had induced the plaintiff to marry through false representations. Reynolds v Reynolds, 171 M 340, 214 NW 650.

Annulment of defendant's first marriage after his second marriage did not relieve the defendant from prosecution for bigamy. State v Richards, 175 M 498, 221 NW 867.

Plaintiff brought an action for divorce, and defendant by cross-complaint sought annulment. The trial court refused to grant the divorce, but did order an annulment. On appeal the order granting annulment was reversed for the reason that the evidence did not support the findings that plaintiff married defendant with an intention not to perform her marital obligations. Osborn v Osborn, 185 M 300, 240 NW 894.

Marriage of a widow terminates her right to a fire department pension by a second marriage even though such second marriage is at once revoked for voidable reasons. Northrup v St. Paul, 193 M 623, 259 NW 185.

Where parties married in Iowa, the husband being under 21 years, the husband was entitled to an annulment for non-age, and the annulment became effective as of the date of the decree. VonFelden v VonFelden, 212 M 54, 2 NW(2d) 426.

Settlement of illegitimate child follows the mother, and of the wife that of her husband, and an annulment of marriage does not change the pauper settlement. OAG Aug. 4, 1938 (339-2); 1940 OAG 233, Sept. 22, 1939.

Jurisdiction to annul marriage. 16 MLR 398.

518.03 ACTION TO ANNUL.

HISTORY. R.S. 1851 c. 66 s. 3; P.S. 1858 c. 53 s. 3; G.S. 1866 c. 62 s. 3; G.S. 1878 c. 62 s. 3; G.S 1894 s. 4787; R.L. 1905 s. 3571; G.S. 1913 s. 7108; G.S. 1923 s. 8582; M.S. 1927 s. 8582.

Where a person whose wife or husband had been absent for five successive years without its being known whether or not the absent spouse survives, marries, the marriage is valid until annulled by a court of competent jurisdiction in an action for the purpose and having the parties before it. The validity of the marriage cannot be attacked collaterally. Charles v Charles, 41 M 201, 42 NW 935.

In an action for annulment of a marriage, void or voidable, the complainant must have resided in the state one year immediately preceding the institution of the action. In case of an insane defendant, good practice would require the appointment of a guardian ad litem to protect the interests of the unfortunate at time of trial. Wilson v Wilson, 95 M 464, 104 NW 300.

Where a marriage is annulled the statutory waiting period must elapse before marrying again. 1922 OAG 443, Dec. 19, 1921.

Jurisdiction to annul a marriage. 16 MLR 398.

Allowance of alimony in case of annulment. 23 MLR 387.

Descent of homesteads. 25 MLR 73.

518.04 INSUFFICIENT GROUNDS FOR ANNULMENTS.

HISTORY. R.S. 1851 c. 66 s. 5; P.S. 1858 c. 53 s. 5; G.S. 1866 c. 62 s. 4; G.S. 1878 c. 62 s. 4; G.S. 1894 s. 4788; R.L. 1905 s. 3572; G.S. 1913 s. 7109; G.S. 1923 s. 8583; M.S. 1927 s. 8583.

An annulment on the ground of insanity of the defendant at the time of marriage must be such as to render the person incapable of assenting to the marriage. It does not include personal traits, or defects of character or habits or reputation, or a propensity toward kleptomania. Lewis v Lewis, 44 M 124, 46 NW 323.

Relator, 32 years of age, married a girl under 14 years, and the next day her father, the defendant, forcibly took the girl home. Plaintiff obtained a writ of habeas corpus, which was dismissed by the trial judge. The appellate court, in reversing the trial court, held the marriage was valid until set aside, and the father had no legal right to restrain the girl from living with her husband. Scott v Lowell, 78 M 166, 80 NW 877.

Cohabitation is not conclusive evidence of marriage, and is rebutted by conduct indicating non-marriage. LeSuer v LeSuer, 122 M 407, 142 NW 593.

Application of the clean hands doctrine to annulment of void marriages. 16 MLR 215.

518.05 NOT AT SUIT OF PARTY CAPABLE.

HISTORY. R.S. 1851 c. 66 s. 6; P.S. 1858 c. 53 s. 6; G.S. 1866 c. 62 s. 5; G.S. 1878 c. 62 s. 5; G.S. 1894 s. 4789; R.L. 1905 s. 3573; G.S. 1913 s. 7110; G.S. 1923 s. 8584; M.S. 1927 s. 8584.

The courts are not authorized to decree a marriage contract void on the ground of insanity except for such want of understanding in such party as to render him or her incapable of assenting to the contract. Lewis v Lewis, 44 M 124, 46 NW 323.

518.06 GROUNDS FOR DIVORCE.

HISTORY. R.S. 1851 c. 66 s. 7; 1855 c. 17 s. 4; P.S. 1858 c. 53 s. 7; G.S. 1866 c. 62 ss. 6, 7; G.S. 1878 c. 62 ss. 6, 7; G.S. 1894 ss. 4790, 4791; 1895 c. 40; R.L. 1905 s. 3574; 1909 c. 443 s. 1; G.S. 1913 s. 7111; G.S. 1923 s. 8585; 1927 c. 304; M.S. 1927 s. 8585; 1933 c. 262 s. 1; 1933 c. 324; Ex. 1934 c. 78; 1935 c. 295; 1941 c. 406.

1. **Adultery**
2. **Impotency**
3. **Cruel and inhuman treatment**
4. **Sentenced to imprisonment**
5. **Desertion**
6. **Drunkenness**
7. **Insanity**
8. **Continuous separation**
9. **Generally**

1. Adultery

In an action for divorce, upon any other ground than that of adultery, the adultery of the plaintiff is not a bar to the action; but if plaintiff in her complaint claims alimony, her adultery may be pleaded and proved as a defense, in whole or in part, to the claim. Buerfening v Buerfening, 23 M 563.

In the statute regarding divorce, as distinguished from the criminal statute, the word "adultery" includes illicit intercourse by a husband with an unmarried woman. Pickett v Pickett, 27 M 299, 7 NW 144.

Where in an action for divorce brought by the husband on the ground of alleged adultery he is unable to sustain his charge by proof, the decree was properly granted to the wife on her cross-bill of cruel and inhuman treatment. Gall v Gall, 165 M 291, 206 NW 450.

2. Impotency

Legal impotency is an incapacity that admits neither copulation nor procreation. The incapacity must be incurable. Payne v Payne, 46 M 467, 49 NW 230.

3. Cruel and inhuman treatment

The doctrine that what is once litigated to final judgment cannot be retried between the same parties governs divorce equally with other civil actions. A malicious and groundless charge of adultery against the wife is "cruel and inhuman treatment" within the divorce statute. Wagner v Wagner, 36 M 239, 30 NW 766.

In an action for divorce on the ground of cruelty, evidence of the conduct of the parties, and act not specially pleaded, antedating the specific charge, may be received as confirmatory and cumulative evidence; provocation disproportionate to the wrongs suffered is insufficient in justification; the mere refusal to share the same bed does not in itself constitute desertion. Segelbaum v Segelbaum, 39 M 258, 39 NW 492; Westphal v Westphal, 81 M 242, 83 NW 988; Haver v Haver, 102 M 235, 113 NW 382.

A decree of mensa et thoro does not bar an action for absolute divorce on grounds of habitual drunkenness. Evans v Evans, 43 M 31, 44 NW 524.

Cruelty in the marriage relation may be the subject of condonation, and in the instant case evidence of renewal of conjugal intercourse was sufficient to justify an inference of condonation. Clague v Clague, 46 M 461, 49 NW 198.

A systematic course of illtreatment, consisting of continued scolding and fault-finding, using unkind language, studied contempt, and many other petty acts of a malicious nature, when sufficiently long continued and when producing sufficiently serious results, may constitute cruel and inhuman treatment and be sufficient ground for granting a divorce. Marks v Marks, 56 M 264, 57 NW 651; 62 M 212, 64 NW 561.

The wife brought an action in divorce on grounds of drunkenness and cruel and inhuman treatment. The husband filed a cross-bill alleging cruel and inhuman treatment by the wife. Neither proved their case, and the unproved allegation as to drunkenness held not to be cruel and inhuman treatment. Reibeling v Reibeling, 85 M 383, 88 NW 1103; Calahan v Calahan, 88 M 94, 92 NW 1130.

The statute does not require that the complainant be corroborated as to each item of testimony given in support of the complaint. It is sufficient if the corroborating evidence tends in some degree to support and confirm the allegations relied upon for divorce. Clark v Clark, 86 M 249, 90 NW 390; Hertz v Hertz, 126 M 65, 147 NW 825.

Where the husband brings an action against the wife for cruel and inhuman treatment, and the wife files a cross-bill on the same grounds and asks for separate maintenance, a finding may be made for the wife, including attorney fees and support money. Baier v Baier, 91 M 165, 97 NW 671.

Prior to the adoption of Revised Laws 1905 a sentence to prison or a state reformatory did not present grounds for divorce. Dion v Dion, 92 M 278, 100 NW 1101.

Condoned cruelty will be revived by subsequent misconduct of the guilty party of such a nature as to create a reasonable apprehension that the cruelty will be repeated, even if such subsequent misconduct be not in itself sufficient to warrant a divorce. Cochran v Cochran, 93 M 284, 101 NW 179.

Repeated charges by the wife of infidelity on the part of the husband, continuing over a period of 18 years, some of the charges being known by her to be untrue when she made them, and other charges she was unable to prove, constitute sufficient grounds for divorce. Williams v Williams, 101 M 400, 112 NW 528.

While there was proof of cruel and inhuman treatment on the part of the husband defendant, the conduct of the wife was such as to equal or exceed that of the husband, and the finding of the trial court for the wife plaintiff was reversed. Jokela v Jokela, 111 M 403, 127 NW 391.

The courts have jurisdiction to decree a divorce for any cause allowed by its laws, notwithstanding the fact that the defendant was at no time a resident of this state, and without regard to the fact that the offense was committed outside of this state, and notwithstanding the fact that the parties were not living together when the offense was committed. Rose v Rose, 132 M 340, 156 NW 664.

In an action by a wife for a divorce in which she fails to establish cruel and inhuman treatment, and the parties having been living apart, the court may award the children to the wife's custody and require the husband to support them. Jacobs v Jacobs, 136 M 190, 161 NW 525.

The evidence supports the findings that a husband was guilty of cruelty entitling his wife to a divorce, in that he had frequently and unjustifiedly accused her of marital infidelity. Eaton v Eaton, 161 M 293, 201 NW 289.

In an action by the wife on grounds of cruel and inhuman treatment, evidence of witnesses generally as to the defendant's disposition and temper are admissible. Dauer v Dauer, 169 M 148, 210 NW 878.

Conduct and association of spouse with one of the opposite sex, carried on against the protest of the one wronged and of a character justifying the belief that the object is criminal, may constitute cruel and inhuman treatment within the meaning of the divorce statute. Tschida v Tschida, 170 M 235, 212 NW 193.

Plaintiff sued on grounds of cruel and inhuman treatment. The husband defendant, who filed a cross-bill on the same grounds, was properly granted a decree. Brodsky v Brodsky, 172 M 250, 215 NW 181.

On appeal from a judgment after trial by the court, no motion for new trial having been made, and no errors in trial being involved, the questions for review are limited to the consideration of whether the evidence sustains the finding of fact and conclusions arrived at in granting the decree. Potvin v Potvin, 177 M 53, 224 NW 461.

Plaintiff sued alleging desertion, and the husband filed a cross-bill alleging cruel and inhuman treatment. Held, where the cross-bill did not demand a divorce, it was proper for the trial court to permit an annulment and grant a decree to the defendant. James v James, 179 M 266, 224 NW 128.

In an action by the husband against the wife on grounds of cruel and inhuman treatment, and cross-bill by the wife on same grounds, the action of the trial court granting a decree to the husband is sustained. Eller v Eller, 182 M 133, 233 NW 823.

Where in an action by the wife on the grounds of cruel and inhuman treatment the evidence satisfied the trial court that the plaintiff is as much to blame as the defendant, the wife's action was properly dismissed, and the remark by the trial judge that "plaintiff must come into the court with clean hands" did not indicate a wrong application of the law. Thorem v Thorem, 188 M 153, 246 NW 674.

Cruel and inhuman treatment may consist of actual or threatened personal violence, or a systematic course of ill-treatment consisting of continued scolding and fault-finding, using unkind language, and petty acts of a malicious nature. Bickle v Bickle, 194 M 375, 260 NW 361; Monson v Monson, 195 M 257, 262 NW 641.

In an action by the wife on grounds of cruel and inhuman treatment, the finding of the trial judge that "family quarrels and wrangling and discord" did not constitute the cruelty on which to base a decree of divorce, is sustained. Tompkins v Tompkins, 204 M 323, 283 NW 485.

Wife guilty of cruel and inhuman treatment. Dahlke v Dahlke, 216 M 111, 11 NW(2d) 825.

Evidence of wife's actions in interfering with husband's business, fault-finding, deserting husband and concealing her whereabouts after withdrawing and concealing his savings account, resulting in husband's illness, warranted divorce for wife's cruel and inhuman treatment. Crowley v Crowley, 219 M 341, 18 NW(2d) 40.

Cruelty as a ground for divorce. 16 MLR 256.

4. Sentence to imprisonment

Prior to the adoption of Revised Laws 1905, a sentence to the state reformatory, even for a felony, did not present ground for a divorce. Dion v Dion, 92 M 278, 100 NW 1101.

The language of the statute does not limit the cause to future sentences of imprisonment, the only limitation being that the sentence must be one imposed after the marriage. Long v Long, 135 M 259, 160 NW 687.

5. Desertion

A district court judgment adjudging that the husband pay a monthly sum of $30.00 to the wife until further order of the court is construed to be implied authority to the wife to live separately and apart from her husband, and such separation will not be a basis for an action for desertion. Weld v Weld, 27 M 330, 7 NW 267.

Where the parties are shown to have continued to live together as husband and wife, and other marital duties are observed, a refusal to occupy the same bed does not, by itself, constitute desertion. Segelbaum v Segelbaum, 39 M 258, 39 NW 492.

A desertion does not cease to be such by reason of action prosecuted for a divorce by the deserting party, if the continuance of the separation is for reasons foreign to those for which such actions are prosecuted, and in the instant case the time during which an action for divorce on the ground of adultery was pending does not toll the statute as to desertion. Wagner v Wagner, 39 M 394, 40 NW 360.

Where the husband told the wife that unless she refrained from interfering in a certain matter she could leave, and she did leave, and they remained separate

for a number of years, an action by the husband on grounds of desertion was denied, the wife testifying that she had never refused to return. Hosmer v Hosmer, 53 M 502, 55 NW 630.

Evidence considered, and sustains the holding that the wife was not in fault, and her action in living apart from her husband was not desertion. Grant v Grant, 64 M 234, 66 NW 983.

Misconduct of the plaintiff may justify desertion, even if not sufficient to serve as basis for a divorce. Stocking v Stocking, 76 M 292, 79 NW 172 (668).

Parties to divorce proceedings should live separately pending litigation, and an action for divorce cannot be maintained upon such separation. The period of legitimate separation ends with pendency of the action, and such time as the separation covers not included in the pendency of the divorce may be computed to make the time on which to found an action in desertion. Hurning v Hurning, 80 M 373, 83 NW 342.

The wife sued for divorce on the ground of desertion and nonsupport. On trial two years later defendant, the plaintiff consenting, was allowed to amend his answer and allege desertion on the part of the wife. There was a finding for the defendant. It was not error, and distinguishing Hurning v Hurning, for the court to include the time during which the case was pending in the statutory time of the desertion. Tolzman v Tolzman, 130 M 342, 153 NW 745.

In refusing a change of venue for the convenience of witnesses, the trial court did not exceed its discretion. Mullen v Mullen, 135 M 179, 160 NW 494.

A decree of separation from bed and board forever is not a bar to a subsequent action for absolute divorce on the same ground, and desertion may be predicated on the conduct of the defendant in such action. Kunze v Kunze, 153 M 5, 189 NW 447.

Where in an action by the husband on the ground of desertion, the wife alleges such cruel and inhuman treatment as to warrant her in leaving, and evidence is adduced on both sides, the finding of the trial court will not be disturbed. Failes v Failes, 166 M 137, 207 NW 200.

Plaintiff's evidence, in an action for divorce on the ground of desertion, failed to establish desertion arising out of the wife's qualified refusal to come to St. Paul to live until the husband was able to establish and support a home. Taylor v Taylor, 177 M 428, 225 NW 287.

In an action for divorce the evidence is sufficient to establish wilful desertion; and the statutory necessary corroboration to plaintiff's testimony need not rest on positive evidence but may be established by the circumstances of the case. Graml v Graml, 184 M 324, 238 NW 683.

The clause, "Plaintiff alleges that without cause or provocation, the defendant, in the month of January, 1925, did desert this plaintiff, and said wilful desertion has existed for more than one year prior to the commencement of this action", is a sufficient allegation on which to grant a decree. Hoogesteger v Ward, 186 M 419, 243 NW 716.

Separation by mutual consent is not grounds for divorce. Wilful desertion is voluntary separation of one of the married parties from the other or the voluntary refusal to renew a suspended cohabitation without justification. Lewis v Lewis, 206 M 501, 289 NW 60.

Desertion as ground for divorce cannot be predicated on a separation under an order or judgment of the court which authorizes or sanctions same. Bliss v Bliss, 208 M 84, 293 NW 94.

Where both parties claimed desertion by the other, the evidence clearly shows the wife deserted her husband. Gerard v Gerard, 216 M 543, 13 NW(2d) 606.

Desertion based upon refusal of marital intercourse. 16 MLR 263.

6. Drunkenness

A decree of separation from bed and board forever does not bar an action for divorce on the ground of habitual drunkenness. Evans v Evans, 43 M 31, 44 NW 524.

Habitual drunkenness, as a ground for divorce, must be shown to have been indulged in one year "immediately preceding the filing of the complaint." Reynolds v Reynolds, 44 M 132, 46 NW 236.

An habitual drunkard within the divorce statute is one who, by frequent, periodic indulgence in liquor to excess, has lost the power or desire to resist alcoholic opportunity with the result that intoxication becomes habitual rather than occasional. Habit, and not misconduct, causing excessive indulgence is sufficient. Heried v Heried, 209 M 573, 297 NW 97.

7. Insanity

Inasmuch as insanity (prior to the enactment of Laws 1927, Chapter 304) is not a ground for divorce, acts of cruel and inhuman treatment resulting from a diseased mind are no cause for divorce. Kunz v Kunz, 171 M 258, 213 NW 906.

8. Continuous separation

Where a husband, sued for a limited divorce, did not defend and the wife by default obtained a decree, the husband is not estopped from instituting an action for divorce against the wife on grounds of misconduct. Estoppel only operates as to issues litigated and decided. The limited decree is not a bar because it does not operate alike on both parties and because the wife has the right to institute an action for absolute divorce. Gustafson v Gustafson, 178 M 1, 226 NW 412.

Laws 1933, Chapter 324, approved five days after the approval of Laws 1933, Chapter 262, did not repeal the latter, and both amended section 518.06, and received from the body of their origin final action only a few days apart. The amendment by chapter 262 adding a ground for absolute divorce is retrospective as well as prospective. Gerdts v Gerdts, 196 M 599, 265 NW 811.

Separation for a period of five years, only three of which was under a decree of limited divorce, does not constitute grounds for absolute divorce under the statute. Moravitz v Moravitz, 205 M 389, 285 NW 884.

Laws 1933, Chapter 165, abolishing limited divorces, did not take from the courts the equitable power to grant separate maintenance. Prior to the enactment of Laws 1941, Chapter 406, desertion as a ground for divorce could not be predicated upon a separation under order of court. Bliss v Bliss, 208 M 84, 293 NW 94.

Statute providing grounds for divorce in District of Columbia additional to previous grounds intended to liberalize and enlarge divorce laws both as to existing and prospective conditions. Tipping v Tipping, 82 F(2d) 828.

New grounds for divorce. 18 MLR 63, 466; 20 MLR 71.

9. Generally

Divorce proceedings are purely statutory, and the court has no power in the premises except as delegated to it by statute, and the trial court was within its powers in modifying the original judgment regarding support of children after majority. Sivertsen v Sivertsen, 198 M 207, 269 NW 413.

The state is interested in preserving the home whenever possible, and the exclusion of divorce cases from the provisions of sections 543.13, 544.32, does not affect the inherent power of the court to grant relief to a party who has been denied an opportunity to defend in a divorce action under such circumstances as amount to a fraud on the administration of justice. Cahaley v Cahaley, 216 M 175, 12 NW(2d) 182.

Wife's suit for divorce or separate maintenance terminates with the death of the husband. Maruska v Erickson, 21 F. Supp. 841.

518.07 RESIDENCE OF COMPLAINANT.

HISTORY. R. S. 1851 c. 66 s. 8; P.S. 1858 c. 53 s. 8; G.S. 1866 c. 62 s. 8; G.S. 1878 c. 62 s. 8; G.S. 1894 s. 4792; R.L. 1905 s. 3575; G.S. 1913 s. 7112; G.S. 1923 s. 8586; M.S. 1927 s. 8586.

That an action was tried in a county other than that declared by statute the proper county for its trial does not go to the jurisdiction, and collusion between the parties to an action for divorce, a decree having been ordered, does not affect the jurisdiction, nor render the judgment void. In re Ellis Estate, 55 M 401, 56 NW 1056.

The husband, who resided and had his property in Minnesota, instituted an action against the wife who for two years had resided in Oregon. Divorce was decreed as prayed for in the complaint, including alimony to the defendant, who made no appearance. The instant case is based upon an action for alimony by the wife. The trial court sustained a demurrer and, distinguishing Thurston v Thurston, 58 M 279, 59 NW 1017, was sustained upon appeal. Sprague v Sprague, 73 M 474, 76 NW 268.

A divorce granted in a state in which neither party is domiciled or resident is void for want of jurisdiction. The residence of the plaintiff is jurisdictional and must be alleged in the complaint. An allegation in the plaintiff's complaint may be traversed and if the allegation is found untrue the court may not grant a divorce. Thelen v Thelen, 75 M 433, 78 NW 108; Salzbrun v Salzbrun, 81 M 287, 83 NW 1088; Wilson v Wilson, 95 M 464, 104 NW 300.

The defendant appeared specially and objected to the jurisdiction of the court on the ground the plaintiff had not been a resident of the state for one year. Plaintiff was allowed to testify orally, filing no affidavits. The court held that the residence was sufficient to give jurisdiction. The trial court was sustained on appeal. Meddick v Meddick, 204 M 113, 282 NW 676.

The courts of state of domicile of parties to a divorce suit have jurisdiction to decree divorce in accordance with such state's laws for any cause allowed thereby, regardless of place of parties' marriage or commission of offense for which divorce is granted, and divorce so obtained is valid everywhere. Warner v Warner, 219 M 59, 17 NW(2d) 58.

Problems in jurisdiction in divorce cases. 13 MLR 525.

518.08 DENIAL, THOUGH ADULTERY BE PROVED.

HISTORY. R.S. 1851 c. 66 s. 9; P.S. 1858 c. 53 s. 9; G.S. 1866 c. 62 s. 9; G.S. 1878 c. 62 s. 9; G.S. 1894 s. 4793; R.L. 1905 s. 3576; G.S. 1913 s. 7113; G.S. 1923 s. 8587; M.S. 1927 s. 8587.

Where a wife fails to establish her allegations and the court is unable to grant a divorce, and the parties living apart, the court under its inherent powers may grant custody of the children to the mother and impose upon the husband terms for their support. Jacobs v Jacobs, 136 M 190, 161 NW 525.

In the husband's action for divorce it was found that the wife was guilty of adultery, but the act had been condoned by the husband; and a divorce was granted to the wife on a cross-complaint alleging cruel and inhuman treatment. Howard v Howard, 171 M 85, 212 NW 738.

Defense of recrimination is a counter charge by defendant in a divorce suit that plaintiff has been guilty of an offense constituting ground for divorce. The doctrine of comparative rectitude is expressly rejected in Minnesota. Where both parties are guilty of cruel and inhuman treatment, plaintiff is not entitled to a divorce and action should be dismissed, notwithstanding that there are no recriminatory defenses stated in Minnesota statutes other than adultery. Hove v Hove, 219 M 590, 18 NW(2d) 580.

Revival of offense condoned. 6 MLR 73.

Recrimination; doctrine of comparative rectitude. 14 MLR 94.

Recrimination; clean hands doctrine. 17 MLR 663.

Effect of lapse of time and repetition and renewal of condoned offenses. 18 MLR 80.

Connivance; adultery brought about by plaintiff's agents. 18 MLR 223.

Knowledge or belief as a prerequisite to condonation. 21 MLR 408.

518.09 ACTION; HOW AND WHERE BROUGHT.

HISTORY. R.S. 1851 c. 66 s. 10; P.S. 1858 c. 53 s. 10; G.S. 1866 c. 62 s. 10; G.S. 1878 c. 62 s. 10; G.S. 1894 s. 4794; R.L. 1905 s. 3577; G.S. 1913 s. 7114; G.S. 1923 s. 8588; M.S. 1927 s. 8588; 1931 c. 226 s. 1.

In the district (of the at that time seventh judicial district) for the attached counties of St. Louis, Lake, Carlton, and Itasca, being that in which an action for divorce is brought, a complaint therein, entitled of said attached counties, contains the name of the county in which the action is brought as required by statute. Young v Young, 18 M 90 (72).

A district court judgment in an action between husband and wife, adjudging that the husband pay to the wife $30.00 per month for her separate support and maintenance, is implied authority for the wife to live separately, and such living on her part, though accompanied by a refusal to live with her husband, is not an act of desertion. Weld v Weld, 27 M 330, 7 NW 267.

In an action on the grounds of cruelty, evidence of the conduct of the parties, and acts not specially pleaded, and antedating the charges specifically made in the complaint, may be received as confirmatory and cumulative evidence in support of the facts pleaded. Segelbaum v Segelbaum, 39 M 258, 39 NW 492.

A desertion does not cease to be such by reason of the pendency of actions prosecuted for a divorce by the deserting party, if the continuance of the separation is for reasons foreign to those for which such actions are prosecuted. Wagner v Wagner, 39 M 394, 40 NW 360.

A decree from bed and board under the provisions of General Statutes 1878, Chapter 62, Section 30, and remaining in force, does not bar an action for an absolute divorce, upon any of the grounds specified by statute. Evans v Evans, 43 M 31, 44 NW 524.

Habitual drunkenness, as a ground for divorce, must be shown to have been indulged in for one year "immediately preceding the filing of the complaint." Reynolds v Reynolds, 44 M 132, 46 NW 236.

Allegations of desertion not sustained by evidence. Hosmer v Hosmer, 53 M 502, 55 NW 630; Grant v Grant, 64 M 234, 66 NW 983.

A husband brought an action for divorce in the county of his domicile, and had copies of the papers served upon the wife, who was temporarily in another state. The wife made no appearance and a decree was entered allowing alimony. The court having jurisdiction of the person and property, a demurrer to the complaint of the wife, filed at a subsequent date and asking alimony, was properly sustained. Sprague v Sprague, 73 M 474, 76 NW 268.

In an action on the ground of desertion, the plaintiff must allege and prove desertion for a full year next before the commencement of the action. Stocking v Stocking, 76 M 292, 79 NW 172.

Under the statute all actions for divorce must be commenced in the county in which the plaintiff resides; but such actions are to be tried, if the defendant serves and files the moving papers for a change of venue, in the county where the defendant resides. The court has certain powers of discretion as to the place of trial. Hurning v Hurning, 80 M 373, 83 NW 342.

Prior to the adoption of Revised Laws 1905, incarceration in the state reformatory did not present grounds for divorce. Dion v Dion, 92 M 278, 100 NW 1101.

Condoned cruelty is revived by subsequent misconduct of such a nature as to create a reasonable apprehension that the cruelty will be repeated, even if the subsequent misconduct be not in itself sufficient to warrant a divorce. Cochran v Cochran, 93 M 284, 101 NW 179.

The rule in Hurning v Hurning, 80 M 373, so far modified by Revised Laws 1905 that all actions for divorce shall be tried in the county wherein the plaintiff resides, unless changed by consent of parties, or when it shall appear that an impartial trial cannot be had therein, or that the convenience of witnesses and ends of justice would be promoted by a change. Degnan v District Court, 110 M 501, 126 NW 133.

Divorce decree granted on grounds of desertion, even though the allegations of the complaint as to cruel and inhuman treatment are not adequately supported by the evidence. Wandersee v Wandersee, 132 M 321, 156 NW 348.

Since the enactment of Laws 1909, Chapter 443, imprisonment in a state prison or state reformatory of any state is ground for divorce. Long v Long, 135 M 259, 160 NW 687.

The duty of a father to provide for his children continues whether they remain in his custody or not, and in an action for a divorce where the wife fails to

establish facts authorizing divorce or a decree of separation, but where the parties are living apart, the court may award the custody of the children to her and require the husband to contribute toward her support. Jacobs v Jacobs, 136 M 190, 161 NW 525.

The parties resided in Minnesota for many years. Defendant went to the state of Washington and obtained a divorce, conceded to be valid. There was no determination as to alimony. The Washington action was in rem. The res was the marriage status and over that the Washington court had jurisdiction and might destroy it, and did. But the judgment in Washington was not res judicata as to alimony, and this action started by plaintiff is proper as far as allowance of alimony is concerned. Searles v Searles, 140 M 385, 168 NW 135.

A decree of separation from bed and board forever is not a bar to a subsequent action for absolute divorce on the same ground. Kunze v Kunze, 153 M 5, 189 NW 447.

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 had no authority to grant a divorce to such party, and a motion to amend a complaint and asking for a separation and support is in effect a withdrawal of the demand for a divorce and should be granted as a matter of right. Brodsky v Brodsky, 164 M 102, 204 NW 915.

A suit for divorce abates at the death of either party, but where in the lifetime of the parties a court has determined all the issues and made his order directing that a decree of divorce be entered, and nothing remains to be done except the clerical work of entering judgment in the judgment book, such judgment may be entered nunc pro tunc after the death of the complainant. Tikalsky v Tikalsky, 166 M 468, 208 NW 180.

Where in a divorce action the issues of fact were all tried to the court, the plaintiff was entitled to have the facts found and the conclusions of law stated in writing, and judgment entered accordingly. Morrissy v Morrissy, 172 M 72, 214 NW 783.

The denial by the district court of a motion of the defendant to change the place of trial of an action for divorce, brought in the proper county, upon the ground that the convenience of witnesses and the ends of justice will be promoted, may be reviewed on mandamus from the supreme court. Whether the place of trial should be changed for the causes is largely in the discretion of the trial court, and in the instant case there was no error. Nesseth v District Court, 186 M 513, 243 NW 692.

In matters of divorce and alimony the district court has no jurisdiction not delegated to it by statute. A remedy at law which is practically ineffective will not bar equitable relief. The obligation imposed upon a divorced husband by a South Dakota decree to pay alimony to the divorced wife will be considered here as remaining one for alimony and enforceable as such, and not as an ordinary debt. Ostrander v Ostrander, 190 M 547, 252 NW 449.

The equitable action for separate maintenance was not abolished by Laws 1933, Chapter 165, repealing the statute authorizing actions by the wife for limited divorce. Barich v Barich, 201 M 34, 275 NW 421.

The district court has power to punish as for contempt the wrongful refusal of a husband to pay an allowance ordered for the benefit of his wife in an action for separate maintenance. Sybilrud v Sybilrud, 207 M 373, 291 NW 607.

The district court has such jurisdiction and powers as are granted by statute, and no others. Warner v Warner, 219 M 59, 17 NW(2d) 58.

Conflict of laws as to domicile. 15 MLR 671.

Adequacy of ineffective remedy at law. 16 MLR 233.

518.10 REQUISITES OF COMPLAINT.

HISTORY. R.S. 1851 c. 66 ss. 10, 11; P.S. 1858 c. 53 ss. 10, 11; G.S. 1866 c. 62 s. 11; G.S. 1878 c. 62 s. 11; G.S. 1894 s. 4795; R.L. 1905 s. 3578; G.S. 1913 s. 7115; G.S. 1923 s. 8589; M.S. 1927 s. 8589.

The district court of the attached counties of St. Louis; Lake, Carlton, and Itasca, being that in which an action for divorce is brought, a complaint therein,

entitled of said counties, contains the name of the county in which the action is brought as required to do by statute. Young v Young, 18 M 90 (72).

An order striking out portions of a pleading is appealable, but a refusal to strike out is not. Statements of issuable facts, not mere evidence, relating to the custody of children, may be a part of the allegations in a complaint. Vermilye v Vermilye, 32 M 499, 21 NW 736.

In an action by a wife for divorce from bonds of matrimony on grounds of cruelty and inhuman treatment, the court may grant a separation from bed and board if the evidence warrants it, and the plaintiff requests it, but a judgment on the merits against the wife in an action for absolute divorce is a bar to any subsequent action by her for a limited divorce on the same grounds. Wagner v Wagner, 36 M 237, 30 NW 766.

In an action for divorce on the ground of cruelty, evidence of the conduct of the parties, and acts not specially pleaded, and antedating the charges specifically made in the complaint, may be received as confirmatory and cumulative evidence of the facts pleaded. Segalbaum v Segalbaum, 39 M 258, 39 NW 492.

The charge of adultery must state definitely time, place, and person, or, when called on to make the pleading more definite and certain, the party must show an excuse for not doing so. Freeman v Freeman, 39 M 370, 40 NW 167.

Condonation may be implied from conduct, and cruelty in the marriage relation may be the subject of condonation. Clague v Clague, 46 M 561, 49 NW 198.

Facts which would entitle plaintiff to a limited divorce may be joined in a complaint with those justifying an absolute divorce, and thereupon relief may be sought in alternative form. Grant v Grant, 53 M 181, 54 NW 1059.

Where the husband obtained a decree of divorce through service on the wife temporarily in another state, the wife making no appearance, and alimony being allocated to the wife by the decree, the matter of the allowance of alimony is res judicata. Sprague v Sprague, 73 M 474, 76 NW 268.

An allegation that the plaintiff has resided in this state one year immediately preceding the bringing of the action is jurisdictional and must be pleaded, and if traversed it must be proven. Thelen v Thelen, 75 M 433, 78 NW 108; Salzbrun v Salzbrun, 81 M 287, 83 NW 1088.

To entitle a plaintiff to a divorce on the ground of desertion, he must allege and prove wilful desertion by the defendant for a full year next before the commencement of the action. Stocking v Stocking, 76 M 292, 79 NW 172.

A complaint in an action for divorce on the ground of cruelty was stated in general terms, but was held sufficient. Westphal v Westphal, 81 M 242, 83 NW 988.

In an action by the husband on the grounds of cruelty and inhuman treatment, the wife was permitted to file a supplementary answer alleging adultery on the part of the husband, and having proved her charge was decreed a divorce. Sodini v Sodini, 96 M 329, 104 NW 976.

In a suit for divorce where personal service is made upon the defendant, the court has power to allow alimony, although the complaint contains no specific demand therefor and the defendant does not answer. Ecker v Ecker, 130 M 472, 153 NW 864.

In an action in which the wife fails to establish facts authorizing divorce or separation, but the parties living apart, the court may permit the children to remain in the custody of the mother and impose an order of support money upon the husband. Jacobs v Jacobs, 136 M 190, 161 NW 525.

518.11 SERVICE; PUBLICATION.

HISTORY. R.S. 1851 c. 66 s. 12; P.S. 1858 c. 53 s. 12; G.S. 1866 c. 62 s. 12; G.S. 1878 c. 62 s. 12; G.S. 1894 s. 4796; R.L. 1905 s. 3579; 1909 c. 434; 1913 c. 57 s. 1; G.S. 1913 s. 7116; G.S. 1923 s. 8590; M.S. 1927 s. 8590.

Pleadings in the instant action entitle the plaintiff to proceed for alimony alone. The husband deserted the wife, acquired a domicile in another state, and procured a divorce there, the wife making no appearance. The wife subsequently started an action on grounds of cruel and inhuman treatment and asked for alimony. It

was held that her action could be maintained only as to alimony allowance. Thurston v Thurston, 58 M 279, 59 NW 1015.

Personal service of complaint and summons in divorce proceedings outside of the state is authorized by statute; and if the language of the return of service in a default divorce judgment fairly admits of an interpretation which will make that return legal and sufficient, it should be so construed upon collateral attack. Sodini v Sodini, 94 M 301, 102 NW 861.

The change of wording found in Revised Laws 1905 made no substantial change in law as to service by publication of the summons in an action for a divorce. Becklin v Becklin, 99 M 307, 109 NW 243.

Defendant was convicted of non-support of his wife. His defense was that she was not his legal wife because her divorce from a previous husband was obtained by publication, and the judgment roll does not disclose that personal service could not have been made. Held, the divorce judgment was valid. State v Doyle, 107 M 498, 120 NW 902.

In divorce actions, where the summons is served personally out of the state, it is not a prerequisite that there be either the return of the sheriff or the affidavit of plaintiff or his attorney to the effect that defendant could not be found in this state. *Bundermann* v *Bundermann*, 117 M 366, 135 NW 998.

Plaintiff in a divorce case knew that the defendant was residing in Great Falls, Montana, but made no effort to get personal service and made substituted service by publication. Before trial defendant returned to Minnesota, all within the knowledge of the plaintiff, but no effort was made to serve her. Held, the divorce decree may be vacated and defendant permitted to answer. Green v Green, 153 M 502, 190 NW 989.

The filing of the affidavit prescribed by section 543.11 is a jurisdictional prerequisite to the publication of the summons. The service of a summons upon a non-resident by delivering a copy to him outside the state is a substitute for the publication and cannot be made without taking the steps required when the summons is to be published. Pugsley v Magerfleisch, 161 M 246, 201 NW 323.

The alimony obligations of a non-resident husband personally served out of the state may be enforced out of his property in this state when the custodian thereof is made a party defendant. A preliminary order may be made by the court restraining the disposition of the property, and such order operates as a seizure. Bullock v Bullock, 181 M 564, 233 NW 312.

Divorce actions are treated differently from other actions such as those referred to in sections 543.13, 544.32. Under the facts stated in the instant case, to deny defendant the right to answer would result in a fraud on her and the administration of justice. Cahaley v Cahaley, 216 M 178, 12 NW(2d) 182.

Jurisdiction over persons by substituted or constructive service. 20 MLR 651.

518.12 TIME FOR ANSWERING.

HISTORY. G.S. 1866 c. 62 s. 13; G.S. 1878 c. 62 s. 13; G.S. 1894 s. 4797; R.L. 1905 s. 3580; G.S. 1913 s. 7117; G.S. 1923 s. 8591; M.S. 1927 s. 8591.

The defendant in an action for divorce must answer within 30 days after service of the summons as required by statute, and a court rule allowing 90 days is not effective. Fogelbank v Fogelbank, 9 M 72 (61).

A default judgment in divorce proceedings is protected against collateral attack by the same conclusive presumptions of validity and by the same favorable intendments which surround any other judgment. Sodini v Sodini, 94 M 301, 102 NW 861.

518.13 FAILURE TO ANSWER; REFERENCE.

HISTORY. G.S. 1866 c. 62 s. 14; 1878 c. 13 s. 1; G.S. 1878 c. 62 s. 14; G.S. 1894 s. 4798; R.L. 1905 s. 3581; G.S. 1913 s. 7118; G.S. 1923 s. 8592; M.S. 1927 s. 8592.

518.14 ALIMONY PENDING SUIT.

HISTORY. R.S. 1851 c. 66 s. 15; P.S. 1858 c. 53 s. 15; G.S. 1866 c. 62 s. 15; G.S. 1878 c. 62 s. 15; G.S. 1894 s. 4799; R.L. 1905 s. 3582; G.S. 1913 s. 7119; G.S. 1923 s. 8593; M.S. 1927 s. 8593.

The court has no authority to grant an application for an allowance for counsel fees and expenses to enable a wife to prosecute an action for divorce, after the determination of the suit and judgment in favor of the defendant. Wagner v Wagner, 34 M 441, 26 NW 450; Wemple v Wemple, 170 M 305, 212 NW 808.

Defendant was ordered to pay alimony. Being in arrears, he was fined $30.00 and ordered to pay $48.00 alimony. On trial the court found that neither party was entitled to a divorce. On writs issued from the supreme court, defendant was relieved from paying the $48.00, but ordered kept in custody until the $30.00 was paid. In re Fanning, 40 M 4, 41 NW 1076.

The statute empowering the court to grant alimony pendente lite may in the discretion of the court be awarded the wife, requires the court to exercise sound judicial discretion. The fact that the wife has money or property is an item for consideration, but not controlling. Stiehm v Stiehm, 69 M 461, 72 NW 708; Wetter v Wetter, 145 M 499, 177 NW 491.

Judgment for alimony having been entered in the divorce proceedings, the question is res judicata between the parties, and the defendant in that action cannot subsequently maintain an independent action to recover alimony. Sprague v Sprague, 73 M 474, 76 NW 268.

The husband brought suit for divorce on the grounds of adultery and was ordered by the court to pay $150.00 attorney fees and $100.00 suit money, which was paid. After several days' trial the jury disagreed. The defendant then made an application for additional money to pay fees and expenses, which the court granted. Schuster v Schuster, 84 M 403, 87 NW 1014.

A wife who is living apart from her husband for a cause legally justifying her may maintain, independent of an action for a divorce, an equitable action against him for her separate support. Baier v Baier, 91 M 165, 97 NW 671.

It is the duty of a father to provide for his children whether they remain in his custody or not, and his liability exists irrespective of his liability, if any, to his wife. He may be relieved in certain circumstances if the court makes other express provision for their support. Jacobs v Jacobs, 136 M 190, 161 NW 525.

A written agreement as to the custody of a child is not binding on the court when the best interests of the child require a different arrangement. The remarriage of the man and improved health of the divorced wife is such change that the best interests of the children may warrant a modification in the original terms of payment of alimony and support money. Spratt v Spratt, 151 M 458, 185 NW 509, 187 NW 227.

Alimony is a substitute for marital support, and an award of $24,000 permanent alimony and $2,000 attorney fees is not unreasonable the defendant having a net worth in excess of $125,000. Burton v Burton, 160 M 224, 199 NW 908.

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

An order denying relief pending an action for divorce is appealable; an order concerning custody of children is not. Brunn v Brunn, 166 M 283, 207 NW 616.

The fact that defendant in a divorce action is in contempt of court in failing to obey an order for the payment of temporary alimony to the plaintiff, the court cannot, for this cause, deprive him of the right of defense. Peterson v Peterson, 173 M 165, 216 NW 940.

Postnuptial agreements, properly made between husband and wife after a separation takes place, are not contrary to public policy. District courts have original, exclusive jurisdiction in divorce proceedings. The power to grant alimony is inherent therein; the parties thereto cannot, by a postnuptial agreement, oust the court of jurisdiction to award alimony or to punish for contempt a failure to comply with the judgment in relation thereto. Sessions v Sessions, 178 M 75, 226 NW 211.

An order to show cause, served at the same time as the summons and complaint in a divorce action, fixing the time and place for hearing a motion for temporary alimony and expenses, with a restraining order, properly served, gives the court jurisdiction to hear such motion. The fact that the order to show cause was issued shortly before the service of the summons does not affect its validity. Lilienthal v Lilienthal, 179 M 106, 228 NW 351.

In an action by the husband for divorce the wife employed counsel, agreeing to pay $200.00. The wife paid $25.00; the husband, under order of court, another $25.00. The parties became reconciled. Held, the attorney is entitled to judgment against the wife for the amount agreed upon as fees, but the husband having paid the full amount due under the court order, no judgment may be taken against him. Melin v Ryan, 189 M 638, 249 NW 194.

The appellate court and the lower court from which an appeal is taken in an action for divorce have concurrent jurisdiction to award temporary alimony pendente lite. Interest may be allowed on a judgment for alimony. Temporary alimony paid pendente lite may be applied as pro tanto payment on a permanent alimony award. Bickle v Bickle, 196 M 392, 265 NW 276.

In the absence of statutory authority the courts have no power in divorce proceedings to deal with property rights of the parties. In the instant case, and following Nelson v Nelson, 149 M 285, the property standing in the name of the wife will not be disturbed. Hutson v Hutson, 204 M 601, 284 NW 780.

Even though the husband is the prevailing party before the trial court, the court may in its discretion allow the wife money with which to appeal from the trial court's decision. Gerard v Gerard, 216 M 543, 13 NW(2d) 606.

Based on a stipulation with prejudice but without costs, the court ordered the files sealed and the case dismissed. A motion by the attorney for the plaintiff to reopen the case and allow his fee, was denied. Johnson v Johnson, 217 M 436, 14 NW(2d) 617.

An order granting wife temporary alimony during pendency of her divorce suit was merged in the judgment and decree granting her a divorce and no longer effective or enforceable, so that contempt proceedings against husband could not be based thereon. Richardson v Richardson, 218 M 42, 15 NW(2d) 127.

Allowance of attorney's fees after reconciliation and dismissal of divorce case. 28 MLR 488.

518.15 PROTECTION OF WIFE.

HISTORY. R.S. 1851 c. 66 s. 16; P.S. 1858 c. 53 s. 16; G.S. 1866 c. 62 s. 16; G.S. 1878 s. 62 s. 16; G.S. 1894 s. 4800; R.L. 1905 s. 3583; G.S. 1913 s. 7120; G.S. 1923 s. 8594; M.S. 1927 s. 8594.

518.16 CUSTODY OF CHILDREN DURING PENDENCY.

HISTORY. R.S. 1851 c. 66 s. 17; P.S. 1858 c. 53 s. 17; G.S. 1866 c. 62 s. 17; G.S. 1878 c. 62 s. 17; G.S. 1894 s. 4801; R.L. 1905 s. 3584; G.S. 1913 s. 7121; G.S. 1923 s. 8595; M.S. 1927 s. 8595.

The proper practice in securing a modification of an order or decree in divorce proceedings, in the instant case touching the care and custody of a minor child, is by application in the original action and not by the commencement of an independent suit. Upon the hearing the test is that the trial court do not abuse the very wide latitude allowed in the introduction of evidence, and the wide range of discretionary powers in the enforcement of the statute enacted for the benefit of the child. Arne v Holland, 85 M 401, 80 NW 3.

In selecting the custodian for a child, the best interest of the child is the paramount consideration. Wandersee v Wandersee, 132 M 321, 156 NW 348.

Children were properly placed in the custody of the plaintiff mother, who in turn left them with her parents while she was temporarily in a rest hospital recovering from the alleged cruel and inhuman treatment by the defendant. The statute does not permit the defendant to file an affidavit of prejudice against the judge hearing a modification of an order for temporary alimony or temporary custody of the children. Ratcliffe v Ratcliffe, 135 M 307, 160 NW 778.

The duty of the father to support his children continues whether they remain in his custody or not. In the instant case the plaintiff wife failed to sustain her case and a divorce was denied, but as the parents were living apart the court properly awarded the custody of the children to the wife and imposed payment of support money on the husband. Jacobs v Jacobs, 136 M 190, 161 NW 525.

A state has the right to determine the status of persons domiciled within its territory. The Iowa courts awarded the custody of a child to a grandmother residing in Iowa. Subsequently the child was permitted to reside in Minnesota with her mother, and remained several years. In an action by the grandmother for return of the child it was held that the question of removal does not depend on the law of the state from which the child came, but of the state where the child is found, and a question of state comity is not involved. Aldridge v Aldridge, 163 M 435, 204 NW 324.

An order concerning the custody of children, pendente lite, is not appealable. Brum v Brum, 166 M 283, 207 NW 616.

A mother is presumed to be a fit person to have custody of her own children, and an unconventional friendship falls short of establishing unfitness for the care of young children. Newman v Newman, 179 M 184, 228 NW 759.

518.17 CUSTODY OF CHILDREN ON JUDGMENT.

HISTORY. R.S. 1851 c. 66 s. 18; P.S. 1858 c. 53 s. 18; G.S. 1866 c. 62 s. 18; G.S. 1878 c. 62 s. 18; G.S. 1894 s. 4802; R.L. 1905 s. 3585; G.S. 1913 s. 7122; G.S. 1923 s. 8596; M.S. 1927 s. 8596.

Judgment for alimony is res judicata between the parties, and the defendant in that action cannot now maintain an independent action to recover alimony. Sprague v Sprague, 73 M 474, 58 NW 286.

The proper practice in securing a modification of an order or decree in divorce proceedings is by application in the original action, and not by the commencement of an independent suit upon a new complaint. Upon a hearing it is discretionary with the trial court whether the evidence bearing upon the question be by affidavits or by oral evidence. Arne v Holland, 85 M 401, 89 NW 3.

The legal obligation of a father for the support of his minor children is not impaired by a decree of divorce at the suit of his wife for his misconduct, which gives the custody of the children to her but is silent as to their support. If under such circumstances he refuses or neglects to support them, she may recover from him in an original action for money expended. The law implies a promise on his part to pay for such necessaries. Spencer v Spencer, 97 M 56, 105 NW 483.

When a court, by a decree of absolute divorce granted the wife because of desertion of her husband, awarded the custody of a minor child to the wife, but made no allowance for its maintenance, and when it appears that the wife is without financial means, the power of that court extends to the subsequent revision and alteration of such decree, so as to adequately secure full performance by the father of his legal and natural duty to take care of his offspring. McAllen v McAllen, 97 M 76, 106 NW 100.

A mother is presumed to be a fit and proper person to have custody of minor children. The first consideration is the welfare of the child. Golson v Golson, 132 M 467, 155 NW 1039.

Even though no decree of divorce is granted to either party, where the parties are living apart, the court may award custody of children to the wife and impose upon the husband a payment schedule for their support. Jacobs v Jacobs, 136 M 190, 161 NW 525.

In determining the inheritance tax to be paid by the widow of one who died intestate and without issue, the value of the homestead is not included in ascertaining the taxable value of the property transferred to her by virtue of the inheritance laws. Estate of Louis P. Eckstrum, 159 M 231, 198 NW 459.

In a direct proceeding the court has power on proper showing to set aside and vacate the decree of divorce. McGinley v McGinley, 166 M 495, 206 NW 954.

Where each of the parties is a fit and proper person to have custody of either or both of two children, the court awarded custody to the wife, on the ground of best for the children, and allowing the husband custody for certain parts of the year. Cosgrove v Cosgrove, 172 M 89, 214 NW 798.

Habeas corpus lies to determine the right to the possession of a child, but if it appears that the rights of the contending parties have been fixed by a valid judgment, the court will give effect to such judgment. In the instant case, where the child was awarded to a third party who cannot now keep custody and the

controversy is as to which parent will be awarded the child, the court will make such order as it deems for the best interest of the child. Pappenfus v Kourtz, 173 M 177, 216 NW 937.

Where in a decree of divorce the children were awarded to the wife, and a specified monthly sum awarded for their support, and a lien imposed upon the husband's real estate, even if the court was not authorized to make such an allowance, the judgment cannot be attacked collaterally by a third party who subequently purchased the property at mortgage foreclosure sale. The judgment gave the wife the right to redeem as a creditor. Limnell v Limnell, 176 M 393, 223 NW 609.

It was an abuse of discretion on the part of the trial court to order a part-time division of the custody of a six-year old child, the frequent moving between two homes being undesirable. Larson v Larson, 176 M 490, 223 NW 789.

If for some good reason the custody of a minor child cannot be determined upon the trial so as to be incorporated in the decree, and the child is in the temporary custody of a third party, the court should as soon as possible set at rest the custody so that the child be not distracted or hampered by frequent changes in homes. Rice v Rice, 181 M 176, 231 NW 795.

Proceedings to determine the custody of a minor child is in the nature of an action in rem, the res being the status of the minor, and only the court of that state in which the minor is domiciled can fix or change that status. An Iowa court awarded custody of a minor child to each parent alternately for six months of the year, and the wife removing to and being domiciled in Minnesota, a Minnesota court had power to decree the status of the child, and even to change the effect of the Iowa decree. Larson v Larson, 190 M 489, 252 NW 329.

Where the mother is able to and does properly care for and control a child in her own suitable home, its custody should not, under the circumstances of this case, be divided by allowing the father to have custody one week in each month. It was decreed that the wife have sole custody, the child's father to have the privilege of visiting only. McDermott v McDermott, 192 M 32, 255 NW 247.

The wife was given a divorce and custody of two minor children. The court denied the father's application for an amended decree, holding that the welfare and best interest of the children would best be served by leaving them in the mother's custody. Brown v Brown, 193 M 211, 258 NW 150.

Divorce jurisdiction is purely statutory. Due to a change in the circumstances of the parties, the court in the instant case very properly struck from the original judgment a provision for support of children after reaching majority. Sivertsen v Sivertsen, 198 M 207, 269 NW 413.

The mother, by a decree of the Illinois court, was awarded custody of the child. She moved to Minnesota, taking the child with her, was subsequently married, and her second husband petitioned the court for adoption of the child. Held, a judgment of the Minnesota court decreeing the adoption of the child by the stepfather does not impair the full faith and credit of the divorce decree of Illinois. Buckman v Houghton, 202 M 460, 278 NW 908.

The child's welfare is the prime consideration in determining to whom its custody shall be given. Christianson v Christianson, 217 M 561, 15 NW(2d) 24.

An allowance which a husband may be required to pay for maintenance of minor children is distinct from an allowance of alimony. A sum awarded a wife out of her husband's earnings which exceeded one-third of his earnings and income but included maintenance for minor children, whose custody was awarded to her, does not exceed the limit set by Section 518.22, providing that the aggregate amount awarded a wife does not exceed one-third of his personal estate, earnings and income, and one-third in value of his real estate. Hove v Hove, 218 M 612, 16 NW(2d) 776.

A wife, granted a divorce at her suit, may maintain an action against her husband for expenses incurred by the wife for spouse's minor children's support. Warner v Warner, 219 M 59, 17 NW(2d) 58.

518.18 REVISION OF ORDER.

HISTORY. R.S. 1851 c. 66 s. 19; P.S. 1858 c. 53 s. 19; G.S. 1866 c. 62 s. 19; G.S. 1878 c. 62 s. 19; G.S. 1894 s. 4803; R.L. 1905 s. 3586; G.S. 1913 s. 7123; G.S. 1923 s. 8597; M.S. 1927 s. 8597.

In an action for alimony the presumption is that all of the husband's property was in the jurisdiction of the court in which the proceedings were instituted, and the court had power to decree alimony to the wife, and the judgment having been entered is res judicata between the parties. Sprague v Sprague, 73 M 474, 76 NW 268.

The proper practice in securing a modification of an order or decree in divorce proceedings is by application in the original action, and not by the commencement of an independent suit upon a new complaint. Arne v Holland, 85 M 401, 89 NW 3.

The divorce decree awarded the custody of the child to the wife. Four years later the father petitioned for the right to visit the child. This was denied on the ground that the visits might injure the child and be detrimental to his health. The essential thing is the welfare of the child. Waldref v Waldref, 135 M 473, 159 NW 1068.

It is the duty of the father to provide for his children whether in his custody or not, unless the court in some proceeding in which that question was involved and determined has made express provision for their support of such a nature as to relieve him from further liability. Jacobs v Jacobs, 136 M 190, 161 NW 525.

The remarriage of a divorced man, and an improvement in the health of his former wife, are such changes in the circumstances and conditions of the parties as will justify a modification of the provisions of a judgment respecting the care and custody of minor children. Spratt v Spratt, 151 M 458, 185 NW 509, 187 NW 227.

Provision for the custody of a child made in a judgment of divorce is binding until changed, but may be changed on application in that action whenever changed conditions warrant it. Habeas corpus lies to determine the right of possession of a child, but if it appears that the rights of the contending parties have been fixed by a valid judgment, the court will give effect to such judgment. Pappenfus v Kourtz, 173 M 177, 216 NW 937.

In granting a divorce to a wife with custody of the children, the court may impress a lien on the real estate of the defendant. This lien cannot be attacked collaterally by a purchaser at a mortgage sale, and the wife has a creditor's right to redeem from the foreclosure sale. Limnell v Limnell, 176 M 393, 223 NW 609.

Where the custody of the children was awarded to the father on an application by the wife for a modification of the decree, the burden is upon her to show benefit to the children in case of such modification. Dacey v Dacey, 179 M 520, 229 NW 868.

The provision for alimony and support of children in a decree of divorce may be changed and amended by the court although incorporated in the decree pursuant to a stipulation of the parties. Randall v Randall, 181 M 18, 231 NW 413.

A proceeding to determine the custody of a minor child is in rem, the res being the child, and the child being domiciled in Minnesota, the court in Minnesota has power to modify the child's status, though fixed by the decree of an Iowa court. Larson v Larson, 190 M 489, 252 NW 329.

Finality of a Minnesota alimony or maintenance decree in relation to the full faith and credit clause. 4 MLR 456.

518.19 POSSESSION OF WIFE'S REAL ESTATE; WHAT MAY BE DECREED TO HUSBAND.

HISTORY. R.S. 1851 c. 66 s. 20; P.S. 1858 c. 53 s. 20; G.S. 1866 c. 62 s. 20; G.S. 1878 c. 62 s. 20; G.S. 1894 s. 4804; R.L. 1905 s. 3587; G.S. 1913 s. 7124; G.S. 1923 s. 8598; M.S. 1927 s. 8598.

In the instant case the wife sued for divorce on grounds of cruel and inhuman treatment and the husband filed a cross-bill on the same grounds and asked for a division of the real property standing in the name of the wife and which had been acquired during coverage. The statute does not give an absolute right of division, but the matter rests in the sound discretion of the trial court. O'Neil v O'Neil, 148 M 381, 182 NW 438.

The doctrine of community property, as applied to the marriage relation, was no part of the common law and has never been adopted in Minnesota, and the trial court in a divorce action has no power to deal with property rights of the parties

in the absence of a statute. So this case, where the divorce is granted to the wife, differs from O'Neil v O'Neil, 148 M 381, because in that case the divorce was granted to the husband. Nelson v Nelson, 149 M 285, 183 NW 354; Hutson v Hutson, 204 M 601, 284 NW 780.

The defendant husband was granted a divorce on his cross-bill. The wife had some property at time of marriage to which was added moneys earned by the husband, all property, real and personal, being in the wife's name. Held, that where property received through the husband has been converted into other property, the court action in making a reasonable division based on the statute and on the facts is sustained. Narva v Narva, 167 M 80, 208 NW 643.

Where husband and wife own real estate as joint tenants, and the husband makes improvements with the consent of the wife, there is no implied contract entitling the husband to be reimbursed or protected therefor in an action in partition. Leach v Leach, 167 M 489, 209 NW 636.

The wife was granted a divorce and certain property and alimony. The husband took title to all other property. Certain of the lots granted to the husband were held in joint tenancy. This is an action to register title in the name of the husband, and the action was stayed pending the wife's motion to vacate or modify the district court order. The appellate court sustained the trial court in dismissing the wife's motion. In re Petition of Charles Wipper, 176 M 206, 222 NW 922.

A divorce having been granted to the wife on the grounds of cruel and inhuman treatment, the court is not authorized to grant any allowance out of the property of the wife. An action to dissolve and wind up a partnership between the parties was tried together with the divorce case, and no relief being granted to the husband in the partnership case, furnishes no basis for any award to the husband in the divorce case. Wilde v Wilde, 177 M 189, 224 NW 852.

In his cross-bill the defendant alleged cruel and inhuman treatment, but did not ask for a divorce. Held: (1) it was proper to amend; (2) the evidence sustained the trial court in granting a divorce to the defendant; (3) the court properly divided the property in the wife's name, but coming from the defendant. James v James, 179 M 266, 229 NW 128; Swanson v Swanson, 182 M 492, 234 NW 675.

"Alimony" is essentially a different thing from "division of property." An award to the wife of the residence property was binding on the parties and may not be modified so as to adjudge the husband the owner after time for appeal has expired. Anich v Anich, 217 M 261, 14 NW(2d) 289.

Interpretation of statute giving husband alimony. 5 MLR 296.

Restoration of property to husband which wife has acquired through him. 5 MLR 558.

Right of husband in property acquired by wife in exchange for property received through him. 11 MLR 74.

518.20 ORDER AS TO WIFE'S PROPERTY.

HISTORY. R.S. 1851 c. 66 s. 21; P.S. 1858 c. 53 s. 21; G.S. 1866 c. 62 s. 21; G.S. 1878 c. 62 s. 21; G.S 1894 s. 4805; R.L. 1905 s. 3588; G.S. 1913 s. 7126; G.S. 1923 s. 8600; M.S. 1927 s. 8600.

A marriage contract is a nullity ab initio only where expressly so declared by statute, and requires no judicial decree for its dissolution; a voidable marriage contract arises where, though prohibited by law, it may be ratified or confirmed by the subsequent cohabitation and conduct of the parties, and is valid until dissolved by judicial decree. State v Yoder, 113 M 503, 130 NW 10.

Although the statute be copied from the statutes of another state, the construction given it in that state is not necessarily controlling. Jacobs v Jacobs, 136 M 190, 161 NW 525.

518.21 COURT MAY APPOINT TRUSTEE OF ALIMONY.

HISTORY. R.S. 1851 c. 66 s. 22; P.S. 1858 c. 53 s. 22; G.S. 1866 c. 62 s. 22; G.S. 1878 c. 62 s. 22; G.S. 1894 s. 4806; R.L. 1905 s. 3589; G.S. 1913 s. 7127; G.S. 1923 s. 8601; M.S. 1927 s. 8601.

Prior to the repeal of Revised Laws 1905, Section 3591, by Laws 1909, Section 292, it was held that a wife divorced from her husband on the ground of adultery

owns and is entitled to the possession of his real estate, if there be no living issue of the marriage. Glaser v Kaiser, 103 M 241, 114 NW 762.

Postnuptial agreements, properly made between husband and wife after a separation takes place, are not contrary to public policy. District courts have original, exclusive jurisdiction in divorce proceedings. The power to grant alimony is inherent therein; the parties thereto cannot, by a postnuptial agreement, oust the court of jurisdiction to award alimony or to punish for contempt a failure to comply with the judgment in relation thereto. Sessions v Sessions, 178 M 75, 226 NW 211, 701.

Where husband and wife agreed upon a deposit of securities with a trustee, the income to go to the wife in lieu of alimony, the state court was not barred by the trust agreement, but had full authority to make an allowance out of the husband's property and set up a trust to give effect to the agreement, and may make a new or modify the existing agreement, or may adopt it and make it its own. Douglas v Willcutts, 296 US 4, 73 F(2d) 130.

518.22 PROPERTY OF HUSBAND; PERMANENT ALIMONY.

HISTORY. R.S. 1851 c. 66 s. 23; P.S. 1858 c. 62 s. 23; 1865 c. 46 s. 1; G.S. 1866 c. 62 s. 23; G.S. 1878 c. 62 s. 23; G.S. 1894 s. 4807; 1901 c. 144; R.L. 1905 s. 3590; G.S. 1913 s. 7128; G.S. 1923 s. 8602; M.S. 1927 s. 8602.

An estate consisting of real estate valued at $8,000 and an interest in a mercantile business of a possible value of $40,000 or more was, for the purpose of fixing alimony, given a conservative valuation of $25,000. The court sustained an alimony award to the wife of $8,000 payable in instalments over a period of two years. Segalbaum v Segalbaum, 39 M 258, 39 NW 492.

In making an adjustment of the property of the husband between the parties in an action for divorce, the court may set off to the wife a whole or a part of the homestead, or may, in lieu thereof, allow her alimony and make it a specific lien on the homestead. Mahoney v Mahoney, 59 M 347, 61 NW 334.

The aggregate award and allowance made to the wife from the estate of her husband in actions for divorce cannot in any case exceed in present value the one-third part of the personal property and value of her dower in real estate, and in estimating the value of this estate the husband's income from professional services cannot be considered. Wilson v Wilson, 67 M 444, 70 NW 154; State ex rel v Jameson, 69 M 427, 72 NW 451. Modified by Laws 1901, Chapter 144.

The husband brought an action for divorce and caused copies of the summons and complaint to be personally served upon the wife, then temporarily in Oregon. She did not answer and made no appearance. The husband obtained a decree which included an allowance of alimony. In the instant case the wife brought an action to recover permanent alimony, to which the defendant demurred. The trial court sustained the demurrer and there was an affirmation in the appellate court on the ground that the question was res judicata, and an independent action could not be maintained, and distinguishing Thurston v Thurston, 58 M 279. Sprague v Sprague, 73 M 474, 76 NW 268.

Where the husband in anticipation of divorce transferred property to third persons, it was within the power of the court to take into consideration the value of such property when fixing alimony. Dougan v Dougan, 90 M 471, 97 NW 122.

The court in granting alimony had no power granted by statute to declare the amount of the alimony a specific lien on personal property, but under the general power of the court did have a right to make an order allowing the wife, then in possession of certain personal property, to hold it until paid the amount of the alimony allotted. Conklin v Conklin, 93 M 188, 101 NW 70.

Where an absolute divorce was properly granted upon proof of adultery by husband, the court may make her a just allowance out of his personal property, in addition to the dower interest in his lands which vests in her without the necessity of a judgment. Sodini v Sodini, 96 M 329, 104 NW 976.

Under the provisions of Revised Laws 1905, Section 3591, where a wife divorced her husband on the ground of adultery, she is entitled to ownership and possession of his real estate, there being no living issue of the marriage. Glaser v Kaiser, 103 M 241, 114 NW 762.

In an action by the wife for divorce and alimony the husband and other relatives were made parties. The appellate court sustained the findings of the lower court who granted alimony and made the amount of the award a specific lien upon certain property conveyed by the husband to relatives. Rand v Rand, 103 M 5, 114 NW 87.

A judgment in a divorce action, in which the alimony awarded was declared a specific lien upon certain specified land owned by the defendant, may be enforced by an ordinary execution and sale thereunder. Maki v Maki, 106 M 357, 119 NW 51.

A promise by the husband to make payment to the wife in discharge of his obligation to support her after divorce is based on a consideration and valid. That it is not incorporated in the decree does not affect its validity. The instrument effecting the agreement may on proper showing be reformed. Nelson v Vassenden, 115 M 1, 131 NW 784.

The court awarding a judgment for alimony has authority to revise or modify such judgment upon the application of either party; such change may be based on a change in the financial condition of the husband; the fact that a bond was furnished to secure the carrying out of the decree does not nullify the right to modify; the application is addressed to the discretion of the court, and a denial is without prejudice to renewal. Haskell v Haskell, 116 M 10, 132 NW 1129.

While an application for the revision of a judgment for alimony on the ground of changed financial condition of the parties should be entertained with great caution, nevertheless, where the change is not wilfully brought about by the applicant, the motion should be disposed of under the same rules applicable upon an original application to fix the amount of alimony, and a modification of the former judgment may be made on account of the changed financial condition of either or both the parties. Alimony is not awarded as a penalty but as a substitute for marital support. Haskell v Haskell, 119 M 484, 138 NW 787.

The authority of the court to make its decree for alimony or allowance is purely statutory, applies only to real estate, and cannot create a lien on personal property. Longbotham v Longbotham, 119 M 139, 137 NW 387.

An award of alimony sustained by the appellate court, but the judgment modified to secure life support of the wife. Fitzpatrick v Fitzpatrick, 127 M 96, 148 NW 1074.

In a suit for divorce where personal service is made upon the defendant, the court has power to allow alimony, although the complaint contains no specific demand therefor and the defendant does not answer. Ecker v Ecker, 130 M 472, 153 NW 864.

Where the defendant, after a judgment for alimony is rendered against him, acquires real estate, the court has power to revise, modify and alter the judgment so as to make the alimony a specific lien on the real estate so acquired. Roberts v Roberts, 135 M 397, 161 NW 148.

Where on trial no divorce is granted, and the parties live apart, the court has jurisdiction and may award the children to the wife and require the husband to contribute to their support. Jacobs v Jacobs, 136 M 190, 161 NW 525.

The statute providing that the aggregate award to the wife shall not exceed in present value one-third of the personal estate, earnings and income of her husband and one-third in value of his real estate, construed not to mean net value. Hence, unsecured debts need not be taken into account in finding this value. Weersing v Weersing, 137 M 480, 163 NW 658.

The parties for many years resided in Minnesota, but the defendant husband removed to the state of Washington and obtained a divorce. There was no appearance on the part of the wife and no alimony was granted. The wife brings this action for alimony. Held, the Washington action was in rem. The res was the marriage relation and the court had jurisdiction and granted a valid decree. That judgment was not res judicata upon the question of alimony and the plaintiff may maintain an independent action for alimony in Minnesota, and may charge with a lien property in Minnesota recently inherited. Searles v Searles, 140 M 385, 168 NW 135.

Permanent alimony cannot be determined by any fixed standards. Alimony is not allowed as a penalty but as a substitute for marital support, and alimony may be awarded to the wife even though her conduct is such as to justify granting a divorce to the husband. Webber v Webber, 157 M 422, 196 NW 646.

In awarding alimony to the 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. Blodine v Blodine, 158 M 296, 197 NW 261.

An award of permanent alimony of $24,000 to a wife whose husband's property is of the value of $125,000 is approved, as is an award for attorney fees of $2,000. A conveyance of land in lieu of motion for temporary alimony considered by the court. Burton v Burton, 160 M 224, 199 NW 908.

The wife was awarded alimony in the amount of $6,000 payable in instalments, later reduced to $4,000, of which $2,000 was paid. There being evidence that the husband was selling his personal property and was about to abandon his equity in the real estate and remove to Canada, the court rightfully modified the judgment by making the final payment immediately payable and sequestering the defendant's property and applying proceeds of the sale of personal property to the payment of the judgment. Hesebeck v Hesebeck, 163 M 331, 203 NW 966.

Alimony within the limits prescribed by statute. Zoretic v Zoretic, 168 M 489, 210 NW 393; Cosgrove v Cosgrove, 172 M 89, 214 NW 793; Brodsky v Brodsky, 172 M 250, 215 NW 181; Bokelmann v Bokelmann, 180 M 180, 230 NW 638.

After a husband obtained a divorce from his wife he entered into a written contract with her, reciting that she might assert a legal claim against him. 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 monthly. The claim was one which could have been asserted in good faith and the release was a sufficient consideration for the contract. Cairns v Lewis, 169 M 156, 210 NW 885.

An order refusing to reduce alimony is appealable. The issue is as to whether there has been a change in the status of the parties since the last time the alimony was adjudicated by the court which warrants canceling or reducing same. Plankers v Plankers, 173 M 464, 217 NW 488.

In the divorce decree the wife was given custody of a child, and the allowance for its support was declared a lien on real estate of which husband and wife were joint tenants, but decreed to the husband. A mortgage being foreclosed on the property, it was held the wife might redeem as a creditor. Limnell v Limnell, 176 M 393, 223 NW 609.

An alimony judgment in favor of a divorced woman cannot be taken on execution by her preexisting judgment creditor; not because it is exempt but because of the peculiar characteristics of alimony. Bensel v Hall, 177 M 178, 225 NW 104.

Postnuptial agreements, properly made between husband and wife after separation, are not contrary to public policy, but while valid they do not oust the court of jurisdiction to award alimony or punish for contempt a failure to comply with the court's orders. Sessions v Sessions, 178 M 75, 226 NW 701.

Where the original order required the defendant to pay $40.00 per month alimony, and a stipulation was subsequently entered into for a small cash settlement of the alimoney to accrue in the future, and a modified order entered based on the stipulation, it is within the power of the court to reinstate the original order on evidence if far-reaching on the part of the defendant. Halper v Halper, 179 M 488, 229 NW 791.

In a divorce proceeding the decree of divorce granted alimony and property settlement based upon a stipulation between the parties, the defendant outside of the stipulation making no appearance. Held, in an action by the wife to cancel and set aside the agreement and decree, that while the court has power to do so, based on the facts and record, the petition of the wife be denied. McCormick v Hoffert, 186 M 380, 243 NW 392.

In framing hypothetical questions to a lawyer called as an expert to give an opinion as to the reasonable value of the attorney's services for obtaining a divorce for defendant, the question was proper if it embraced the facts which the evidence might justify the jury in finding, even though it did not assume all of the testimony of the plaintiff, the attorney who rendered the services, to be true. Lee v Woolsey, 187 M 659, 246 NW 25.

A past due sum or instalment of alimony is assignable. A discharge in bankruptcy does not discharge such claim. Cederberg v Gunstrom, 193 M 421, 258 NW 574.

A separtion agreement between husband and wife in terms obligated each to join with the other in the execution of future conveyances or encumbrances of real property belonging to the other, held, that as the above provision was invalid, and was not severable from the other provisions in the separation contract, the entire contract is unenforceable. Simmer v Simmer, 193 M 1, 261 NW 481.

Plaintiff sued for six instalments of alimony past due and obtained an order for judgment. The defendant made a motion for modification of the monthly alimony payment of $70.00 per month which was denied. These orders were by two different judges of Ramsey county. The cases were consolidated on appeal. Held, the pending motion in the divorce action did not bar or abate the suit for the recovery of money, and the motion of the defendant was properly denied. Koch v Koch, 196 M 312, 264 NW 791.

Temporary alimony, paid pendente lite, may be applied as pro tanto payment on a permanent alimony award. Bickle v Bickle, 196 M 392, 265 NW 276.

Where in an action in Arkansas both parties voluntarily appear and submit to the judgment of the court, they are bound by the judgment as to all matters litigated therein and cannot avoid it in a collateral proceeding in this state by proof that neither party was a resident of Arkansas at the time, but were in fact residents of Minnesota, and as the plaintiff's right to alimony was litigated in the proceedings in Arkansas. Norris v Norris, 200 M 246, 273 NW 708.

Where in a suit involving the setting aside of a divorce the jury is not bound to accept testimony as true, merely because uncontradicted, if improbable, or where the surrounding facts and circumstances, or what is developed on cross-examination furnish reasonable grounds for doubting its credibility. Osbon v Hartfiel, 201 M 347, 276 NW 270.

Decrees of divorce are not subject to the limitations prescribed for the enforcement of ordinary judgments. Divorce decrees prescribe within themselves their own limitations and are at all times subject to modification by the court rendering them. Akerson v Anderson, 202 M 356, 278 NW 577.

To justify the elimination of all alimony from a divorce decree there must be proof of a substantial change in the pecuniary situation of the parties. Vassar v Vassar, 204 M 326, 283 NW 483.

In the absence of statutory authority the courts have no power in divorce proceedings to deal with property rights of the parties, and where the wife obtains a divorce the courts may not award to the husband property standing in the name of the wife. Hutson v Hutson, 204 M 601, 284 NW 780; Nelson v Nelson, 149 M 285, 183 NW 354.

The allowance of attorney's fees and other expenses is largely a matter of discretion with the trial court. They should be allowed cautiously and conservatively. In fixing alimony, the court is by statute given large discretionary power, but in the instant case the appellate court modified the decree by doing away with a time limitation. Burke v Burke, 208 M 1, 292 NW 426.

While the amount of alimony allowed is within the sound discretion of the court, and the imposing of a lien on the real estate of the defendant is approved, the decree is modified by the appellate court, making it payable monthly until further order of the court. Locksted v Locksted, 208 M 551, 295 NW 402.

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. The making of a new order in furtherance of the original decree is not required. The finding of the defendant in contempt for non-payment is sustained. An order holding the defendant in civil contempt is reviewable by appeal and not by certiorari.' Dahl v Dahl, 210 M 361, 298 NW 361.

A wife's misconduct subsequent to the divorce may be considered in a motion for reduction of alimony. As to an allowance of alimony, the court will not overrule the decision where the evidence permits a decision either way. Martens v Martens, 211 M 369, 1 NW(2d) 357.

Whether the court rightly determined that the wife should have a lien on the husband's property is unimportant when the court had justifiably enjoined the husband from transferring his property until payment of the wife's award. Dow v Dow, 212 M 508, 4 NW(2d) 313.

Both husband and wife claimed cruelty. The divorce was granted to the husband. An award of $333.17 to the defeated wife was ample. Dahlke v Dahlke, 216 M 111, 11 NW(2d) 825.

Alimony is not a penalty, but a substitute for marital support. Except where there is an abuse of judicial discretion the allowance by the trial court must stand. Gerard v Gerard, 216 M 543, 14 NW(2d) 289.

Limitation in amount applies only to alimony and does not include money for support of children awarded to, and supported by wife. Hove v Hove, 218 M 612, 16 NW(2d) 776.

A property settlement agreement between parties to a divorce action, fairly entered into, each party being fully informed, will not be set aside, especially where made under the watchful care of competent counsel, and specifically made a part of the court's findings. Warner v Warner, 219 M 59, 17 NW(2d) 58.

Payments to a divorced wife under a trusteeship based upon a decree for alimony are not regarded as income of the wife but as paid in discharge of the general obligation to support which is made specific by decree. Douglas v Willcutts, 296 US 4.

Where the right subsequently to apply for alimony is preserved by reservation in the decree, an application for alimony may be made after the rendition of the judgment of divorce. Dow v Dow, 212 M 507, 4 NW(2d) 313.

Availability of equitable relief in enforcing foreign alimony decrees. 18 MLR 589.

Implied condition under a separation agreement that the wife be chaste. 19 MLR 218.

518.23 REVISION, AS TO ALIMONY, AFTER DECREE.

HISTORY. R.S. 1851 c. 66 s. 25; P.S. 1858 c. 62 s. 25; G.S. 1866 c. 62 s. 25; G.S. 1878 c. 62 s. 25; G.S. 1894 s. 4809; R.L. 1905 s. 3592; G.S. 1913 s. 7129; G.S. 1923 s. 8603; M.S. 1927 s. 8603.

The authority given by statute to revise and alter a judgment for alimony, is to be exercised only upon new facts occurring after the judgment, or perhaps, also, upon facts occurring before the judgment, of which a party was excusably ignorant at the time when the judgment was rendered. When a gross sum was awarded as alimony, the death of a child in custody of the wife is not ground for reduction of the sum allowed. Semrow v Semrow, 23 M 214; Weld v Weld, 28 M 33, 8 NW 900.

A decree should not be modified unless it is apparent that there has been such a change in circumstances of the parties as to make it necessary and equitable. Smith v Smith, 77 M 67, 79 NW 648.

The fact that the property and income of the husband had materially depreciated since the divorce may furnish reasons for the reduction of allowance to the divorced wife. The court need not in its order make specific findings of fact. Barbarus v Barbarus, 88 M 105, 92 NW 522.

When a court by a decree of absolute divorce granted the wife because of desertion of her husband, awarded the custody of a minor child to the wife, but made no allowance for its maintenance, the power of that court extends to the subsequent revision and alteration of such decree, and in the instant case the trial court rightfully refused alimony to the wife, but should have made provision for the support of the minor child. McAllen v McAllen, 97 M 76, 106 NW 100.

Prior to the passage of Laws 1909, Chapter 292, where a wife divorced her husband on the ground of adultery, she is entitled to ownership and possession of his real estate, there being no living issue of the marriage. Glaser v Kaiser, 103 M 241, 114 NW 762.

An order, imposing reciprocal obligations upon the parties, must be construed as an entirety; and the several provisions thereof as dependent upon each other, such order is not void or beyond the jurisdiction of the court, because to comply therewith defendant must secure the assent of his present wife. Warren v Warren, 114 M 389, 121 NW 379.

The court awarding a judgment for alimony whether such alimony be payable in a gross sum or in instalments, has authority to revise or modify such judgment

upon application of either party for good cause shown. A modification due to change in earnings or fortune of the husband sustained. Haskel v Haskel, 116 M 10, 132 NW 1129.

Where a limited divorce was granted, the court allowed alimony. The question being raised as to disposition of the husband's real estate, the court held that any difficulty that might arise could be obviated upon proper application to the court. Martinson v Martinson, 116 M 128, 133 NW 460.

The court may modify a judgment for alimony in a divorce proceeding, and where the decree is based upon a stipuation, the agreement is merged in the judgment, and the contract does not control the court as far as to an amendment of the decree. Warren v Warren, 116 M 458, 133 NW 1009; Randall v Randall, 181 M 18, 231 NW 413.

There must be a material change in the situation of the parties in order to sustain a modification of the decree. Fitzpatrick v Fitzpatrick, 129 M 538, 152 NW 1101.

When the defendant, after a judgment for alimony, acquires real estate, the court has power to revise the judgment so as to make the alimony a specific lien on the real estate so acquired. Roberts v Roberts, 135 M 397, 161 NW 148.

It is the duty of the father to provide for his children even though they do not remain in his custody. His liability is not limited by regulations governing the allowance of alimony to the wife. Jacobs v Jacobs, 136 M 190, 161 NW 525.

In making an award of alimony, the court properly took into account real property acquired by the defendant by inheritance after the decree of divorce, and the property being in the jurisdiction of the court may declare a lien thereon. Searles v Searles, 140 M 385, 168 NW 135.

The remarriage of a divorced wife does not ipso facto cancel the obligation to pay instalments of alimony. Where the allowances are based upon support it should be a fact that would strongly move the court to modify the decree, but where the allowance was based on a property consideration it might not be a factor. Hartigan v Hartigan, 142 M 274, 171 NW 925.

When it appears that a second marriage was planned by the wife before the divorce action was instituted, sound public policy demands that the alimony be discontinued after the second marriage of the wife. Hartigan v Hartigan, 145 M 27, 176 NW 180.

The court has power to modify a judgment where payment is by instalments, by making all payable at once, and sequestering the defendant's personal property in satisfaction. Hesebeck v Hesebeck, 162 M 331, 203 NW 966.

A judgment in a divorce decree awarding alimony, to continue during the life of the wife though her husband predecease her, and charged as a lien upon his property, may be modified in a proper case upon the application of his heirs after his death. Gunderson v Gunderson, 163 M 236, 203 NW 786.

Postnuptial agreements are not contrary to public policy. The power to fix alimony is, however, inherent in the district court, and the parties cannot by any agreement oust the court of that jurisdiction. Sessions v Sessions, 178 M 77, 236 NW 212.

Where the husband did not satisfactorily report to the court details as to his earnings and there was doubt as to the correctness of his books, and in view of his long continued unwillingness to pay the instalments, the trial court erred in canceling the accrued alimony. Plankers v Plankers, 178 M 31, 225 NW 913.

Evidence of a change in defendant's pecuniary situation was sufficient to warrant the trial court in reducing the alimony payments. The misconduct of the plaintiff, though not so gross as to warrant entire relief from payments, may be taken into consideration as to reduction. Lindbloom v Lindbloom, 180 M 33, 230 NW 117.

The fact that the husband is about in the near future to enjoy the benefits of an express, irrevocable trust, may be taken into consideration in fixing alimony even if the husband has enjoyed no benefits at the time of the hearing. Erickson v Erickson, 181 M 421, 232 NW 793.

An order made modifying and limiting the extent of the instalment payments, and reducing the total amount, sustained. Holida v Holida, 183 M 618, 237 NW 2.

A remedy at law which is practically ineffective will not bar equitable relief. The obligation imposed upon a divorced husband by a South Dakota court will be considered here as remaining one for alimony and not an ordinary debt. Ostrander v Ostrander, 190 M 547, 252 NW 449.

The fact that the applicant for reduction of alimony is in arrears does not preclude the court from acting on the application; and the fact that prior applications have been heard does not prevent a hearing on the instant application, if there has been a change in financial status of the defendant. Erickson v Erickson, 194 M 634, 261 NW 397.

The pending motion in a divorce action did not bar or abate the suit to recover a money judgment for default payments under a contract, the contract being a valid one. Koch v Koch, 196 M 312, 264 NW 791.

The appellate court and the lower court from which an appeal is taken have concurrent jurisdiction to award temporary alimony pendente lite. Temporary alimony pendente lite, may be applied as pro tanto payment on a permanent alimony award. Bickle v Bickle, 196 M 392, 265 NW 276.

Divorce jurisdiction is purely statutory, and the court has no power in the premises except as delegated to it by statute, and the holding of the trial court modifying the alimony payments, is sustained. Sivertsen v Sivertsen, 198 M 207, 269 NW 413.

Where the record discloses that plaintiff's right to alimony was litigated in a divorce action brought against her in Arkansas, she cannot thereafter maintain an action therefor in this state. Norris v Norris, 200 M 246, 273 NW 708.

In an action against an administrator brought by a divorced wife of the decedent to set aside a divorce on the ground of fraud, held, in the original action the jury is not bound to accept testimony as true merely because uncontradicted, if improbable, or where surrounding facts and circumstances furnish grounds for doubting its credibility. Osbon v Hartfiel, 201 M 347, 276 NW 270.

A final judgment in an action for divorce cannot be vacated on the ground that the defendant failed to answer through mistake or excusable neglect. Wilhelm v Wilhelm, 201 M 462, 276 NW 804.

Plaintiff obtained a divorce and alimony of $1,200 based on the husband's sworn testimony of a net worth of $5,000. He died one year later and his estate, concealed from the wife, amounted to more than $20,000. This is an action against the administrator of the husband's estate. The action of the lower court in denying her motion on the ground that she had not shown due diligence in the original action, is sustained. Clarizio v Castigliano, 201 M 590, 277 NW 262.

Decrees of divorce are not subject to the limitations prescribed for the enforcement of ordinary judgments, and the trial court was sustained in not requiring the release of a lien, though no payments were made between 1929 and 1937, more than six years having elapsed. Akerson v Anderson, 202 M 356, 278 NW 577.

To justify the elimination of all alimony from a divorce decree there must be proof of a substantial change in the pecuniary situation of the parties. Vassar v Vassar, 204 M 326, 283 NW 483.

The trial court should be conservative in the matter of alimony allowances. They should be allowed cautiously and only when necessary. Such allowances, except where the power is abused, are largely in the discretion of the trial court. Burke v Burke, 208 M 5, 292 NW 426.

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 the divorce decree. Hagen v Hagen, 212 M 490, 4 NW(2d) 100.

The general rule is that where the right subsequently to apply for alimony is preserved by reservation in the decree itself, an application for alimony may be made after the rendition of the judgment of divorce. Daw v Daw, 212 M 507, 4 NW(2d) 313.

The court in revising or altering a decree is limited to cases wherein alimony has been allowed the wife initially and as part of the divorce proceedings; and an extra allowance should not be granted unless it is clear that changed circumstances warrant it. Warner v Warner, 219 M 59, 17 NW(2d) 58.

Where the husband deposits securities and creates a trust, the court has full power to modify the agreement or may adopt it and treat it as its own, and it is

subject to the same modification as any decree of alimony. Douglas v Willcutts, 73 F(2d) 130.

Full faith and credit; finality of an alimony or maintenance decree. 4 MLR 456.

Power of the court to modify decree based on agreement of parties. 15 MLR 347.

Availability of equitable relief in enforcing foreign alimony decrees. 18 MLR 589.

Separation agreements; implied condition that the wife be chaste. 19 MLR 218.

Power of the court to modify accrued instalments. 20 MLR 314.

Right to procure a modification of alimony agreement not incorporated in the divorce decree. 25 MLR 645.

518.24 SECURITY; SEQUESTRATION; CONTEMPT.

HISTORY. G.S. 1866 c. 62 s. 26; G.S. 1878 c. 62 s. 26; 1881 c. 78 s. 1; G.S. 1894 s. 4810; R.L. 1905 s. 3593; G.S. 1913 s. 7130; G.S. 1923 s. 8604; M.S. 1927 s. 8604.

Where the husband is ordered to pay alimony and is unable to pay same, and he has not purposely created the disability, he cannot be imprisoned pending obedience of the order; but where he has the power to comply with the order, and fails to do so, he is guilty of a contempt of court and may be imprisoned until he purges himself. Hurd v Hurd, 63 M 443, 65 NW 728.

Where the plaintiff is insecure, in this case because the defendant planned to move to Canada, the court may modify the judgment by making all instalments immediately payable, and by sequestering defendant's personal property and the sale proceeds applied. Hesebeck v Hesebeck, 163 M 331, 203 NW 966.

His earnings being from $20.00 to $30.00 per week and it appearing that he is able to support an automobile for pleasure purposes, the divorced husband was properly convicted for failure to comply with a decree requiring him to pay $9.00 a week for the support of his minor daughter. Toppan v Toppan, 166 M 263, 207 NW 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. The showing is not so complete and definite as to require a finding of inability. Jackson v Jackson, 168 M 196, 209 NW 901.

Contempts of court, while in a general sense of a criminal nature, are not crimes within the meaning of our penal code, but are dealt with under a different statute, and the punishment is imprisonment in the county jail, and does not include incarceration in the city or county workhouse. Plankers v Plankers, 175 M 57, 220 NW 414.

Where the parties entered into a postnuptial agreement at or about the time of the divorce and the agreement or stipulation was adopted by the court and made a part of the decree, the duty of the defendant to pay the alimony does not rest on the agreement but on the court order and failure to perform is punishable by contempt. Sessions v Sessions, 178 M 75, 226 NW 211, 701.

Plaintiff whose allowance under a decree was in default, brought this action to have her claim declared prior to that of a judgment in favor of the husband's father against the husband and which she claims to be collusive. The wife endeavored to prove her case by cross-examination of the two defendants and the jury, disbelieving their story, found the judgment fraudulent. There was a reversal, the court holding that a plaintiff cannot call defendants for cross-examination under the statute, fail to get the necessary proof, and then base her case on the finding or assumption that their testimony is false. Moulton v Moulton, 178 M 568, 227 NW 896.

The alimony obligations of a non-resident husband personally served out of the state may be enforced as to his property in the state, and the court may by injunction restrain the disposition of the property. Bullock v Bullock, 181 M 564, 223 NW 312.

The husband defendant cannot be compelled by contempt proceedings to pay an encumbrance against his homestead. The order can only be enforced as to

alimony, suit money, attorney fees, and the like. Newell v Newell, 189 M 501, 250 NW 49.

The plaintiff was awarded support money for herself and infant child. By the same order, she was ordered to join with the husband in a mortgage on the husband's lands, which order was not obeyed. Held, under the circumstances the husband cannot be adjudged in contempt for non-payment. Feltman v Feltman, 189 M 584, 250 NW 457.

A remedy at law which is practically ineffective will not bar equitable relief. An action may be brought to compel payment of alimony under a South Dakota decree, and the court's orders on hearing are enforceable. Ostrander v Ostrander, 190 M 547, 252 NW 449.

A party guilty of contempt may not purge himself by showing of inability to pay, when he has voluntarily placed himself in such position. Ryerson v Ryerson, 194 M 350, 260 NW 530.

The husband was a beneficiary under a valid spendthrift trust, by which both the principal and interest are free from the claims of creditors and are protected in transmission. Alimony in a case of this kind stands in a position similar to that of other creditors. Erickson v Erickson, 197 M 71, 266 NW 161.

The defendant presented evidence which convinced the court that he was unable to pay $75.00 per month alimony and was therefore purged of contempt. Zeches v Zeches, 199 M 488, 272 NW 380.

Upon an ex parte application for a declaration judgment for unpaid alimony, and an execution thereon, the trial court may, in its discretion, require notice of the application given to the other party. It is within the discretion of the court, upon a proper showing, to cancel a substantial part of delinquent payments. Kumlin v Kumlin, 200 M 26, 273 NW 253.

The fact that the plaintiff because of the husband's default found it necessary to keep the children with relatives and outside of the state, will not relieve the husband from his obligations, and will not save him from the penalty of default. Fjeld v Fjeld, 201 M 512, 277 NW 203.

The appellate court will not review by writ of certiorari an order of the district court adjudging the relator guilty of civil contempt. Gulleson v Gulleson, 205 M 409, 286 NW 721; Dahl v Dahl, 210 M 361, 298 NW 361.

The district court has power to punish as for contempt the wrongful refusal of the husband to pay an allowance ordered for the benefit of his wife in an action for separate maintenance. Sybilrud v Sybilrud, 207 M 373, 291 NW 607; Dahl v Dahl, 210 M 361, 298 NW 361.

An order, adjudging a defendant in contempt for failure to make payments of alimony pendente lite cannot be sustained insofar as it is not responsive to the order to show cause upon which it is based. Richardson v Richardson, 218 M 44, 15 NW(2d) 127.

The purpose of the statute requiring corroboration of testimony is to prevent collusion, and where a divorce is originally contested, the rule may be greatly relaxed. Categorical corroboration is not necessary. It need not necessarily be oral. Conflicting evidence in contested cases may supply the statutory corroboration. Visneski v Visneski, 219 M 217, 17 NW(2d) 313.

Enforcement by commitment for non-payment of alimony. 18 MLR 45.

518.25 REMARRIAGE; REVOCATION.

HISTORY. R.S. 1851 c. 66 s. 29; P.S. 1858 c. 62 s. 29; G.S. 1866 c. 62 s. 27; G.S. 1878 c. 62 s. 27; G.S. 1894 s. 4811; R.L. 1905 s. 3594; G.S. 1913 s. 7131; G.S. 1923 1923 s. 8605; M.S. 1927 s. 8605.

518.26 COHABITING AFTER DIVORCE PROHIBITED.

HISTORY. R.S. 1851 c. 66 s. 30; P.S. 1858 c. 62 s. 30; G.S. 1866 c. 62 s. 28; G.S. 1878 c. 62 s. 28; G.S. 1894 s. 4812; R.L. 1905 s. 3595; G.S. 1913 s. 7132; G.S. 1923 s. 8606; M.S. 1927 s. 8606.

518.27 EFFECT OF DIVORCE; NAME OF WIFE.

HISTORY. R.S. 1851 c. 66 s. 31; P.S. 1858 c. 62 s. 31; G.S. 1866 c. 62 s. 29; G.S. 1878 c. 62 s. 29; G.S. 1894 s. 4813; R.L. 1905 s. 3596; G.S. 1913 s. 7133; G.S. 1923 s. 8607; M.S. 1927 s. 8607.

A divorce granted in Dakota may be attacked collaterally. The failure of the wife over a period of many years to attack the invalid decree did not operate to prevent persons claiming under her from securing her distributive share in the husband's estate. Sammons v Pike, 108 M 291, 120 NW 540, 122 NW 168.

A court of equity, independent of an action for divorce or separation, and though grounds for divorce do not exist, has jurisdiction to decree the wife support. It may do so when the husband unjustifiably lives apart from his wife and refuses his support. Waller v Waller, 160 M 431, 200 NW 480.

518.28 CORROBORATING TESTIMONY REQUIRED.

HISTORY. R.S. 1851 c. 109 s. 6; P.S. 1858 c. 98 s. 6; G.S. 1866 c. 73 s. 95; G.S. 1878 c. 73 s. 106; G.S. 1894 s. 5769; R.L. 1905 s. 4746; G.S. 1913 s. 8465; G.S. 1923 s. 9905; M.S. 1927 s. 9905.

A judgment for a divorce cannot be granted upon default of defendant to answer, except upon proof of the facts other than the evidence of the parties. True v True, 6 M 458 (315).

Following Segelbaum v Segelbaum, 39 M 258, other acts of cruelty than those set forth in the complaint, which illustrates the character of the relations between the parties, may be received in evidence to corroborate the issuable facts. Westphal v Westphal, 81 M 242, 83 NW 988.

The statute evidences an intention on the part of the legislature to apply to divorce actions the general rule in respect to corroborating evidence. It is not required that the complaining party be corroborated as to each item of testimony. It is sufficient if the corroborating evidence tends in some degree to support and confirm the allegations relied upon for divorce. Clark v Clark, 86 M 249, 90 NW 390; Hertz v Hertz, 126 M 65, 147 NW 825; Engleke v Engleke, 152 M 242, 188 NW 316.

The statutory necessary corroboration to plaintiff's testimony is established by the circumstances and atmosphere of the case. Graml v Graml, 184 M 324, 238 NW 683; Locksted v Locksted, 208 M 551, 295 NW 402.

The intention to consider divorce cases as a special class has been indicated by (1) the requirement of personal service, (2) allowing 30 days to answer and, (3) requirement of corroborating evidence in default cases. Cahaley v Cahaley, 216 M 178, 12 NW(2d) 182.

The statutory rule does not require categorical corroboration; it is sufficient if it leads the impartial and reasonable mind to believe that the material testimony of the prevailing party is founded upon truth. Gerard v Gerard, 216 M 543, 13 NW(2d) 606.

518.29 ADVERTISEMENT SOLICITING DIVORCE BUSINESS PROHIBITED.

HISTORY. 1901 c. 209; R.L. 1905 s. 5166; G.S. 1913 s. 8971; G.S. 1923 s. 10461; M.S. 1927 10461.

The statute is not invalid because it deprives the defendant of a vested right. The construction of the writing, there being no evidence to explain its meaning, was for the court. State v Giantvalley, 123 M 227, 143 NW 780; 123 M 529, 143 NW 1135.

Validity of statute prohibiting the solicitation of personal injury claims. 12 MLR 74.

Rules governing attorneys in the practice of their profession. 16 MLR 288.

Advertising by bar association. 25 MLR 788.

Prohibition against solicitation. Laws 1929, Chapter 289.