

# MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-  
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT  
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED  
BY THE SUBSEQUENT LEGISLATION OF 1925  
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES  
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE  
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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**8607. Effect of divorce—Name of wife—**Whenever a decree of divorce from the bonds of matrimony is granted in this state, such decree shall completely dissolve the marriage contract as to both parties. And in all actions for a divorce brought by a woman, if a divorce is granted, the court may change the name of such woman, who shall thereafter be known by such name as the court designates in its decree. (3596) [7133]

Collateral attack on foreign divorce (108-291, 120+540).

A judgment in a divorce suit between the parties, it not appearing that the facts involved here and essential to a recovery were involved there, is not a bar. 160-431, 200+480.

LIMITED DIVORCES

**8608. Separation—**A separation from bed and board forever, or for a limited time, may be adjudged by the district court, on the complaint of a married woman, in the following cases:

1. Between any husband and wife, inhabitants of this state.

2. When the marriage shall have taken place within this state, and the wife shall be an actual resident at the time of filing her complaint.

3. When the marriage shall have taken place out of this state, and the parties have been inhabitants of this state at least one year, and the wife shall be an actual resident at the time of filing her complaint. (3597) [7134]

See generally as to limited divorces (36-239, 30+766; 43-31, 44+524; 53-181, 54+1059; 77-67, 79+648; 81-287, 83+1088; 87-136, 91+432; 91-165, 97+671). Under complaint for absolute divorce for cruel and inhuman treatment, may grant limited divorce (107-43, 119+489). Who is "actual resident" (101-511, 112+883); 189+447.

A motion to amend an amended complaint, asking for an absolute divorce, so as to ask for a limited divorce and support, amounts to a withdrawal of the demand for a divorce, and should be granted as a matter of right. 164-102, 204+915.

**8609. For what causes—**Such separation may be adjudged for the following causes:

1. Cruel and inhuman treatment by the husband.

2. Such conduct on the part of the husband towards his wife as may render it unsafe and improper for her to cohabit with him.

3. The abandonment of the wife by the husband, and his refusal or neglect to provide for her. (3598) [7135]

53-181, 54+1059. Subd. 1 (116-128, 133+460). Subd. 2 (107-43, 119+489). See 190+343.

**8610. Complaint—**The complaint in every such case shall specify particularly the facts and circumstances on which the plaintiff relies, and shall set forth times and places with reasonable certainty. (3599) [7136]

**8611. Defences—**The defendant may prove in his justification the ill conduct of the plaintiff, and, on establishing such defence to the satisfaction of the court, the complaint shall be dismissed. (3600) [7137]

**8612. Alimony, etc.—**Such proceedings shall be commenced and conducted in the same manner as actions for a divorce from the bonds of matrimony, and the court, upon motion, may award such sum for counsel fees and temporary alimony during the pendency of the action as the circumstances and situation of the parties appear to warrant. (3601) [7138]

36-239, 30+766.

In husband's divorce suit, where defendant asked for separate maintenance, court, on finding that she was justified in living apart from plaintiff though not entitled to divorce, should have retained case to determine what support plaintiff should pay her during such time, though trial did not proceed on theory that separate maintenance would be sought. 163-509, 203+769.

**8613. As to alimony and wife's property—**Upon adjudging a separation in any such suit, the court may make such order and decree for the suitable support of the wife and her children by the husband, or out of his property or earnings, as may appear just and proper, and by such decree may give the wife absolute control of her separate property, with power of alienation, and may make such further decree as the nature and circumstances of the case require. (3602) [7139]

Modification of judgment as to alimony and property rights (116-128, 133+460).

A court of equity, though an action for divorce or separation is not pending, and though grounds for such action do not exist, may award the wife support and maintenance, when the husband unjustifiably refuses to live with or support her. 160-431, 200+480.

**8614. When separation not granted—**Although a decree for separation from bed and board be not made, the court may make such decree for the support of the wife and her children, or any of them, by the husband, or out of his property or earnings, as the nature of the case renders suitable and proper. (3603) [7140]

28-33, 8+900; 142-279, 171+933; 136-190, 161+525.

**8615. Revocation—**Upon a joint application of the parties, and satisfactory proof of their reconciliation, the court granting any decree of separation may revoke the same, under such regulations and restrictions as it shall prescribe. (3604) [7141]

CHAPTER 72

MARRIED WOMEN

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**8616 Separate legal existence—**Women shall retain the same legal existence and legal personality after marriage as before, and every married woman shall re-

ceive the same protection of all her rights as a woman which her husband does as a man, including the right to appeal to the courts in her own name alone for protection or redress; but this section shall not confer upon the wife a right to vote or hold office, except as is otherwise provided by law. (3605) [7142]

A married woman may sue her husband in her own name in any form of action to enforce any right affecting her property (64-381, 67+20. See 96-294, 104+969). If living apart from her husband she may sue him for support without seeking a divorce (91-165, 97+671). The object of this section is obscure. It does not authorize a wife to convey her realty independently of her husband (48-18, 50+1018); or to maintain an action for criminal conversation against another woman (60-372, 62+433). It does not relieve a husband of liability for his

wife's torts (62-348, 64+912). Under G. S. 1894 § 5530 married woman could not, before or after divorce, maintain action against husband for personal tort committed during coverture (98-427, 107+1047). Wife cannot maintain an action against her husband to recover damages for his negligent tort (189+1022), nor can husband maintain such tort action against his wife (145-388, 177+624).

**8617. Property rights**—All property, real, personal, and mixed, and all choses in action, owned by any woman at the time of her marriage, shall continue to be her separate property, notwithstanding such marriage; and any married woman, during coverture, may receive, acquire, and enjoy property of every description, and the rents, issues, and profits thereof, and all avails of her contracts and industry, free from the control of her husband, and from any liability on account of his debts, as fully as if she were unmarried. (3606) [7143]

This gives to the wife the same absolute right to the use and enjoyment of her separate property that she would have if unmarried (22-29; 22-34; 34-367, 25+803; 56-33, 57+219; 64-381, 67+20; 85-83, 88+419; 112-270, 127+1120). She is entitled to the increase and product of her own estate, real or personal (13-46, 39; 28-469, 10+781; 34-107, 24+366). Her property is not liable for her husband's debts (66-108, 68+513); 135-105, 160+249. And to the avails of her contracts and industry (113-517, 130+8). Cited (36-3, 29+588; 62-348, 64+912).

A wife's inchoate interest in her husband's property cannot be subjected to the husband's indebtedness beyond the amount to which she joins in the mortgage, although it may be reached by execution or judicial sale. 158-231, 197+277.

The purchase of land by the husband in the name of another does not give the wife marital rights therein; but a gift by a husband, or the taking of title in the name of another, may be in fraud of the marital rights of his wife. The evidence does not require a finding of fraud. 166-464, 208+193.

**8618. Contracts—Torts—Property rights and liabilities**—Every married woman is bound by her contracts and responsible for her torts, and her property shall be liable for her debts and torts to the same extent as if unmarried. She may make any contract which she could make if unmarried, and shall be bound thereby, except that every conveyance and contract for the sale of her real estate or any interest therein, shall be subject to and governed by the provisions of section 3335, Revised Laws, 1905 [8196], and acts amendatory thereof. (R. L. § 3607, supplemented '05 c. 255, amended '07 c. 417 § 1) [7144]

1905 c. 255 § 2 repeals inconsistent acts, etc. Freedom to make contracts (23-337; 28-469, 10+781; 39-490, 40+568). Liability for conversion (46-80, 48+447). If a wife joins in the covenants of her husband's deed she is liable thereon (48-408, 51+379). She may lease her real property for a term not exceeding three years without her husband's consent (85-83, 88+419). In conveyances of a homestead both husband and wife must join (96-294, 104+969). See (101-152, 112+65).

**8619. Property acquired by wife during separation—Conveyances**—Certain conveyances legalized—That all property, real and personal, acquired by any woman in her own name during any period of time in which she shall have been or may hereafter be legally separated from her husband by a decree of any court of this state, shall be and remain her separate property during the continuance of such separation and any such real property may be conveyed by her without her husband joining in the deed of conveyance and all such property may be conveyed, sold and disposed of by her without her husband joining with her in the conveyance thereof, and any and all conveyances of such property heretofore made are hereby declared legal and valid and the same and all such are declared valid, provided, that nothing in this act contained shall apply to any action or proceedings now pending in any court in this state. ('13 c. 237 § 1) [7145]

Section 2 repeals inconsistent acts, etc.

**8620. Liability of husband and wife**—No married

woman shall be liable for any debts of her husband, nor shall any married man be liable for any torts, debts, or contracts of his wife, committed or entered into either before or during coverture, except for necessities furnished to the wife after marriage, where he would be liable at common law. But where husband and wife are living together, they shall be jointly and severally liable for all necessary household articles and supplies furnished to and used by the family. (3608) [7146]

This does not change the common law rule as to the implied authority of a wife to employ servants for household purposes (28-208, 94+759); or to purchase household necessities (33-370, 23+539). Prior to 1897 c. 10 a husband was liable for his wife's torts (62-348, 64+912); 129-190, 151+976; 137-115, 162+1060; 137-333, 163+656; 144-44, 174+438.

In cases covered by the statute, a husband must pay for the supplies mentioned, notwithstanding the fact that he furnished his wife with the means of procuring them. 210+395.

**8621. Contracts between husband and wife**—No contract between husband and wife relative to the real estate of either, or any interest therein, nor any power of attorney or other authority from the one to the other to convey real estate, or any interest therein, shall be valid; but, in relation to all other subjects, either may be constituted the agent of the other, or contract with the other. But in all cases where the rights of creditors or purchasers in good faith come in question, each spouse shall be held to have notice of the contracts and debts of the other as fully as if a party thereto. (3609) [7147]

**1. Contracts relating to realty**—Statute applicable though husband and wife are living apart (68-152, 70+1082). Not applicable to conveyance from one spouse to another through third party (10-50, 32; 30-519, 16+404; 64-489, 67+364). A direct conveyance from a husband to a wife is void (32-228, 20+94; 63-5, 65+91; 72-57, 74+1109). See, prior to statute, 10-50, 32). One spouse cannot make a valid lease of the other's realty acting as agent or attorney (24-172; 45-515, 58+404; 69-149, 154, 72+56; 88-116, 92+521; 117-519, 134+289). Wife cannot release to husband her statutory interest in his realty (35-291, 28+920). Earnest money paid on contract void under this section held not recoverable where husband and wife were ready to perform (55-537, 57+156). Where husband contracts as agent to sell, and wife confirms his act, vendee cannot take advantage of this section (107-177, 119+948). See also, 116-280, 133+862. Doctrine of estoppel applicable to contracts void under this section (41-165, 42+870; 47-491, 50+533; 48-307, 51+375). Doctrine of trust ex maleficio also applicable (93-45, 100+656). See 63-5, 65+91). Part performance does not take contract out of statute (93-45, 100+656). Statute applied (63-5, 65+91; 83-362, 86+336; 97-301, 107+137; 106-380, 118+1026; 116-458, 133+1009). Assignment of mortgage by husband to wife not void (114-24, 129+1051). Agreement between husband and wife by which each releases to the other interests in real estate void (116-90, 133+164).

**2. Other contracts**—34-367, 25+803; 36-3, 29+588; 51-353, 53+716.

**3. Notice as to creditors—Burden of proof**—34-107, 24+366; 34-367, 25+803; 39-490, 40+568; 56-469, 57+1136; 102-256, 113+689; 131-299, 154+1086, 188+276; 138-170, 164+899; 144-44, 174+438.

**8622. Barring interest of spouse**—Whenever a married man shall be deserted by his wife, or a married woman shall be deserted by her husband, for the space of one year, or whenever he or she would, for any cause, be entitled to a divorce from such husband or wife under the laws of this state, or whenever he or she has a husband or wife that has been insane for ten years immediately prior to the time of bringing the action hereinafter named, and upon the hearing thereof shall be found to be incurably insane, he or she may bring an action in the district court of the proper county, asking for a decree which shall debar him or her so deserting or furnishing grounds for a divorce, or so found to be incurably insane as aforesaid, from any right or estate by the curtesy or in dower, or otherwise, as the case may be, in or to his or

her lands, and which will give such husband or wife full authority to alien, sell and convey, and dispose of his or her lands, without the interference of or signature of the husband or wife so deserting, or being guilty of acts which would entitle the person bringing such action to a divorce, or so found to be incurably insane as aforesaid; and the court may grant such decree whenever it shall appear just or expedient; and thereupon the husband or wife shall have full control of his or her real estate, with power to convey the same without the husband or wife joining in the conveyance, and as fully as if he or she were unmarried; or the court may, by such decree, make such limitations on the power to convey such real estate as may seem meet and proper in the premises. A certified copy of such decree may be recorded in the deed records in the office of the register of deeds in any county wherever such lands or any part thereof may be situated. (3610) [7148]

22-348; 27-330, 7+267.

Deserted wife may maintain action against husband, to debar him from interest in her real estate, and for an allowance for support of herself and minor child (102-301, 113+913).

**8622-1. Dower and curtesy abolished in certain lands**—All inchoate estates in dower and curtesy, and all inchoate estates or statutory interests in lieu of dower and curtesy, are hereby abolished in all lands in this state which have been conveyed prior to January 1, 1910, by the husband or wife of the one en-

titled to such inchoate dower or curtesy, or statutory interest, by a conveyance in writing. ('25, c. 174, § 1)

**8622-2. Same—Actions not maintainable**—No action for the recovery of real property, or of any right therein, or the possession thereof, shall be maintained by any person having any estate in dower or by the curtesy or any estate or statutory interest in lieu of dower or by the curtesy therein, or by anyone claiming, by, through or under any such person, where it appears that the husband and wife of such person conveyed such real property, or any interest therein, by a conveyance in writing, prior to the first day of January, 1910; and no action shall be maintained for the recovery of real property, or of any right therein, or the possession thereof, by any person claiming as heir of any person who has conveyed land claimed as a homestead at the time of the conveyance and where such conveyance was made prior to January 1st, 1910, unless such action shall be commenced on or prior to the first day of December, 1925, and notice thereof filed for record at the time of the commencement of said action in the office of the Register of Deeds in the county where said real property is situate. ('25, c. 174, § 2)

**8623. Antenuptial contracts**—Nothing in this chapter shall be construed to affect antenuptial contracts or settlements. (3611) [7150]

Conveyances prior to April 1, 1900, by husband or wife whose spouse was insane, legalized, '13 c. 240.

CHAPTER 73

ADOPTION AND CHANGE OF NAME

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**8624. Adoption—Petition and consent**—Any resident of the state may petition the district court of the county in which he resides for leave to adopt any child not his own. If the petitioner be married the spouse shall join in the petition. All petitions for the adoption of a child who is a ward or pupil of the state public school shall be made jointly by the person desiring to adopt such child and the superintendent of the state public school. The state board of control may determine by resolution that the joinder of the superintendent in the petition shall be its consent to the adoption of the ward or pupil, as prayed for in the petition. A person of full age may be adopted. (R. L. '05 § 3612, amended '09 c. 81 § 1; '17 c. 222 § 1) [7151]

No implied contract to adopt can be found, and no ground for invoking estoppel is in this record. 166-35, 207+17.

**8625. Investigation by board of control—Probationary residence**—Upon the filing of a petition for the adoption of a minor child the court shall notify the State Board of Control. It shall then be the duty of the board to verify the allegations of the petition; to

investigate the condition and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, and to make appropriate inquiry to determine whether the proposed foster home is a suitable home for the child. The board shall as soon as practicable submit to the court a full report in writing, with a recommendation as to the granting of the petition and any other information regarding the child or the proposed home which the court shall require. If the report of the Board of Control disproves of the adoption of the child the Board of Control may move the court to dismiss the petition. No petition shall be granted until the child shall have lived for six months in the proposed home. Provided, however, that such investigation and period of residence may be waived by the court upon good cause shown, when satisfied that the proposed home and the child are suited to each other. ('17, c. 222, § 1; amended '27, c. 170, § 1)

**8626. Consent, when necessary**—Except as herein provided no adoption of a minor shall be permitted without the consent of his parents, but the consent of a parent who has abandoned the child, or who cannot be found, or who is insane or otherwise incapacitated from giving such consent, or who has lost custody of the child through divorce proceedings or the order of a juvenile court, may be dispensed with, and consent may be given by the guardian, if there be one or if there be no guardian, by the state board of control. In case of illegitimacy the consent of the mother alone shall suffice. In all cases where the child is over fourteen years old his own consent must be had

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comply with order by establishing his inability to pay installments provided for in decree. *Ryerson v. R.*, 194 M350, 260NW530. See Dun. Dig. 1703(40).

Neither corpus nor income of spendthrift trust could be reached to satisfy claims for alimony or support money for children. *Erickson v. E.*, 197M71, 266NW161. See Dun. Dig. 2809a.

Evidence held to justify denial of motion that plaintiff be adjudged in contempt for failure to pay alimony. *Zeches v. Z.*, 198M488, 272NW380. See Dun. Dig. 1703.

Upon ex parte application for a declaratory judgment for unpaid alimony and for execution, trial court may, in its discretion, require notice of application to be given to other party to proceedings, even though statutes do not require giving of notice in such cases. *Kumlin v. K.*, 200M26, 273NW253. See Dun. Dig. 2811.

Defendant is not relieved from paying alimony and support money because of plaintiff's action in keeping children with relatives outside of state rendered necessary because of defendant's failure to make payments, distinguishing *Eberhart v. E.*, 153Minn66, 189NW592, *Fjeld v. F.*, 201M512, 277NW203. See Dun. Dig. 2803.

Defendant cannot purge himself of contempt by showing that he assumed additional burdens by remarriage. *Fjeld v. F.*, 201M512, 277NW203. See Dun. Dig. 1703.

Default in payment of alimony being admitted, defendant had burden of showing inability to make payments ordered to be made by him. *Id.* See Dun. Dig. 1703.

Following *State ex rel. Hurd v. Willis*, 61 Minn. 120, 63NW169, supreme court will not review by writ of certiorari an order of the district court adjudging the relator guilty of a civil contempt. *Guleson v. G.*, 286 NW721.

Enforcement of payment of alimony by commitment. 18MinnLawRev45.

**LIMITED DIVORCES**

**8608 to 8615 [Repealed].**

Repealed by Laws 1933, c.165, to take effect from its passage but not to apply to actions now pending in district courts. Filed Apr. 10, 1933, without approval.

**ANNOTATIONS UNDER REPEALED SECTIONS**

**8608. Separation.**

Equitable action for separate maintenance was not abolished by Laws 1933, c. 165, repealing statute authorizing actions by wife for a limited divorce. *Barich v. B.*, 201M34, 275NW421. See Dun. Dig. 2798.

**8609. For what causes.**

Evidence held to warrant decree of separation. 171 M213, 213NW919.

Evidence held to sustain finding that plaintiff could not reside with defendant with safety and self-respect, warranting separation. 172M96, 214NW771.

A judgment denying the wife absolute divorce for cruelty is not a bar to her action for separate maintenance and support for children, where she has legal cause for living apart from her husband, but there is an estoppel where maintenance action is grounded upon the same specific acts of cruelty. 174M159, 218NW559.

**8613. As to alimony and wife's property.**

Finding as to value of homestead held sustained by the evidence. 171M213, 213NW919.

On decree of separation from husband earning \$115 monthly, court properly awarded wife use of homestead during five years separation and \$25 per month alimony, the wife having an income of \$57.50. 171M213, 213NW 919.

Where the evidence of misconduct of husband does not justify either an absolute or a limited divorce, the court is not authorized to terminate the husband's inchoate interest in the wife's real estate even though the misconduct may legally justify her in living apart from him. 174M159, 218NW559.

**8614. When separation not granted.**

177M178, 225NW104.

Court may require father to pay support of child to wife even though she has no legal cause to live apart from him. 174M159, 218NW559.

Irrespective of this section a court of equity may create a lien against real estate of a husband in favor of a wife for her separate maintenance while justifiably living apart from him, though the decree is not enforceable against the husband personally. 178M531, 227NW895.

A husband sued for a limited divorce held not estopped by the decision against him in a subsequent suit for absolute divorce from his wife. 178M1, 226NW412.

In suit by guardian of insane ward against husband of ward, court held not to have abused its discretion in denying motion for allowance pending suit. *Rutledge v. H.*, 186M369, 243NW385. See Dun. Dig. 4273.

**8615. Revocation.**

A husband sued for a limited divorce held not estopped by the decision against him in a subsequent suit for absolute divorce from his wife. 178M1, 226NW412.

Decree of separation from bed and board is subject to termination by consent of parties and aid of court. *Bakula v. B.*, 186M488, 243NW703. See Dun. Dig. 2798.

Separation from bed and board is not a bar to an action for absolute divorce. *Bakula v. B.*, 186M488, 243 NW703. See Dun. Dig. 2798(76).

**CHAPTER 72**

**Married Women**

**8616. Separate legal existence.**

Husband has absolute power to dispose of his personal property, providing that no fraud be committed against his wife's marital rights. *Maruska v. E.*, (USDC-Minn), 21FSupp841.

Status of marriage has not been modified by the Married Woman's Act, and only property rights and contracts are affected thereby. *State v. Arnold*, 182M313, 235NW373. See Dun. Dig. 4258.

Though wife cannot maintain an action against her husband for a tort committed by him against the person of the wife, action by administrator of a child is not an action by wife against husband, and administrator may recover for death of child, though wife of defendant is sole beneficiary. *Albrecht v. P.*, 192M557, 257NW377. See Dun. Dig. 2608, 4288.

Neither wife nor minor child may recover damages for personal injuries to husband and father, remedy being solely in husband and father. *Eschenbach v. B.*, 195 M378, 263NW154. See Dun. Dig. 4288b, 7305b.

A married woman cannot maintain an action against her husband for damages claimed to have been caused to her by the negligence of her husband prior to their marriage. *Patenaude v. P.*, 195M523, 263NW546. See Dun. Dig. 4288.

Fact that, prior to their marriage, plaintiff commenced and action against defendant for same cause which action she thereafter dismissed, does not create any estoppel or entitle her to any relief in suit brought after marriage. *Id.*

Immunity of husband from suit in tort on part of his wife does not inure to benefit of owner of automobile driven by husband. *Miller v. J.*, 196M438, 265NW324. See Dun. Dig. 4258(77).

Where a husband is driving his automobile with his wife as passenger, his negligence cannot be imputed to wife on basis of joint venture unless it is shown that wife jointly controlled, or had right to join in controlling, driving of automobile at time of collision. *Olson v. K.*, 199M493, 272NW381. See Dun. Dig. 4262.

An inference that husband is acting as agent or servant of his wife in driving her in his automobile to a doctor for medical attention does not arise from fact of marital relation alone, nor from fact that husband acts at wife's request. *Id.*

In Minnesota a wife cannot maintain an action in tort against her husband, but a Wisconsin court cannot refuse to take jurisdiction of such an action between persons domiciled in that state. *Bourestom v. B.*, 285NW(Wis) 426.

**8617. Property rights.**

Wife by letting husband use and manage her property apparently as his own, may estop herself from asserting ownership as against a mortgagee of the husband. 171M276, 214NW45.

Recital in instrument concerning conveyance of land signed by defendant and husband of deceased were not conclusive as to the deceased when she was the real party in interest. *Kehrer v. S.*, 182M596, 235NW386. See Dun. Dig. 4259(84).

Fact that wife, who was either joint tenant or tenant in common, did not join in writing authorizing tenant to cut and sell wood was immaterial where she substantially participated in contract. *Morrow v. P.*, 186M516, 243NW785. See Dun. Dig. 4256.

Neither husband nor wife have separate actions for damages to property owned only by one of them. *Eschenbach v. B.*, 195M378, 263NW154. See Dun. Dig. 4288a.

When a husband acquires possession of the separate property of the wife, whether with or without her consent, he must be deemed to hold it in trust for her benefit in the absence of evidence that she intended to make a gift of it to him. *Reifsteck's Estate*, 197M315, 267NW 259. See Dun. Dig. 4259.

That widow as administratrix listed property in inventory as belonging to estate does not estop her from making claim that it was held in trust for her. *Id.*

Complaint filed by widow against estate of which she was administratrix to recover property held in trust for her by deceased stated a cause of action as against claim that administratrix and claimant were same person

and therefore she could not bring an action against herself. *Id.*

Effect of marriage on contract existing between husband and wife at time of marriage. 16MinnLawRev108.

#### 8618. Contracts—Torts—Etc.

Contract whereby plaintiff was employed at a stipulated compensation per month as a farm hand was not abrogated by marriage of plaintiff to his employer, but remained a binding obligation upon her, and he could recover for work performed after the marriage. *Archer v. M.*, 183M306, 236NW455. See Dun. Dig. 4258.

A farm may be owned and operated by wife, her husband functioning only as her agent. *Durgin v. S.*, 192M526, 257NW338. See Dun. Dig. 145, 4262.

In proceeding to recover for services rendered deceased by claimant, his daughter-in-law, pursuant to an alleged contract to pay her at his death, court erred in refusing to instruct jury that services of wife with respect to family household belong to husband; that he may waive his right to compensation therefor from another party and consent that wife receive same, provided there is no question of set-off or counterclaim against husband, but where such appears it must be shown that one to be charged with payment of compensation acquired in payment to wife. *Empenger v. E.*, 194M219, 259NW795. See Dun. Dig. 4261.

Where plaintiff's husband had lived apart from her for five years, during which time she had received no support from him, and she alone requested service of nurse, doctor, and hospital for which she alleged special damages, she is liable therefor and may recover from wrongdoer who necessitated her incurring the liability. *Paulos v. K.*, 195M603, 263NW913. See Dun. Dig. 4258.

Marital relation alone did not constitute wife agent of husband to surrender lease and make a new one for him. *Hildebrandt v. N.*, 199M124, 272NW257. See Dun. Dig. 4262a.

#### 8620. Liability of husband and wife.

The term necessities as applied to a husband's obligations toward his wife includes not only food and clothing, but such articles of utility and even ornaments as are suitable to maintain the wife according to the estate and rank of her husband, though she has independent means, and though the husband has furnished her with money to pay for such necessities. *Hill v. C.*, (USCCA8), 88F(2d)941, aff'g 34BTA1288. See Dun. Dig. 4273.

A county which furnishes necessary support to a woman, deserted by her husband, may recover of the husband. 175M39, 220NW156.

Verdict against parent for services of daughter, held not excessive, and evidence as to previous earnings of daughter, held admissible on issue of value. 180M100, 230NW478.

Wife was not liable for negligence of her husband in driving a car registered in her name. *Cewe v. S.*, 182M126, 233NW805. See Dun. Dig. 5334b.

Wife who signed contract of sale of lot merely to bar her inchoate right of dower was not liable in action by purchaser to recover money paid because of fraud of seller. *McDermott v. R.*, 188M501, 247NW683. See Dun. Dig. 4270.

Service of an attorney for wife in divorce case amicably withdrawn was not a necessity for which husband was liable. *Melin v. R.*, 189M638, 249NW194. See Dun. Dig. 4276.

Absent fraud or plea for reformation of instruments, a wife cannot successfully defend against a note which she signed with her husband on ground that she signed it merely to bar her right of dower to premises which she and her husband mortgaged to secure note; extension of time for her husband to pay a debt being a valuable consideration running to her. *First State Bank of Gaylord v. H.*, 201M586, 277NW274. See Dun. Dig. 4270.

Husband is obligated to support wife and maintain family home whether wife has independent income or not. *Hill*, 33 U. S. Board of Tax Appeals 891.

Admission to tuberculosis sanatorium is not governed by rules applicable to settlement for poor relief purposes. *Op. Atty. Gen.* (556a-1), Dec. 29, 1936.

#### 8621. Contracts between husband and wife.

*Archer v. M.*, 183M306, 236NW455; note under §8618.

#### ½. Agency.

In action by woman for fraud in sale of stock of financial corporation, evidence held to show that plaintiff's husband acted as her agent. *Watson v. G.*, 183M233, 236NW213. See Dun. Dig. 8612.

Evidence held to sustain verdict that deceased farmer, through his wife, agreed to pay daughter and son for work if they remained on farm. *Holland v. M.*, 189M172, 248NW750. See Dun. Dig. 3593g.

Farmer's wife had authority to employ persons doing housework as agent of her husband. *Id.* See Dun. Dig. 4286.

#### 1. Contracts relating to realty.

Transaction whereby husband and wife executed a trust deed and put it in escrow to be delivered upon condition that wife be granted an absolute divorce did not violate the law. *First Minneapolis Trust Co. v. L.*, 185M121, 240NW459. See Dun. Dig. 4282(2).

Real estate may be conveyed from one spouse to the other through the medium of a third party. *Williams v. W.*, 192M438, 257NW1. See Dun. Dig. 4282.

An equitable mortgage cannot be created by law to secure advances made by wife to husband on faith of latter's parol promise to give security on his real estate. *Id.* See Dun. Dig. 4282, 6153.

One spouse may transfer his real estate and all his personal property to the other through a third person, if rights of creditors are not prejudiced. *Durgin v. S.*, 192M526, 257NW338. See Dun. Dig. 4258, 4282.

A transfer of a farm and all owner's personal property from husband to wife, having been found not fraudulent, considered absolute rather than mere security for indebtedness from husband to wife. *Id.* See Dun. Dig. 6154.

A separation agreement between husband and wife which in terms obligated each to join with other in execution of future conveyances or incumbrances of real property belonging to either, was illegal. *Simmer v. S.*, 195M1, 261NW481. See Dun. Dig. 4282.

Conveyance by one spouse to other spouse through medium of a third party is valid, but an executory agreement between spouses to make such a conveyance would be invalid. *Id.*

#### 2. Other contracts.

Evidence held to show conveyance by husband and wife to daughter rendered husband insolvent, and conveyance fraudulent as to creditors. 171M284, 213NW911.

Where the promises of the husband under an antenuptial contract, to make payments to his wife have matured and the money has become due, the causes of action so perfected are not defeated by the wife's subsequent desertion of the husband. 172M91, 214NW791.

If there was a contract between husband and wife whereby latter was bound to make agreed testamentary disposition of property left her by her husband, his will held of such nature that, coupled with other evidence of testator's intention, it was properly held that agreement between husband and wife had been abrogated, and that disposition made of his property by husband's will was intended to be absolute. *Hanefeld v. F.*, 191M547, 254NW821. See Dun. Dig. 10207.

Before any inference of undue influence may be drawn from fact that donee is spouse of donor, it must also appear that such donee stood in a relation other than ordinary intimate, or even affectionate, relation existing between them, and it must be shown, in addition, that donee occupied a position to dominate donor, or exert an influence over him, by virtue of being intrusted with donor's business affairs. *Berg v. B.*, 201M179, 275NW836. See Dun. Dig. 4035.

Children of respective parties to an antenuptial contract held not parties to contract and to have no vested right which would prevent change by voluntary act of parties thereto. *Id.* See Dun. Dig. 4251, 4285.

Right of one spouse to accept by gift *inter vivos*, or take under will of other spouse, is not affected by an antenuptial agreement between them, except where it is found that by such gift or agreement it was intended that there be satisfaction or adoption thereof. *Id.*

#### 3. Notice as to creditors—Burden of proof.

Transfers between husband and wife, whether made directly or indirectly, are *prima facie* fraudulent as to existing creditors; burden resting upon wife to show by clear and satisfactory evidence that a valuable consideration was paid by her or by some one in her behalf. *State Bank of New London v. S.*, 197M425, 267NW366. See Dun. Dig. 3907.

#### 8622. Barring interest of spouse.

Where the evidence of misconduct of husband does not justify either an absolute or a limited divorce, the court is not authorized to terminate the husband's inchoate interest in the wife's real estate even though the misconduct may legally justify her in living apart from him. 174M159, 218NW559.

#### 8622-1. Power and curtesy abolished in certain lands.

Act abolishing dower and curtesy and statutory interests in lieu thereof in all lands conveyed by guardians of incompetent married persons prior to Jan. 1, 1929. *Laws 1931, c. 29.*

Act Apr. 8, 1939, c. 152, abolishes dower and curtesy or estates in lieu thereof as to land conveyed prior to Jan. 1, 1920, and limits actions to recover such estates.

#### 8623. Antenuptial contracts.

Antenuptial agreements are valid. *Op. Atty. Gen.* (300), Nov. 23, 1934.