

MAINE STATE LEGISLATURE

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REPORT

OF THE

COMMISSIONERS

APPOINTED TO REVISE THE

PUBLIC LAWS

OF THE

STATE OF MAINE.

TITLE VI.

Augusta:

WM. R. SMITH & Co., PRINTERS TO THE STATE.

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TITLE SIXTH.

OF DOMESTIC RELATIONS.

- Chap.* 87. Of marriage and its solemnization.
88. Of parents and children.
89. Of divorce and dissolution of marriages.
90. Of masters, apprentices and servants.
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CHAPTER 87.

OF MARRIAGE AND ITS SOLEMNIZATION.

- Sect.* 1. Prohibited marriages, within certain degrees.
2. Prohibited marriages.
3. No white person shall marry a negro, mulatto or indian—no insane person is capable of contracting marriage.
4. Marriages void, where either party has a former husband or wife living.
5. Certain marriages solemnized in another State, when the parties live in this State, are void.
6. How intentions of marriage are to be published and where.
7. Where parties are under age, the consent of parent or guardian is necessary.
8. If there is no town clerk in the place where either of the parties live—then how to be published.
9. When banns are forbidden, what proceedings to be had.
10. Marriages among quakers valid, clerk to certify marriages, &c. to town clerk, &c.
11. Persons authorized to marry—and where.
12. Commissioned ministers may marry.
13. Tenure of such minister's office and mode of revoking the authority.
14. Penalty for marrying persons contrary to the foregoing provisions.
15. Each justice and minister shall keep a record of marriages solemnized by him, penalty for neglect.
16. Persons forbidden, or never authorized to marry, liable to punishment in State prison.
17. Copies of record of marriages, legal evidence of marriage.
18. No marriage before a known inhabitant of the State professing to have authority to marry, though he had none, shall be void on that account, or for informality in the matter of publications of intentions, if in other respects lawful and consummated.
19. Punishment for defacing or pulling down publications.
20. Punishment of town clerk, for giving a false certificate of publication of intentions.
21. Every person having solemnized a marriage, shall deposite the certificates of the publication of the intention of marriage with the clerk of the town, in which he solemnized the marriage.

- Sect. 22.* S. J. Court may authorize a wife, whose husband has left her without support to make contracts—also
23. To convey lands of her own.
24. To commence and defend suits.
25. And authorize a person having her property in possession to pay and deliver it to her.
26. Application may be made and heard in any county—after notice given, &c.
27. Her contracts to bind her and husband, &c.
28. No suit to abate by husband's return, he may defend, &c. if.
29. Judge of probate may license to sell wife's land, &c. when insane.
30. When guardian of a married man is licensed to sell ward's estate, wife may join and release her dower.
31. In case of such release of dower, how proceeds shall be secured to her.
32. When married man is confined in State prison wife may be authorized to sell and contract, as above mentioned.
33. Application and notice to precede such license.
34. Wife's authority to continue, till husband's discharge.
35. When married woman's estate is taken for public use, how proceeds to be secured to her.
36. When a married woman comes into the State without her husband, she may contract, &c. as an unmarried woman.
37. If husband arrives in State to claim his marital rights, the effect of it, &c.

SECT. 1. No man shall marry his mother, grandmother, daughter, grand-daughter, step-mother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's daughter, wife's grand-daughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister. 1821, 70, § 1.

SECT. 2. No woman shall marry her father, grandfather, son, grandson, step-father, grandmother's husband, daughter's husband, grand-daughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother, brother's son, sister's son, father's brother or mother's brother. 1821, 70, § 1.

SECT. 3. No white person shall intermarry with any negro, indian, or mulatto; and no insane person or idiot shall be capable of contracting marriage. 1821, 70, § 2.

SECT. 4. All marriages contracted while either of the parties has a former wife or husband living, shall be void, unless the former marriage shall have been dissolved, by a decree of divorce. 1834, 116, § 3.

SECT. 5. When any persons, resident in this State, shall undertake to contract a marriage contrary to the preceding provisions of this chapter, and shall in order to evade those provisions, and with an intention of returning to reside in this State, go into another State or country and there have their marriage solemnized, and shall afterwards return and reside here, such marriage shall be deemed and held void in this State. 1821, 70, § 1.

SECT. 6. All persons intending to be joined in marriage shall have their intentions published, at three public religious meetings, on different days—at three days' distance exclusively, at

4 least, from each other, in the city, town or plantation, where
 5 they respectively dwell; or such intentions posted up by the
 6 clerk of such town or plantation, fourteen days, in some pub-
 7 lic and conspicuous place therein, and shall deliver a certificate
 8 of such publishment, under the hand of the town or plantation
 9 clerk, to the minister or justice of the peace solemnizing the
 10 marriage. 1821, 70 § 4.

SECT. 7. And when a male under twenty-one years or a
 2 female under eighteen years of age is to be married, the consent
 3 of the parent, guardian or other person, having the care and
 4 government of such party, if within the State, shall be obtained
 5 and delivered to the magistrate or minister, before he shall pro-
 6 ceed to solemnize the marriage. 1821, 70, § 5.

SECT. 8. If the parties or either of them, lives in a town or
 2 place where there is no clerk, publishment shall be made as
 3 above directed in the adjoining town or plantation, and a certi-
 4 ficate of such clerk shall be obtained before marriage.
 1821, 70, § 5.

SECT. 9. When the banns of matrimony between any persons
 2 are forbidden, and the reasons assigned in writing by the person
 3 forbidding and left with the town or plantation clerk, he shall
 4 issue no certificate as aforesaid, until a decision shall be made
 5 by two justices of the same county, ~~quorum unus~~, approving
 6 the marriage, after due notice to and a hearing of all concerned,
 7 provided the person forbidding the banns, shall within seven
 8 days after filing his reasons procure the decision of such jus-
 9 tices, unless they shall certify that further time is necessary for
 10 the purpose, in which case a certificate shall be withheld, until
 11 the expiration of the certified time; and by the decision of such
 12 justices he shall govern himself and if the decision be against
 13 the person forbidding he shall pay all costs to the persons whose
 14 marriage was forbidden, and the justices shall enter judgment
 15 therefor, and issue execution accordingly. 1821, 70, § 6.

SECT. 10. All marriages solemnized among the people called
 2 quakers or friends, in the form heretofore practised, and in use
 3 in their meeting, shall be good and valid and shall not be con-
 4 strued as affected by any of the foregoing provisions in this
 5 chapter; and the clerk of the meeting or the keeper of the
 6 records of the meeting in which such marriages shall be solem-
 7 nized, shall once every year deliver a list of all marriage to the
 8 clerk of the town in which such clerk resides, on penalty of
 9 forfeiting fifty dollars, one half to the use of the county and the
 10 residue to the use of the prosecutor. 1821, 70, § 9.

SECT. 11. Every justice of the peace appointed for any par-
 2 ticular county and in which he resides; may solemnize marriages
 3 in such county where either of the parties reside and every
 4 justice of the peace, appointed for each and every county in the
 5 State, may solemnize marriages in any county where either of
 6 the parties resides. 1821, 70, § 3.

SECT. 12. Every ordained minister of the gospel duly appointed and commissioned for that purpose, by the governor and council, shall also have power to solemnize marriages within the county for which he was appointed and in which he resides, and in any other counties, when such power is given and expressed in his commission, between parties, either of whom resides in the county where the marriage is solemnized.

1821, 70, § 3.

SECT. 13. Such ordained minister shall hold his office during the pleasure of the executive; and the commission shall be conclusive evidence that he is an ordained minister; and when the commission shall be revoked, a copy of such revocation, shall be filed in the clerk's office of said county.

1821, 70, § 4.

SECT. 14. No minister of the gospel, not appointed and commissioned as aforesaid, shall solemnize any marriage, and if any justice of the peace, or minister commissioned as aforesaid, shall join any persons in marriage contrary to the provisions of this chapter, he shall forfeit and pay the sum of one hundred dollars; two third parts thereof to the use of the county, in which the offence was committed, and the residue to the prosecutor; to be sued for and recovered by the county treasurer. And every justice or minister, against whom such recovery shall be had, is forbidden from joining any persons in marriage afterwards.

1821, 70, § 10.

SECT. 15. Each justice and minister shall keep a record of all marriages solemnized before him, and in the month of April, annually, shall make a return to the clerk of the town or plantation in which the marriage is solemnized, certifying the names of the parties so married by him; and for his neglect to comply with this requisition; he shall forfeit and pay the sum of fifty dollars one-half to the use of the county, and the other half to the person suing for the same.

1821, 70, § 8, 7.

SECT. 16. If any person thus forbidden, or who is not authorized to solemnize marriages, shall join any persons in marriage, on conviction thereof upon indictment, he shall be punished by confinement to hard labor in the state prison, for a term not exceeding five years.

1821, 70, § 7.

SECT. 17. An attested or sworn copy of the record of a marriage made and kept as before mentioned by a justice of the peace, or commissioned minister, or by the clerk of any town or plantation shall be received in all courts as presumptive evidence of the fact of marriage, but where such cannot be produced, other presumptive evidence may be admitted.

M. R. S. ch. 75.

SECT. 18. No marriage solemnized before any known inhabitant of this State, professing to be a justice of the peace, or an ordained minister of the gospel duly appointed and commissioned to solemnize marriages, shall be deemed void—nor shall the validity thereof be in any manner affected on account of

6 any want of jurisdiction or authority in such supposed justice,
 7 or commissioned minister, or on account of any omission or
 8 informality, in entering the intention of marriage or publication
 9 of the banns, provided the marriage be in other respects lawful,
 10 and consummated with a full belief on the part of the persons
 11 married, or either of them that they have been lawfully joined
 12 in marriage. M. R. S. ch. 75.

SECT. 19. Whoever shall pull down any written posted pub-
 2 lishment, before the end of said fourteen days, shall forfeit and
 3 pay ten dollars for the use of the town or plantation.

1821, 70, § 7.

SECT. 20. If any city, town or plantation clerk, shall make
 2 out and deliver to any person a false certificate of the publica-
 3 tion of the banns of matrimony between two persons, knowing
 4 the same to be false in any particular, and be thereof convicted,
 5 he shall be fined one hundred dollars, or be imprisoned for the
 6 term of six months, in the common jail of the county, where the
 7 offence is committed.

SECT. 21. And every person authorized to solemnize mar-
 2 riages, by this chapter, shall, within three months after solem-
 3 nizing any marriage, deposit the certificate of the publication of
 4 the banns of matrimony between such persons with the clerk of
 5 the city, town, or plantation in which the marriage was solem-
 6 nized on pain of forfeiting not less than five nor more than ten
 7 dollars to the use of such city, town or plantation, and to be
 8 recovered by and in the name of the corporation.

Certain provisions respecting husband and wife.

SECT. 22. The supreme judicial court, on application of any
 2 married woman, whose husband has absented himself from the
 3 State, abandoning her, and not making sufficient provision for
 4 her maintenance, may empower her, during his absence and till
 5 his return, in her own name to make and execute any contract
 6 under seal or otherwise. 1821, 57, § 9.

SECT. 23. She may also be so authorized to make sale of any
 2 estate, real or personal, of which she is seized or possessed in
 3 her own right, and duly execute all legal instruments, necessary
 4 for that purpose. 1821, 57, § 9.

SECT. 24. And also to commence, prosecute and defend any
 2 action in law or equity to final judgment and execution, in like
 3 manner as if she were unmarried. 1821, 57, § 9.

SECT. 25. The court may also, on her petition, authorize any
 2 person, holding money or other personal property to which the
 3 husband is entitled, in her right, to pay and deliver the same to
 4 the wife; and authorize her to give a discharge for the same,
 5 which shall be valid; and to use and dispose of such property,
 6 during the absence of the husband, as her own property.

M. R. S. 71, § 2.

SECT. 26. The application for any of the purposes before
 2 mentioned, may be presented and heard in any county; but the
 3 court before granting any of the powers before mentioned;

4 shall order notice to be given in like manner as is prescribed
5 in case of libel for divorce filed by a wife when the party com-
6 plained of is without the State. 1821, 57, § 9.

SECT. 27. All contracts lawfully made by any married
2 woman, by virtue of any power given her as aforesaid, shall be
3 binding on her and her husband in like manner as if their mar-
4 riage had taken place after such contracts; and during his
5 absence she shall be liable to be sued thereon, as if she were
6 unmarried; and for all other acts done by her while the power
7 granted to her is continued. 1821, 57, § 10.

SECT. 28. No suit pending where the wife shall be a party,
2 pursuant to power granted her as before mentioned, shall abate
3 by his return into the State; but on his application he may be
4 admitted to prosecute or defend jointly with her, as if their
5 intermarriage had taken place after the commencement of such
6 suit; but if he shall not be admitted as a party, judgment shall
7 be rendered, and execution issued, and enforced against her in
8 the same manner as if judgment had been rendered against her,
9 before their intermarriage. 1821, 57, § 10.

SECT. 29. Any judge of probate, when he thinks proper, may
2 license a husband, whose wife is insane, being inhabitants of
3 his county, to make sale and conveyance of any real estate held
4 by him in her right and his deed so made, shall be valid, and
5 pass as good a title therein, as the husband and wife could have
6 conveyed, if she had been under no disability. 1835, 160.

SECT. 30. When the guardian of any married man is duly
2 licensed to convey the real estate of his ward, the wife of the
3 ward, may, if she thinks fit, join with the guardian in the con-
4 veyance, and thereby release her dower in the granted premises,
5 in like manner as by joining in a conveyance with the husband,
6 had he not been under disability, or by so joining with the
7 guardian, may convey all her estate in the premises, whatever it
8 may be. M. R. S. 77, § 14. 15.

SECT. 31. In case of any such release by the wife of her
2 dower, the proceeds of the sale of it may be invested or dis-
3 posed of in such manner, as to secure to her the same benefits
4 therefrom as if it had not been sold; and any agreement for the
5 purpose, made between her and the guardian, being approved
6 by the judge of probate for the county, shall be valid to all
7 intents. M. R. S. 77, § 16.

SECT. 32. When any married man shall be sentenced to con-
2 finement in the state prison, and confined under such sentence,
3 the wife, on her petition, may be authorized to make contracts
4 and conveyances, and perform all such acts as are above men-
5 tioned, in case of ~~absence of the husband~~ in the manner before
6 mentioned. M. R. S. 77, § 12.

SECT. 33. The application therefor shall be made, and notice
2 given as aforesaid, prior to the grant of such powers to his
3 wife; and her contracts shall have all the binding effect, as those

** the abandonment of her husband*

4 made by her as before mentioned in case of absence of the
5 husband. M. R. S. 77, § 13.

SECT. 34. The authority of the wife so given, shall continue
2 till the discharge of the husband from the state prison.

M. R. S. 77, 12.

SECT. 35. When the real estate of a married woman is taken
2 for any rail road, turnpike, way, or public use, or shall be dam-
3 aged by the laying out of such way or any other public work,
4 the damages awarded therefor, shall be so invested and disposed
5 of, as to secure to her the same benefits of the sum awarded and
6 the income of it, as she would have had of and in the real
7 estate and its income; and on her application to the supreme
8 judicial court, they may hear and decide the case according to
9 the course of chancery proceedings and make such decrees,
10 as may enforce and secure her rights. M. R. S. 77, § 17.

SECT. 36. When a married woman shall come into this State,
2 from any other State or country, without her husband, he having
3 never lived with her in this State, she may make contracts and
4 commence and defend suits, and dispose of property in her own
5 name, as if she were unmarried; and shall be liable to be sued
6 on her contracts, made before his arrival in this State.

M. R. S. 77, § 18.

SECT. 37. If the husband of such woman shall afterwards
2 come into this State, and claim his marital rights, his arrival
3 shall have the same effect, as to contracts made by her, or suits
4 pending in which she is a party, as if they had been first mar-
5 ried, at the time of his arrival here, and shall have no other.

M. R. S. 77, § 19.

NOTES.

SECT. 17. This sanctions common practice.

SECT. 18. This section is a new one. Its object is manifest where parties act in good faith and in the circumstances mentioned, it would be an unwelcome and cruel consequence if the marriage were declared void.

SECT. 20, 21. The commissioners have added these sections as guards against fraud in the former case, and to preserve evidence of the certificate and prevent evasion of the law.

SECT. 25, and the last eight sections are taken from the R. S. of Mass. They seem useful as expositions of the principles of the statute of 1821, ch. 57, referred to in sections 22, 23, and 24. They all have in view to furnish the necessary powers to enable a wife in certain cases to manage the property belonging to her husband or herself when he is in prison or absent or incapacitated; or to give the husband more right as to the wife's property when she is insane. The commissioners view all the above powers as necessary and well arranged and have proposed them as amendments. The 27th section saves suits from abatement on a husband's return, and authorizes him to join in their prosecution. Indeed there is now a constant endeavor to do away technical objections and amend process.

SECT. 36. The provision of this section is entirely new, but while it gives new rights to the wife, it gives also new rights to creditors.

CHAPTER 88.

OF PARENTS AND CHILDREN.

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- Sect.* 1. Parents bound to maintain their children, &c.
 2. If a minor has property, its income may be applied to his support, in certain cases, &c.
 3. Father may by will, appoint guardian for his children.
 4. Illegitimate children may be bound by the mother.
 5. Limitation of this power.
-

SECT. 1. Parents shall be bound to maintain their children when poor and unable to work to maintain themselves; and shall be bound to maintain their parents in like circumstances provided in the thirty-second chapter.

SECT. 2. If any minor who has a father living, has property, the income of which is sufficient for his maintenance and education, in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of the income of his own property in whole or in part; and the charges therefor may be allowed accordingly in the settlement of the guardian's account.

2 Mass. 113, 415. 4 Mass. 97. 6 Johns. R. 566.

SECT. 3. Every father may, by his last will, appoint a guardian for his minor children until the age of fourteen respectively.

SECT. 4. The mother of an illegitimate child, shall have power to bind him, during the life time of the putative father as well as after his decease.

2 Mass. 109. 12 Mass. 387, 483.

SECT. 5. But the power of the mother to bind the legitimate or illegitimate children, shall cease in case of her subsequent marriage, and shall not be exercised during the continuance of such marriage, either by herself or her husband.

4 Mass. 675.

NOTES.

SECT. 2. This a new section declarative of the law on the subject as established by decisions in Massachusetts many years prior to the separation of Maine; and the subject being placed under the control of the judge of probate, there seems to be no danger in conferring the power as proposed.

SECT. 4. This section is also founded on similar decisions: and is proposed for enactment for the same reasons as are above stated.

SECT. 5. The limitation in this section is of the same character.

CHAPTER 89.

OF DIVORCE AND DISSOLUTION OF MARRIAGES.

- Sect.*
1. What marriages are null and void, without any divorce.
 2. For what causes a divorce from bond of matrimony may be decreed.
 3. Such divorce shall not bar the issue from inheriting.
 4. Divorces to be decreed by S. J. court in county where one of the party lives—or any justice of it.
 5. Exceptions may be filed to his decision.
 6. Causes of divorce from bed and board.
 7. When collusion appears, no divorce to be granted.
 8. Libel may be filed in clerk's office, and notice given—when adverse party is in the State.
 9. If not, libel to filed in court in any county.
 10. When libel is filed by wife, and notice given, husband's lands shall be bound.
 11. Libel may in all cases be presented to court.
 12. Where libel is to be filed, when one of the parties has left the State.
 13. No divorce to be decreed, where parties never lived together in this State, &c.
 14. No divorce to be decreed for a cause that occurred in any other State, unless one of the parties was then living in this State.
 15. When divorce is decreed for impotence, what proceedings are to be had.
 16. When a divorce shall be decreed on wife's libel for any *other* cause, what proceedings are to be had.
 17. Same subject.
 18. When on husband's libel, what proceedings.
 19. When divorce from bed and board is decreed, what proceedings are to be had.
 20. If decreed for husband's cruelty, what proceedings.
 21. Punishment for cohabitation, after divorce from bond, &c.
 22. When a libel may be filed for annulling a marriage.
 23. When issue shall be deemed illegitimate.
 24. When deemed legitimate.
 25. Same subject.
 26. When a libel for dissolution of marriage or divorce from bond, &c. court may prevent husband from restraining the wife, &c.
 27. When a divorce from bond or a dissolution of marriage—court may order as to disposition of children, &c.
 28. Court may employ such process as may be proper.
 29. When a divorce decreed in another State shall be deemed void in this State.
 30. In other cases it shall be held valid.
 31. Either party may have trial by jury.
 32. Court may grant new trial.

SECT. 1. All marriages prohibited by law on account of consanguinity or affinity between the parties; or for the cause that either of the parties has a former husband or wife then living, except as hereinafter provided, or was an idiot, or insane, when the marriage was solemnized, and all marriages between a white person and a negro, indian or mulatto, shall, if solemnized in this State, be absolutely void without any decree of divorce or other legal process, and the sentence of either party to imprisonment for life in the state prison, and confinement under such

10 sentence, shall dissolve the bond of matrimony without any
11 legal process.

SECT. 2. A divorce may be decreed from the bond of mat-
2 rimony in the following cases and for the following reasons—

3 *First*—For the cause of adultery committed by either of the
4 parties within or without this State, provided they have not
5 cohabited together as husband and wife after the commission of
6 the crime was well known to the libellant.

7 *Second*—For impotency in either of the parties, existing at the
8 time of the marriage. 1821, 3.

9 *Third*—Where either of the parties has deserted, or shall
10 desert the other wilfully and without reasonable cause for the
11 term of five successive years; and without consent or collusion
12 of the parties, or any intention on the part of the party deserted
13 thereby, to procure cause for a divorce. 1829, 440. 1830, 450.

14 *Fourth*—Where either of the parties shall join and continue
15 with the society called shakers, for the term aforesaid, separate
16 from the other party, without consent or collusion or an inten-
17 tion to enable the other party thereby to procure cause of
18 divorce. 1829, 440.

19 *Fifth*—Where either of the parties shall be sentenced to con-
20 finement and hard labor in a state prison or penitentiary in any
21 of the United States for said term of five years, provided that in
22 neither of the last three cases shall a divorce be granted on the
23 application of the party deserting, joining said society or con-
24 fined in prison as aforesaid; nor on application of either when
25 both parties shall have cohabited together within the term of
26 five years next before the filing of the libel, or between that
27 time and the time of the trial or decision on the same. 1829, 440.

28 *Sixth*—Where the consent of one of the parties to the mar-
29 riage was obtained by the gross and deliberate fraud or false
30 pretences practised by the other, a divorce may be granted on
31 the application of the other, provided the parties have not
32 cohabited as husband and wife after such fraud was known to the
33 party thus deceived. 1835, 177, § 1.

34 *Seventh*—In all cases where one party has been or shall be
35 divorced from the bond of matrimony the court granting the
36 same, may on application of the other party grant a like divorce
37 on such terms and conditions as such court in the exercise of a
38 sound discretion may judge reasonable.

39 *Eighth*—Where either of the parties is, or shall become a con-
40 firmed, habitual and common drunkard and shall so continue for
41 the term of three years thereby incapacitating him or herself
42 from making suitable provision for and taking proper care of the
43 family. 1833, 342.

SECT. 3. No decree from the bond of matrimony for any of
2 the causes mentioned in the preceding section shall bar the

3 issue of such marriage from inheriting ; but the question of the
 4 right of such issue shall remain unaffected by any thing in this
 5 chapter. M. R. S.

SECT. 4. All questions of divorce, dissolution of marriage,
 2 and alimony shall be heard and tried by the supreme judicial
 3 court, held in the county in which the parties or one of them
 4 live, and any one of the justices thereof is empowered to decide
 5 such questions. 1821, 71, § 1.

SECT. 5. But any person aggrieved at the opinion of such
 2 justice upon a matter of law, may file his exceptions to the same
 3 and have a full hearing thereupon before a majority of the court,
 4 as provided in civil actions. 1838, 370.

SECT. 6. A divorce from bed and board may be granted for
 2 the cause of extreme cruelty in either of the parties ; or when-
 3 ever the husband shall grossly or wantonly and cruelly neglect
 4 or refuse to provide suitable maintenance for her, he being of
 5 sufficient ability, though without deserting her. 1838, 310.

SECT. 7. But when it shall appear that the adultery or cruelty
 2 complained of is matter of collusion between the parties and
 3 for the purpose of procuring a divorce, or if both parties have
 4 been guilty of adultery no divorce shall be decreed.

1821, 71, § 4.

SECT. 8. The party complaining may file his or her libel in the
 2 office of the clerk of the court, setting forth as particularly as it
 3 can be done the causes of complaint making a distinct count,
 4 for each alleged cause of divorce ; which shall be signed by the
 5 party complaining, and shall cause the other party, if in this
 6 State, to be served with an attested copy of the same, and with
 7 a summons to be at the court, and such service to be made four-
 8 teen days at least, before its session, where the trial is to be had.

1821, 71, § 1.

SECT. 9. If the party complained of be not in the State, the
 2 libel may be presented to the court in session in any county ;
 3 and such court shall order what notice shall be given to the
 4 other party, and the manner of giving it, returnable in the
 5 county where the libellant resides. 1821, 71, § 1.

SECT. 10. When such libel shall be filed by the wife in the
 2 clerk's office, or presented to the court in session, praying for a
 3 divorce from bed and board, and she shall cause legal notice to
 4 be served on him, all his lands in the State shall be thereby
 5 bound to answer the order and judgment of court, in case a
 6 divorce should be decreed upon her libel—provided such lien
 7 be prayed for in the libel. 1821, 71, § 5.

SECT. 11. The libel may in all cases, at the option of the
 2 libellant, be presented in the first instance to the court, as pro-
 3 vided in the ninth section, and notice ordered and given as
 4 therein mentioned.

SECT. 12. Where the libellant has left the county in which
 2 the parties have lived together, the adverse party still living in
 3 the same county, the libel shall be heard and tried in the court

4 held for that county and if either party has removed from the
5 State, and the other be resident in this State, the libel shall be
6 heard and tried in the county where such other party resides.

M. R. S.

SECT. 13. No divorce shall be decreed for any cause, if the
2 parties never lived together as husband and wife in this State,
3 nor for any cause which shall have occurred in any other State
4 or country, unless the parties had before, such cause occurred,
5 lived together as husband and wife in this State. M. R. S.

SECT. 14. No divorce shall be decreed for any cause which
2 occurred in any other State or country, unless one of the parties
3 was then living in this State; provided that nothing in either of
4 the two preceding sections shall be construed to include cases
5 of desertion by either of the parties. M. R. S.

SECT. 15. When a divorce shall be decreed for the impotence
2 of either of the parties, the wife shall have all her lands restored
3 to her; and the court may enter a judgment for all or such part
4 of her personal estate which had come to her husband's hands by
5 virtue of the marriage, or the value thereof, as the court may judge
6 to be reasonable; and may make use of such process as may be
7 necessary to compel the husband to disclose on oath, what per-
8 sonal estate of the wife had so come to his hands, how it had
9 been disposed of, and how much remained in his hands at the
10 time of divorce. 1821, 71, § 5.

SECT. 16. Where a divorce is granted to the wife on the libel
2 of the wife for any other of the causes mentioned in the second
3 section of this chapter, she shall be entitled to her dower in the
4 husband's estate to be assigned to her in the same manner as
5 though her husband were dead, and the real estate, which her
6 husband held in her right the court may assign to the wife, for
7 her own use, and also the personal estate which the husband
8 received in virtue of the marriage, or such part thereof as they
9 shall deem reasonable; or a sum of money equal in value, to
10 the whole of the same, or to such part thereof as shall be judged
11 proper. 1821, 71, § 5.

SECT. 17. And if such personal estate so assigned, or its value,
2 together with her dower in the husband's real estate, should be
3 insufficient for her reasonable and comfortable support, the court
4 may allow her alimony out of her husband's, so long as she
5 remains unmarried as is provided in the nineteenth section fol-
6 lowing. 1821, 71, § 5.

SECT. 18. Where the divorce shall be decreed on the libel of
2 the husband for adultery committed by the wife, the husband
3 shall hold her personal estate forever, and her real estate of
4 which she was seized during coverture; during his natural life,
5 if they have a child born alive during the marriage; otherwise
6 during her natural life only, if he should survive her; but the
7 court may allow her for her subsistence, so much of her per-
8 sonal or real estate, as they shall judge to be necessary.

1821, 71, § 5.

SECT. 19. Whenever a divorce shall be decreed from bed
 2 and board, for the extreme cruelty of the husband, or his
 3 grossly or wantonly and cruelly neglecting or refusing to provide
 4 suitable maintenance for her, he being of sufficient ability to do
 5 it, if there be no issue living, the wife shall be restored to all
 6 her lands and be allowed out of his personal estate such alimony
 7 as the court shall think reasonable, having regard to the per-
 8 sonal property that came to the husband by the marriage and
 9 his ability, but if there be issue living at the time of the divorce,
 10 then the court may decree what they may judge right in respect
 11 to the restoration of property or granting alimony; and such
 12 decree may be altered from time to time, by the court as may
 13 be found just and reasonable; and the court in the above case,
 14 to effectuate any purpose aforesaid, may, order the real estate
 15 of the husband or any part of it, or of the rents, and profits to
 16 be assigned and set out to the wife for and during her life and
 17 employ such legal process as they may deem necessary to carry
 18 the decree into execution. 1821, 71, § 5.

SECT. 20. If a divorce from bed and board is decreed for the
 2 cruelty of the wife, whether there be issue or not at the time of
 3 the divorce, the court may order her a restoration of the whole
 4 or such part of her lands and assign alimony as they may judge
 5 proper. 1821, 71, § 5.

SECT. 21. If any persons shall cohabit together as husband
 2 and wife, or live together in the same house after they have been
 3 divorced from the bond of matrimony for any cause whatever,
 4 they shall suffer the like punishment by law provided against
 5 adultery.

SECT. 22. Whenever the validity of a marriage is denied or
 2 doubted either party may file a libel for annulling the same, in
 3 like manner as a libel for a divorce; and upon due proof of the
 4 nullity of the marriage it shall be declared void by sentence of
 5 said court—and upon due proof of its validity, the court by their
 6 decree shall affirm the marriage; but no decree of dissolution
 7 or affirmation shall prejudice the rights of the party against
 8 whom the same may be passed, unless such party had been per-
 9 sonally notified to answer to the libel or had appeared and
 10 answered to the same. M. R. S.

SECT. 23. Upon dissolution of a marriage by divorce or sen-
 2 tence of nullity, on account of consanguinity or affinity between
 3 the parties, or of any marriage between a white person and a
 4 negro, indian or mulatto, the issue of the marriage shall be
 5 deemed to be illegitimate. M. R. S.

SECT. 24. If the dissolution of the marriage be on account
 2 of the non-age, insanity or idiocy of either of the parties, the
 3 issue of the marriage shall be deemed to be the legitimate issue
 4 of the parent who at the time of the marriage, was capable of
 5 contracting marriage. M. R. S.

SECT. 25. When a marriage is dissolved on account of a
 2 prior marriage of either of the parties and it shall appear that

3 the second marriage was contracted in good faith and in the full
 4 belief of the parties that the former husband or wife was dead,
 5 that fact shall be stated in the sentence of divorce or nullity;
 6 and the issue of such second marriage born or begotten before
 7 the commencement of the suit, shall be deemed to be the legiti-
 8 mate issue of the parent, who, at the time of the marriage was
 9 capable of contracting—and such legitimacy shall be presumed,
 10 on the same principles of evidence as in a case where both par-
 11 ties were enabled to contract lawful marriage at the time of the
 12 solemnization of the supposed marriage.

SECT. 26. After a libel has been filed for the dissolution of a
 2 marriage or for a divorce from the bond of matrimony or from
 3 bed and board, said court, may, in any county on the petition of
 4 the wife, prohibit the husband from imposing any restraint on
 5 her personal liberty during the pendency of such libel.

M. R. S.

SECT. 27. The court when decreeing the dissolution of a
 2 marriage or a divorce from the bond of matrimony or from bed
 3 and board may make such further decree as they shall judge
 4 expedient concerning the custody, care and maintenance of the
 5 minor children of the parties and may determine with which of
 6 the parents the children or any of them shall remain; and the
 7 court may from time to time revise and alter such decree as to
 8 the custody, care and maintenance of the children as the cir-
 9 cumstances of all concerned may require or render expedient.

M. R. S.

SECT. 28. The court in the execution of the powers given to
 2 them in this chapter may employ such compulsory process as
 3 they may deem proper whether by execution or attachment or
 4 such other form as shall be effectual.

SECT. 29. When an inhabitant of this State shall go into any
 2 other State or country in order to obtain a divorce for any cause
 3 which had occurred here and whilst the parties resided here, or
 4 for any cause which would not authorize a divorce by the laws
 5 of this State, a divorce so obtained shall be of no force or effect
 6 in this State.

M. R. S.

SECT. 30. But in all other cases a divorce decreed in any
 2 other State or country according to the law of the place, by a
 3 court having jurisdiction of the cause and of both the parties
 4 shall be valid in this State.

M. R. S.

SECT. 31. In all cases of libel for divorce, from the bond of
 2 matrimony, either party shall be entitled to a trial by jury, on
 3 requesting it; and if the jury shall find the facts stated in the
 4 libel to be true, and if such facts shall be sufficient by the laws
 5 of the State to authorize a divorce, the court shall thereupon
 6 decree a divorce as prayed for in the libel.

SECT. 32. The justices of the supreme judicial court may, at
 2 their discretion, and on such conditions as they may impose,
 3 grant a new trial in cases of divorce—whenever they shall judge
 4 it reasonable, and whenever the parties have not lived together

5 since the former trial, on application of the party aggrieved,
6 by the judgment then given—provided such new trial shall not
7 be granted after the lapse of three years after the former judg-
8 ment. 1839.

NOTES.

SECT. 2. In the enumeration in this section of the several causes for divorce *a vinculo* the commissioners have retained the seventh cause with some hesitation and reluctance; and now, respectfully submit to the Legislature the query whether the provision is a useful one as it now stands; more especially in those cases where the original divorce is decreed for the cause of adultery. It would seem that the party who had been guilty of that offence, should never have it in his or her power to destroy the happiness of another wife or husband by a repetition of such a crime. No second marriage should be allowed to such a heartless and unprincipled offender.

SECT. 13, 14. These are new sections, but they are considered as stating the law as now settled; and they are proposed for enactment for general information.

SECT. 15. This section contains an exception from the law of dower in this State, as it now exists. The law entitles a wife to dower when she obtains a divorce from the bond of matrimony for *any* cause. But this section does not give her dower, where the divorce is decreed for the cause of impotency; *perhaps*, because the case may be free from all imputation of improper conduct or intention on either side. The commissioners submit the distinction to the judgment of the Legislature, and whether in case of a divorce for such cause, justice is not done by placing both parties in *statu quo*, as to property, or as nearly so as circumstances will permit. The section is taken from R. S. of Mass.

SECT. 22. This section and most of the following are also taken from the same code; containing a summary of the principles regulating the *dissolution* of marriages. This section expresses its object. This mode of proceeding has never been in use in this State, or in Mass. until since the revision of the laws of that State a few years since, or perhaps found necessary; but the provisions may be found useful, and they are therefore proposed. This mode of proceeding is to *ascertain facts*, when the legality of a marriage is *denied* or *doubted*. The sooner such a question can be settled, the better for the parties concerned and their friends. The decree in such a case either *confirms* the marriage or *annuls* and *dissolves* it. It proceeds on the ground of the invalidity of the marriage, but a divorce proceeds on the ground that though the marriage was lawful, the bond, for certain, legal reasons, ought to be dissolved.

SECT. 23. The marriage being expressly forbidden by law, is void, and the issue must be illegitimate.

SECT. 24. This section presents a different case, yet why should the issue of the party, competent to contract, be deemed incapable of inheriting from such parent?

SECT. 25. Here is a stronger case still in favor of the issue, for even *both* parents are innocent, having acted under a misapprehension.

SECT. 26. This gives a salutary power to the court to afford protection to a wife when she may most stand in need of it.

SECT. 27, 28. When parents are divorced children are exposed to many dangers and trials. The court decreeing the divorce, are better able to judge, than any others, how to direct as to the disposal, custody and care of the children. A wilful or unfeeling parent, as well as an intemperate one, it would seem, ought not in such cases, to have any control over them. The court can furnish them with comforts and protection. The commissioners presume and hope that these principles and this power will become, the known law of this State.

SECT. 29, 30 are considered as in perfect harmony with the law as settled by numerous decisions, and they are proposed for enactment, to give information to all and prevent fraud and mischief.

The commissioners have availed themselves of many valuable principles and provisions found in the revised statutes of Mass.; and they have done it, in the full belief that in questions of such interest and importance as arise out of the laws of marriage and divorce, and which are often affecting persons residing under different jurisdictions, uniformity in legislation, as far as it can be had in neighboring States, is very desirable.

CHAPTER 90.

OF MASTERS, APPRENTICES AND SERVANTS.

- Sect.* 1. How minors under the age of fourteen may be bound.
 2. How minors—above fourteen.
 3. Must be bound by indenture—and form of it.
 4. Who are to keep the indentures.
 5. Consideration allowed by master to be wholly secured by the indenture to the minor.
 6. Indentures made as above to be binding.
 7. Indentures to be void on death of master or mistress to whom minor is bound.
 8. Minors so bound, not to be transferable nor transported out of the jurisdiction, &c.
 9. Parents, guardians, selectmen and assessors may enquire into usage of apprentices—proceedings to correct, &c.
 10. Masters and mistresses may complain of misconduct of apprentices, and course of proceedings to obtain redress.
 11. If apprentice or servant leave his master's business what proceedings to be had.
 12. Additional power given.
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SECT. 1. Children under the age of fourteen years may be bound as apprentices or servants *until* that age without their consent, by their father, if living, and if not, by their mother or legal guardian; and if they have no parent or guardian they may bind themselves with the approbation of the selectmen of the town or assessors of the plantation, where such minor children reside. 1821, 170, § 1.

SECT. 2. Minors above the age of fourteen years may be bound in the same manner with their consent, which shall be distinctly expressed in the indenture and testified by his signing the same; females to the age of eighteen years or to the time of their marriage, within that age, and males to the age of twenty years. 1821, 170, § 1.

SECT. 3. No minor of age shall be bound as aforesaid, unless by an indenture of two parts, signed sealed and delivered by both parties; and when the minor shall bind himself, as aforesaid, by the consent of the selectmen, or assessors before men-

5 tioned, their consent and approbation shall be certified in
6 writing, by them signed on each part of the indenture.

1821, 170, § 1.

SECT. 4. One part of the indenture shall be kept by the mas-
2 ter or mistress to whom the minor is bound and other part by
3 the parent or guardian for the use of the minor; and when
4 made by the approbation of the selectmen or assessors as afore-
5 said, it shall be deposited with the town or plantation clerk.

1821, 170, § 1.

SECT. 5. All considerations allowed by the master or mis-
2 tress, in any contract of service or apprenticeship shall be
3 secured by the indenture to the sole use of the minor and to be
4 paid to such minor, without any control on the part of the par-
5 ent or guardian at any time.

1821, 170, § 1.

SECT. 6. All indentures made, in the manner and form pre-
2 scribed in this chapter, shall be binding and effectual in law,
3 against all parties thereto.

1821, 170, § 1.

SECT. 7. No indenture between any minor his parent or guar-
2 dian, and any master or mistress, or their executors and admin-
3 istrators shall be binding on such minor parent or guardian—
4 after the decease of such master or mistress; but on the death
5 of such master or mistress, the indenture shall be deemed void
6 from that time; and the minor may be bound out in the manner
7 aforesaid.

1821, 170, § 2.

SECT. 8. A minor bound in manner aforesaid, as an appren-
2 tice or servant to any master or mistress, shall not be transfera-
3 ble by such master or mistress to another person; nor shall such
4 master or mistress have any authority to transport such apprentice
5 or servant, beyond the jurisdiction, within which the indenture
6 was made, and with reference to the laws of which such parties
7 contracted.

Mass. 8, § 299.

SECT. 9. Parents and guardians who have bound minors, and
2 selectmen and assessors, who have given approbation to a bind-
3 ing of minors, by their own act, shall have a right to inquire
4 into their usage, and defend them from the cruelty or other
5 injury of their masters and mistresses; and such parents, guar-
6 dians and selectmen, may complain to the district court of the
7 county of which such master or mistress is an inhabitant against
8 them for any such cruelty, neglect or injury; and said court,
9 after giving due notice to the person complained of, may hear
10 and decide on such complaint, and if the same shall be supported
11 may render judgment that the minor be discharged from his
12 apprenticeship or service, with costs against the respondent, and
13 award execution accordingly; in which case the indenture shall
14 be void from the time of the rendition of such judgment. If the
15 complaint be not supported, the court shall award costs for such
16 respondent against the parent, guardian or selectmen or asses-
17 sors, where the complaint shall appear to the court to have been
18 made without probable cause, and issue execution accordingly.

1821, 170, § 3.

SECT. 10. And if any apprentice or servant shall be guilty of
2 any gross neglect or misbehavior or wilful refusal to do his duty,
3 the master or mistress may complain thereof to said court in the
4 county where the complainant lives; and the court after giving
5 notice to such apprentice or servant, and all persons interested,
6 by means of signing or approving the indenture, hear and decide
7 the cause, and if the complaint is supported, may discharge the
8 said master or mistress from the obligation of said indenture
9 with costs and award execution therefor—and the apprentice or
10 servant may be bound out anew. 1821, 170, § 4.

SECT. 11. If any apprentice or servant bound as aforesaid,
2 shall depart from the service of his master or mistress, any justice
3 of the peace of the county where the delinquent may be found,
4 on complaint of such master or mistress, may issue his warrant
5 against him, and cause him to be brought before such justice,
6 who upon a hearing, may order such apprentice or servant to be
7 returned to the place of his duty or commit him to the jail of
8 said county for a term not exceeding twenty days, unless sooner
9 discharged, by the master or mistress. And the warrant of such
10 justice shall authorize the officer to convey such delinquent to
11 his master or mistress though they may reside in another county.
12 The expenses attending the above proceedings shall be paid by
13 the complainant, and may be recovered by action on the deed
14 of indenture, and if recovered of a guardian, they shall be a
15 valid and proper article of charge in his guardianship account.
1821, 170, § 5.

SECT. 12. And such district court, and such selectmen and
2 overseers, shall have and may exercise all such powers in rela-
3 tion to minors bound as apprentices or servants by selectmen
4 and overseers of the poor, as are contained in the chapter
5 respecting paupers, their settlement and support.