s. 2339n—20; 1925 c. 4; Stats. 1925 s. 245.31; 1959 c. 595 s. 33; 1963 c. 6.

Legislative Council Note, 1959: This is a restatement of present law. (Bill 151-A)

CHAPTER 246.

Property Rights of Married Women.

246.01 History: 1850 c. 44 s. 1; R. S. 1858 c. 95 s. 1; R. S. 1878 s. 2340; Stats. 1898 s. 2340; 1925 c. 4; Stats. 1925 s. 246.01.

The provisions of ch. 95, R. S. 1858, do not in any way deprive the husband of his estate as tenant by curtesy. Kingsley v. Smith, 14 W 360.

When parties married before enactment of ch. 44, Laws 1850, property then held by wife and not reduced to possession by husband in his lifetime remained separate property. Miller v. Aram, 37 W 142.

Secs. 2340-2343, R. S. 1878, have substantially been in force since February 1, 1850. But a married woman could not dispose of her property by last will and testament without the consent of her husband until March 23, 1859 (sec. 1, ch. 66, R. S. 1849; sec. 1, ch. 97, R. S. 1858; sec. 2, ch. 91, 1859). In re Ward, 70 W 251, 35 NW 731. See also Nichols v. Nichols, 43 W (2d) 346, 168 NW (2d) 876.

The property rights of married women under modern laws. Winslow, 1 MLR 7 and 53.

The legal status of women in Wisconsin. Stout, 14 MLR 66, 121 and 199.

246.02 History: 1850 c. 44 s. 2; R. S. 1858 c. 95 s. 2; R. S. 1878 s. 2341; Stats. 1898 s. 2341; 1925 c. 4; Stats. 1925 s. 246.02.

A bond given in illegitimacy proceedings is not extinguished by the marriage of the parties, as the interest in the bond continues the separate property of the wife after the marriage. Meyer v. Meyer, 123 W 538, 102 NW 52.

An indebtedness due to the husband and wife cannot be garnished in an action against the husband alone. Badger L. Co. v. Stern, 123 W 618, 101 NW 1093.

A charge for funeral expenses of a married woman where she leaves separate property is primarily a charge against her estate. Schneider v. Breier's Estate, 129 W 446, 109 NW 99.

Where a wife has been awarded certain property by a judgment of divorce, it becomes her separate estate and is not affected by her marriage to her former husband. Kistler v. Kistler, 141 W 491, 124 NW 1028.

246.03 History: R. S. 1858 c. 95 s. 3; R. S. 1878 s. 2342; 1895 c. 86; Stats. 1898 s. 2342; 1925 c. 4; Stats. 1925 s. 246.03.

Execution of a mortgage is the clearest indication of intention to charge her separate estate. Dodge v. Silverthorn, 12 W 644.

There is no presumption against a separate estate except in favor of creditors. A wife's title is established against a trespasser by the same evidence as in other cases. Weymouth v. Chicago & N. W. R. Co. 17 W 550.

A chattel mortgage directly from husband to wife is good at law where the consideration was her separate property. Fenelon v. Hogoboom, 31 W 172.

Money derived by gift or bequest from a husband's father is separate property. Smith v. Hardy, 36 W 417.

A wife may buy a farm on credit and it will be separate property. Dayton v. Walsh, 47 W 113, 2 NW 65; Cramer v. Hanaford, 53 W 85, 10 NW 15.

A deed from husband to wife conveys a full equitable estate. Horton v. Dewey, 53 W 410, 10 NW 599.

A wife's interest in money paid by a third person to husband and wife in consideration of their joint covenant to support the former is separate property. Houghton v. Milburn, 54 W 554, 11 NW 517, 12 NW 23.

Deeds and contracts for land running to a married woman are prima facie evidence of her title to the land and the timber cut therefrom as against her husband's creditors. Brickley v. Walker, 68 W 563, 32 NW 773.

A married woman who claims, as against her husband's creditors, property directly conveyed to her after his indebtedness accrued, must show by clear and satisfactory evidence that she purchased and paid for it out of her separate estate. Rozek v. Redzinski, 87 W 525, 58 NW 262.

An insolvent debtor cannot accumulate property in the name of his wife, while acting ostensibly as her agent, and hold it as against his creditors; and where such a claim is made the ownership of the business and whether the alleged agency was a mere scheme and device to defraud creditors are questions of fact. Ansorge v. Barth, 88 W 553, 60 NW 1055.

Conveyance to a husband and wife makes them joint tenants, and the wife may convey as if unmarried. Wallace v. St. John, 119 W 585, 97 NW 197.

The principles governing contracts of married women in 1906 are stated, and the cases on that point are cited in Merrill v. Purdy, 129 W 331, 109 NW 82.

Where a contract was made for the support of a mother during life, the relieving of the daughters from liability under the statutes for furnishing such support operated as a benefit to their separate estates in such a way as to allow them to bind such estates for the performance of the contract. Payne v. Payne, 129 W 450, 109 NW 105.

A married woman may obtain title to property by warranty deed from the grantee of a tax deed and holds by possession under such deed. Brunette v. Norber, 130 W 632, 110 NW 785.

The provision allowing a married woman to devise property held by her in joint tenancy with her husband gives to a married woman who is a joint tenant the same rights in the property as she would possess if she were unmarried, but she cannot defeat the right of survivorship by devising the property. Bassler v. Rewodlinski, 130 W 26, 109 NW 1032; Friedrich v. Huth, 155 W 196, 144 NW 202.

A married woman may give a valid mortgage on her own property in payment of or as security for her husband's debt. Krause v. Reichel, 167 W 360, 167 NW 817.

The transfer of property by a wife to her husband raises no presumption of gift, and the husband is deemed to hold the property in trust for his wife. In case he claims it

was a gift, the burden of proof is upon him. The fact that the wife recognized the property as that of her husband in an action brought by him and her to review an income-tax assessment did not work an estoppel upon the wife or a waiver of her rights. The statute of limitations does not affect or run between husband and wife as to contracts or obligations made or arising during coverture. Estate of Brundage, 185 W 558, 201 NW 820.

Sec. 2342 is a very broad statute and materially changes the rule as to the burden of proof declared in some of the early decisions. Since husband and wife have unusual facilities for perpetrating fraud on creditors, transactions between them affecting the husband's creditors will be closely scrutinized, but under the statute a solvent husband has a perfect right to make a gift to his wife, and has a right to repay an indebtedness to her in good faith as he might pay any other indebtedness. Dockry v. Isaacson, 187 W 649, 205 NW 391.

Estates by the entirety do not exist either in real or personal property. (Dupont v. Jonet, 165 W 554, 162 NW 664, overruled.) Aaby v. Citizens Nat. Bank, 197 W 56, 221 NW 417.

246.05 History: 1872 c. 155 s. 2; R. S. 1878 s. 2343; Stats. 1898 s. 2343; 1925 c. 4; Stats. 1925 s. 246.05.

A married woman may contract with a firm of which her husband is a member to run a boarding house for a share of the profits. Brickley v. Walker, 68 W 563, 32 NW 773.

A married woman may contract to cut and bank logs. Barker v. Lynch, 75 W 624, 44 NW 826.

Money received by a married woman for board is the money of her husband if he paid for the provisions and defrayed all the household expenses. Bloodgood v. Meissner, 84 W 452, 54 NW 772.

The time, talents and industry of a debtor are at his own disposal, and his creditors have no claim thereto; he may bestow them upon his wife as well as another. Hence, a wife may employ her husband as her agent to manage her separate property or to carry on her business in her name, without giving his creditors any right to have their claims paid out of the profits of the business, especially where the husband is paid by the wife for his services. Ansorge v. Barth, 88 W 553, 60 NW 1055.

A note signed by a husband and wife to secure the payment of a debt arising out of the husband's agency and to procure a new contract of agency from the same principal in both their names is void as to her. Emerson-Talcott Co. v. Knapp, 90 W 34, 62 NW 945.

Where a husband, on his own behalf, makes a contract to do certain work with the help of his wife, the amount payable for her services belongs to and may be recovered by him, and is not her individual earnings. Rockwell v. Estate of Robinson, 158 W 319, 148 NW 868.

A husband is entitled to the services of his wife in and about the household and to whatever earnings might result from labor, performed for him or in his business. All other individual earnings of the wife are deemed her separate property. Therefore the following instruction was held erroneous: "Under the law the husband is entitled to the services and earnings of his wife, and in the event of her death under such circumstances that he is entitled to recover damages he is entitled to recover the value of her services after death." Herro v. Northwestern M. I. Co. 181 W 198, 194 NW 383.

In an action by a husband against a landlord to recover for alleged overcharges of rent in excess of the amount lawfully chargeable under federal rent control, the evidence established that the relationship of landlord and tenant was solely between the defendant and the plaintiff's wife, and that all of the payments of rent were made by the plaintiff's wife out of her individual earnings from employment with the defendant, which earnings were her own separate property and not subject to her husband's control or liable for his debts; hence the husband was not entitled to recover from the landlord. Quarles v. Nauert, 259 W 562, 49 NW (2d) 725.

246.06 History: R. S. 1849 c. 49 s. 1; R. S. 1858 c. 95 s. 4; R. S. 1878 s. 2344; Stats. 1898 s. 2344; 1925 c. 4; Stats. 1925 s. 246.06; 1959 c. 595 s. 39.

Legislative Council Note, 1959: This section relating to property rights of married women merely modernizes the language of present law. (Bill 151-A)

A married woman, deserted by her husband, may relinquish her expectancy in her father's estate in order to pay a debt she incurred when a feme sole; and such relinquishment is binding on her children. Estate of Fontaine, 181 W 407, 195 NW 393.

A father who had abandoned his child was not a necessary party to an action brought by the divorced mother to recover damages for the death of the child. Fiel v. Racine, 203 W 149, 233 NW 611.

A postnuptial agreement entered into by husband and wife a few days after marriage, providing for mutual releases by each party of any rights in the property or estate of the other, except that the wife was to receive $500 from the estate of the husband, was not void for want of consideration on the ground that the husband had no rights to release, since the contract was at least a definite protection to the wife and her children by a former marriage in the event of a change in the law of curtesy. Estate of Nickolay, 249 W 571, 25 NW (2d) 451.

246.07 History: 1872 c. 155 s. 3; R. S. 1878 s. 2345; 1881 c. 99; Ann. Stats. 1889 s. 2345; Stats. 1898 s. 2345; 1905 c. 17 s. 1; Supl. 1906 s. 2345; 1911 c. 663 s. 423; 1925 c. 4; Stats. 1925 s. 246.07.

Sec. 2345, R. S. 1878, is to be liberally construed, and under it a husband may maintain replevin against his wife for chattels claimed by her to be her separate property. Carney v. Gleissner, 62 W 493, 22 NW 735.

A married woman who is engaged in carrying on a separate business may recover for loss of time therein by reason of an injury to her person. Fife v. Oshkosh, 89 W 540, 62 NW 541.

The beneficial right under bond given in illegitimacy proceedings is the sole and sepa-

rate property of the person for whom given and suit may be maintained by her in her own name if married. Meyer v. Meyer, 123 W 538, 102 NW 52.

The cause of action for an injury to the person or character of a married woman cannot be united in the same complaint with a cause of action for the husband's loss of services and his expenses in consequence of such injury. Brickner v. Kipmeier, 133 W 582, 113 NW 414.

A wife may bring action against her husband for injuries to her person or character the same as she might do if she were a feme sole. She may therefore maintain an action against her husband for injuries sustained by the negligent operation of an automobile by the husband's employe. Wait v. Pierce, 191 W 202, 209 NW 475, 210 NW 822. See also: Moore v. Moore, 191 W 232, 209 NW 483; and Fontaine v. Fontaine, 205 W 570, 238 NW 410.

As to survival of an action brought under this section after the death of the defendant, see note to 331.01, citing Howard v. Lunsburg, 192 W 507, 213 NW 301.

A wife cannot maintain an action against her husband for wrongs done to her other than those resulting in injury to her person or character, and hence cannot maintain an action against her husband as a conspirator to commit such other wrongs in concert with other persons. Singer v. Singer, 245 W 191, 14 NW (2d) 43.

6.015 (1) and 246.07, Stats. 1943, were enacted to establish and enlarge the rights and privileges of married women, but not to create or enlarge liabilities except as specifically provided. Fehr v. General A. F. & L. A. Corp. 246 W 228, 16 NW (2d) 787.

In the absence of judicial interpretation by the New Mexico courts of a New Mexico statute providing that a married woman may sue and be sued as if she were unmarried, the Wisconsin supreme court will presume that it means the same as 246.07, that a wife may maintain an action against her husband for injuries to her person proximately caused by his negligence. Nelson v. American Employers' Ins. Co. 258 W 252, 45 NW (2d) 681.

Arizona, a community property state, recognizes the right of the wife to be protected from injury by the husband and to sue him when he invades that right, and that when an action concerns her separate property or is between herself and her husband, she may sue or be sued alone, whenever they are adversary parties, so that, under the laws of Arizona, a wife domiciled with her husband in Wisconsin, and injured in Arizona because of the husband's negligent operation of an automobile there, has a cause of action and may sue and recover from the husband for her injuries. Jaeger v. Jaeger, 262 W 14, 53 NW (2d) 740.

Whenever courts of this state are confronted with conflict-of-laws problem as to which law governs capacity of one spouse to sue the other in tort, the law to be applied is that of the state of domicile. [Buckeye v. Buckeye, 203 W 248; Forbes v. Forbes, 226 W 477; Bourestom v. Bourestom, 231 W 666; Garlin v. Garlin, 260 W 187; Scholle v. Home Mut. Cas. Co. 273 W 387; and Hansen v. Hansen, 274 W 262, so far as to the contrary, overruled.] Haumschild v. Continental Cas. Co. 7 W (2d) 130, 95 NW (2d) 814.

A wife can sue a tort-feasor for loss of consortium if her cause of action is joined with that of her husband for his injuries to obviate double recovery for loss of support. (Nickel v. Hardware Mut. Cas. Co. 269 W 647, 70 NW (2d) 205, overruled.) Moran v. Quality Aluminum Casting Co. 34 W (2d) 542, 150 NW (2d) 137. See also: Fitzgerald v. Meissner & Hicks, Inc. 38 W (2d) 571, 157 NW (2d) 595; and Edeler v. O'Brien, 38 W (2d) 691, 158 NW (2d) 301.

Right of married woman to sue in her own name. 28 MLR 131.

Relational interests—wife's action for loss of consortium. 1968 WLR 270.

246.075 History: 1947 c. 164; Stats. 1947 s. 246.075.

See note to 246.07, citing Haumschild v. Continental Cas. Co. 7 W (2d) 130, 95 NW (2d) 814.

246.08 History: 1872 c. 155 s. 1, 3; R. S. 1878 s. 2346; Stats. 1898 s. 2346; 1925 c. 4; Stats. 1925 s. 246.08; 1959 c. 595 s. 40.

Legislative Council Note, 1959: Restatement of present law. (Bill 151-A)

246.09 History: 1851 c. 158 s. 1, 2; R. S. 1858 c. 95 s. 5, 6; 1870 c. 59 s. 19; R. S. 1878 s. 2347; 1889 c. 271; Ann. Stats. 1889 s. 2347; 1891 c. 376; Stats. 1898 s. 2347; 1925 c. 4; Stats. 1925 s. 246.09; 1931 c. 425 s. 3; 1933 c. 320; 1939 c. 139.

Where a policy was issued to the plaintiff insuring the life of her husband, and they, by a separate instrument, assigned it as security for liabilities incurred or to be incurred by the assignees in behalf of the husband the assignment was valid. Archibald v. Mutual L. Ins. Co. 38 W 542.

One who procured insurance on his own life and paid the premiums might dispose of it by will or otherwise to the exclusion of the beneficiary. Foster v. Gile, 50 W 603, 7 NW 555, 8 NW 217.

A guardian who had received money under a policy upon the life of the husband "for the sole use" of the wife of the insured and his children sought to escape liability to the latter, having paid the whole amount to the widow, on the ground that the charter of insurer and the policy together made it payable to her alone. It was immaterial whether such was the case or not; in the absence of a designation in the policy of the shares which the widow and children should receive, they were all entitled to share equally. Taylor v. Hill, 86 W 99, 56 NW 738.

Under the presumption of innocence it will be deemed that checks drawn by a husband, for premiums, on an account in which the husband had mixed his own and his wife's business with that of defendants (of whom he was the agent) for the benefit of the wife, were drawn on her funds, and for defendants' benefit, on their funds. Bromley v. Cleveland C., C. & St. L. R. Co. 103 W 562, 79 NW 741.

Sec. 2347, Stats. 1898, has no application to an agreement by a husband to assign insurance policies to his wife on consideration of a voluntary separation. Baum v. Baum, 109 W 47, 85 NW 122.

Ch. 158, Laws 1851, was taken from Massachusetts and by the settled construction in that state at the time of its adoption here, a wife could assign her interest in a policy upon her husband's life with the consent of the insured and the insurer. The doctrine of Ellison v. Straw, 116 W 207, 92 NW 1094, has been modified, by ch. 15, Laws 1903. Canterbury v. Northwestern Mut. Life Ins. Co. 124 W 169, 102 NW 1096.

The husband of the beneficiary under a life policy is not a necessary party plaintiff to an action against the company for damages for the unlawful forfeiture of the policy. Merrick v. Northwestern Nat. Life Ins. Co. 124 W 221, 102 NW 593.

A married woman becomes, by virtue of sec. 2347, Stats. 1898, the owner of her sole and separate property of a life insurance policy made payable to her no matter by whom the premiums are paid. Perkinson v. Clarke, 135 W 584, 116 NW 229.

Where a policy of life insurance on the life of a married man is made payable at maturity to his wife but is conditioned that in a specified event it shall have surrender value in which the beneficiary shall have no interest, it is not governed as to such latter feature by sec. 2347, Stats. 1898. Hilliard v. Wisconsin Life Ins. Co. 137 W 208, 117 NW 999.

A married woman made beneficiary in a life insurance policy takes a vested interest therein which can be divested by the substitution of a new beneficiary only in the manner provided for that purpose in the policy. Such vested right is not divested by a subsequent divorce from the insured. Christman v. Christman, 163 W 433, 157 NW 1099.

The amendment of sec. 2347 by ch. 376, Laws 1891, did not impair the right of the holder of a fraternal benefit certificate previously issued to him to change the beneficiary named, even though she was his wife. Suelflow v. Supreme Lodge, K. & L. of H. 165 W 291, 162 NW 346.

The rights of a wife as a beneficiary under a policy effected by her husband on his own life are contingent on her surviving the term of the policy. The insured retains a substantial interest in the policy which does not pass during his life and proceeds are taxable at his death. Will of Allis, 174 W 527, 184 NW 381.

The right to follow embezzled money was not lost because the money was used to buy life insurance payable to the embezzler's wife. To impress a trust on the life insurance policies, it was not necessary to prove the embezzlement of funds by the insured and the payment of premiums therewith beyond a reasonable doubt. The rule that one cannot follow money in equity because it has no earmarks is no longer followed. The employer's lien on the insurance policies was not limited to the amount of the premiums paid out of the embezzled money, but extended to two-thirds of the proceeds of the policy on which two-thirds of the premiums had been paid out of the embezzled fund. Truelsch v. Miller, 186 W 239, 202 NW 352.

In bankruptcy matters the federal courts accept the construction of the state courts of the state's exemption statutes. The cash surrender value of an insurance policy on the life of a bankrupt was not payable to the trustee in bankruptcy, although the bankrupt had the right to change the beneficiary because the face value of the policy was payable on his death to the bankrupt's wife. Cannon v. Lincoln Nat. Life Ins. Co. 208 W 452, 243 NW 320.

Where a life insurance policy reserves the right to change the beneficiary, and to assign the policy, the insured may assign the policy as security for a debt without the consent of the beneficiary even though she is the wife of the insured, such reserved right of the insured not being affected by 246.09 (1) relating to property rights of married women in life policies made payable to them. (Statement contra in Beck v. First Nat. Bank of Madison, 238 W 346, not necessary to decision of case, regarded as dicta.) Oldenburg v. Central Life Assur. Society, 243 W 8, 9 NW (2d) 133.

The status of a married woman for the purpose of the exemption provided by 246.09 (1) must be determined as of the time the insurance is effected or the beneficiary is named; a woman who was single when a life policy was effected and made payable to her was not entitled to the exemption in respect to the proceeds of such policy; but as to a policy effected, and made payable to her when she was married, she was entitled to the exemption. Insurance which a corporate employer effected on the life of an employe by executing a group policy, paying the premiums thereon, and delivering to the employe a certificate naming as beneficiary a married woman was within 246.09 (1). Luebke v. Vonnekold, 250 W 496, 27 NW (2d) 458.

A wife has a vested interest in a life insurance policy of her husband naming her as beneficiary, subject to being divested if the right to change the beneficiary is reserved. After a divorce in which she received certain property in lieu of alimony and as a division of property and in satisfaction of all claim to his property, but which did not affect her property, she could still claim the proceeds of the insurance if the designation of beneficiary was not changed at the time of death. Hott v. Warner, 268 W 264, 67 NW (2d) 370.

Sec. 2347, Stats. 1898, affects ordinary life insurance only and is not applicable to a policy payable to a wife if her husband, the insured, dies within 20 years but provides that if he survives that period he shall have the option of settling the policy for his own benefit. In re Churchill, 198 F 711.

The rights of a wife as a beneficiary of life insurance are by sec. 2347, Stats. 1898, exempt from interference or control on the part of the insured husband; and his trustee in bankruptcy cannot require the company to pay him, as the surrender value of a policy, any money whatsoever in a case where the policy does not in terms provide for a surrender, even though at a period some 2 years after bankruptcy intervened certain optional benefits would become available to the insured if he should survive that period. In re Churchill, 209 F 766.

246.10 History: 1891 c. 34; Stats. 1898 s.

2347a; 1925 c. 4; Stats. 1925 s. 246.10; 1959 c. 595 s. 41.

Legislative Council Note, 1959: A person is not required to be an attorney to qualify as an assignee or receiver. (See ch. 128, Stats.) Present s. 246.01 [246.10] is modernized to permit married women to qualify as receivers and assignees. (Bill 151-A)

246.11 History: 1903 c. 15 s. 1, 2; Supl. 1906 s. 2347b; 1925 c. 4; Stats. 1925 s. 246.11; 1953 c. 61.

See note to 246.09, citing Canterbury v. Northwestern Mut. Life Ins. Co. 124 W 169, 102 NW 1096.

246.15 History: 1965 c. 666; Stats. 1965 s. 246.15.

Legislative Council Note, 1965: This section is a restatement of s. 6.015. (Bill 755-A)

A man and woman may before marriage contract as to their property rights, but cannot change the personal duties resulting from the marriage. A promise by the husband, made before marriage, to care for, nurse and support the wife is not a valid consideration for a promise by her to bequeath him her property, and is void. Ryan v. Dockery, 134 W 431, 114 NW 820.

6.015, Stats. 1921, includes married as well as unmarried women and is not void because it fails to enumerate all statutory provisions that are affected by it. It removes the disabilities heretofore imposed upon married women, and they may now make themselves liable as sureties the same as men, even though the transaction be without direct consideration and is in no way related to her separate estate. The equitable remedies formerly invoked to protect or enforce such disabilities are abolished and the liabilities of women, contractual and otherwise, may now be enforced by the usual legal remedies employed to enforce the liabilities of men. First Wisconsin Nat. Bank v. Jahn, 179 W 117, 190 NW 822.

6.015 further modified the rights of husband and wife as they existed at common law, and was designed to place them on a basis of equality before the law, not only in the particulars mentioned but "in all other respects." Wait v. Pierce, 191 W 202, 209 NW 475, 210 NW 822. See also: Moore v. Moore, 191 W 232, 209 NW 483; and Fontaine v. Fontaine, 205 W 570, 238 NW 410.

A married woman may enter into a contract of partnership with her husband. Sparks v. Kuss, 195 W 378, 216 NW 929, 218 NW 208.

Discharge of a school teacher on her marriage does not contravene 6.015, Stats. 1927. Ansorge v. Green Bay, 198 W 320, 224 NW 119.

The relation of a married woman and her husband as to contracts with others for their services are the same as though unmarried. Estate of Nitka, 208 W 181, 242 NW 504.

The statute of limitations does not run on the debts of the husband to his wife. Campbell v. Mickelson, 227 W 429, 279 NW 73.

A wife has the same right of action that a husband has to recover damages for criminal conversation, in view of 6.015 (1). Woodman v. Goodrich, 234 W 565, 291 NW 768.

A wife bringing an action for personal injuries could recover for nursing and medical expenses which she had agreed to pay, as against the contention that these constituted an obligation of the husband, since, under 6.015 (1), a married woman is free to make her own personal contracts. Baum v. Bahn Frei Mut. B. & L. Asso. 237 W 117, 295 NW 14.

6.015 (1), Stats. 1941, conferring on women the same rights as men in the choice of residence for voting purposes, does not deal with poor relief and was not intended to include choice of residence for relief purposes, and 49.02 is not in conflict therewith in providing that a married woman shall always follow and have the legal settlement of her husband where he has one within the state. Ashland County v. Bayfield County, 244 W 210, 12 NW (2d) 34.

The rights of parents in respect to the custody of their children are equal. Dovi v. Dovi, 245 W 50, 13 NW (2d) 585.

246.07, Stats. 1943, authorizing any married woman to maintain an action in her own name for any injury to her person or character, the same as if she were sole, is not enlarged by 6.015 so as to authorize her to maintain an action for injuries other than those to her person or character. Singer v. Singer, 245 W 191, 14 NW (2d) 43.

6.015 (1) and 246.07, Stats. 1943, were enacted to establish and enlarge the rights and privileges of married women, but not to create or enlarge liabilities except as specifically provided. Fehr v. General Acc., F. & L. Assur. Corp. 246 W 228, 16 NW (2d) 787.

Married women are as free in their right to own and control property as unmarried women and as men. Goodman v. Wisconsin Electric P. Co. 248 W 52, 20 NW (2d) 553.

6.015 means that women shall be as free as men to make personal contracts. Therefore, a post-nuptial agreement dividing property between husband and wife and providing for relinquishment of inheritance rights was valid. In re Cortte's Estate, 230 W 103, 283 NW 336; Estate of Nickolay, 249 W 571, 25 NW (2d) 451.

A wife may acquire a separate domicile from that of her husband if his misconduct has given her adequate cause for divorce. Lucas v. Lucas, 251 W 129, 28 NW (2d) 337.

See note to 52.01, citing Schade v. Schade, 274 W 519, 80 NW (2d) 416.

A married woman may contract for medical services in her own right, but in the absence of the establishment of such an express contract between the wife and the person rendering the service, the husband, and not the wife, is the person liabile for such expenses and the one entitled to recover for them in case of liability of a tort-feasor therefor. Jewell v. Schmidt, 1 W (2d) 241, 83 NW (2d) 487.

A Milwaukee ordinance, prohibiting only female entertainers or other female employes employed in premises licensed for sale of malt beverages or intoxicating liquors from standing or sitting at the bar, does not violate any rights of women conferred on them under 6.015, Stats. 1959. Milwaukee v. Piscuine, 18 W (2d) 599, 119 NW (2d) 442.

See note to 246.07, citing Moran v. Quality Aluminum Casting Co. 34 W (2d) 542, 150 NW (2d) 137.

As to the right of a wife to change her residence for voting purposes from the residence of her husband, see 17 Atty. Gen. 489.

6.015, Stats. 1929, does not grant a Chinese married woman the privilege of establishing her residence in the state, independently of the residence of her husband, so as to exempt her from payment of nonresident tuition fees at the university. 18 Atty. Gen. 359.

The legal rights and status of women. Stout, 14 MLR 66, 121 and 199.

CHAPTER 247.

Actions Affecting Marriage.

Editor's Note: For foreign decisions construing the "Uniform Divorce Act" consult *Uniform Laws, Annotated.*

247.01 History: R. S. 1849 c. 79 s. 8, 15; R. S. 1858 c. 111 s. 8, 15; R. S. 1878 s. 2348; Stats. 1898 s. 2348; 1925 c. 4; Stats. 1925 s. 247.01; 1959 c. 595 s. 43; 1961 c. 495; 1969 c. 352.

Legislative Council Note, 1959: This is a restatement of present law which clarifies the fact that circuit courts always have jurisdiction of actions affecting marriage even though such jurisdiction may be concurrent with special courts created by statute. When a circuit court is handling marital actions it is to be known as a family court branch, a term presently used in the second circuit. (Milwaukee county) (Bill 151-A)

A traversable fact put in issue in a court of competent jurisdiction and tried thereby, is a bar to another action between the same parties and based on the same fact although the relief asked in the last case is different from that in the first. Kalisch v. Kalisch, 9 W 529.

Courts possess no power in actions for divorce except such as are given by statute. A circuit court may grant a divorce although the guilty party has never resided in this state and the acts alleged as cause therefor were committed elsewhere. Shafer v. Bushnell, 24 W 372.

A stipulation by defendant as to time and place of trial is a waiver of all defects in process and of process itself if none has issued. Keeler v. Keeler, 24 W 522.

For the purpose of bringing or defending a divorce suit the wife may acquire a domicile distinct from her husband. Where they reside in different counties suit may be commenced in either; but if brought in that of plaintiff's residence it may be removed to that of defendant. Moe v. Moe, 39 W 308.

A circuit court for one county has authority to examine testimony reported by a referee appointed by the circuit court of another county in the same circuit, in an action for divorce begun in the latter county, and to sign a judgment. Coad v. Coad, 41 W 23.

Courts possess no power in actions for divorce, except such as are conferred by statute. Cook v. Cook, 56 W 195, 14 NW 33, 443.

If an order for publication of a summons and judgment of divorce is obtained by plaintiff's perjury the order and all subsequent proceedings should be vacated. Everett v. Everett, 60 W 200, 18 NW 637.

In an action by a wife for divorce and alimony a third person may be made a party where it is necessary to protect her rights. Way v. Way, 67 W 662, 31 NW 15.

Although an agreement to separate and live apart is void as against public policy, a court will not, in the absence of fraud, decree a restoration of property or cancellation of deeds delivered pursuant thereto. Anderson v. Anderson, 122 W 480, 100 NW 829.

Circuit courts are empowered by sec. 2348, Stats. 1919, to issue writs of ne exeat to prevent judgments for alimony from becoming ineffective. In re Grbic, 170 W 201, 174 NW 546.

See note to 247.02, citing Lyannes v. Lyannes, 171 W 381, 177 NW 683.

The court has no discretion to deny a divorce where the facts entitling a party to a divorce are established by the evidence to the requisite degree of legal certainty. Mattson v. Mattson, 204 W 424, 235 NW 767.

An action for divorce is a statutory action, and the trial court can grant only such relief therein as the statutes prescribe. Hirchert v. Hirchert, 243 W 519, 11 NW (2d) 157.

Courts of equity have jurisdiction of personal rights, including those of infants, and such jurisdiction may be exercised in divorce actions as well as in other actions of an equitable nature. Dovi v. Dovi, 245 W 50, 13 NW (2d) 585.

So long as the jurisdiction of the divorce court was operative in respect to custody and allowance for children, no other court of coordinate jurisdiction in this state could interfere to alter or modify judgment in either of those respects. The divorce court has power to modify alimony and support payments retrospectively. Halmu v. Halmu, 247 W 124, 19 NW (2d) 317.

The equitable principles of laches are applicable to divorce actions under 247.01, Stats. 1947. It makes applicable to divorce actions the procedure and practice by the court in other actions including statute of limitations. Zlindra v. Zlindra, 252 W 606, 32 NW (2d) 656.

In its disposition of divorce actions, the trial court is not confined to the facts as they existed at the time of the commencement of the action merely, but may take cognizance, under proper pleadings, of what is done by either or both parties thereto during the pendency of the action. The same statutory provisions with respect to the amendment of pleadings apply in divorce actions as in other actions. Whether or not to permit an amendment to pleadings is largely within the discretion of the trial court, and considerable liberality is permitted. Limberg v. Limberg, 5 W (2d) 327, 92 NW (2d) 767.

247.02 History: R. S. 1849 c. 79 s. 3; R. S. 1858 c. 111 s. 3; R. S. 1878 s. 2351; Stats. 1898 s. 2351; 1909 c. 323; 1917 c. 584, 586; 1925 c. 4; Stats. 1925 s. 247.02; 1959 c. 595 s. 44, 45.

Legislative Council Note, 1959: As to (intro. par.): The new language makes it clear that a marriage may be annulled only through a judicial proceeding.

As to (2): The present law barring marriages between parties who are nearer of kin than second cousins has been restated without change in substance. Marriage between first