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.

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.

A complaint alleging that prior to marriage the defendant had promised to perform the marital duties of a wife, that for the month during which the defendant lived in the plaintiff's home she refused to have marital relations, and that she had secretly intended to enter into the marriage solely to gain financial advantages, stated a cause of action for annulment of the marriage on the ground of fraud going to the essence of the marriage contract. The husband's living with the wife for a month after her first refusal

to engage in the marital relation did not constitute a confirmation of the marriage so as to bar the husband's action for annulment. Zerk v. Zerk, 257 W 555, 44 NW (2d) 568.

The fact that the woman incorrectly stated her age in the application for a marriage license in Illinois did not invalidate the marriage. The fact that the parties did not reside together after the marriage ceremony in Illinois and their return to Wisconsin, and may have represented themselves as being single, did not invalidate the marriage. The fact that the parties, residents of Wisconsin and returning to Wisconsin to reside, failed to comply with the then existing, but since repealed, 68.48, as to filing a marriage certificate here, did not invalidate a marriage that was valid in Illinois. Marriages valid where celebrated are valid everywhere, except those contrary to the law of nature and those which the law has declared invalid on the ground of public policy. Estate of Campbell, 260 W 625, 51 NW (2d) 709.

This section was intended to be exclusive in character as to grounds for annulment, thus negativing the right of the circuit courts, sitting as courts of equity, to grant annulments on additional grounds not specified by such statute. Witt v. Witt, 271 W 93, 72 NW (2d) 748.

See note to 330.18, citing Witt v. Witt, 271 W 93, 72 NW (2d) 748.

Evidence of fraud discussed. Rascop v. Rascop, 274 W 254, 79 NW (2d) 828.

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, by personal service upon the defendant within this state, or in the manner provided in s. 262.08 (4) or 262.12, 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.

History: 1951 c. 419; 1953 c. 540.

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, by personal service upon the defendant within this state, or in the manner provided in s. 262.08 (4) or 262.12, 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.

History: 1951 c. 419; 1953 c. 540.

247.07 Causes for divorce from contract or from bed and board. A divorce from the bond of matrimony, or from bed and board forever or for a limited time, may be adjudged for any 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 is guilty of like cruelty to her husband.

(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 5 years next preceding the commencement of the action, the same may be granted at the suit of either party.

(7a) Such living apart for 5 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 that ground at the suit of either party.

(8) On the complaint of the wife, when the husband, being of sufficient ability, refuses or neglects to provide for her.

History: 1957 c. 535.

A judgment of divorce from bed and board on grounds of cruel and inhuman treatment was a final judgment and barred an action, brought 16 months later and while such judgment was in full force and effect, for an absolute divorce on the same grounds of cruel and inhuman treatment. Weber v. Weber, 257 W 613, 44 NW (2d) 571.

In a husband's action for divorce on grounds of cruel and inhuman treatment, the doctrine of recrimination applied so that the wife, although not counterclaiming for divorce, should have been permitted to prove, if such was the fact, that the husband was guilty of cruel and inhuman treatment toward her in making false accusations of misconduct, and also because it would tend to show provocation of certain conduct on her part and the part of her son which, standing unexplained, amounted to cruelty by her. Elsinger v. Elsinger, 258 W 524, 46 NW (2d) 761.

Where it appeared that the husband's real reason for wanting a divorce was not any cruel and inhuman treatment on the part of the wife, but was to permit the husband to marry one of the girls with whom he had kept company since his marriage, the record did not support a judgment of divorce in favor of the husband. Cascio v. Cascio, 259 W 273, 48 NW (2d) 510.

To constitute desertion as a ground for divorce, where the parties are living apart, there must be an unreasonable refusal to terminate the separation and an intention of continuing the separation, and there must be a fixed and deliberate intention to terminate the marital relation. Evidence as to the separation of a wife from her husband after he had locked her out of the house one night while suspicious that she was associating with another man, and as to the refusal of the wife to resume the marital relation on conditions demanded by the husband, supported a determination that the refusal of the wife to resume the marital relation was not unreasonable, and warranted the denial of a divorce to the husband on the ground of desertion. Delware v. Delware, 259 W 499, 49 NW (2d) 403.

A 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 of his selection, her conduct constitutes unlawful desertion. Accompanying the husband's right to choose the domicile of the family is his duty to support his wife and maintain her in a home in which she need have no fear that she will be dominated by his relatives and in which she may have some hope of remaining as more than a tenant at the sufferance of relatives. Under evidence disclosing, among other things, that a wife was living with her husband in Milwaukee and was gainfully employed there, that the unemployed husband returned to an Indian reservation where they had formerly resided, and that the husband, not earning enough to support both of them, requested the wife to return to the reservation to live there with the husband in a house owned and occupied by the husband's sister, the wife's refusal to return was not unreasonable and did not warrant the granting of a divorce to the husband on the ground of desertion. Powless v. Powless, 264 W 71, 58 NW (2d) 520.

Where, on a formal appeal in an unsuccessful action for divorce on the ground of cruel and inhuman treatment, the supreme court held that the wife had left the family home without just cause so that she was not entitled to support and maintenance from the husband while living apart from him, such holding was res judicata, in a subsequent action by the husband for a divorce on the ground of desertion, as to the matter of the wife having left home without just cause, although not res judicata as to other essentials which the husband was required to establish in order to make out a case of desertion constituting ground for divorce. Leach v. Leach, 266 W 223, 63 NW (2d) 73.

To constitute a voluntary separation under (7), it must apear that such separation was mutually voluntary at its inception and so continued throughout the statutory period. Powless v. Powless, 269 W 552, 69 NW (2d) 753.

There is no yardstick definition for "cruel and inhuman treatment," and each case depends for construction on its own peculiar circumstances, but treatment which does or is well calculated to impair the health of a party, makes the marriage state intolerable, and renders a party incapable of performing his or her duties in married life, is cruel and inhuman treatment. Gordon v. Gordon, 270 W 332, 71 NW (2d) 386.

Acts of cruelty and harsh treatment on the part of one spouse toward the other, although condoned by the injured spouse, are revived by subsequent mistreatment and may be relied on as a ground for divorce, provided the recrudescence is not provoked by the offensive conduct of the other spouse. Gordon v. Gordon, 270 W 332, 71 NW (2d) 368.

If the conduct of both parties has been such as to furnish grounds for divorce, neither of the parties is entitled to relief. The doctrine of recrimination, which does not recognize the principle of "comparative rectitude," precludes the granting of a divorce to either party. Bahr v. Bahr, 272 W 323, 75 NW (2d) 301.

247.09 Kind of divorce. When the court grants a judgment of divorce, the kind of divorce granted shall be in accord with the demand of the complaint or counterclaim of the prevailing party, except that a divorce from the bond of matrimony or a divorce from bed and board may be adjudged regardless of such demand whenever, in the opinion of the court, the circumstances of the case are such that it will be discreet and proper to do so.

History: 1957 c. 535.

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.

The defendant husband's voluntary resumption of marital relations with the plaintiff wife, after knowledge of the wife's adultery, constituted condonation, but the wife's involuntary resumption of marital relations, after knowledge of the husband's adultery, did not constitute condonation, so that this section would not preclude the granting of a divorce to the wife but would preclude the granting of a divorce to the husband, and the doctrine of recrimination had no application. Neblett v. Neblett, 274 W 574, 81 NW (2d) 61.

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.

Cross Reference: See 270.07 re jury trial in divorce cases.

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 counties having a population of 500,000 or more, there is created in the classified civil service the office of divorce counsel and such additional assistant divorce counsels as the county board shall determine and authorize, 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 ss. 16.31 to 16.44. Before entering upon the performance of their duties, such divorce counsel and assistant divorce counsels shall take and file the official oath. Such divorce counsel and assistant divorce counsels may be appointed court commissioners as provided in s. 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 counsels 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 ch. 247, he shall perform such other duties as the circuit court of such county may direct.

History: 1951 c. 581; Sup. Ct. Order, 259 W v; 1953 c. 34.

256.49 applies only to attorneys appointed by the court and therefore does not affect the fees of the divorce counsel, who is appointed by the circuit judge or judges under 247.13. 46 Atty. Gen. 163.

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, counterclaim 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.

247.15 Default actions; divorce counsel to appear; Milwaukee county. (1) No decree in any action in which divorce counsel is required by s. 247.14 to appear shall be granted until such counsel in behalf of the public has made a fair and impartial investigation of the case 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 subpoenaed 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.

(2) In any county having a population of 500,000 or more in any action for divorce or for the annulment of a marriage in which the defendant has appeared and has interposed an answer or an answer and counterclaim and in which one of the parties thereto informs the court that he or she will not oppose the prayer of the other party and if the

court is satisfied from the facts submitted that the withdrawal of such opposition is done in good faith and without collusion, the court may then order such action to be tried as a default without the presence or appearance of the divorce counsel.

History: 1951 c. 726; Sup. Ct. Order, 259 W v.

Comment of Judicial Council, 1951: (2) was created by ch. 581, Laws 1951, as 247.13 (3). It is renumbered 247.15 (2), to place it in the section which deals with the necessity of the divorce counsel appearing in default divorces, instead of the section (247.13) which provides for the appointment of divorce counsel. The renumbering clearly indicates that the provision for Milwaukee is an exception to the general rule requiring the appearance of the divorce counsel. [Re Order effective May 1, 1952]

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.

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.

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.

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 oc-

curred 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.

The defendant in an action for divorce who is not a resident of the state of the forum, and is not served personally with process in the state of the forum and takes no part in the proceedings, is not concluded by the judgment of divorce from raising the issue of the plaintiff's domicile in another court; the state where the parties admittedly resided up to the time of the divorce is not required to extend faith and credit to the judgment under such circumstances; but where both parties are physically present and participate in the divorce proceedings, the decree is conclusive. Davis v. Davis, 259 W 1, 47 NW (2d) 338.

See note to 247.26, citing Pollock v. Pollock, 273 W 233, 77 NW (2d) 485.

247.22 Uniform divorce recognition act. (1) A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced.

(2) Proof that a person obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this state within 12 months prior to the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of his departure therefrom, or (b) at all times after his departure from this state, and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced.

(3) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(4) This section may be cited as the Uniform Divorce Recognition Act.

History: 1953 c. 61; 1955 c. 10.

Where, in a husband's action for divorce in a Wyoming court, the defendant wife, domiciled in Wisconsin, was not served personally in Wyoming, did not attend personally, and took no part in the proceedings except to enter a formal special appearance by counsel objecting to jurisdiction because the plaintiff husband lacked domicile, the wife was not concluded by the judgment of divorce from raising the issue of the husband's domicile in an action brought by her in a Wisconsin court to annul the divorce, and the Wisconsin court was not concluded by the full-faith-and-credit clause from determining that both parties at all times were residents of Wisconsin and entering judgment declaring the judgment of the Wyoming court void for lack of jurisdiction. Davis v. Davis, 259 W 1, 47 NW (2d) 338.

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 s. 52.11 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.

History: 1953 c. 31.

Where the husband instituted the action for divorce, and much of the services rendered by counsel for the wife, who counterclaimed for divorce, were necessary in defending the action, it was within the sound discretion of the trial court, on denying a divorce to both parties, to require the husband to pay to the wife's attorneys two-thirds of their total bill for services rendered to the wife in the action. Leach v. Leach, 261 W 350, 52 NW (2d) 896.

See note to 247.26, citing Pollock v. Pollock, 273 W 233, 77 NW (2d) 485.

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 a relative (as defined in ch. 48) of the child, a county agency specified in s. 48.56 (1), a licensed child welfare agency, or the state department of public welfare. 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, relative or agency, 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 relative or agency that then has the custody of such child.

History: 1955 c. 575.

A judgment in a divorce suit does not prevent the court from modifying a judgment providing for the minor children, if the circumstances of the parties have so changed as to render such modification equitable, but a modification in matters relating to custody is an abuse of discretion in the absence of a substantial change in the premises on which

the original determination was made. In a divorce action wherein the husband alleged certain adulterous acts on the part of the wife, and the trial court found that the husband had falsely accused the wife of adulterous conduct, an adjudication of the judgment of divorce that the wife was a proper person to have the custody of the children was res adjudicata as to the fitness of the wife, so far as the alleged events preceding the judgment were concerned. Hill v. Hill, 257 W 388, 43 NW (2d) 455.

Improper conduct of the wife in riding with a married man and on occasions embracing him and "petting" did not require the court to find that she was an unfit person to have the custody of the children. Barrock v. Barrock, 257 W 565, 44 NW (2d) 527.

When the wife is proved to be morally unfit to have the custody of the minor children of the parties and there is no testimony that the father is incompetent, unfit, or unworthy to have the care and custody of the children, their care and custody should be awarded to him if he can provide for them a suitable home with competent and proper supervision in his absence. Vogel v. Vogel, 259 W 373, 48 NW (2d) 501.

The purpose of this section, so far as requiring a determination as to the custody of minor children of the parties, is to assure that there shall be at least one person directly chargeable with the responsibility that accompanies having the custody of a minor child. Where the judgment provided that the child should remain at a school for the deaf, but did not award custody to either parent, the cause is remanded for further action. Julien v. Julien, 265 W 85, 60 NW (2d) 753.

Considering the income of the husband, an award requiring the husband to pay support money for each of the 3 children until he or she reaches the age of 21 years, or completes his or her formal education, whichever first occurs, was not an abuse of discretion. Brackob v. Brackob, 265 W 513, 61 NW (2d) 849.

The provision that in rendering a judgment for divorce the trial court "may" make further provision therein concerning the maintenance of the minor children of the parties, it is not required that such provision be made. A judgment requiring the husband to pay a designated sum to the wife "as and for final division of estate and as and for support and maintenance for the minor child," was not void as depriving the child of support and operating to relieve the father from the obligation to support him. If the allowance made by such judgment for the support of the child was inadequate, or even if construed as no allowance at all, it was merely erroneous, and it might have been corrected by appeal or by a motion to modify, but it was not open to a motion to vacate it as void after the death of the father. Paulson v. Paulson, 267 W 639, 66 NW (2d) 700.

An order denying the application of a divorced mother for leave to move a 5½-year old daughter to Minnesota, to live there with the remarried mother and her husband, and granting the application of the divorced father for a change of custody from the mother to him, and contemplating that the child would stay with the father's sister on a farm near Eau Claire, Wisconsin, until the father completed his miltary service, was not an abuse of discretion under all the facts and circumstances. A specific finding that the mother was unfit to have the custody was not required as a prerequisite to ordering a change of custody from the mother to the father. Dodge v. Dodge, 268 W 441, 67 NW (2d) 878.

The welfare of minor children is of paramount importance in determining to whom their custody shall be given in a divorce case. Grosberg v. Grosberg, 269 W 165, 68 NW (2d) 725.

Where the plaintiff husband had advanced $5,500 to the defendant wife prior to and during the 4 months of their marriage, which sum she used in the purchase of a house and lot having a value of $14,500, a provision in the judgment of divorce requiring the wife to pay $5,500 to the husband, and awarding to him a lien on the real estate to secure the payment of such sum was proper. Dziengel v. Dziengel, 269 W 591, 70 NW (2d) 21.

When a court finds, on sufficient evidence, that a parent is unfit to have the custody, it implicitly follows that changing such custody from such parent is for the welfare of the child. The matter of the custody of children in divorce actions is a matter peculiarly within the jurisdiction of the trial court, who has seen the parties, had an opportunity to observe their conduct, and is in much better position to determine where the best interests of the child lie than is an appellate court. Hamachek v. Hamachek, 270 W 194, 70 NW (2d) 595.

In determining custody, the wishes of the children may be considered, as well as the financial condition of the parents, the prospective home surroundings of the children, the character of persons who would associate with them, the fact that the children are to be removed to another country and the children's oportunities for education and moral training, but no one of these is controlling. State ex rel. Hannon v. Eisler, 270 W 469, 71 NW (2d) 376.

Although the support of a second wife should not be taken into consideration in determining the amount which the divorced husband should be required to pay for the support of his children by his former marriage until they complete their high school education, it would not be an abuse of discretion for the trial court to consider such factor, together with others, in determining whether the divorced father should be required to continue such payments further. Peck v. Peck, 272 W 466, 76 NW (2d) 316.

The court may modify an order fixing the custody of a child of divorced parents when there has been a substantial change in the premises on which the original determination was made, but the court is not empowered, when fixing custody, to anticipate such substantial change merely on the basis of the passage of time; so that an order, although valid so far as awarding the custody to the mother, is invalid so far as directing that the custody be transferred to the father in 1960. Pollock v. Pollock, 273 W 233, 77 NW (2d) 485.

The husband, a hospital superintendent, should be required to pay the entire amount of fees allowed by the trial court to the wife's attorneys for the successful defense of an annulment action against the wife, a nurse. The trial court's allowance of fees of $1,000 to the wife's attorneys was within the discretion of the trial court and will not be disturbed by the supreme court on appeal. Rascop v. Rascop, 274 W 254, 79 NW (2d) 828.

See note to 319.03, citing State ex rel. Tuttle v. Hanson, 274 W 423, 80 NW (2d) 387.

The court has the continuing power to change the custody of children as between the parents, relatives, or others, and to prescribe terms and conditions for visitation or deny it altogether, if the interests of the children will be thus served. The court could deny to the husband any right of visitation with the children unless and until a psychiatric examination by a psychiatrist appointed by the court showed the father's fitness. Neblett v. Neblett, 274 W 574, 81 NW (2d) 61.

A court of equity in which an action for divorce is pending has the inherent jurisdiction to protect the interests of a child of the parties whether the divorce is granted or not, and jurisdiction to determine custody in accordance with the child's interests is neither dependent on statute nor limited by it. Subrt v. Subrt, 275 W 628, 83 NW (2d) 122.

See note to 262.12, citing May v. Anderson, 73 S. Ct. 840.

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.

See note to 48.40, citing 42 Atty. Gen. 341.

247.26 Alimony, property division. 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.

A property settlement in lieu of alimony granted the wife the farm of the parties, which was acquired originally by the investment of $4,000 of the wife's money, and is now subject to indebtedness of $4,900, and valued by the trial court at $16,000 but producing an income of only $1,500 per year, on condition that the wife pay $5,500 to the husband in specified instalments; judgment is deemed inequitable as unduly jeopardizing the wife's rightful share, and the husband's share is accordingly reduced to $3,500. Gipp v. Gipp, 258 W 220, 45 NW (2d) 623.

See note to 247.32, citing Schall v. Schall, 259 W 412, 49 NW (2d) 429.

Where the husband, who was to have the custody of 4 children, had a salary of $500 per month and was awarded the home and household furnishings of the parties, and the wife, who was to have the custody of the other 2 children, would presumably have to spend all or most of her $8,000 cash allowance for a home for herself and such 2 children, one of whom was still an infant, and the wife might not be able to supplement her income by accepting employment, an allowance of $125 per month for the support of such 2 children was not so unwarranted as to establish an abuse of discretion. Hansen v. Hansen, 259 W 485, 49 NW (2d) 434.

Where a divorce was granted to the husband on the ground of misconduct of the wife, an award to the wife of $8,000 in cash as a final division of an estate of the net value of $23,250, although liberal, was not an abuse of discretion. Hansen v. Hansen, 259 W 485, 49 NW (2d) 434.

Where the court makes a division of the property of the parties in divorce cases, there should be an actual division wherever possible. A judgment of divorce, granted to the wife of a veterinarian, so far as providing that a lot and the home thereon should remain in the names of the parties as joint tenants, and awarding an animal hospital on the rear of the lot to the husband, and giving the wife the right to occupy the house so long as she desires, is deemed impractical and is modified so as to award the house and lot to the husband, and to give the wife and children the right to occupy the house for a period not exceeding 2 years, the husband then to pay the wife for her interest in such real estate. Horel v. Horel, 260 W 336, 50 NW (2d) 673.

A division of estate in a divorce case is an adjustment of property rights and equities between the parties, and it is clearly distinguishable in its use and purposes from alimony for the wife and from support money for dependent children. A division of estate, granting much more than one-half to the wife, and in effect increasing this by making an additional allowance over ordinary alimony for the wife and support for the children, is considered as excessive and as not properly deciding the reasonableness of the division requiring a reversal and remand for the trial court's further consideration of the facts involved. Brackob v. Brackob, 262 W 202, 54 NW (2d) 900.

In a divorce action, the question of a final division and distribution of the husband's property is one for the discretion of the trial court. There is no precise measure by which to determine the amount to be awarded to a divorced wife and, although the general level to start from is a third, the amount to be allowed may be less than a third in some cases. Where the parties lived together about 7 years during which the plaintiff wife and her children of a former marriage gave the husband a great deal of help in the operation of his household and farm, and during such period the value of his holdings was increased, and the parties earned sufficient to invest about $1,600 in the purchase of land and approximately $5,000 in the purchase of farm machinery, a property division awarding the wife $4,200 out of the husband's net estate valued at $13,380 was not an abuse of discretion. Starzinski v. Starzinski, 263 W 104, 56 NW (2d) 784.

In a divorce judgment awarding the wife $4,200 out of the farmer-husband's net estate valued at $13,380, a provision requiring him to pay 4,200 to the wife forthwith would place an undue burden on him, so that further proceedings should be had to determine what would be a reasonable requirement as to time of payment and whether it would lighten his burden to permit him to pay the amount in fixed reasonable instalments. Starzinski v. Starzinski, 263 W 104, 56 NW (2d) 784.

In an action for divorce against a husband whose net estate was valued at $10,000, an award of $1,000, as a final division of property to the wife, who had lived with the husband only a relatively short period of time and had contributed only in small part to his accumulations, was not an abuse of discretion. Baehmann v. Baehmann, 264 W 178, 58 NW (2d) 634.

The trial court was correct in holding that the wife was not entitled to alimony and in making a full and final division of property in lieu thereof, but an award of support money to the wife for her use and benefit for the support of herself and 2 children, with $70 of the total of $150 per month to be used for herself, was an award of alimony to the wife contrary to the finding that she was not entitled to alimony, requiring that the case be returned to the trial court for further consideration of the matter of support money for the children. An allowance of $150 per month as support money for 2 children would not be excessive, considering the husband's net estate of $25,000 and his earning capacity, although his income presently was only approximately $125 per month. Weihert v. Weihert, 265 W 438, 61 NW (2d) 890.

A divorce granted from the bench at the conclusion of the original trial was effective as of such date, and such date would be

the proper time as of which to determine the value of the estate of the parties on which to base a division of property on a second trial of such matter, in the absence of any exceptional intervening circumstances occurring in the meantime. Brackob v. Brackob, 265 W 513, 61 NW (2d) 849.

If the husband, before his death, does not name a different beneficiary for his life insurance, or cash series E savings bonds payable jointly, his divorced wife can claim the proceeds of both, despite the divorce judgment which divided his estate, entered pursuant to a stipulation that the wife would make no further claim to any other of his property. Hott v. Warner, 268 W 264, 67 NW (2d) 370.

An award of half of an estate of a net value of $10,780 to a farmer's wife who had worked in the fields and at the various chores on the farm during the 14 years of the marriage, and had contributed as much to the acquisition of their property as had the husband, who was 39 years of age and in good health, and would have no further obligation to support the wife because no award of alimony was made, was not an abuse of discretion. Hoffman v. Hoffman, 270 W 357, 71 NW (2d) 401.

Where a wife obtained a divorce without personal service in Washington, she can bring an equity action in this state to determine items of alimony, custody and support money on the ground of the Washington divorce, without commencing a divorce action here. Pollock v. Pollock, 273 W 233, 77 NW (2d) 485.

In general, a clear third of the whole property to be divided in a divorce action is a liberal allowance to the wife, subject to be increased or decreased according to special circumstances. Hull v. Hull, 274 W 140, 79 NW (2d) 653.

In making a division of the estate of the parties, the court can divest the wife of any interest in the husband's insurance, since she derives it from him, and if it does so, 247.35 is inapplicable. Spalding v. Williams, 275 W 394, 82 NW (2d) 187.

An award to the wife of specified items and to the husband of "all the rest of the property" was sufficient to divest the wife of any interest in his insurance. Spalding v. Williams, 275 W 394, 82 NW (2d) 187.

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 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.

This section does not make it mandatory, where a divorce is denied to both parties, that the trial court award support money to the wife; and in applying the statute, which is procedural in nature, in a case where the wife has left the home of the parties without just cause, the quoted phrase is to be interpreted in the light of the common law as declared in the decisions of the supreme court passing on the question of the right of a wife, who has abandoned the marital home without just cause, to compel her husband to support her while living apart from such home. The trial court's award of support money to the wife was an abuse of discretion as being contrary to the principles applicable to such a situation as announced in the prior decisions of the supreme court. Leach v. Leach, 261 W 350, 52 NW (2d) 896.

247.29 Alimony, clerk of court, divorce counsel, fees and compensation. (1) 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.

(2) If any party entitled to alimony or support money, or both, is receiving public assistance under either s. 45.20 or ch. 49, such party may assign his right thereto to the county department of public welfare or municipal relief agency granting such assistance. Such assignment shall be approved by order of the court granting such alimony or support money, and may be terminated in like manner; except that it shall not be terminated in cases where there is any delinquency in the amount of alimony and support money previously ordered or adjudged to be paid to such assignee without the written consent of the assignee or upon notice to the assignee and hearing. When an assignment of alimony or support money, or both, has been approved by such order, the assignee shall be deemed a real party in interest within s. 260.13 but solely for the purpose of

securing payment of unpaid alimony or support money adjudged or ordered to be paid, by participating in proceedings to secure the payment thereof.

History: 1957 c. 280.

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.

Where the former husband had moved to Mexico City with intent to reside there and had withdrawn all bank deposits and other funds from Wisconsin, the trial court did not abuse its discretion in granting the wife's application to make the alimony payments a lien on the husband's Wisconsin real estate. Bunde v. Bunde, 270 W 226, 70 NW (2d) 624.

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.

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.

In a judgment of divorce granted to the wife, it was within the power of the trial court, under 247.26 and 247.32, to provide for a final division of property and also to provide that the matter of alimony be left to the further determination of the court, and as to the latter provision the judgment was an interlocutory judgment within 270.54, so that, on application made by the wife, it was within the power of the court to determine the amount and make an award of alimony more than a year after the entry of the divorce judgment. (Hannon v. Hannon, 230 W 620, (annotation under 247.26) distinguished.) Schall v. Schall, 259 W 412, 49 NW (2d) 429.

The matter of support money is always open for revision by the trial court on the motion of either party. A judgment of divorce may make a final division of property and grant alimony as well. After judgment making a final division and no allowance for alimony, no revision of the judgment to provide for alimony may be had, but where a divorce is granted because of misconduct by the wife and she is given a fairly substantial division of the property of the parties, the supreme court cannot approve of an alimony allowance of $1 per year without a definite statement by the trial court of its reason for making such award. Hansen v. Hansen, 259 W 485, 49 NW (2d) 434.

See note to 247.24, citing Paulson v. Paulson, 267 W 639, 66 NW (2d) 700.

A material change in the status of the wife subsequent to the entry of a decree of divorce constitutes sufficient ground for modifying the alimony provisions of the judgment. Bunde v. Bunde, 270 W 226, 70 NW (2d) 624.

247.33 Judgment; from bed and board; revocation. In all cases of divorce from bed and board for any of the causes specified in s. 247.07, 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.

History: 1957 c. 535.

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.

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.

See note to 270.57, citing Reading v. Reading, 268 W 56, 66 NW (2d) 753.
See note to 247.26, citing Spalding v. Williams, 275 W 394, 82 NW (2d) 187.

247.36 Dower and curtesy rights. When a marriage is dissolved by the granting of a decree of divorce from the bonds of matrimony, and also when the court, upon a divorce from bed and board, makes a final division of the estate under s. 247.26, the wife shall not be entitled to dower in any lands of the husband; nor, in such cases, shall the husband be entitled to curtesy in any lands of the wife.

History: 1957 c. 535.

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.

On a divorced wife's application, filed after the husband's death, to reopen the divorce judgment and allow the wife additional property on the ground of mistake on her part as to values in entering into a stipulation for division of property, the record supported a finding that there was a failure of proof of any mistake on the part of the wife, who had assisted the husband in the business in which the properties had been accumulated, and was familiar with all of the properties, and had as much knowledge of their values at the time of the divorce action as she had later. Cox v. Cox, 259 W 259, 48 NW (2d) 508.

See note to 238.14, citing Estate of Kort, 260 W 621, 51 NW (2d) 501.

Under (2) a motion to vacate a divorce judgment is addressed to the discretion of the trial court. The newly discovered evidence offered in relation to certain conduct of the wife was not such as to require the granting of a new trial, and the trial court's refusal to grant the husband's motion for a new trial was not an abuse of discretion. (White v. White, 167 W 615; Jermain v. Jermain, 243 W 503; Kilmer v. Kilmer, 249 W 401, distinguished.) Starzinski v. Starzinski, 263 W 104, 56 NW (2d) 784.

See note to 270.50, citing Starzinski v. Starzinski, 263 W 104, 56 NW (2d) 784.

Where the trial court has jurisdiction of the parties and of the subject of the action, the judgment is not void even though the court errs in the determination of questions of law or fact, but steps can be taken for the correction thereof or for a review on appeal within the period prescribed by law. Reading v. Reading, 268 W 56, 66 NW (2d) 753.

The statute does not bar an action to vacate a judgment of absolute divorce commenced after one year from the rendition

of the judgment, when such action is based on grounds of fraud or coercion in obtaining the decree, but, transcending any consideration or imposition on the party claiming to have been defrauded or coerced, is the question as to whether a fraud has been perpetrated on the court. Guzzo v. Guzzo, 269 W 21, 68 NW (2d) 559.

247.375 Sale of realty before final decree. (1) Between the date of a judgment of divorce and the date on which it becomes final, a party to whom real estate has been awarded pursuant to s. 247.26 may apply to the court by verified petition for an order authorizing him or her to sell, mortgage, lease or otherwise dispose of such real estate free of any claim or interest of the opposite party. The court or presiding judge shall thereupon enter an order fixing a time for hearing such petition, which shall be not more than 60 days nor less than 10 days from the filing thereof. At least 8 days prior to the date fixed for hearing, a copy of the petition and order shall be served on the opposite party and the divorce counsel, in the manner prescribed by law for the service of a summons. The opposite party or the divorce counsel may answer the petition and present evidence at the hearing in opposition thereto.

(2) Upon the hearing if it appears to the court that the petition is made in good faith and that it will be for the best interests of the petitioner and not in violation of any rights of the opposite party to grant the petition, the court may enter an order authorizing the execution of a deed, mortgage, lease or other instrument affecting the real estate described in the petition and in the order; and such instrument shall be effectual to convey, mortgage, lease or otherwise dispose of the real estate free and clear of any interest of the opposite party to the action. As a condition of granting the petition the court may require that there be secured, in such manner as the court directs, out of the proceeds of the sale, mortgage or other disposition of the real estate, or by bond in such amount and with such surety as the court approves, such sum for the benefit of the parties to the action or either of them, or the children of the parties, as the court deems just under all the circumstances.

(3) A sale, mortgage, lease or other disposition of real estate by the party to whom it is awarded in a divorce judgment shall be effectual, free and clear of any interest of the opposite party to the action, without a proceeding under subs. (1) and (2), if expressly authorized or directed in the divorce judgment or if both parties to the divorce action join in the conveyance.

History: 1953 c. 495; 1957 c. 173.

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.