

## CHAPTER 518

## DIVORCE

**518.01 WHAT MARRIAGES VOID.**

A marriage may not be dissolved by agreement of the parties or by the say-so of one. This applies to common-law marriages as well as those solemnized. But divorce and grounds therefor are prescribed by the state where the action is instituted and not at all by the law of the state where the marriage was contracted. *Rogers v Cordingley*, 212 M 546, 4 NW(2d) 627.

A married person was not eligible to contract a common-law marriage when such marriages were recognized; and since common-law marriages were abolished before defendant procured a divorce from his wife, no marriage exists by virtue of the parties living as husband and wife. *Baker v Baker*, 222 M 169, 23 NW(2d) 582.

Divorce jurisdiction is purely statutory, and courts have only the powers delegated by statute. Each state has the exclusive right and power to determine the status of its resident and domiciled citizens and subjects respecting the question of marriage and divorce. Where an absolute divorce was granted by a court possessed of jurisdiction, such divorce, lawfully obtained, is valid anywhere. *Larsen v Erickson*, 222 M 363, 24 NW(2d) 711.

Section 518.01 does not make void the marriage of a feeble-minded person who married irrespective of the provisions of section 517.03. Under the provisions of section 518.02 the marriage might be voidable. OAG June 16, 1943 (300).

If both parties are over the age of 15 years, the marriage is not void, even if the license is wrongfully procured. OAG March 13, 1945 (300-A).

Division of property jointly accumulated during a void marriage. 5 MLR 149.

Validity of foreign divorce depends upon recognition in state of domicile of spouse. 6 MLR 323.

Power of a court of equity to enjoin divorce proceedings in a foreign jurisdiction. 11 MLR 467.

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

Right to receive payments from husband under separation agreement; effect of wife's adultery. 19 MLR 218.

Effect of marriage on the jurisdiction of the juvenile court over minors. 22 MLR 285.

Effect of divorce on homestead rights. 25 MLR 66, 73.

Estoppel to assert fraud or duress in separation agreement or deny validity of void decree. 25 MLR 111.

**518.02 WHAT MARRIAGES VOIDABLE.**

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

Annulment of marriage for fraudulent representation as to pregnancy. 6 MLR 416.

Intoxication as ground for annulment. 8 MLR 169.

Misrepresentation of citizenship as ground for annulment. 8 MLR 341.

Annulment of marriage for fraud. 9 MLR 497.

Jurisdiction to annul a marriage. 16 MLR 398.

Allowance of alimony on annulment of marriage. 23 MLR 387.

**518.03 ACTION TO ANNUL.**

Wife was not estopped from bringing action to set aside default annulment decree obtained by husband through extrinsic fraud, though the woman who subsequently married the husband did so in good faith, where she had no knowledge of the husband's previous marriage and annulment decree and hence could not have relied on the annulment decree. *Bloomquist v Thomas*, 215 M 35, 9 NW(2d) 337.

Annulment of marriage for fraud. 9 MLR 497.

Application of clean hands doctrine. 16 MLR 215.

Jurisdiction to annul marriage. 16 MLR 398.

Jurisdiction of action to annul marriage. 19 MLR 117.

Allowance of alimony in annulment. 23 MLR 387.

Effect of divorce on homestead rights. 25 MLR 66, 73.

**518.06 GROUNDS FOR DIVORCE.**

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

**3. Cruel and inhuman treatment**

The trial court determines the credibility of the witnesses and the weight to be given to their testimony. In the exercise of this power the trial court can conclude that testimony is the product of imagination and exaggeration rather than a recital of what actually took place. *Rhoads v Rhoads*, 208 M 61, 292 NW 760.

Trial court did not commit reversible error in refusing to permit two witnesses of the husband to testify as to his disposition and temperament since a husband's general temperament is often a very inaccurate gauge of his disposition toward his wife. *Locksted v Locksted*, 208 M 551, 295 NW 402.

The granting of a continuance or postponement of a cause is a matter lying in the discretion of the trial court, and its action will not be reversed on appeal except for a clear abuse of discretion. *Lehman v Lehman*, 216 M 538, 13 NW(2d) 604.

The court refuses to follow the doctrine of comparative rectitude in a divorce action, and holds that where both parties are found guilty of cruel and inhuman treatment neither is entitled to a divorce. *Hove v Hove*, 219 M 592, 18 NW(2d) 581.

The appellate court will not disturb the findings by the trial court of cruel and inhuman treatment, unless the findings are manifestly and palpably contrary to the evidence as a whole. *Landen v Landen*, 221 M 396, 22 NW(2d) 164.

Refusal to have intercourse without contraceptives. 26 MLR 751.

**5. Desertion**

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

Desertion is a specific ground for divorce, but only where it is wilful and continuous for a period of one year next preceding the commencement of the action.

While a divorce could not be granted here upon the ground of desertion, because the alleged desertion had continued for but a fraction of the required statutory time, an attempt is made herein to make desertion ground for divorce as an act of cruelty. This cannot legally be done. To permit one ground to be established by proof of another would wipe out the statutory requirement of proof on specific grounds for divorce. *Crowley v Crowley*, 219 M 355, 18 NW(2d) 40.

### 9. Generally

To each state belongs the exclusive right and power to determine the status of its resident and domiciled citizens and subjects in respect to the question of marriage and divorce. Contract between parties to divorce suit, made after issue was joined but before trial and with the aid and assistance of competent counsel, agreeing to custody and maintenance of their children and to settlement of their respective property rights, the terms of which, in order to be effective, were required to be, and were, submitted to and approved by the court, requires careful and searching judicial scrutiny to avoid possibility of its being the means to influence the court's decision and one which, to be effective, must satisfy the court as to its fairness between the parties, that it was made without collusion or concealment, and that it was not the result of imposition by one of the parties. *Warner v Warner*, 219 M 60, 17 NW(2d) 58.

Ante nuptial agreement by parties to a marriage that the contemplated marriage is to be terminable at some future time or is to be effective only for a limited purpose is void as contrary to public policy. *Safranski v Safranski*, 222 M 358, 24 NW(2d) 834.

Mere domicile within the state of a party to a marriage does not give the court of that state jurisdiction to render a decree of divorce enforceable in all other states against a nonresident who did not appear and was only constructively served. The full faith and credit clause of the federal constitution does not so extend. *Haddock v Haddock*, 201 US 562, 26 SC 525.

There is no statutory authority authorizing the executive officer of the respective state institutions to charge or collect fees for certifying to the courts the mental condition of inmates, or other information acquired in the course of their official duties. OAG Nov. 4, 1946 (196-S).

"Divorces shall not be granted by the legislature." Const., Art. IV, s. 28.

Revival of offense condoned. 6 MLR 73.

Where wife without support lives separate from husband five years next preceding filing of complaint; constitutionality of statute permitting divorce. 6 MLR 243.

Constructive desertion. 6 MLR 244.

Evidence of good reputation where divorce is asked on ground of adultery. 7 MLR 413.

Rejection of doctrine of comparative rectitude. 14 MLR 94; 30 MLR 306.

Cruelty as ground for divorce. 16 MLR 256, 263.

Admissibility of parol evidence to prove divorce. 16 MLR 711.

Duty to attempt reconsideration in desertion cases. 16 MLR 863.

Proof of adultery. 17 MLR 439.

Fraud as ground for vacating decree of divorce. 17 MLR 440.

Social and economic consequences of divorce. 17 MLR 638.

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

Knowledge or belief as a prerequisite to condonation in the law of divorce. 21 MLR 408.

Refusal to have intercourse without contraceptives. 26 MLR 751.

### 518.07 RESIDENCE OF COMPLAINANT.

It is the marriage status that furnishes the subject matter of the court's jurisdiction. To each state belongs the exclusive right and power to determine the status

of its resident and domiciled citizens and subjects in respect to the question of marriage and divorce. *Warner v Warner*, 219 M 59, 17 NW(2d) 58.

Misconduct of husband compelling wife to live apart from him. 9 MLR 155.

Residence within the state while residing on government land. 11 MLR 74.

Problems in jurisdiction. 13 MLR 525.

Divorce racket; relating to jurisdiction. 17 MLR 638.

Domicile while in military service. 28 MLR 69.

Interstate recognition of divorce decree rendered when non-domiciliary defendant appears. 30 MLR 399.

**518.08 DENIAL, THOUGH ADULTERY PROVED.**

Revival of offense condoned. 6 MLR 73.

Proof of crime in a civil proceeding. 13 MLR 556.

Doctrine of comparative rectitude. 14 MLR 94; 30 MLR 306.

Proof of adultery. 17 MLR 439.

Clean hands doctrine. 17 MLR 663.

Effect of lapse of time and repetition of offense condoned. 18 MLR 80.

Connivance as a defense. 18 MLR 223.

Knowledge or belief as a prerequisite to condonation in the law of divorce. 21 MLR 408.

Doctrine of comparative rectitude rejected. 30 MLR 306.

Divorce; condonement; statute copied from another state; effect of subsequent interpretation by court of parent state. 31 MLR 617.

**518.09 ACTION; HOW AND WHERE BROUGHT; VENUE.**

Shortly after the entry of the divorce decree in favor of the husband, the husband died. This suit is brought under section 548.14 to have the decree set aside as fraudulent. The suit is against the executor of the husband's estate and the heirs. Where the positive testimony of witnesses is uncontradicted and unimpeached either by positive testimony or by circumstantial evidence, either extrinsic or intrinsic, of its falsity, a jury has no right to disregard it. But a jury is not bound to accept the testimony as true merely because uncontradicted, if improbable, or where 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.

The equitable power of the court to grant separate maintenance was not abolished by L. 1933, c. 165, abolishing limited divorce. Desertion as a ground for divorce cannot be predicated on a separation under an order of court which sanctions same. *Bliss v Bliss*, 208 M 84, 293 NW 94.

Where each party is guilty of cruel and inhuman treatment no divorce will be granted. *Hove v Hove*, 219 M 590, 18 NW(2d) 580.

Divorce; custody of children; support. 1 MLR 525.

Collusive divorce. 5 MLR 317.

Selection of domicile; limited divorce; separate maintenance. 7 MLR 247.

Some problems in jurisdiction to divorce. 13 MLR 525.

Conflict of laws as to domicile. 15 MLR 671.

Adequacy of ineffective remedy at law. 16 MLR 233.

Continuation of jurisdiction in divorce suit. 22 MLR 267.

**518.11 SERVICE; PUBLICATION.**

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.

Extraterritorial effect of decree rendered on constructive service. 17 MLR 513.

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

Interstate recognition of decree rendered without jurisdiction over defendant. 27 MLR 403.

**518.12 TIME FOR ANSWERING.**

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 court and the administration of justice. *Cohaley v Cohaley*, 216 M 175, 12 NW(2d) 182.

**518.13 FAILURE TO ANSWER; REFERENCE.**

While divorce jurisdiction is purely statutory and as such the court possesses only the powers so delegated, adequate authority and power to grant relief is contained in section 518.23; but in the instant case defendant was not, on the record presented, entitled to have default divorce decree vacated on the ground that he had been prevented by fraud from presenting his defense. *Wilhelm v Wilhelm*, 201 M 462, 276 NW 804.

The exclusion of divorce cases from the provisions of sections 543.13 and 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 court and the administration of justice. *Cohaley v Cohaley*, 216 M 175, 12 NW(2d) 182.

**518.14 ALIMONY PENDING SUIT; COSTS.**

The allowance of attorney's fees and other expenses in divorce proceedings is largely a matter of discretion with the trial court, and it is the established policy of this court to be conservative in the matter of such allowances. They are to be allowed cautiously and only when necessary. *Burke v Burke*, 208 M 1, 292 NW 426; *Coddon v Coddon*, 209 M 1, 295 NW 74; *Whipple v Mayer*, 215 M 518, 10 NW (2d) 771.

A husband may be required to pay a reasonable amount necessary to enable his wife to carry on or defend a divorce suit, even though the wife is the losing party. As the appeal by the wife is not without merit plaintiff, in the instant case, is required to pay defendant's appeal expenses in the sum of \$250. *Visneski v Visneski*, 219 M 217, 17 NW(2d) 313.

Trial court is in a better position than a court of review to determine, according to local conditions and the circumstances of each case, what is reasonably necessary for the support and maintenance of a minor child. *Kaehler v Kaehler*, 219 M 536, 18 NW(2d) 312.

Trial court is invested with discretion, within limits, as to the alimony to be allowed and as to property to be restored to the wife. In the absence of abuse of discretion, the action of the trial court will not be reversed. *Starks v Starks*, 220 M 313, 19 NW(2d) 742.

Where a judgment is entered in a divorce case, allowances of temporary alimony under a prior order of court become merged in the judgment and unenforceable, unless, as in the instant case, the final judgment makes provision for their payment. *Trutnau v Trutnau*, 221 M 462, 22 NW(2d) 321.

By virtue of section 518.23 the court is given broad power to revise or alter a decree of alimony or other allowance for the wife and children, or either of them. This power may be appropriately exercised when it is shown that sub-

sequent to the original decree there has been a substantial change in the financial circumstances of one required to pay such allowance or the one receiving the same. *Wilcox v Wilcox*, 222 M.279, 24 NW(2d) 237.

Attorney's fees in divorce when wife dismisses the case. 1 MLR 371.

Excluding defendant from divorce trial for failure to pay temporary alimony. 13 MLR 505.

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

#### 518.16 CUSTODY OF CHILDREN DURING PENDENCY.

Where in an action for divorce a child or children are at the time under order from a juvenile court as neglected children, the order of the juvenile court, under section 260.11, should prevail. It is the duty of the director of public welfare in case there is an inconsistency between the orders issued by the said courts, to intervene in the district court proceedings and obtain a modification of the district court order. OAG Aug. 21, 1946 (268-H).

#### 518.17 CUSTODY OF CHILDREN ON JUDGMENT.

Decrees of divorce not being subject to the limitations prescribed for the enforcement of ordinary judgments, the trial court was right in denying defendant's application under section 548.15 for a satisfaction of a lien upon real estate provided for in such decree. *Okerson v Anderson*, 202 M 356, 278 NW 577.

One member of the court being incapacitated by illness and the remaining members of the court being equally divided on the questions presented by this appeal, the order is affirmed without opinion. *Martin v Martin*, 204 M 621, 284 NW 294.

To warrant a modification of an allowance fixed by a divorce decree, there must be proof of such substantial change in the situation of the parties from that in which they were when the decree was rendered as to justify a modification. *Quist v Quist*, 207 M 257, 290 NW 561.

A divorced wife who has been awarded the custody of a child cannot enforce accrued instalments of the obligation to support the child as provided for in the decree when she has intentionally violated its provisions by taking the child out of the territorial limits of the court's jurisdiction. The trial court properly exercised its discretion in denying relief. *Anderson v Anderson*, 207 M 338, 291 NW 508.

In a divorce proceeding, the trial court determines the credibility of the witnesses and the weight to be given their testimony. In the exercise of this power the trial court can conclude that testimony is the product of imagination and exaggeration rather than a recital of what actually took place. *Rhoads v Rhoads*, 208 M 61, 292 NW 760.

The appellate court will not disturb the disposition of the children as directed by the trial court except or unless there is evident abuse of the wide discretion with which the trial court is invested. *Locksted v Locksted*, 208 M 551, 295 NW 402; *Coddon v Coddon*, 209 M 1, 295 NW 74.

Upon the evidence herein it was found that the appellant was not a fit and proper person to have the custody, care, and education of her child Nancy, but her husband, the father of the child, was fit to have such custody and care of her education on the terms decreed by the district court. *State ex rel v Price*, 211 M 565, 2 NW(2d) 39.

Unless there is evident abuse of the trial court's discretion, an order granting divided part time custody of a child to each of the divorced parents will not be disturbed. *Menke v Menke*, 213 M 311, 6 NW(2d) 470.

Regularity of daily routine of providing a child of tender years with food, sleep, and general care, as well as stability in the human factors affecting the child's emotional life and development, is essential, and this regularity and stability can best be obtained with such undivided custody as will prevent the child from being shunted back and forth between two homes. *Kaehler v Kaehler*, 219 M 536, 18 NW(2d) 312.

The father being able to give the 12 year old child an education, and being recommended by institution which formerly had custody of the child, and the mother being a victim of the drink habit, the trial court erred in granting custody to the mother. *Collins v Collins*, 221 M 343, 22 NW(2d) 168; 22 M 197, 23 NW(2d) 9.

It was an abuse of discretion on the part of the trial court to cancel arrearages and change the periodic payments due as support money for a minor child when there was no evidence showing a change in circumstances meriting relief for the divorced defendant. *Williams v Williams*, 221 M 441, 22 NW(2d) 212.

While a divorce judgment containing no provision for the support of a minor child does not affect the father's duty to support the child, the father is not liable to the mother for support furnished the child by her after the divorce where he is unable to pay therefor and has no property, credit, or other means available for the purpose. *Haugen v Swanson*, 222 M 203, 23 NW(2d) 535.

Under well established rules, the custody of very young children is ordinarily awarded to the mother. *Johnson v Johnson*, 223 M 420, 27 NW(2d) 290.

Where an action for divorce is brought by a party who is found to be a resident of this state for the prescribed statutory period, and a cross-complaint is interposed by defendant, a divorce may be granted defendant on his cross-complaint without a finding of statutory residence. *Johnson v Johnson*, 223 M 420, 27 NW(2d) 290.

Jurisdiction to determine custody of children in divorce actions; extraterritorial effect of the decree. 13 MLR 261.

Jurisdiction to award custody of minor children. 18 MLR 591.

#### 518.18 REVISION OF ORDER.

To warrant a modification of an allowance fixed by a divorce decree, there must be proof of such substantial change in the situation of the parties from that in which they were when the decree was rendered as to justify a modification. *Quist v Quist*, 207 M 257, 290 NW 561.

The evidence submitted on the application to amend the divorce decree justified the trial court in modifying the decree so as to grant custody of the child to the mother during the summer months. *Menke v Menke*, 213 M 311, 6 NW(2d) 470.

The welfare of a child is the prime consideration in determining to whom its custody is to be given, and even the care, love and affection of the child's mother must yield to this consideration. *Christianson v Christianson*, 217 M 561, 15 NW (2d) 24.

An order affecting custody and maintenance of children of parties in divorce action is not final and is thereafter subject to such changes as to the trial court in its discretion may deem the circumstances require. *Johnson v Johnson*, 223 M 420, 27 NW(2d) 290.

The finality of a Minnesota alimony or maintenance decree. 4 MLR 456.

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

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. [*Nelson v Nelson*, 149 M 285, 183 NW 354] *Huston v Huston*, 204 M 601, 284 NW 780.

In the divorce action after a full hearing, the trial court decreed the title to the real estate to the wife. This was not an award in alimony but a division of property which was binding on the parties and which cannot be modified so as to adjudge the husband the owner of the property after the time for appeal had expired. *Anich v Anich*, 217 M 259, 14 NW(2d) 289.

Defendant, having obtained title to an undivided half interest in the husband's homestead by misrepresentations, held such title in trust for the husband. *Crowley v Crowley*, 219 M 341, 18 NW(2d) 40.

On appeal from a judgment after trial by the court, no motion for a new trial having been made and no errors in rulings or proceedings at the trial being involved, the questions for review are limited to a consideration of whether the evidence sustains the findings of fact and whether such findings sustain the conclusions and judgment. *Maust v Maust*, 222 M 135, 23 NW(2d) 538.

Where plaintiff had title to and possession of property valued at \$36,511, of which two-thirds had been procured through her husband, and the husband procured the divorce on his cross-bill, the court may award him a sum of money representing the proportion of property to which he may be found entitled, notwithstanding the property procured through him had been converted into other forms. *Maust v Maust*, 222 M 135, 23 NW(2d) 538.

Interpretation of statute giving alimony to husband. 5 MLR 296.

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

Right of husband in property acquired by the wife in exchange for property received from her husband. 11 MLR 74.

### 518.20 ORDER AS TO WIFE'S PROPERTY.

The allowance of alimony and division of property in a divorce suit is within the discretion of the trial court, and its action will not be disturbed unless abuse of discretion is shown. *Starks v Starks*, 220 M 313, 19 NW (2d) 741.

### 518.22 PROPERTY OF HUSBAND, PERMANENT ALIMONY .

Sections 518.20 and 518.22 invest the trial court with discretion, within the limits therein stated, as to the alimony to be allowed and as to property to be restored to the wife which has come to the husband by reason of the marriage. In the absence of an abuse of discretion, the action of the trial court will not be reversed here. *Starks v Starks*, 220 M 313, 19 NW(2d) 742.

The trial court exercises a broad discretion in awarding and fixing the amount of alimony, and where such court has in its sound discretion considered the ability of the husband to pay, the character and situation of the parties, its award will not be disturbed on appeal. Any possible inadequacy in the future may be corrected by future revision. *Louden v Louden*, 221 M 338, 22 NW(2d) 165.

In a default divorce action, where defendant was personally served, the judgment entered against him was notice to him from the time of its entry; and it was an abuse of discretion on the part of the trial court to cancel arrearages and change the periodic payments due as support money for a minor child when there was no evidence showing a change in circumstances meriting relief. *Williams v Williams*, 221 M 441, 22 NW(2d) 212.

Where a judgment is entered in a divorce case, allowances of temporary alimony under a prior order of court become merged in the judgment and unenforceable, unless, as in the instant case, the final judgment makes provision for their payment. *Trutnau v Trutnau*, 221 M 462, 22 NW(2d) 321.

A point not raised in the trial court, that the judgment and an order amending it leave uncertain the amount of temporary alimony in arrears to be paid, cannot be raised for the first time on appeal. *Trutnau v Trutnau*, 221 M 462, 22 NW(2d) 321.

Where divorced father lacked ability to support spouse's minor child, born after entry of divorce judgment, which contained no provision for child's support, and the child was without means to support itself, duty to support it fell on the mother, and the father was not liable for support furnished child by the mother. *Haugen v Swanson*, 222 M 203, 23 NW(2d) 535.

Since the parties to this divorce proceeding lived together with full knowledge that defendant was married, their relationship was meretricious, and no property rights were acquired during such cohabitation. The parties must resort to such remedies as they, as unmarried individuals, may have. *Baker v Baker*, 222 M 169, 23 NW(2d) 582; 224 M 117, 28 NW(2d) 165.



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On a motion to relieve defendant of past-due instalments of alimony and to vacate a judgment based thereon, the affidavits presented to the trial court were sufficient to justify the exercise of its discretion in vacating the judgment and relieving defendant of all payments in default. The district court has power to cancel accrued alimony instalments. *Conklin v Conklin*, 223 M 449, 27 NW(2d) 275.

Award of permanent alimony of \$30,000 to a wife whose husband's property is of the value of \$200,000 or more, and who has a substantial income, is not excessive. *Potter v Potter*, 224 M 29, 27 NW(2d) 785.

Personalty held in joint tenancy by husband and wife, on the death of the husband goes to the wife, and is no part of the husband's estate, except where the joint tenancy is created for a fraudulent purpose. In the instant case, in an action by the divorced wife against her divorced husband's widow, the burden of proving fraud by the deceased and his second wife in carrying heavy insurance and creating a joint tenancy which left the estate void of assets out of which to pay alimony and contract liability to the divorced wife, was not sustained. *Pauling v Pauling*, 65 F. Supp. 814.

Finality of a Minnesota alimony or maintenance decree, full faith and credit clause. 4 MLR 593.

Due process; validity of divorce decree making provision in lieu of dower in non-resident husband's property without personal service. 9 MLR 573.

Alimony cannot be awarded after the entry of a divorce decree. 10 MLR 254.

Decree for alimony for support of the child as a charge upon the father's estate. 11 MLR 673.

Effect of annulment of wife's second marriage upon alimony from divorced husband. 14 MLR 93.

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.

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

Recognition by forum of foreign decree for payment of unaccrued instalments. 25 MLR 946.

Interstate recognition of decree rendered when non-domiciliary defendant appears. Full faith and credit. 30 MLR 399.

Recognition of foreign ex parte judgment for arrears of alimony. 31 MLR 95.

## 518.23 REVISION, AS TO ALIMONY, AFTER DECREE.

A wife's misconduct subsequent to the granting of a decree of divorce is an element to be considered upon a motion by the divorced husband for reduction or termination of alimony payments. *Martens v Martens*, 211 M 370, 1 NW(2d) 356.

Alimony, a matter of statutory creation, is not awarded as a penalty but as a substitute for the husband's duty to provide the wife with means of support. Having regard for the uncertainties of the future, the court's power to modify the decree as to alimony is a continuing one. *Wilcox v Wilcox*, 222 M 279, 24 NW(2d) 237.

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 of 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.**

A divorced husband charged with contempt for disobedience for failing to pay alimony allowed to the wife by the judgment of divorce may excuse the disobedience by showing his inability to obey; but the burden of showing such fact is on him which in the instant case he was unable to do. *Ekblad v Ekblad*, 207 M 346, 291 NW 511.

Where a party fails to comply with a divorce decree directing payment of alimony, the burden rests upon him to establish by a complete and frank disclosure of his financial situation that his failure to obey the order was due solely to his inability to make the payments required. *Meisner v Meisner*, 220 M 559, 20 NW(2d) 486.

#### **518.27 EFFECT OF DIVORCE; NAME OF WIFE.**

Where a personal judgment has been rendered in the courts of a state against a non-resident merely upon constructive service and without acquiring jurisdiction over the person of the defendant, such judgment may not be enforced in another state in virtue of the full faith and credit clause of the federal constitution. Under that rule, each state may determine for itself what effect is to be given to divorce decrees rendered against one of its own residents by the courts of a foreign state where personal service of process upon defendant is wholly lacking and there is no property belonging to defendant that can be reached within the jurisdiction of such foreign court. *Sheridan v Sheridan*, 213 M 24, 4 NW(2d) 785.

A court should be slow, under any circumstances, to revise or alter a former decree, and only when changed circumstances warrant modification. There is a clear distinction in the law between a divorced husband's obligation to his former wife and the obligation to his children. Alimony is governed by statute, but a father's duty to support his children is not suspended by a divorce of the parents. *Warner v Warner*, 219 M 66, 17 NW(2d) 58.

In the instant case the divorce was not granted in this state, but by a court having jurisdiction of the marriage status of the parties. Each party to that cause subsequently married another spouse. Plaintiff's former wife by reason of the divorce, has no interest or claim in or to any real estate of plaintiff, although acquired and owned by him during coverture. *Larsen v Erickson*, 222 M 363, 24 NW(2d) 713.

Divorce as a defense to an action for enticing and alienating divorced spouses' affections. 6 MLR 75.

Estoppel to deny validity of void decree and to assert fraud or duress in separation agreements. 25 MLR 111.

#### **518.28 CORROBORATING TESTIMONY REQUIRED.**

The statutory corroboration required in a divorce case does not require oral testimony. Corroboration may be supplied from the circumstances and atmosphere of the case. Neither is categorical corroboration required. 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. *Visneski v Visneski*, 219 M 217, 17 NW(2d) 313.

The rule that the corroborating evidence need not confirm each item of plaintiff's testimony, but is sufficient if it tends, in a degree sufficient to satisfy an impartial and reasonable mind to establish the truth of plaintiff's material testimony as a whole, is justifiable, in the light of preventing collusion, to be applied with greater liberality where the divorce action is fervently contested. *Louden v Louden*, 221 M 338, 22 NW(2d) 165.

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Purpose of statute requiring corroboration of testimony is to prevent collusion, and where the divorce is vigorously contested the rule is greatly relaxed. *Potter v Potter*, 224 M 29, 27 NW(2d) 785.

### **518.29 ADVERTISEMENT SOLICITING DIVORCE BUSINESS PROHIBITED.**

Disbarment of attorney for encouragement of divorce litigation. 5 MLR 571.

Validity of statute prohibiting solicitation by attorneys. 12 MLR 74.

Rules governing attorneys in the practice of their profession. 16 MLR 270, 288.

Advertising by bar associations. 25 MLR 788.