

MAINE STATE LEGISLATURE

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REPORT
OF
THE COMMISSIONER
ON THE
REVISION AND CONSOLIDATION
OF THE
PUBLIC LAWS
OF THE
STATE OF MAINE,
UNDER
Resolve of March 21, 1901.

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TITLE FIVE.

Domestic Relations.

- CHAP. 59. Marriage and its solemnization; registration of vital statistics.
 Parents and children. Abused and neglected children.
 60. Divorce and annulling of marriages.
 61. The rights of married women.
 62. Masters, apprentices and servants.

CHAPTER 59.

MARRIAGE AND ITS SOLEMNIZATION. REGISTRATION OF VITAL STATISTICS.
 PARENTS AND CHILDREN. ABUSED AND NEGLECTED CHILDREN.

MARRIAGE AND ITS SOLEMNIZATION.

SEC. 1. No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister; and no woman shall marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter'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.

SEC. 2. No insane person or idiot is capable of contracting marriage.

SEC. 3. Marriages, contracted while either of the parties has a former wife or husband not divorced, living, are void.

SEC. 4. Residents of the state intending to be joined in marriage, shall cause notice of their intentions to be recorded in the office of the clerk of the town in which each resides, at least five days before a certificate of such intentions is granted; and if one only of the parties resides in the state, they shall cause notice of their intentions to be recorded in the office of the clerk of the town in which such party resides, at least five days before such certificate is granted; and the book in which such record is made, shall be labeled on the outside of its cover, "Record of intentions of marriage," and be kept open to public inspection in the office of the clerk; and if there is no such clerk in the place of their residence, the like entry shall be made with the clerk of an adjoining town.

SEC. 5. The clerk shall deliver to the parties a certificate specifying the time when such intentions were entered with him; and it shall be delivered to the minister or magistrate before he begins to solemnize the marriage; but no such certificate shall be issued to a male under twenty-one, or to a female under eighteen years of age, without the written consent of their parents or guardians first presented, if they have any living in the state; nor to a town pauper when the overseers of such town deposit a list of their paupers with the clerk; and for an intentional violation of the foregoing prohibitions, or for falsely stating the residence of either party named in such certificate, such clerk forfeits twenty dollars.

Marriages prohibited within certain degrees.
 R. S., c. 59, § 1.

Void marriages.
 R. S., c. 59, § 2.
 46 Me., 510.
 76 Me., 421, 595.
 Polygamy.
 R. S., c. 59, § 3.
 Marriage, notice of intentions of, to be recorded.
 R. S., c. 59, § 4.

—where one of the parties lives out of the state, intentions, how recorded.

Clerk to give certificate to parties, but not to minors without written consent of parents, or to paupers.
 R. S., c. 59, § 5.

—penalty.

Penalty for marrying unlawfully.
R. S., c. 59, § 6.

Certificate of marriage out of the state, to be filed.
R. S., c. 59, § 7.

—penalty.

Proceedings when marriage is forbidden.
R. S., c. 59, § 8.
88 Me., 252.

Marriage in another state in evasion of law, void here.
R. S., c. 59, § 9.

Marriage among Quakers.
R. S., c. 59, § 10.

Who may solemnize marriages.
R. S., c. 59, § 11.
18 Me., 310.
42 Me., 288.
72 Me., 548.
—women, authorized.
62 Me., 596.

Tenure of ministers.
R. S., c. 59, § 12.
42 Me., 288.

Penalty for joining persons in marriage in violation of law.
R. S., c. 59, § 13.

Penalty for unauthorized solemnization of marriage.
R. S., c. 59, § 14.

Copy of record, legal evidence.
R. S., c. 59, § 16.
19 Me., 158.
Marriage valid, if consummated in

SEC. 6. Whoever contracts a marriage, or makes false representations to procure such certificate or the solemnization of marriage contrary to this chapter, forfeits one hundred dollars.

SEC. 7. When residents of this state go into another state for the purpose of marriage, and it is there solemnized, and they return to dwell here, they shall file a certificate or declaration of their marriage with the clerk of the town in which each of them then lived, within seven days after their return, or forfeit ten dollars, half to the prosecutor and half to the town where the forfeiture is incurred.

SEC. 8. Any person, believing that parties are about to contract marriage when either of them cannot lawfully do so, may file a caution and the reasons therefor, in the office of the clerk where notice of their intentions should be filed. Then if either party applies to enter such notice, the clerk shall withhold the certificate, until a decision is made by two justices of the peace, approving the marriage, after due notice to, and hearing all concerned; *provided*, that the person filing the caution, shall, within seven days thereafter, procure the decision of such justices, unless they certify that further time is necessary for the purpose. In which case a certificate shall be withheld until the expiration of the certified time. He shall, finally, deliver or withhold the certificate in accordance with the final decision of said justices. If the decision is against the sufficiency, the justices shall enter judgment against the applicant for costs, and issue execution therefor.

SEC. 9. When residents of this state, with intent to evade the provisions of sections one, two and three of this chapter, or of chapter sixty, and to return and reside here, go into another state or country, and there have their marriage solemnized, and afterwards return and reside here, such marriage is void in this state.

SEC. 10. Marriages solemnized among Quakers or Friends, in the form heretofore practiced in their meeting, are valid, and not affected by the foregoing provisions; and the clerk or the keeper of the records of the meeting in which they are solemnized, shall *once every year deliver a list thereof to the clerk of his town, or forfeit fifty dollars, half to the county, and half to the prosecutor.* (make return thereof as provided in section twenty.)

SEC. 11. Every justice of the peace residing in the state, every ordained minister of the gospel, and every person licensed to preach by an association of ministers, religious seminary, or ecclesiastical body, duly appointed and commissioned for that purpose by the governor, may solemnize marriages within the limits of his appointment. The governor, with the advice and consent of council, may appoint women, otherwise eligible under the constitution, to solemnize marriages.

SEC. 12. Such ordained or licensed minister holds his office during the pleasure of the executive; and said commission is conclusive evidence that he is an ordained or licensed minister.

SEC. 13. Whoever, commissioned as aforesaid, knowingly and wilfully joins persons in marriage contrary to this chapter, forfeits one hundred dollars, two-thirds thereof to the county where the offense is committed, and one-third to the prosecutor, to be recovered by the county treasurer or by the parent, guardian, or other person under whose immediate care and government either of the parties was at the time of such marriage; and such offender is forbidden to join any persons in marriage thereafter.

SEC. 14. If any person thus forbidden, or any minister or other person not authorized to solemnize marriages, joins any persons in marriage, he shall be confined to hard labor in the state prison for not more than five years, or fined not exceeding one thousand dollars.

SEC. 15. A copy of a record of marriage duly made and kept, attested or sworn to by a justice of the peace, commissioned minister, or town clerk, shall be received in all courts as evidence of the fact of marriage.

SEC. 16. No marriage, solemnized before any known inhabitant of the state professing to be a justice of the peace, or an ordained or licensed

minister of the gospel duly appointed and commissioned, is void, nor is its validity affected by any want of jurisdiction or authority in the justice or minister, or by any omission or informality in entering the intention of marriage, if the marriage is in other respects lawful, and consummated with a full belief, on the part of either of the persons married, that they are lawfully married.

SEC. 17. A town clerk who makes out and delivers to any person a false certificate of the entry of the intention of marriage, knowing it to be false in any particular, shall be fined one hundred dollars or imprisoned six months.

good faith, by either party.
R. S., c. 59, § 17.
6 Me., 149.
36 Me., 454.
61 Me., 177.
75 Me., 131.

Penalty for false certificate of intention.
R. S., c. 59, § 18.

REGISTRATION OF VITAL STATISTICS.

SEC. 18. The secretary of the state board of health shall be the registrar of vital statistics for the state, and shall furnish to clergymen, and others authorized to marry, to sextons, to physicians, town clerks, clerks of the society of Friends, and clerks of courts, a copy of the provisions of this chapter relating to the registration of vital statistics, and suitable blanks for recording births, marriages, deaths and divorces, so printed, with appropriate headings, as readily to show the following facts and such others as may be deemed necessary to secure an accurate registration.

Registrar of vital statistics.
1891, c. 118, § 1.

—shall furnish blanks, for record of births, marriages, deaths and divorces.

I. The record of birth shall state its date and place of occurrence, full christian and surname, if named, color and sex of child, whether living or still-born, and the full christian and surnames, color, occupation, residence and birthplace of parents.

—what record of birth shall state.

II. The record of marriage shall state its date and place of occurrence, the name, residence, and official character of the person by whom solemnized, the full christian and surnames of the parties, the age, color, birthplace, occupation, and residence of each, the condition, whether single or widowed, whether first, second or other marriage; and the full christian and surnames, residence, color, occupation, and birthplace of their parents.

—what record of marriage shall state.
1897, c. 282, § 1.

III. The record of death shall state its date, the full christian and surname of the deceased, the sex, color, condition, whether single or married, age, occupation, place of birth, place of death, the full christian and surnames and birthplaces of parents, and the disease or other cause of death, so far as known.

—what record of death shall state.

SEC. 19. The attending physician, accoucheur, midwife, or other person in charge, who shall attend at the birth of any child, living or still-born, within the limits of any town or city in this state, shall report to the clerk of such town or city within six days thereafter, all the facts regarding such birth, as required in section eighteen.

Report of facts, regarding birth, made to town clerk.
1891, c. 118, § 2.

SEC. 20. Every person authorized to unite persons in marriage shall make a record of every marriage solemnized before him, in conformity with the requisitions prescribed for blank records of marriages in section eighteen, and shall within six days thereafter, deliver or forward to the clerk of each town in which the marriage intention was recorded, and to the clerk of the town in which the marriage was solemnized, a copy of such record of marriage.

Copy of record of marriages, forwarded to town clerks.
1891, c. 118, § 3.
1897, c. 282, § 2.

SEC. 21. A physician who has attended a person during his last illness shall, when requested, forthwith furnish for registration a certificate stating, to the best of his knowledge and belief, the name of the deceased, his age, the disease of which he died, and the date of his death; and a physician or midwife who has attended at the birth of a child dying immediately thereafter, or at the birth of a stillborn child, shall, when requested, forthwith furnish for registration a certificate, stating to the best of his knowledge and belief, the fact that such child died after birth or was born dead. It shall be a misdemeanor for any person to make a false return in regard to any birth or death.

Physician in attendance shall furnish certificate of cause of death.
1895, c. 154, § 7.

—penalty.

SEC. 22. Whenever any person shall die, or any stillborn child be brought forth in this state, the undertaker, town clerk or other person

Town clerk shall be furnished with

copy of the record of any death in town. 1891, c. 118, § 4. 1895, c. 154, § 1. 91 Me., 75.

—permit for burial.

If no attending physician in last sickness, clerk may issue certificate, upon such facts as can be obtained. 1891, c. 118, § 5. 1895, c. 154, § 2.

Bodies of persons dying of cholera, etc. 1895, c. 154, § 7.

—certificate of cause of death attached to outer case.

—heart failure not deemed sufficient cause for burial permit.

—permit, when body is brought into this state for burial.

Who are required to give notice of births and deaths. 1891, c. 118, § 6.

Birth, marriage or death, in unincorporated place. 1895, c. 154, § 7.

Clerk shall make certified copy of record on first Monday of each month. 1895, c. 154, § 7.

superintending the burial of said deceased person, shall obtain from the physician attending such bringing forth or last sickness, a certificate, duly signed, setting forth as far as may be, the facts required in the record of a death, according to section eighteen; and the undertaker or other person having charge of the burial of said deceased person, shall add to said certificate the date and place of the proposed burial; and having duly signed the same, shall forward it to the clerk of the town or city where said person died and obtain a permit for burial; and in case of any contagious or infectious disease, said certificate shall be made and forwarded immediately.

SEC. 23. In case of any deceased person not having had the attendance of a physician in his or her last sickness, the town clerk may issue and sign the certificate of death, upon presentation of such facts as may be obtained of relatives, persons in attendance upon said deceased person during said last sickness or present at the time of death, or from any other source, and the permit for burial shall be issued upon such information. Said certificate and permit shall not be required before burial in cases where it is impracticable to obtain the same within a reasonable time after death, but in all such cases said certificate shall be obtained as soon as practicable after death.

SEC. 24. No body of a deceased person whose death was caused by cholera, yellow fever, diphtheria, scarlet fever, typhus fever, typhoid fever, smallpox or other pestilential disease, shall be removed from place to place in this state by any railroad, steamboat or other common carrier, unless there shall be attached to the outer case in which said body is enclosed, a certificate from the board of health where such person died, stating the disease causing such death, and that necessary precautions against infection satisfactory to said board have been observed. A certificate of death giving heart failure as the only cause of death shall not be deemed sufficient upon which to issue a burial permit, and such certificate must be returned to the physician who made it for the proper correction and definition. If the body of a deceased person is brought into this state from without for burial, and if it is accompanied by a permit issued by the legally constituted authorities of the state from which it was brought, such permit shall be received as sufficient authority upon which the clerk of the town in which said body is to be buried shall issue a permit for burial; but if it is not accompanied by such permit, then the person or persons in charge of it shall apply for a burial permit to the clerk of the town in which it is to be buried, and the clerk of the town shall issue such permit when furnished with satisfactory information.

SEC. 25. Parents shall give notice to the clerk of their city or town of the births or deaths of their children; every householder shall give notice of every birth and death happening in his house; the eldest person, next of kin, shall give such notice of the death of his kindred; the keeper of a workhouse, house of correction, prison, hospital, almshouse, or other institution, and the master or other commanding officer of a ship, shall give like notice of every birth or death happening among the persons under his charge.

SEC. 26. When a birth, marriage or death occurs in an unincorporated place, it shall be reported to the town clerk in the town which is nearest to the place at which the birth, marriage or death took place, and shall be recorded by the town clerk to whom the report is made; and all such reports and records shall be made and recorded and returned to the state registrar as is provided herein.

SEC. 27. The clerk of each town shall, on the first Monday of each month, make a certified copy of the record of all deaths and births recorded in the books of said town during the previous month, whenever the deceased person, or the parents of the child born were resident in any other town in this state at the time of said death or birth, or whenever they were recently resident in any other town, or whenever the remains

of any deceased person have been carried to any other town for burial and shall transmit said certified copies to the clerk of the town in which said deceased person or parents were resident at or near the time of said birth or death, or to which the remains of such deceased person have been carried for burial, stating in addition the name of the street and the number of the house, if any, where such deceased person or parents so resided, whenever the same can be ascertained; and the clerk so receiving such certified copies shall record the same in the books kept for recording deaths or births. Such certified copies shall be made upon blanks to be furnished for that purpose by the registrar of vital statistics.

—transmit to clerk of town where person or parents were resident at time of death.

—blanks.

SEC. 28. Except as provided in section twenty-three, no interment or disinterment of the dead body of any human being, or disposition thereof in any tomb, vault or cemetery, shall be made without a permit as aforesaid, from the clerk of the town or city where said person died, (or in case of disinterment, is buried,) nor otherwise than in accordance with such permit. No undertaker or other person shall assist in, assent to, or allow any such interment or disinterment to be made, except as provided in section twenty-three, until such permit has been given as aforesaid; and every undertaker or other person having charge of any burial place as aforesaid, who shall receive such permit, shall preserve and return the same to the clerk of the town from whom said permit was obtained within six days after the day of burial.

No interment, or disinterment, shall be made without permit. 1891, c. 118, § 7. 1895, c. 154, § 3. Sec. c. 123, § 32.

SEC. 29. The town or city clerk shall appoint two suitable and proper persons, in each town or city, as sub-registrars, who shall be authorized to issue burial permits based upon a death certificate, as hereinbefore provided, in the same manner as is required of the town or city clerk; and the said record of death upon which the permit is issued shall be forwarded to the town clerk within six days after receiving the same, and all permits by whomsoever issued shall be returned to the town clerk as required by section twenty-eight. The appointment of sub-registrars shall be made with reference to locality, so as to best suit the convenience of the inhabitants of the town, and such appointment shall be in writing and recorded in the office of the town or city clerk.

Sub-registrars shall be appointed who may issue burial permits. 1891, c. 118, § 8.

—how appointed.

SEC. 30. Town clerks and sub-registrars may issue burial permits to persons in contiguous towns, when by so doing it would be more convenient for those seeking a permit, but in all cases the permit shall be made returnable to the town clerk of the town in which the death occurred.

Clerks and sub-registrars may issue burial permits in contiguous towns. 1891, c. 118, § 9. Assessors shall make return of all births. 1891, c. 118, § 10.

SEC. 31. The assessors shall, when taking the annual inventory, collect and return to the town clerk, before the first day of June, the births which have occurred within their respective jurisdictions during the year ending December thirty-first next preceding, together with the names of such children.

SEC. 32. The clerk of every town shall keep a chronological record of all births, marriages, and deaths reported to him and shall annually, in the month of June, transmit a copy of the record of all births, marriages, and deaths occurring during the year ending December thirty-first next preceding said report, to the state registrar, together with the names, residences, and official stations of all such persons as have neglected to make returns to him in relation to the subject matters of such records, which the law required them to make, all to be made upon blanks to be prepared and furnished by the state registrar. *

Town clerks required to make return to state registrar, annually. 1891, c. 118, § 11.

SEC. 33. The clerk of courts for the several counties shall, annually, during the month of February, make returns to the registrar of vital statistics relating to libels for divorce in their respective counties for the calendar year next preceding. Such returns shall specify the following details; the number of divorces granted; and the names of the parties including the maiden name and any other former name of female, if any, when ascertainable.

Clerks of courts required to make return of divorces, annually. 1891, c. 118, § 12.

(*) Clerks of cities shall transmit to the board of registration list of male persons over twenty-one years of age deceased since the preceding election; c. 4, § 27.

Duty of state registrar.
1891, c. 118, § 13.
1895, c. 154, § 4.

SEC. 34. The state registrar shall cause the returns made to him in pursuance of the two preceding sections to be arranged alphabetically for convenient reference, and carefully preserved in his office. He shall annually make and publish a general abstract and report of the returns of the preceding year in such form as will render them of practical utility, not more than two thousand five hundred copies of which shall be printed and bound in cloth, one copy of which shall be forwarded to every town, one copy to each senator and representative, one copy to each state and territory in the union, and the remainder to such departments, libraries and persons as the state registrar shall direct.

Appropriation.
1891, c. 118, § 14.
1895, c. 233.

SEC. 35. The sum of twenty-five hundred dollars *per annum* (a year), or as much thereof as may be necessary, is hereby appropriated for printing and binding the circulars and blanks, for postage, and to defray the expenses of clerical work in carrying out the provisions of this chapter relating to the registration of vital statistics.

Clerk's record or certified copy, prima facie evidence.
1891, c. 118, § 15.

SEC. 36. The town clerk's record of any birth, marriage or death, or a duly certified copy thereof, shall be prima facie evidence of such birth, marriage or death, in any judicial proceeding.

Penalty for neglect of duty.
1891, c. 118, § 16.
1895, c. 154, § 5.

SEC. 37. If any person shall wilfully neglect or refuse to perform any duty imposed upon him by the provisions of (section ten or of) the nineteen last preceding sections, it shall be a misdemeanor, and he shall be fined not more than one hundred dollars for each offense, for the use of the town in which the offense occurred, and the state registrar shall enforce this section as far as comes within his power; when the state registrar knows, or has good reason to believe, that any penalty or forfeiture hereunder has been incurred, he shall *at his discretion* forthwith give notice thereof, in writing to the county attorney of the county in which said penalty or forfeiture has occurred, which notice shall state as near as may be, the time of such neglect, the name of the person or persons incurring the penalty or forfeiture, and such other facts relating to the default of duty as said state registrar may have been able to learn, and upon receipt of such notice the county attorney shall prosecute the defaulting person or persons.

—state registrar shall enforce this section.

Duties of clerks.
1891, c. 118, § 17.
1895, c. 154, § 6.

SEC. 38. The clerk of each city or town shall enforce, so far as comes within his power, sections (ten), twenty, twenty-two, twenty-five, twenty-eight, and thirty-one of this chapter, and when he knows of any birth, marriage or death, which is not reported to his office in accordance with the provisions of this chapter, he shall collect so far as he is able to do so, the facts called for in the blank certificates of birth, of marriage, or of death, as furnished by the state registrar, and shall record them as is herein prescribed; for each birth or death duly reported to the town clerk, physicians shall receive twenty-five cents from the town in which the birth or death has occurred.

—clerk shall obtain facts as to births, marriages and deaths not reported to him.
See c. 115, § 23.

—fees of physicians.

PARENTS AND CHILDREN.

Care and custody of children.

1895, c. 43, § 1.
When parents live apart, judge of probate may decree as to care and custody.
1895, c. 43, § 2.
See c. 67, § 3.
94 Me., 471.

SEC. 39. Fathers and mothers shall jointly have the care and custody of the person of their minor children.*

SEC. 40. If the father and mother of a minor child are living apart from each other, the judge of probate in the county where either resides, on petition of either, and after such notice to the other as he may order, may decree which parent shall have the care and custody of the person of such minor as the good of the child may require; which decree shall be in force until further order of the judge of probate. An appeal shall lie from such decree to the supreme court of probate, which appeal shall be heard and determined by the justice presiding, but the decree of the judge of probate shall be in force until reversed.

—appeals.
1895, c. 43, § 3.

(*) Liability of parent for injury by minor to schoolhouse and school furnishings, c. 11 § 117; for breach of pound, c. 23, § 20; for offenses of minor children under c. 25, § 14. 90 Me., 312; 94 Me., 471.

SEC. 41. The two preceding sections shall not be construed to deprive the supreme judicial court of its jurisdiction over the care and custody of minor children, under the provisions of sections six and fourteen of chapter sixty relating to divorce proceedings.

SEC. 42. The unmarried mother of an illegitimate child may bind him during minority; but her right to bind legitimate or illegitimate children ceases at her marriage, and cannot be exercised by her or her husband while it continues.

SEC. 43. Widowed mothers have the same right to the custody and earnings of minor children without guardians, as a father has.

S. J. Court not deprived of jurisdiction under c. 69. 1895, c. 43, § 4. 94 Me., 471. Mother may bind illegitimate child. R. S., c. 59, § 23.

Widowed mothers, rights touching minors. R. S., c. 59, § 24.

ABUSED AND NEGLECTED CHILDREN.

SEC. 44. Any parent, guardian or other person, having the care and custody of any child, who cruelly treats such child by abuse, neglect, overwork or extreme punishment, shall be punished by fine not exceeding one hundred dollars, or by imprisonment not exceeding one year.

Penalty for cruelty to children. 1889, c. 160. See c. 117, § 20.

SEC. 45. When complaint in writing, signed by two or more citizens of any town or city alleging that any child therein is wilfully neglected or cruelly treated by its parents, or by the wilful fault of such parents is not provided with suitable food, clothing or privileges of education, or is kept at a house of ill-fame, or that such child is an orphan without means of support or kindred of sufficient ability who will furnish such support, is made to the municipal officers of such town or city, such officers shall give notice of a time and place of hearing by serving such notice, with a copy of such petition, upon such parents, at least two days before such hearing, or by publishing a copy of such petition and notice in some newspaper in the county where such child resides, at least seven days before such hearing. Said officers shall at the time and place mentioned in said notice, give a hearing to the parties and their witnesses, and if they find that the allegations in the petition are true, and that it is just and expedient to make further provision for the care, education and support of such child, they shall make a record thereof, signed by them or a majority of them, which shall be recorded by the clerk of said city or town in a suitable book.

Municipal officers shall, on complaint, give notice of hearings on cases of alleged abuse of children by parents. R. S., c. 59, § 25.

—hearing.

—record of proceedings.

SEC. 46. Upon making such record such municipal officers or some person appointed by them for that purpose, shall make complaint under oath to a judge of a court or to any trial justice, which complaint shall contain, in substance, the allegations set forth in said petition, and a prayer that such provision may be made for the care, custody, support and education of the child named in said complaint as justice requires, and thereupon the magistrate, before whom such complaint is made, shall issue his warrant and cause such child to be brought before him, and if, upon notice and hearing, it appears that the allegations of the complaint are true, and that justice requires that such child shall be supported and educated away from its parents, he shall order it to such place or institution as is provided therefor by such town or city, or to such charitable institution or private person, as he deems suitable, *provided*, that such institution or person consents to receive, support and educate it; but such order shall not extend beyond the time when such child arrives at the age of twenty-one years, if a male, or at the age of eighteen years, if a female. An order to the same effect may be made by the probate court in any county where either of the parents of a child resides, upon petition of the superintendent of any such public or charitable institution asking for the care, custody and control of such child, if written consent be given as provided in section thirty-two of chapter sixty-seven. Such orders and decrees shall have the same effect to divest the parents of all legal rights in respect to such child as specified in section thirty-four of said chapter sixty-seven, and said institution shall have full control over said child thereafter, for said time, and have authority alone to give the consent required in said section thirty-two.

Municipal officers may make complaint to court or trial justice. R. S., c. 59, § 26. 1891, c. 68.

—proceedings before magistrate.

—magistrate may order child to be placed in charitable institution or with private person.

—probate courts may make order with same effect.

—such decrees shall divest parents of all legal rights.

Magistrate shall require such private person, to give bond.
R. S., c. 59, § 27.

—magistrate may examine into condition of such children.

When town officers may take temporary custody of child.
R. S., c. 59, § 28.

Parents of child in an institution may make application to have its custody restored to them.
R. S., c. 59, § 29.

—notice, hearing, and order.

Expenses may be recovered of parents.
R. S., c. 59, § 30.

Towns may provide for children.
R. S., c. 59, § 31.

SEC. 47. Whenever the magistrate deems it suitable and conducive to the public welfare, that such child be placed under the control of a private person, he shall first take a bond from such person, running to the town where the child resides, in such sum and with such sureties as he approves, conditioned that such person shall humanely treat and properly support, clothe and educate the child, and in case of the non-performance of said bond, a suit may be commenced thereon, and the sum recovered upon such bond shall be paid into the treasury of the town to which the bond is given. Upon application to any magistrate, he shall examine into the condition and welfare of the children who have been provided for under this chapter, and may at any time make such further order in relation to their care, custody, support and education as justice demands.

SEC. 48. Whenever the municipal officers of a town or city have reason to believe that any child will be removed beyond the limits of the state before a hearing can be had, as provided in this chapter, they may at any time until after filing the petition, take the child into their custody and keep it until the hearing before the magistrate, as hereinbefore provided.

SEC. 49. Whenever a child is in the custody of any public or charitable institution, the parents or either of them may make application in writing to any justice of the supreme judicial court to have its custody restored to them. Such notice of the application and the time and place of the hearing thereon as the court orders, shall be given to such institution and to the municipal officers of the town where the proceedings herein provided were commenced, and if, upon such hearing, it appears that the applicant is of sufficient ability and inclination suitably to provide for its support and education, and that justice requires that its custody be restored to such applicant, the judge shall so order, and the custody and control of said child shall thereupon be given to such applicant until the further order of court.

SEC. 50. Any town incurring expenses under the five preceding sections, through the fault of parents who are able properly to support and educate their children, but wrongfully neglect and refuse to do so, may recover of them, in an action of debt, the amount so expended.

SEC. 51. Any town may make proper provision for the support of children mentioned in the six preceding sections, and such support shall not make such children or their parents, paupers.

[The commissioner calls attention to the fact that sections 45-48 do not apply to cases occurring in plantations; the careful use of the words "town or city," seems to limit the application of the sections. No reason is perceived for excluding plantations.]

CHAPTER 60.

DIVORCE AND ANNULING OF MARRIAGES.

SEC. 1. Marriages prohibited in sections one, two, and three, of chapter fifty-nine, if solemnized in this state, are absolutely void; and the sentence of either party to imprisonment for life and confinement under it, dissolves the bonds of matrimony, without legal process in either case.

Certain marriages void, without process.
R. S., c. 60, § 1.
31 Me., 491.
32 Me., 589.
76 Me., 421.

DIVORCE FROM BONDS OF MATRIMONY.

SEC. 2. A divorce from the bonds of matrimony may be decreed by the supreme judicial court in the county where either party resides, at the commencement of proceedings, for causes of adultery, impotence, extreme cruelty, utter desertion continued for three consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium or other drugs, cruel and abusive treatment, or on the libel of the wife, where the husband being of sufficient ability or being able to labor and provide for her, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her, *provided*, that the parties were married in this state or cohabited here after marriage, or if the libelant resided here when the cause of divorce accrued, or had resided here in good faith for one year prior to the commencement of proceedings (or if the libellee is a resident of this state.) (a) But when both parties have been guilty of adultery, or there is collusion between them to procure a divorce, it shall not be granted. Either party may be a witness. (b)

In what cases divorce may be granted.
R. S., c. 60, § 2.
1897, c. 207.
1899, c. 79.

[The clause in brackets was inserted in the amendment of 1897, but was apparently overlooked in the amendment of 1899.]

SEC. 3. The libelant may file in the clerk's office a libel, signed by him, or insert it in a writ of attachment with power to attach real and personal property, to respond to the decrees of the court as in other suits; and service thereon shall be made by summons and copy, fourteen days before it is returnable; and when the divorce is made absolute in vacation, such attachment shall continue for thirty days after the final adjournment of the next term of the court in said county, in which such proceedings have been pending.

Libel filed with clerk, or inserted in writ and served by summons and copy.
R. S., c. 60, § 3.
1887, c. 106.
69 Me., 338.

[This clause is thought to be obsolete. See P. L. 1889, c. 156.]

SEC. 4. When the residence of the libellee can be ascertained, it shall be named in the libel and actual notice shall be obtained, if the libellee is out of the state, in such manner and by such means as may be ordered by the court. When it is not known to the libelant and cannot be ascertained by reasonable diligence, the libelant shall so allege under oath in the libel.

Libellee's residence to be named in libel, when known.
R. S., c. 60, § 4.
87 Me., 492.

SEC. 5. Whoever falsely and corruptly swears or affirms to any facts required as aforesaid, is guilty of perjury, and shall be punished by imprisonment not less than two, nor more than ten years.

Perjury, penalty for.
R. S., c. 60, § 5.

SEC. 6. Pending a libel, the court, or any justice thereof in vacation, may order the husband to pay to the clerk, for the wife, sufficient money for her defense or prosecution thereof, and to make reasonable provision for her separate support; enter such decree for the care and custody of the minor children as they think right; and enforce obedience by appropriate processes. (c)

Pending libel, wife's expenses to be paid by husband.
R. S., c. 60, § 6.

(a) 32 Me., 338; 43 Me., 261; 45 Me., 379; 51 Me., 481; 54 Me., 366; 58 Me., 102, 514; 60 Me., 452; 61 Me., 377; 78 Me., 409; 88 Me., 120.

(b) 61 Me., 397; 69 Me., 535.

(c) 46 Me., 381; 65 Me., 409; 69 Me., 338.

Court may
free wife
from re-
straint pend-
ing libel.
R. S., c. 60, § 7.
Jury trial.
R. S., c. 60, § 8.
1899, c. 121.
58 Me., 162.

Alimony, and
other provi-
sions for wife
in case of
divorce for
husband's
fault.
R. S., c. 60, § 9.
1895, c. 167, § 11.
27 Me., 220.
41 Me., 230.
55 Me., 21.
59 Me., 150, 153.
60 Me., 462.
61 Me., 377, 398.
62 Me., 123.
65 Me., 409.
69 Me., 533.

Provision for
husband, in
case of
divorce for
adultery
of wife.
R. S., c. 60, § 10.
69 Me., 533.

—exception.

New trial
within three
years, when
granted.
R. S., c. 60, § 14.
55 Me., 375.
63 Me., 424.
66 Me., 270.
—alimony.
64 Me., 420.
66 Me., 537.

Divorces
decreed out
of the state.
R. S., c. 60, § 15.
9 Me., 146.
76 Me., 536.
78 Me., 189.

Issue inherit.
R. S., c. 60, § 16.

Disposal of
minor children
and change of
name.
R. S., c. 60, § 17.
1901, c. 151.

—compulsory
powers of
court.

SEC. 7. After a libel is so filed in any county, the court, on the petition of the wife, may prohibit the husband from imposing any restraint on her personal liberty during its pendency.

SEC. 8. If either party requests in writing filed with the clerk on or before the return day of the libel, or the court orders it, the case shall be submitted to a jury; and if they find the allegations are true, and that a divorce ought to be granted according to section two, the court shall so decree.

SEC. 9. When a divorce is decreed for impotence, the wife's real estate shall be restored to her, and the court may enter judgment for her against her husband for so much of her personal property as came to him by the marriage, or its value in money, as it thinks reasonable; and may compel him to disclose, on oath, what personal estate he so received, how it has been disposed of, and what then remains. When a divorce is decreed to the wife for the fault of the husband for any other cause, she shall be entitled to one-third, in common and undivided of all his real estate, except wild lands, which shall descend to her as if he were dead; and the same right to a restoration of her real and personal estate, as in case of divorce for impotence. The court may also decree to her reasonable alimony out of his estate, having regard to his ability; and to effect the purposes aforesaid, may order so much of his real estate, or the rents and profits thereof, as is necessary, to be assigned and set out to her for life; or instead of alimony, may decree a specific sum to be paid by him to her; and use all necessary legal processes to carry its decrees into effect.

SEC. 10. When a divorce is decreed to the husband for the adultery of the wife, he may hold her personal estate forever, and her real estate, of which she was seized during coverture, during his life, if they had a child born alive during marriage, otherwise, during her life only, if he survives her; but the court may allow her so much of her real or personal estate as is necessary for her subsistence. This section does not apply to the wife's property held under chapter sixty-one.

SEC. 11. Within three years after judgment on a libel for divorce, a new trial may be granted as to the divorce when the parties have not cohabited, nor either contracted a new marriage since the former trial; and when either of the parties has contracted a new marriage since the former trial, a new trial may be granted as to alimony or specific sum decreed, on such terms as the court may impose and justice require, when it appears that justice has not been done through fraud, accident, mistake or misfortune.

SEC. 12. When residents of the state go out of it for the purpose of obtaining a divorce for causes which occurred here while the parties lived here, or which do not authorize a divorce here, and a divorce is thus obtained, it shall be void in this state; but in all other cases, a divorce decreed out of the state according to the law of the place, by a court having jurisdiction of the cause and of both parties, shall be valid here.

SEC. 13. A divorce does not bar the issue of the marriage from inheriting, or affect their rights.

SEC. 14. The court making a decree of nullity, or of divorce, or any justice thereof in vacation, may also decree concerning the care, custody and support of the minor children of the parties and with which parent any of them shall live, alter its decree from time to time as circumstances require; change the name of the wife, at her request; and in execution of the powers given it in this chapter may employ any compulsory process which it deems proper, by execution, attachment or other effectual form. (a)

(a) 64 Me., 488; 65 Me., 409; 66 Me., 537; 80 Me., 483.

ANNULLING ILLEGAL MARRIAGES.

SEC. 15. When the validity of a marriage is doubted, either party may file a libel as for divorce; and the court shall decree it annulled or affirmed, according to the proof; but no such decree affects the rights of the libellee, unless he was personally notified to answer, or did answer to the libel.

Illegal marriages, how annulled.
R. S., c. 60, § 18.
55 Me., 362.
76 Me., 422.

SEC. 16. When a marriage is annulled on account of the consanguinity or affinity of the parties, or because it was between a white person and a negro, mulatto or Indian, the issue is illegitimate; but when on account of nonage, insanity or idiocy, the issue is the legitimate issue of the parent capable of contracting marriage.

Issue, when legitimate, and when not.
R. S., c. 60, § 19.
See c. 59, § 2;
1883, c. 203.
76 Me., 422.

[The statute prohibiting a marriage between a white person and a negro, mulatto or Indian was repealed by P. L. 1883, c. 203.]

SEC. 17. When a marriage is annulled on account of a prior marriage, and the parties contracted the second marriage in good faith, believing that a prior husband or wife was dead, that fact shall be stated in the decree of nullity; and the issue of such second marriage, begotten before the commencement of the suit, is the legitimate issue of the parent capable of contracting.

Issue of second marriage, when legitimate.
R. S., c. 60, § 20.

Note. Clerks of courts shall make return of libels for divorce to state registrar of vital statistics, c. 59, § 33.

CHAPTER 61.

RIGHTS OF MARRIED WOMEN.

SEC. 1. A married woman, of any age, may own in her own right real and personal estate acquired by descent, gift, or purchase; and may manage, sell, convey, and devise the same by will, without the joinder or assent of her husband; but real estate directly conveyed to her by her husband, cannot be conveyed by her without the joinder of her husband; except real estate conveyed to her as security or in payment of a bona fide debt actually due to her from her husband. When payment was made for property conveyed to her from the property of her husband, or it was conveyed by him to her without a valuable consideration, it may be taken as the property of her husband to pay his debts contracted before such purchase. (a)

Rights of married women to hold and dispose of property; exceptions.
R. S., c. 61, § 1.
1889, c. 176.

SEC. 2. A woman, having property, is not deprived of any part of the same by her marriage, since April twenty-one, eighteen hundred and forty-four; and a husband, by marriage since that time, acquires no right to any property of his wife. His rights acquired before that time are not affected by this chapter. A married woman may release to her husband the right to control her property, or any part of it, and to dispose of the income thereof for their mutual benefit, and may in writing revoke the same. (b)

A woman does not lose, and a husband does not acquire, rights to her property by marriage.
R. S., c. 61, § 2.
71 Me., 134.

(a) 27 Me., 130; 31 Me., 564; 32 Me., 33; 34 Me., 151, 542, 572; 35 Me., 428; 36 Me., 70, 85; 37 Me., 396, 399; 41 Me., 573; 42 Me., 116; 43 Me., 189; 45 Me., 445, 480; 47 Me., 134, 335; 48 Me., 180, 346; 49 Me., 482; 50 Me., 93, 374; 51 Me., 50, 252, 348, 357, 519; 53 Me., 47; 55 Me., 189, 247; 57 Me., 301, 562; 58 Me., 141; 60 Me., 229; 62 Me., 271; 63 Me., 319, 321; 64 Me., 181; 65 Me., 444-5; 67 Me., 195; 69 Me., 252; 71 Me., 157; 75 Me., 474, 260; 76 Me., 494; 77 Me., 524; 78 Me., 18; 80 Me., 279, 478; 81 Me., 23, 376; 82 Me., 264; 84 Me., 362, 541; 88 Me., 22; 91 Me., 553.

(b) 48 Me., 268; 63 Me., 521; 64 Me., 181; 68 Me., 104, 277; 69 Me., 252; 71 Me., 134; 72 Me., 116; 81 Me., 376; 91 Me., 553.

May be paid for her labor, not done for her family.
R. S., c. 61, § 3.

SEC. 3. She may receive the wages of her personal labor, not performed for her own family, maintain an action therefor in her own name, and hold them in her own right against her husband or any other person. (a)

Husband not liable for wife's debts or torts; her property, but not her body, liable as if sole.
R. S., c. 61, § 4.

SEC. 4. A husband married since April twenty-six, eighteen hundred and fifty-two, is not liable for the debts of his wife contracted before marriage, nor for those contracted afterward in her own name, for any lawful purpose; nor is he liable for her torts committed after April twenty-six, eighteen hundred and eighty-three, in which he takes no part; but she is liable in all such cases; a suit may be maintained against her, *or against her and her husband* * therefor; and her property may be attached and taken on execution for such debts and for damages for such torts, as if she were sole; but she cannot be arrested. (b)

* "A harmless and useless form." 95 Me. 109.

She may sue and be sued relative to her property, as if sole, or may join with husband, but neither is liable to arrest.
R. S., c. 61, § 5.

SEC. 5. She may prosecute and defend suits at law or in equity, either of tort or contract, in her own name, without the joinder of her husband, for the preservation and protection of her property and personal rights, or for the redress of her injuries, as if unmarried, or may *do it* (prosecute such suits) jointly with her husband, and the husband shall not settle or discharge any such action or cause of action without the written consent of the wife. Neither of them can be arrested on such writ or execution, nor can he alone maintain an action respecting his wife's property. (c)

How property of married woman, dying intestate, shall descend.
R. S., c. 61, § 6. 1895, c. 157, § 12.—husband and wife may dispose of it by settlement.
Sec. c. 75, §§ 9, 10, 11.

SEC. 6. When a married woman dies intestate, her property, real and personal, descends as provided in chapter seventy-five; and administration and distribution may take place accordingly; but a husband and wife, by a marriage settlement executed in presence of two witnesses before marriage, may determine what rights each shall have in the other's estate during the marriage, and after its dissolution by death, and may bar each other of all rights in their respective estates not so secured to them. (d)

Rights of wife when husband has abandoned her, or is in state prison.
R. S., c. 61, § 7. 47 Me., 230. 91 Me., 553.

SEC. 7. When a husband abandons his wife and leaves the state, without making sufficient provision for her maintenance, or is confined in the state prison in execution of a sentence, the supreme judicial court, on her application, may authorize her, during such absence or confinement, to make contracts under seal or otherwise, and may authorize any person holding personal property to which her husband is entitled in her right, to pay or deliver the same to her, for her disposal, and for it she may give a valid discharge. Such application may be presented in any county and notice thereof given, as in case of a libel for divorce, before such powers are granted.

Her contracts so made, may be enforced.
R. S., c. 61, § 8. 91 Me., 553.

SEC. 8. All contracts, lawfully made by her by virtue of such power, are binding upon her and her husband, and during such absence or confinement, she may sue and be sued thereon, as well as for all acts done by her; and execution may be enforced against her, as if unmarried. No such suit is abated by the return or release of the husband, but he may, on application, be admitted to prosecute or defend jointly with her.

Damages awarded for real estate of wife, secured to her.
R. S., c. 61, § 9. 91 Me., 553.

SEC. 9. When the real estate of a married woman is taken or damaged for public use, the amount awarded therefor shall be so invested as to secure to her the same benefits that she would have had from the estate. The court may, on her application, hear and decide upon her rights, according to the course of chancery proceedings.

(a) 58 Me., 55; 64 Me., 181; 66 Me., 184; 76 Me., 524; 80 Me., 348; 88 Me., 22; 91 Me., 553.

(b) 41 Me., 245; 42 Me., 116; 55 Me., 516; 57 Me., 547; 63 Me., 409; 64 Me., 181; 65 Me., 222; 69 Me., 110, 252; 76 Me., 426; 80 Me., 537; 82 Me., 260; 91 Me., 546; 95 Me., 107.

(c) 33 Me., 197; 35 Me., 339; 46 Me., 298; 51 Me., 79; 54 Me., 159; 55 Me., 247, 359; 58 Me., 55; 67 Me., 309; 68 Me., 104, 277; 70 Me., 382; 76 Me., 423; 80 Me., 537; 84 Me., 82; 88 Me., 22; 91 Me., 553.

(d) 45 Me., 262; 69 Me., 251; 82 Me., 237; 95 Me., 77.

SEC. 10. When a married woman comes from any other state or country, and remains in this state, without living with her husband, she may make contracts, dispose of property, sue, and be sued, as if unmarried. When her husband comes and claims his marital rights, her contracts and suits are affected the same as if they were then first married.

Wife coming from another state without her husband; powers of. R. S., c. 61, § 10. 54 Me., 159. 91 Me., 553.

SEC. 11. *The administrator of a deceased married woman, whose husband survives, may pay all reasonable expenses occasioned by her last sickness.*

Expenses of last sickness may be paid from her estate. R. S., c. 61, § 11.

[Sections seven, eight, nine and ten were originally enacted before the passage of the various acts enlarging the rights of married women. See R. S., 1841, c. 87, §§ 22-33. The commissioner suggests that they may properly be omitted from the revision. The provisions of section eleven are repeated in c. 64, § 63.]

SEC. 12. Whenever a man, having a wife, a minor child, or both, residing in this state, and from whom he lives apart, and being of sufficient ability, or being able to labor and provide for them, wilfully and without reasonable cause, refuses or neglects to provide suitable maintenance for them, the supreme judicial court, the superior courts and the Bangor Municipal Court, in term time, or vacation, in the county where the wife or children reside, on petition of the wife for herself, and for such children, or of such children, by their guardian, after such notice to the husband or father as it may order, and hearing, may order him to contribute to the support of his wife, if the separation was without her fault, and to the support of such children, such sums payable weekly, monthly or quarterly, as are deemed reasonable and just, and may enforce obedience by appropriate decrees. Execution may also issue for said sums, when payable, and for costs; *provided, however*, that the jurisdiction of the Bangor Municipal Court, in cases arising under the provisions of this section shall be limited to cases in which the defendant resides in Penobscot county.

Husband and father living apart from his family, may be compelled to contribute to support of wife or minor children. 1899, c. 25.

—executions may issue.

CHAPTER 62.

MASTERS, APPRENTICES AND SERVANTS.

SEC. 1. In all cases where the care of the person, and the education of minors under fourteen years of age, have been entrusted to the parents, or to either of them, or to a legal guardian, under the provisions of section three of chapter sixty-seven, such children may be bound as apprentices or servants, until that age, without their consent, by the parents or parent so entrusted, or by the guardian so entrusted with the approval of the judge of probate and in all other cases, such children may be bound as apprentices or servants, until that age, without their consent, by their father and mother, if living, if either has deceased, by the survivor, if both have deceased, by the legal guardian with the approval of the judge of probate as aforesaid, and if they have no parent or guardian, they may bind themselves with the approbation of the municipal officers of the town where they reside. The indenture shall, on the part of such parents or guardians, continue in force for the time mentioned in the following section, *provided*, that the children, on reaching the age of fourteen, give their consent, as provided in said section.

Binding of minors, under age of fourteen. 1895, c. 28. 43 Me., 458.

SEC. 2. Minors, above the age of fourteen, may be bound in the same manner, with their consent, which shall be distinctly expressed in the indenture signed by them; females to the age of eighteen, or to the time of their marriage within that age, and males to the age of twenty-one years.

Binding of minors above fourteen. R. S., c. 62, § 2. 43 Me., 459.

SEC. 3. No minor of any age shall be thus bound, unless by an indenture of two parts, signed, sealed, and delivered by both parties; and when the minor binds himself, by the consent of the municipal officers, such consent shall be in writing, signed by them on each part of the indenture.

Indentures in such cases. R. S., c. 62, § 3. 13 Me., 153.

By whom indentures shall be kept, or deposited.
R. S., c. 62, § 4.

Consideration, how secured.
R. S., c. 62, § 5.
56 Me., 530.

Not binding after death of master.—no transfer or removal from state.
R. S., c. 62, § 6.

Remedies of parties the same as in chapter 24.
R. S., c. 62, § 7.
See c. 24, §§ 22-30.

SEC. 4. One part of the indenture shall be kept by the master or mistress, to whom the minor is bound, and the other part, by the parent or guardian for the use of the minor; and when made by consent of the municipal officers as aforesaid, it shall be deposited with the town clerk.

SEC. 5. All considerations, allowed by the master or mistress in any contract of service or apprenticeship, shall be secured by the indenture, to the sole use of the minor; and paid to him without any control on the part of the parent or guardian at any time.

SEC. 6. All indentures made as aforesaid shall, in law, bind all parties thereto; but not the minors, parents or guardians, after the death of the master or mistress; nor shall such minors be transferred to another person, or carried out of the state.

SEC. 7. Parents and guardians, municipal officers, and masters and mistresses, joining in such indentures, have the like remedies and proceedings thereon, as are provided for corresponding parties in chapter twenty-four.

Note. Overseers may bind, as apprentices or servants, children of paupers, c. 24, § 22; also persons of age without apparent means of support, § 23. Liability of apprentice for breach of pound, c. 23, § 20; of masters for offenses of servants or apprentices under c. 25, § 14.