CHAPTER 247.

DIVORCE.

247.01 Jurisdiction. The circuit court has jurisdiction of all actions to affirm or to annul a marriage, or for a divorce from the bond of matrimony, or from bed and board, and authority to do all acts and things necessary and proper in such actions and to carry its orders and judgments into execution as hereinafter prescribed. All such actions shall be commenced and conducted and the orders and judgments therein enforced according to the provisions of these statutes in respect to actions in courts of record, as far as applicable, except as provided in this chapter.

Note: 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.

The courts of this state have no common-law jurisdiction over the subject of divorce and their authority is confined altogether to such express and incidental powers as are conferred by statute. Dovi v. Dovi, 245 W 59, 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 co-ordinate jurisdiction in this state could interfere to alter or modify the 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.

247.02 Marriages; annulment; causes for. A marriage may be annulled for any of the following causes existing at the time of marriage:

(1) Incurable physical impotency or incapacity of copulation, at the suit of either party, provided that the party making the application was ignorant of such impotency or incapacity at the time of marriage.

(2) Consanguinity or affinity where the parties are nearer of kin than the second cousins, computing by the rule of civil law, whether of the half or of the whole blood, at the suit of either party; but when any such marriage shall not have been annulled during the lifetime of the parties, the validity thereof shall not be inquired into after the death of either party.

(3) When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

(4) Fraud, force, or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.

(5) Insanity, idiocy, or such want of understanding as renders either party incapable of assenting to marriage, at the suit of the other, or at the suit of a guardian of the lunatic or incompetent, or of the lunatic or incompetent on regaining reason, unless such lunatic or incompetent, after regaining reason, has confirmed the marriage; provided that where the party compos mentis is the applicant, such party shall have been ignorant of the other's insanity or mental incompetency at the time of the marriage, and shall not have confirmed it subsequent to such person's regaining reason.

(6) At the suit of the wife when she was under the age of fifteen years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age.

(7) At the suit of the husband when he was under the age of eighteen at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.

247.03 Proceedings to affirm marriage. When the validity of any marriage shall be denied or doubted by either of the parties the other party may commence an action to affirm the marriage, and the judgment in such action shall declare such marriage valid or annul the same, and be conclusive upon all persons concerned.

247.04 Divorce; kinds. Divorce shall be of two kinds:

(1) Divorce from the bonds of matrimony, or divorce a vinculo matrimonii.

(2) Divorce from bed and board, or divorce a mensa et thoro.

247.05 Annulment; jurisdiction; publication; personal service. For the purposes of annulment of marriage, jurisdiction may be acquired by publication as provided in the statutes, or by personal service upon the defendant within this state, when either party is a bona fide resident of this state at the time of the commencement of the action. When both parties are nonresidents, jurisdiction to annul a marriage contracted within the state may be acquired in the same manner provided the action is commenced within a year after such marriage. [*1947 c. 98*]

247.06 Divorce; jurisdiction; publication; personal service; conditions. For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by publication as provided in the statutes or by personal service upon the defendant within this state, under the following conditions:

(1) When, at the time the cause of action arose, either party was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action, except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a bona fide resident of this state.

(2) If, since the cause of action arose, either party, for at least two years next preceding the commencement of the action, has continued to be a bona fide resident of this state.

Note: Under 247.06, the court was without jurisdiction to grant an absolute divorce where neither of the parties had been a bona fide resident of this state for the 2 years next preceding the commencement of the action, and neither adultery nor bigamy was alleged as a ground for divorce. A judgment of divorce entered without jurisdiction to grant the divorce is wholly void, and hence a provision therein relating to the custody of the minor children of the parties is void. Sang v. Sang, 240 W 288, 3 NW (2d) 340.

If the testimony in the case warrants, the trial court may grant an absolute divorce even though the plaintiff asks only for a divorce from bed and board. Rohloff v. Rohloff, 244 W 153, 11 NW (2d) 507.

The theory that the domicile of the wife follows the domicile of the husband is excluded by our statute, 247.06, from application to an action for divorce by requiring an actual residence here of the plaintiff, whether husband or wife; and the right to maintain a separate residence from that of the husband for purposes of divorce might also be sustained by 6.015, giving women the same rights and privileges under the law as men. Lucas v. Lucas, 251 W 129, 28 NW (2d) 337.

247.07 Causes for divorce from contract. A divorce from the bond of matrimony may be adjudged for either of the following causes:

(1) For adultery.

(2) For impotency.

(3) When either party, subsequent to the marriage, has been sentenced to imprisonment for three years or more; and no pardon granted after a divorce for that cause shall restore the party sentenced to his or her conjugal rights.

(4) For the wilful desertion of one party by the other for the term of one year next preceding the commencement of the action.

(5) When the treatment of the wife by the husband has been cruel and inhuman, whether practiced by using personal violence or by any other means; or when the wife shall be guilty of like cruelty to her husband or shall be given to intoxication.

(6) When the husband or wife shall have been a habitual drunkard for the space of one year immediately preceding the commencement of the action.

(7) Whenever the husband and wife shall have voluntarily lived entirely separate for the space of five years next preceding the commencement of the action, the same may be granted at the suit of either party. And such living apart for five years or more, pursuant to a decree of divorce from bed and board, without request during that period by either party to the other in good faith for a reconciliation and revocation of said judgment, shall not be any bar to an absolute divorce upon this ground at the suit of either party; provided further, however, that no divorce absolute upon this ground shall be granted unless six months of such separation shall be subsequent to the time when this act shall go into effect.

Note: The commencement of a groundless divorce action by a deserting spouse did not interrupt the period of desertion, and the filing of a counterclaim on the trial date, the plaintiff having abandoned the divorce action, was the commencement of an action by the defendant for divorce within the statutes permitting divorce for one year's

desertion preceding the commencement of the action. Heinemann v. Heinemann, 202 W 639, 233 NW 552.

The doctrine of recrimination bars a divorce where it is shown that each party has been guilty of an offense which the statute has made a ground for divorce in favor of the other. Roberts v. Roberts, 204 W 401, 236 NW 135.

Doctrine of condonation has no application to divorce action based on cruel and inhuman treatment, consisting of long succession of relatively trivial incidents. Cudahy v. Cudahy, 217 W 355, 258 NW 168.

The husband has the right to select the place where the family shall reside, and if the wife unreasonably refuses to remove with him to the place he selects, her conduct constitutes wilful desertion. A wife who wilfully deserts her husband forfeits her right to support, and cannot during the period of such desertion maintain an action for divorce on the ground of failure to support. Gray v. Gray, 232 W 400, 287 NW 708.

Desertion is a ground for divorce when it continues a sufficient length of time, but it does not constitute cruel and inhuman treatment. Moen v. Moen, 249 W 169, 23 NW (2d) 472.

A husband whose wife is insane cannot have the advantage of a divorce from her merely because she had a lucid interval at the time the divorce was granted if he colluded with the granting of it; nor is a divorce granted to an insane wife on her complaint validated because she had a lucid interval at the time the divorce action was instituted and the divorce granted. Heine v. Witt, 251 W 157, 28 NW (2d) 248.

247.08 Causes for divorce from bed and board. A divorce from bed and board forever or for a limited time may be adjudged:

(1) For the fourth, fifth and sixth causes above specified.

(2) For extreme cruelty of either party.

(3) On the complaint of the wife, when the husband, being of sufficient ability, shall refuse or neglect to provide for her or when his conduct toward her is such as may render it unsafe and improper for her to live with him.

Note: To determine the right of a divorced wife to share in the estate of her deceased husband, the oral statement of the court in the divorce action brought by the wife that "the divorce will be granted," followed by an admonition that the parties were not to marry again within a year and a statement that he would determine property rights, but never did, and entry of the clerk that the divorce was granted on the grounds of cruel and inhuman treatment (no formal judgment being entered), are construed, particularly in view of the prayer in the complaint for a divorce from bed and board, as a divorce from bed and board; hence she continued to have the status of a wife and upon his death she was entitled to share in his estate as his widow. Estate of Kehl, 215 W 353, 254 NW 639.

247.09 Divorce from bond for same causes. A divorce from the bond of matrimony may also be adjudged for either of the causes specified in the second and third subdivisions of section 247.08 whenever, in the opinion of the court, the circumstances of the case are such that it will be discreet and proper so to do.

247.095 Actions to compel support by husband. Any wife, whose husband fails or refuses, without lawful or reasonable excuse, to provide for the support and maintenance of his wife or minor children, may commence an action in any court having jurisdiction in actions for divorce, to compel such husband to provide for the support and maintenance of herself and such minor children as he may be legally required to support. The court, in such action, may determine and adjudge the amount such husband should reasonably contribute to the support and maintenance of said wife or children and how such sum should be paid. The amount so ordered to be paid may be changed or modified by the court upon notice of motion or order to show cause by either the husband or wife upon sufficient evidence. Such determination may be enforced by contempt proceedings. [*1939 c. 211*]

Note: A wife on leaving her husband without reasonable cause is not entitled to be supported by him. Nowack v. Nowack, 235 W 620, 293 NW 916.

247.10 Collusion; procurement; connivance; condonation; stipulation; property rights. No decree for divorce shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offense charged, or has condoned it, or has been guilty of adultery not condoned; provided that the parties may, subject to the approval of the court, stipulate for a division of estate, for alimony, or for the support of children, in case a divorce be granted or a marriage annulled.

Note: See note to 247.07, citing Cudahy v. Cudahy, 217 W 355, 258 NW 168.

247.11 Accomplice to be interpleaded. Any one charged as a particeps criminis shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

247.12 Divorce, trials. All hearings and trials to determine whether or not a decree shall be granted, shall be had before the court and shall be public. The testimony shall be taken by the reporter in divorce actions where the judgment will be subject to revision, and shall be written out and filed with the record if so ordered by the court. The reporter's fees for transcribing the same shall be paid with the clerk's fees. [*Court Rule XXVIII s. 2; Supreme Court Order, effective Jan. 1, 1934*]

247.13 Divorce counsel; appointment; oath; Milwaukee county. (1) In each county of the state, except in counties having a population of 500,000 or more, the circuit judge

or judges in and for such county shall by order filed in the office of the clerk of the circuit court on or before the first Monday of July of each year, appoint some reputable attorney, of recognized ability and standing at the bar, divorce counsel for such county. Before entering upon the discharge of his duties such counsel shall take and file the official oath. The person so appointed shall continue to act until his successor is appointed and duly qualified.

(2) In any county having a population of 500,000 or more, there is created in the classified civil service the office of divorce counsel and an assistant divorce counsel who shall be appointed from the membership of the bar residing in such county by the judges of the circuit court of such county, pursuant to the provisions of sections 16.31 to 16.44. Before entering upon the performance of his duties, such divorce counsel and assistant divorce counsel shall take and file the official oath. Such divorce counsel and assistant divorce counsel may be appointed court commissioners as provided in section 252.14 (2). They shall receive such salary as may be fixed by the county board, shall perform their duties under the direction of the circuit judges of such county and shall be furnished with quarters and necessary office furnishings and supplies. The county board shall provide them their necessary stenographic and investigational service. The assistant divorce counsel shall perform all the duties and have all the powers of the divorce counsel when so directed by the latter or in his absence or disability. In addition to the duties of such divorce counsel as defined in chapter 247, he shall perform such other duties as the circuit court of such county may direct. [*1945 c. 408*]

Note: County board may not abolish office of divorce counsel or alter compensation paid thereto. 22 Atty. Gen. 744.

Offices of district attorney and divorce counsel are compatible. 28 Atty. Gen. 624.

247.14 Service on and appearance by divorce counsel; other actions disclosed. In any action to affirm or annul a marriage, or for a divorce, the plaintiff and defendant shall, within ten days after making service on the opposite party of his complaint, answer, conterclaim or reply, as the case may be, serve a copy of the same upon the divorce counsel of the county in which the action is begun. In addition to all other allegations, the complaint shall specifically allege whether or not an action for obtaining a divorce by either of the parties was or has been at any time commenced or pending in any other court, or before any judge thereof, in this state, or elsewhere. Such counsel shall appear in the action when the defendant fails to answer or withdraws his answer before trial; also, when the defendant interposes a counterclaim and the plaintiff thereupon neither supports his complaint nor opposes the counterclaim by proof; and when the court is satisfied that the issues are not contested in good faith by either party.

Note: Service of the original pleading in divorce upon the district attorney and his approval of the court's findings was a substantial compliance with the statutes, though the counterclaim on which divorce was granted was not served upon the district attorney and he did not appear in open court. Heinemann v. Heinemann, 202 W 639, 233 NW 552.

247.15 Default actions; divorce counsel to appear. No decree in any action in which divorce counsel is required by section 247.14 to appear shall be granted until such counsel or the divorce counsel of the county in which the action is tried shall have appeared in open court and in behalf of the public made a fair and impartial presentation of the case to the court and fully advised the court as to the merits of the case and the rights and interests of the parties and of the public, nor until the proposed findings and judgment shall have been submitted to such divorce counsel. Such divorce counsel is empowered to cause witnesses to be subpœnaed on behalf of the state when in his judgment their testimony is necessary to fully advise the court as to the merits of the case and as to the rights and interests of the parties and of the public. The fees of such witnesses shall be paid out of the county treasury as fees of witnesses in criminal cases are paid. The court may direct that such fees be repaid to the county by one of the parties to the action, in which case it shall be the duty of the divorce counsel to see that such repayment is made.

Note: An order setting aside a default judgment of divorce is reviewable when the case reaches the supreme court on appeal from the final judgment. Kelm v. Kelm, 204 W 301, 235 NW 787.

247.16 Divorce counsel or law partner; when interested; procedure. Neither such divorce counsel nor his partner or partners shall appear in any action to affirm or annul a marriage or for a divorce in any court held in the county in which he shall be acting, except when authorized to appear by section 247.14. In case he or his partner shall be in any way interested in such action, the presiding judge shall appoint some reputable attorney to perform the services enjoined upon such divorce counsel and such attorney, so appointed, shall take and file the oath and receive the compensation provided by law.

247.17 Divorce counsel; fees; salary. (1) Excepting in counties having a population of 250,000 or more, in any action to affirm or annul a marriage, or for a divorce, the divorce counsel shall receive the sum of $15 for appearing upon the trial and the sum

of $10 for making an investigation, to be paid by the county wherein the action was tried upon the order of the presiding judge and the certificate of the clerk of the court. The court may order payment for an investigation whether or not the divorce counsel appears upon the trial, but in any case only after satisfactory proof in writing that such investigation has been made is filed with the court. When any case shall occupy more than one day of the time of such divorce counsel, the court may, in its discretion, require the parties to the action or either of them to pay such additional sum to compensate such divorce counsel, as the justice of the case may require, having due regard to the financial ability of such parties, which additional sum in counties having a population of 250,000 or more or in counties where the divorce counsel is compensated on a salary basis shall be paid into the treasury of the county.

(2) In counties having a population of less than 250,000, the county board may by resolution provide an annual salary for the divorce counsel and the divorce counsel upon his appointment by the circuit judge or judges shall receive such annual salary in lieu of the fees otherwise prescribed. When the divorce counsel is paid an annual salary as provided in this subsection the county board may also by resolution prescribe such other duties to be performed by him in the field of domestic relations law as are allied with and are not in conflict with his duties as divorce counsel. [*1947 c. 383*]

Note: County in which action is brought is responsible for fee of divorce counsel. 20 Atty. Gen. 262.

Trial court is permitted to grant compensation to divorce counsel for services rendered in collecting alimony or support money at rate of $15 per day under 247.29, Stats. 1931. 20 Atty. Gen. 1142.

247.18 Corroboration required; defaults. (1) No decree for annulment of marriage, or for divorce, shall be granted in any action in which the defendant does not appear and defend the same in good faith unless the cause is shown by affirmative proof aside from any admission to the plaintiff on the part of the defendant.

(2) No judgment of divorce or annulment shall be granted on the testimony of the party, unless the required residence and grounds for divorce or annulment be corroborated except cruel and inhuman treatment, when no corroborating evidence is available. [*Court Rule XXVIII s. 3; Supreme Court Order, effective Jan. 1, 1934*]

Note: A letter sent by the defendant to the plaintiff, and showing that a considerable quarrel had very recently occurred, was sufficient corroboration of the plaintiff's testimony to satisfy 247.18 (2) so as to authorize the granting of a divorce. The plaintiff's testimony was sufficient to show residence in the state for the required 2 years immediately prior to the commencement of the action for divorce; and a statement of the defendant's attorney admitting the residence in open court, together with an admission thereof in the verified answer, was sufficient corroboration to satisfy 247.18 (2), in the absence of claim that the required residence did not in fact exist. Hirchert v. Hirchert, 243 W 519, 11 NW (2d) 157.

(2) is not a statute enacted by the legislature limiting the jurisdiction of the trial court, but is a rule of practice and procedure adopted by the supreme court pursuant to 251.18, so that, notwithstanding such rule, the trial court is not without jurisdiction to grant a divorce on the uncorroborated testimony of the plaintiff, even though there is no showing that no corroborating evidence is available. Swenson v. Swenson, 245 W 124, 13 NW (2d) 531.

247.19 Record; impounding. No record or evidence in any case shall be impounded, or access thereto refused, except by special written order of the court made in its discretion in the interests of public morals. And when impounded no officer or other person shall permit a copy of any of the testimony or pleadings, or the substance thereof, to be taken by any person other than a party to the action, or his attorney of record, without the special order of the court. [*Court Rule XXVIII s. 4; Supreme Court Order, effective Jan. 1, 1934*]

247.20 Former name of wife. The court, upon granting a divorce from the bonds of matrimony, may allow the wife to resume her maiden name or the name of a former deceased husband in case there be no children of the marriage.

247.21 Foreign decrees; comity of states. Full faith and credit shall be given in all the courts of this state to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another state, territory or possession of the United States, when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 247.05 and 247.06. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce, by a court of a foreign country as may be justified by the rules of international comity; provided, that if any inhabitant of this state go into another state, territory or country for the purpose of obtaining a decree of divorce for a cause which occurred while the parties resided in this state, or for a cause which is not ground for divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state.

247.22 [*Repealed by 1939 c. 476*]

247.23 Support of wife and children; suit money. In every action to affirm or annul a marriage or for a divorce or for support and maintenance under section 247.095 the

court or a judge may, during the pendency thereof, make such orders concerning the care, custody and suitable maintenance of the minor children and to require the husband to pay such sums for the support of the wife and the minor children in her custody and to enable her to carry on or defend the action and in relation to the persons or property of the parties as in its discretion shall be deemed necessary or proper; and may prohibit the husband from imposing any restraint on her personal liberty. [*1939 c. 211*]

Note: Defendant wife in divorce action cannot be allowed for attorney's fees and disbursements sum greater than reasonably necessary for defense of action. Cudahy v. Cudahy, 217 W 355, 258 NW 168.

The amount of an allowance for counsel fees to the wife in a divorce action is largely within the discretion of the trial court. Szumski v. Szumski, 223 W 500, 270 NW 926.

An order refusing to award suit money and counsel fees against a divorced husband to enable the divorced wife to defend against a motion for modification of the judgment of divorce so as to award the custody of the child to the husband was not an abuse of discretion, where the wife had remarried and there was no showing that her second husband was unable to supply her with funds necessary to her defense. Elies v. Elies, 239 W 60, 300 NW 493.

An allowance to the wife for attorney fees for services rendered in defending against the husband's motion to set aside the divorce judgment is proper as an allowance to enable the wife to carry on or "defend the action," within 247.23, particularly where the husband was asking for a new trial, and his counterclaim, constituted an "action" by him. Although the wife has means with which to carry on her divorce action, the trial court in its discretion may require the husband to pay the expense of her so doing if the circumstances make such payment equitable. Swenson v. Swenson, 245 W 124, 13 NW (2d) 531.

247.24 Judgment; care and custody, etc., of minor children. In rendering a judgment of nullity of marriage or for divorce, whether from the bond of matrimony or from bed and board, the court may make such further provisions therein as it shall deem just and proper concerning the care, custody, maintenance, and education of the minor children of the parties, and give the care and custody of the children of such marriage to one of the parties to the action, or may, if the interest of any such child shall demand it, and if the court shall find that neither of the parents is a fit and proper person to have the care and custody of any such child, give the care and custody of such child to any fit and proper person, who is a resident of this state and willing to receive and properly care for such child, or to any institution incorporated for such purposes and willing and authorized to receive and care for such child, having due regard to the age and sex of such child. Whenever the welfare of any such child will be promoted thereby, the court granting such decree shall always have the power to change the care and custody of any such child, either by giving it to or taking it from such parent or other person or such institution, provided that no order changing the custody of any child shall be entered until after notice of such application shall have been given the parents of such child, if they can be found, and also to the person or institution that then has the custody of such child.

Note: An order relating to the custody of a child entered subsequent to a divorce judgment is construed as in fact an order modifying the judgment as to such custody and as such, having been made without necessary findings as to whether the interest of the child demanded a change of custody or as to the fitness of either parent to have its custody, and having awarded such custody to a nonresident for sixty days, was void upon its face under the requirements of the statute. In proceedings for modification of a divorce judgment in the matter of the custody of children, a hearing should be granted if demanded, witnesses should be sworn, opportunity given for cross-examination, and a record made. Smith v. Smith, 209 W 605, 245 NW 644.

With respect to custody on divorce, the welfare of the child is now the controlling consideration, and with regard to children of tender years, especially girls, preference will ordinarily be given to the mother, other things being equal and she not being unfit. Acheson v. Acheson, 235 W 610, 294 NW 6.

A provision in a judgment of divorce, awarding the custody of the minor children to a nonresident, was void for that reason. Sang v. Sang, 240 W 288, 3 NW (2d) 340.

In awarding the custody of a child, the welfare of the child is the controlling consideration, paramount to legal rights which a parent might otherwise have to the custody of his child. Siskoy v. Siskoy, 250 W 435, 27 NW (2d) 488.

247.25 Revision of judgment. The court may from time to time afterwards, on the petition of either of the parties, revise and alter such judgment concerning the care, custody, maintenance and education of the children, or any of them, and make a new judgment concerning the same as the circumstances of the parents and the benefit of the children shall require.

Note: A modification or revision of a judgment of divorce in matters relating to alimony and to the custody of minor children is an abuse of discretion in the absence of a substantial change in the premises on which the original determination was made. Romanowski v. Romanowski, 245 W 199, 14 NW (2d) 23.

In modifying a divorce judgment as to the custody of the minor child, the court erred in basing its order in part on a report of the department of domestic conciliation, which report was not before the court, in that it was never submitted to the parties or to counsel nor offered in evidence. In such situation, the order is reversed and cause remanded for further proceedings. Wunsch v. Wunsch, 248 W 29, 20 NW (2d) 545.

247.26 Alimony, how adjudged. Upon every divorce from the bond of matrimony for any cause excepting that of adultery committed by the wife, and also upon every divorce from bed and board, the court may further adjudge to the wife such alimony out of the estate of the husband, for her support and maintenance, and such allowance for the

support, maintenance and education of the minor children committed to her care and custody as it shall deem just and reasonable, and the court may finally divide and distribute the estate, both real and personal, of the husband and so much of the estate of the wife as shall have been derived from the husband, between the parties and divest and transfer the title of any thereof accordingly, having always due regard to the legal and equitable rights of each party, the ability of the husband, the special estate of the wife, the character and situation of the parties and all the circumstances of the case; but no such final division shall impair the power of the court in respect to revision of allowances for minor children under section 247.25. No such judgment shall divest or transfer title to real estate unless such judgment or a certified copy thereof is recorded in the office of the register of deeds of the county in which such real estate is situated. [*1935 c. 379*]

Note: The trial court's division of property in a divorce action must prevail unless there appears to be an abuse of judicial discretion. In this case an allowance of forty per cent of the husband's estate to the wife was affirmed. Voegeli v. Voegeli, 204 W 363, 236 NW 123.

An allowance to the wife, because of whose misconduct the husband was granted a divorce, of an amount approximating one-third of the value of the net estate as a final division of property, is excessive under the evidence, and is reduced, with direction for a provision for instalment payments at the option of the husband. Seyfert v. Seyfert, 206 W 503, 240 NW 150.

The husband's estate consisting of five thousand five hundred dollars and six hundred dollars worth of furniture, an award to the wife of five thousand dollars and thirty dollars monthly for their child's support is excessive, and reduced to two thousand dollars and the furniture, the allowance for support of the child not being disturbed. Perloff v. Perloff, 206 W 565, 240 NW 126.

The government's allotment of part of the insane veteran's monthly compensation for the support of the child did not prevent application of the accumulated fund in the hands of the veteran's guardian to the payment of accrued support money under the divorce judgment. Guardianship of Gardner, 220 W 493, 264 NW 643.

A provision ordering the husband to pay the wife the value of a ring converted by him, did not constitute a division of estate so as to raise a question as to the validity of an alimony order included in the judgment, but was merely a provision for restitution of the wife's separate property. Zuehls v. Zuehls, 227 W 473, 278 NW 880.

On appeal from an order for alimony the supreme court may determine whether such order for alimony amounts to an abuse of discretion or results in manifest injustice. Littig v. Littig, 229 W 430, 282 NW 547.

Where the judgment of divorce is silent as to alimony, the court in effect has adjudged that the plaintiff should not be required to pay alimony and that judgment could not be altered after the term. Hannon v. Hannon, 230 W 620, 284 NW 499.

A wife on leaving her husband without reasonable cause is not entitled to be supported by him. Nowack v. Nowack, 235 W 620, 293 NW 916.

When a final division of the property is made a judgment of divorce may now include both a provision for alimony and a provision for division of the property, but a judgment providing only for final division of the property may not thereafter be modified to substitute therefor or to include therein a provision for alimony. A provision for alimony in a judgment of divorce may be revised from time to time, but not so as to a provision for division of the estate. Gray v. Gray, 240 W 285, 3 NW (2d) 376.

The division of property in a divorce case is peculiarly within the discretion of the trial court, and its determination must prevail in the absence of mistake or error respecting details, or disregard of established guides amounting to want of judicial discretion. Quigley v. Quigley, 244 W 94, 11 NW (2d) 638.

The interest of a husband who is a beneficiary under a spendthrift trust, created before his marriage by a will executed in Pennsylvania by a resident thereof, and admitted to probate there, can be reached in satisfaction of an enforceable claim against the husband by his wife or children for alimony or support, notwithstanding a provision in the will that no beneficiary under the trust shall have the power of anticipation, alienation, or assignment of any principal or income accruing therefrom. Dillon v. Dillon, 244 W 122, 11 NW (2d) 628.

On the basis of findings which did not show that the husband had legal title to or any equitable interest in the property, or that the wife derived any portion of the property from the husband, and negatived any contributions on the part of the husband toward payments made on the property, and showed the property to be the separate property of the wife, the trial court was not empowered to make a division thereof and award the husband a share therein. Ruppert v. Ruppert, 247 W 528, 19 NW (2d) 874.

A conveyance of real estate by the husband to the wife shortly after marriage, not made pursuant to any antenuptial or postnuptial agreement, was property of the wife "derived from the husband" and could be finally divided by the court. Polak v. Polak, 248 W 425, 22 NW (2d) 153.

A denial of alimony to a wife, granted a divorce, was an abuse of discretion, where it meant that the wife, although awarded a portion of the estate of the parties, and receiving an allowance for the 2 small children sufficient to maintain them, would be required to seek full-time employment in order to meet expenses of the household, and the income of the husband, an officer in the army air corps, was sufficient to warrant alimony, at least in an amount that would relieve the wife of the necessity of seeking full-time employment and thereby enable her to give the children the care which they should have. Hahn v. Hahn, 250 W 397, 27 NW (2d) 359.

247.27 Wife to support children, when. When a divorce shall be adjudged for a cause or fault committed by the wife and the care, custody and maintenance of their minor children or any of them shall be adjudged to the husband the court may adjudge to the husband, out of the separate estate of the wife, such sums for the support and education of such minor children as it shall deem just and reasonable, considering the ability of the parties and all the other circumstances of the case.

247.28 [*Repealed by 1943 c. 553 s. 36a*]

247.28 Support and maintenance of wife and children. In a judgment in an action for a divorce, although such divorce be denied, the court may make such order for the support and maintenance of the wife and children, or any of them, by the husband or out of his property as the nature of the case may render suitable and proper. [*1945 c. 272*]

Note: Where the question is presented to a court of equity in a divorce action, the court, although denying a divorce, may properly exercise its jurisdiction to determine the custody of children, which it possesses independently of any statute. 247.28, Stats. 1941, was procedural in character, and the repeal thereof [by sec. 36a, ch. 553, laws of 1943] left the jurisdiction and procedure of the courts where it was before the enactment thereof. Dovi v. Dovi, 245 W 50, 13 NW (2d) 585.

247.29 Alimony, clerk of court, divorce counsel, fees and compensation. All orders or judgments providing for permanent or temporary alimony or support of children shall direct the payment of all such sums to the clerk of the court for the use of the person or persons to whom the same has been awarded. A party securing an order for temporary alimony or support money shall forthwith file said order, together with all pleadings in the action, with the clerk of the court. Said clerk shall disburse the money so received pursuant to said judgment and order and take receipts therefor. All moneys received or disbursed pursuant to this rule shall be entered in a record book kept by said clerk, which shall be open to the inspection of the parties to the action or of their attorneys. If the alimony or support money adjudged or ordered to be paid shall not be paid to the clerk at the time provided in said judgment or order, the clerk and the divorce counsel of said county shall take such proceedings as shall be directed by the court or presiding judge to secure the payment of such sum. Copies of any order issued to compel such payment shall be sent to counsel who represented the party who was awarded alimony or support money. In case any fees of officers in any proceedings taken by the divorce counsel, including the compensation of the divorce counsel at the rate of $20 per day, be not collected from the person proceeded against, the same shall be paid out of the county treasury upon the order of the presiding judge and the certificate of the clerk of the court. [*1947 c. 383*]

247.30 Alimony, payment of and security for. In all cases where alimony or other allowance shall be adjudged to the wife or for the maintenance or education of the children the court may provide that the same shall be paid in such sums and at such times as shall be deemed expedient, and may impose the same as a charge upon any specific real estate of the party liable or may require sufficient security to be given for the payment thereof according to the judgment; and upon neglect or refusal to give such security or the failure to pay such alimony or allowance the court may enforce the payment thereof by execution or otherwise as in other cases. No such judgment shall become effectual as a charge upon specific real estate until the judgment or a certified copy thereof is recorded in the office of the register of deeds in the county in which the real estate is situated.

247.31 Trustee may be appointed. The court may also appoint a trustee, when deemed expedient, to receive any money adjudged to the wife upon trust, to invest the same and pay over the income thereof for her maintenance or the maintenance and education of the minor children or any of them, or to pay over the principal sum in such proportions and at such times as the court shall direct. The trustee shall give such bond, with such sureties as the court shall require, for the faithful performance of his trust.

Note: It was within the power of the court under 247.26, 247.30, 247.31, for the purpose of having sufficient security, to order in the judgment of divorce that the husband assign to the clerk of the court in trust for current payments for alimony and support money and for the payment of such amount as might subsequently be adjudged to the wife as a final division and distribution of the husband's estate. Dillon v. Dillon, 244 W 122, 11 NW (2d) 628.

In providing for the support and education of minor children in a divorce judgment, the court could order the husband to assign corporate stocks to a trustee as security for such support and education. Beck v. First Nat. Bank in Oshkosh, 244 W 418, 12 NW (2d) 665.

247.32 Revision of judgment. After a judgment providing for alimony or other allowance for the wife and children, or either of them, or for the appointment of trustees as aforesaid the court may, from time to time, on the petition of either of the parties, revise and alter such judgment respecting the amount of such alimony or allowance and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any judgment respecting any of the said matters which such court might have made in the original action. But when a final division of the property shall have been made under the provisions of section 247.26 no other provisions shall be thereafter made for the wife.

Note: In the husband's proceeding for modification of the judgment as to alimony, costs should have been allowed to the wife for attorney's fees. Littig v. Littig, 229 W 430, 282 NW 547.

The fact that under 247.25 and 247.32 the court had authority to review and modify the judgment of divorce in question, so far as it related to the children, has no bearing on whether that part of the income of the trust payable to the wife was taxable income of the husband, since such authority did not affect the provision made by the court for the wife as a final division of the husband's estate and did not give the court any power to alter such provision after the expiration of the term at which the judgment was entered. Friedmann v. Tax. Comm., 235 W 237, 292 NW 894.

See note to 247.26, citing Gray v. Gray, 240 W 285, 3 NW (2d) 376.

The provision in the divorce judgment for the support of the minor children could be revised at any time on petition of the parties to the divorce action, even though a trustee had been appointed to hold the assets of the trust created by the judgment as security for such support, and even

though the provision in the judgment for such support and trust was based on a stipulation of the parties. [Secs. 247.30 to 247.32, Stats.] Stipulations of that kind become merged in the divorce judgment when incorporated therein, and are not so far of a contractual nature as to be controlling on the court or to preclude the court from subsequently revising the judgment in a proper case. Beck v. First Nat. Bank in Oshkosh, 244 W 418, 12 NW (2d) 665.

A divorce terminates only the relationship of husband and wife and does not affect the parental relation or the duty of the husband to support a minor child of the couple, and the omission in the judgment of divorce of provisions for the support of the child is not a final action in that respect so as to preclude the exercise of the court's power to revise such judgments in respect to provisions for the children. Romanowski v. Romanowski, 245 W 199, 14 NW (2d) 23.

The powers of the divorce court to revise and alter its judgment respecting the amount of the allowance for the minor children of the parties ends at the attainment of majority by the children. Halmu v. Halmu, 247 W 124, 19 NW (2d) 317.

Where a divorce judgment required the husband to provide for the support of the wife and children, and the husband contumaciously refused to comply therewith, the court, entering an amended judgment decreeing recovery of the amount of the arrearages of alimony and support money, had jurisdiction to insert in the judgment provisions for enforcing the same by contempt proceedings if the husband should fail to pay such amount in specified monthly instalments, the judgment in such case not being one for a gross sum payable at once. Larson v. Larson, 248 W 352, 21 NW (2d) 725.

247.33 Judgment; from bed and board; revocation. In all cases of divorce from bed and board for any of the causes specified in section 247.08, the court may decree a separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree; and upon such application the court shall make such order as may be just and reasonable.

247.34 Restoring property upon annulment. Upon rendering a judgment annulling a marriage the court may make provision for restoring to the wife the whole or such part, as it shall deem just and reasonable, of any estate which the husband may have received from her or the value thereof, and may compel him to disclose what estate he shall have received and how the same has been disposed of. The court may in like manner provide for the restoration to the husband of any property which he has transferred to his wife. [*1945 c. 25*]

247.35 Judgment not to affect wife's property. No judgment nullifying a marriage or for a divorce of any kind shall in any way affect the right of a wife to the possession and control of her separate property, real or personal, except as provided in this chapter; and nothing contained in this chapter shall authorize the court to divest any party of his title in any real estate further than is expressly provided herein.

247.36 Dower rights. When a marriage shall be dissolved by the granting of a decree of divorce from the bonds of matrimony, the wife shall not be entitled to dower in any lands of the husband.

247.37 Effect of judgment of divorce from bonds. (1) When a judgment or decree of divorce from the bonds of matrimony is granted so far as it affects the status of the parties it shall not be effective until the expiration of one year from the date of the granting of such judgment or decree; excepting that it shall immediately bar the parties from cohabitation together and that it may be reviewed on appeal during said period. But in case either party dies within said period, such judgment or decree, unless vacated or reversed, shall be deemed to have entirely severed the marriage relation immediately before such death. Should the parties cohabit together after granting of such judgment or decree and before vacation or reversal of same, they shall be subject to the penalties provided by section 247.39.

(2) So far as said judgment or decree affects the status of the parties the court shall have power to vacate or modify the same for sufficient cause shown, upon its own motion, or upon the application of either party to the action, at any time within one year from the granting of such judgment or decree, provided both parties are then living. But no such judgment or decree shall be vacated or modified without the service of notice of motion, or order to show cause on the divorce counsel, and on the parties to the action, if they be found. The court may direct the divorce counsel or appoint some other attorney, to bring appropriate proceedings for the vacation of said judgment or decree. The compensation of the divorce counsel or other attorney for performing such services shall be at the rate of $20 per day, same to be paid out of the county treasury upon order of the presiding judge and the certificate of the clerk of the court. If the judgment or decree shall be vacated it shall restore the parties to the marital relation that existed before the granting of such judgment or decree. If after vacation of the judgment or decree either of the parties shall bring an action in this state for divorce against the other the court may order the complainant in such action to reimburse the county the amount paid by it to the divorce counsel or other attorney in connection with such vacation proceedings.

(3) It shall be the duty of every judge, who shall grant a judgment or decree of divorce, to inform the parties appearing in court that the judgment or decree, so far as it

affects the status of the parties, will not become effective until one year from the date when such judgment or decree is granted.

(4) Such judgment or decree, or any provision of the same, may be reviewed by an appeal taken within one year from the date when such judgment or decree was granted. At the expiration of such year, such judgment or decree shall become final and conclusive without further proceedings, unless an appeal be pending, or the court, for sufficient cause shown, upon its own motion, or upon the application of a party to the action, shall otherwise order before the expiration of said period. If an appeal be pending at the expiration of said year, such judgment or decree shall not become final and conclusive until said appeal shall have been finally determined. [*1931 c. 117; 1947 c. 383*]

Note: See note to section 330.22, citing Harris v. Kunkel, 227 W 435, 278 NW 868.

See note to 245.03, citing Ex Parte Soucek, 101 F (2d) 405.

So far as a judgment of divorce affected the status of the parties, the trial court had the power to vacate the same for sufficient cause shown, either on its own motion or on application of either party, at any time within one year from the granting of the judgment, both parties being then living; and the denial of a motion to vacate a default judgment of divorce, because the motion was not properly presented, was not res adjudicata so as to preclude the court from considering a second motion involving the same facts, properly presented within the time prescribed, both parties being then living. Jermain v. Jermain, 243 W 508, 11 NW (2d) 163.

An action for divorce is a statutory action, and the trial court can grant only such relief therein as the statutes prescribe. Vacation of a judgment of divorce a vinculo after the death of one of the parties, so far as the judgment affects the marriage status is forbidden; and the trial court cannot thereafter vacate the judgment, so far as it affects the marriage status, even though relief is moved for under 269.46 on the ground of mistake, inadvertence, surprise, or excusable neglect, and within the one-year period permitted by that section. But in a proper case and on appeal, the court may modify the judgment as to provisions of final division of property between the parties so as to give the surviving party relief. Hirchert v. Hirchert, 243 W 519, 11 NW (2d) 157.

A judgment granting a divorce to a husband in a state other than that of the wife's residence, on service by publication, destroys the marriage status of the wife, and is binding on the courts of other states, if otherwise valid. Price v. Ruggles, 244 W 187, 11 NW (2d) 513.

The court did not abuse its discretion in vacating, on the application of the wife, a default judgment in favor of the wife, where the husband had married another woman, in Michigan, within less than one year from the date of the judgment. When a wife, granted an absolute divorce, obtained a vacation of the judgment in order to restore the marital status, she should have been required to restore the husband's property adjudged to her with the divorce, and where this was not done, but a judgment dismissing the action was entered, such judgment should be reversed with directions to reinstate the divorce judgment unless, within a reasonable time to be fixed by the trial court, the wife restores to the husband what she received from him under and by virtue of that judgment. Kilmer v. Kilmer, 249 W 41, 23 NW (2d) 510.

247.38 Judgment revoked on remarriage. When a judgment of divorce has been granted and the parties shall afterwards intermarry the court, upon their joint application and upon satisfactory proof of such marriage, may revoke all judgments and orders of divorce, alimony and subsistence which will not affect the right of third persons. After a final judgment of divorce has been rendered, the court, upon the application of the party paying alimony, on notice to, and on proof of the marriage, after such final judgment, of the party receiving such alimony, shall by order modify such final judgment and any orders made with respect thereto, by annulling the provisions of such final judgment or orders, or of both, directing payment of such alimony.

247.39 Adultery, who guilty of. If any persons, after being divorced from the bond of matrimony for any cause whatever, shall cohabit together before intermarriage they shall be liable to all the penalties provided by law against adultery.