

MAINE STATE LEGISLATURE

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EIGHTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

PASSED SEPTEMBER 20, 1944, AND TAKING EFFECT
DECEMBER 30, 1944

VOLUME II



By the Authority of the Legislature

AUGUSTA
KENNEBEC JOURNAL PRINT

be set forth in substance that since the rendition of judgment, the creditor (naming him) has died, and that the person whose name is inserted in his place is the executor or administrator of his estate; and the command to the officer shall be the same as if the judgment had been recovered by the executor or administrator, who shall hold any real estate levied on to the same uses as if he had recovered judgment in his representative capacity.

CHAPTER 153.

DOMESTIC RELATIONS.

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Marriage and its Solemnization

Sec. 1. Marriages prohibited within certain degrees. R. S. c. 72, § 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.

See § 51.

Sec. 2. Void marriages. R. S. c. 72, § 2. No insane or feeble-minded person or idiot is capable of contracting marriage.

See §§ 9, 51, 53; 46 Me. 510; *76 Me. 421, 595; 97 Me. 133.

Sec. 3. Polygamy. R. S. c. 72, § 3. Marriages, contracted while either of the parties has a former wife or husband not divorced, living, are void.

See § 51.

Sec. 4. Intentions of marriage to be recorded. R. S. c. 72, § 4. 1933, c. 118, § 1. 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 5 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 5 days before such certificate is granted; 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; and if both parties reside out of the state they shall cause notice of their intentions to be recorded in the office of the clerk of the town in

which such parties propose to have the marriage solemnized, at least 5 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.

Upon application by both of the parties to an intended marriage, when both parties are residents of this state, or both parties are non-residents, or upon application of the party residing within the state when one of the parties is a resident and the other a non-resident, a judge of probate or the judge of a municipal court or trial justice may, after hearing such evidence as is presented, grant a certificate stating that in his opinion it is expedient that the intended marriage be solemnized without delay. Upon the presentation of such a certificate, or a copy thereof certified by the clerk of the court by which the certificate was issued, or in extraordinary or emergency cases when the death of either party is imminent, upon the authoritative request of a minister, clergyman, priest, rabbi, or attending physician, the clerk or registrar of the city or town in which the intention to be joined in marriage has been filed shall at once issue the certificate as prescribed in this section.

The 5 days' notice required by the provisions of this section shall not apply to cases in which either of the parties to an intended marriage has arrived as an immigrant from a foreign country within 5 days.

See c. 22, §§ 107-115, re premarital medical examination, etc.

Sec. 5. Clerk to give certificate to parties, but not to paupers, nor to minors without written consent of parents or guardian; penalty. R. S. c. 72, § 5. 1933, c. 12; c. 24, § 2. 1939, c. 99; c. 126, § 1. 1941, c. 66, § 1. On and after the 5th day from the filing of notice of intentions of marriage, except as otherwise provided, 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, which shall be performed in the presence of at least 2 witnesses besides the clergyman or magistrate officiating; but no such certificate shall be issued to a male under 21, or to a female under 18 years of age, without the written consent of their parents or guardians first presented, if they have any living; or to a male or female under 16 years of age without the written consent of their parents or guardians first presented, if they have any living, and without said clerk having notified in writing the judge of probate in the county in which they reside of the filing of such intentions, who may in the interest of public welfare order that no such certificate shall be issued, nor to a state, city, or town pauper, when the overseers of such town where the pauper resides, deposit a list of their state, city, or town paupers with the clerk. Such certificate is void if not used within 1 year after the date of issuance. Whoever contracts a marriage or makes false representations to procure the certificate provided for above or the solemnization of marriage contrary to the provisions of this chapter shall forfeit \$100. The clerk of any town or his deputy who intentionally violates the provisions of this section or falsely states the residence of either party named in the certificate above mentioned shall forfeit \$20 for each offense.

See c. 22, §§ 107-115, re premarital medical examination etc.

Sec. 6. Certificate of record of intentions of marriage, how printed. R. S. c. 72, § 6. All such certificates shall have conspicuously printed thereon the following words: "The laws of Maine provide that a fine of not more than \$1,000, or imprisonment for not more than 5 years, shall be the punishment of any clergyman or other person, who shall solemnize a marriage within this state unless

authorized to solemnize marriages therein." Following the above words, said certificate shall contain the blank form for the return to the clerk with a space for the entry of the date of the commission or license issued to the person solemnizing such marriage.

See § 14.

Sec. 7. Certificate of marriage out of state to be filed; penalty. R. S. c. 72, § 7. 1933, c. 24, § 1. 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, on the blank prepared by the state registrar for that purpose, fill out and file a certificate of their marriage with the clerk of the town in which each of them lived, within 7 days after their return. The clerk shall then record such marriage. Any person who fails to make the report of his marriage as above provided shall forfeit \$20, one-half to the prosecutor and one-half to the town where the forfeit is incurred.

Sec. 8. Proceedings when marriage is forbidden. R. S. c. 72, § 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 2 justices of the peace, approving the marriage, after due notice to, and hearing all concerned; provided that the person filing the caution shall within 7 days thereafter procure the decision of such justices, unless they certify that further time is necessary for the purpose. In such 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.

88 Me. 252; 120 Me. 293.

Sec. 9. Marriage in another state in evasion of law, void here. R. S. c. 72, § 9. When residents of this state, with intent to evade the provisions of sections 1, 2, and 3 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. Marriage among Quakers; penalty. R. S. c. 72, § 10. 1933, c. 24, § 3. 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 make return thereof as provided in section 368 of chapter 22. Any person who wilfully neglects or refuses to perform the duty imposed upon him by the provisions of this section shall be punished by a fine of not more than \$100 for each offense, for the use of the town in which the offense occurred.

Sec. 11. Persons authorized to solemnize marriages; secretary of state to issue license; license or certified copy to be received as evidence; revocation of license; penalty. R. S. c. 72, § 11. 1933, c. 24, § 4. Every justice of the peace and every notary public residing in this state may solemnize marriages therein. Every ordained minister of the gospel, clergyman engaged in the service of the religious body to which he belongs, or person licensed to preach by an association of ministers, religious seminary, or ecclesiastical body, whether a resident or non-resident of this state, and of either sex, may solemnize marriages therein

after being licensed for that purpose, upon application duly filed with the secretary of state, as herein provided. Such application shall be made upon blanks furnished by the secretary of state, which shall be signed by the applicant and set forth the necessary facts in the premises, which facts shall be certified to by the clerk, treasurer, or any of the municipal officers of the town wherein the applicant resides, or wherein the ceremony is to be performed. Upon receipt of such application the secretary of state shall issue to the applicant a license under the seal of the state to the effect that he is authorized to solemnize marriages in this state. Such license or a certified copy thereof shall be received as evidence in all courts of his authority in the premises, and a copy of the record of any marriage solemnized by such licensee, duly made and kept, and attested or sworn to by the clerk of the town in which the marriage intention was recorded or in which the marriage was solemnized, shall be received in all courts as evidence of the fact of marriage. Such license shall continue until revoked by the governor for cause, after notice and an opportunity to be heard thereon. If any person wilfully neglects or refuses to perform any duty imposed upon him by the provisions of this section, he shall be punished by a fine of not more than \$100 for each offense, for the use of the town in which the offense occurred, and the state registrar of vital statistics shall enforce the provisions of this section as far as it comes within his power and shall notify the county attorney of the county in which said penalty should be enforced of the facts that have come to his knowledge, and upon receipt of such notice the county attorney shall prosecute the defaulting person or persons.

18 Me. 310; 42 Me. 288; 72 Me. 548.

Sec. 12. Copy of record, legal evidence. R. S. c. 72, § 12. A copy of a record of marriage duly made and kept, and 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.

19 Me. 158; 120 Me. 290.

Sec. 13. Marriage valid, if consummated in good faith by either party. R. S. c. 72, § 13. 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.

*6 Me. 149; 36 Me. 454; 61 Me. 177; *75 Me. 131.

Sec. 14. Penalties. R. S. c. 72, § 14. 1933, c. 24, § 5. Whoever knowingly and wilfully joins persons in marriage contrary to the provisions of this chapter shall be punished by a fine of \$100; and such offender is forbidden to join any persons in marriage thereafter.

If any person thus forbidden, or any minister or other person not authorized to solemnize marriages, joins any person in marriage, he shall be punished by a fine of not more than \$1,000, or shall be confined to hard labor in the state prison for not more than 5 years.

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 punished by a fine of \$100, or by imprisonment for 6 months.

Sec. 15. Fees for solemnization of marriages. R. S. c. 126, § 18. For solemnizing a marriage and certifying the same, the fee shall be \$1.25.

See c. 99, § 91, re suits for breach of promise to marry.

Parents and Children

Sec. 16. Father and mother joint natural guardians of children; neither has paramount rights. R. S. c. 72, § 43. The father and mother are the joint natural guardians of their minor children and are jointly entitled to the care, custody, control, services, and earnings of such children; and neither parent has any rights paramount to the rights of the other with reference to any matter affecting such children.

See c. 37, § 193, re liability of parent for injury by minor to schoolhouse and school furnishings; 90 Me. 312; 94 Me. 471; *124 Me. 38; 126 Me. 112; 134 Me. 295; 135 Me. 159.

Sec. 17. Parents may maintain joint action for loss of services; either may sue when one refuses. R. S. c. 72, § 44. The parents of a minor child jointly may maintain an action for loss of the services or earnings of such child when such loss is caused by the negligent or wrongful act of another; but where one parent refuses to sue, the other may sue alone. Nothing contained herein shall be deemed to limit, amend, supersede, or affect the provisions of the workmen's compensation law or acts in amendment thereof.

Sec. 18. When one parent is dead or has abandoned child, rights devolve on other. R. S. c. 72, § 45. If one of the parents of a minor child is dead or has abandoned such child, all parental rights respecting such child shall devolve upon the other parent.

Sec. 19. When parents live apart, judge of probate may decree as to care and custody; appeals. R. S. c. 72, § 46. 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 exclusive care and custody of the person of such minor, or he may apportion the care and custody of the said minor between the parents, 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.

See c. 145, § 3, re power of guardian over minor's person and property; 94 Me. 471.

Sec. 20. Vested jurisdiction of courts not affected. R. S. c. 72, § 47. Nothing contained in the 4 preceding sections shall be deemed to abrogate any power or jurisdiction now vested in any court over the care and custody of minor children.

94 Me. 471.

Sec. 21. Administrators etc. may pay funds to a minor not having a guardian in certain cases; limitation on amount; when payment may be made to either parent. R. S. c. 72, § 48. Whenever, under any decree or order of the supreme judicial court or superior court of this state, or of any justice of either of said courts, in term time or in vacation, or of any judge of any probate court in this state, any receiver, master, executor, administrator, trustee, guardian, or other

person acting under authority of either of said courts, or any justice or judge thereof shall have in his hands any funds not exceeding \$200 to be distributed or paid to any person under the age of 21 years, not having a guardian legally appointed in this state, payment may be made directly to such minor, if such minor be 10 years of age, and such minor's receipt therefor shall be a sufficient voucher for such payment in the settlement in court of any account by the party who makes such payment, and shall discharge and release him from any and all further liability on account of the same. When said minor is under 10 years of age the payment may be made to either parent at the discretion of said person paying said money; provided, however, that where the money is paid directly to said minor the person paying the same may, in his discretion, require on such receipt the counter signature of one or both of the parents of such minor, and when the minor is under 10 years of age the person paying the same shall receive the receipt of either or both parents, or if neither parent is living may withhold payment until further order of court, or until the appointment of a guardian.

Sec. 22. Children to care for parents according to ability. 1939, c. 182. Children shall, in proportion to their respective abilities, contribute to the care of or shall care for their parent or parents who have not sufficient ability, income, or property to support themselves jointly or individually.

Bastard Children and Their Maintenance

Sec. 23. Accusation by a woman pregnant with a bastard child, and her examination. R. S. c. 111, § 1. When a woman pregnant with a child, which, if born alive, may be a bastard, or who has been delivered of a bastard child, accuses any man of being the father thereof, before any justice of the peace, and requests a prosecution against him, such justice shall take her accusation and examination on oath, respecting the accused, and the time and place when and where the child was begotten, as correctly as they can be described, and such other circumstances as he deems useful in the discovery of the truth.

8 Me. 164; 16 Me. 40; 36 Me. 488; *39 Me. 471; 64 Me. 373; 66 Me. 271; *70 Me. 418; 81 Me. 65; 83 Me. 146; 105 Me. 411; 116 Me. 359; 125 Me. 439; 132 Me. 326.

Sec. 24. Justice may issue a warrant. R. S. c. 111, § 2. The justice may issue his warrant for the apprehension of the accused, directed to the sheriff of any county in which the accused is supposed to reside, or to either of his deputies, or to a constable of any town in such county, accompanied by such accusation and examination.

See c. 79, § 215, re service of precepts by constables.

Sec. 25. Justice to take bond or commit; expense of support in jail. R. S. c. 111, § 3. When the accused is brought before such or any other justice, he may be required to give bond to the complainant, with sufficient sureties, in such reasonable sum as the justice orders, conditioned for his appearance at the next term of the superior court for the county in which she resides, and for his abiding the order of the court thereon; and if he does not give it, he shall be committed to jail until he does. The cost of commitment and board of the accused while so in jail shall be paid by the county in which said jail is situated. If he gives the required bond after said commitment, he shall be liberated upon the payment of cost of commitment and board.

2 Me. 169; 3 Me. 433; 19 Me. 411; 26 Me. 380; 36 Me. 488; 37 Me. 548; 56 Me. 415; *66 Me. 271; *70 Me. 418; 76 Me. 249; *80 Me. 361; 85 Me. 287; 116 Me. 396.

Sec. 26. Case continued, if complainant is not yet delivered; surrender of principal. R. S. c. 111, § 4. If at such next or any subsequent term, the complainant is not delivered of her child, or is unable to attend court, or shows other good reason, the cause may be continued; and the bond shall remain in force until final judgment, unless the sureties of the accused surrender him in court at any time before final judgment, which they may do, and thereupon they shall be discharged; and he shall be committed until a new bond is given.

76 Me. 249; *80 Me. 357, 361; *116 Me. 396.

Sec. 27. Declaration must be filed before trial; its form. R. S. c. 111, § 5. 1937, c. 219. Before proceeding to trial, the complainant must file a declaration, stating that she has been delivered of a bastard child begotten by the accused, and the time and place when and where it was begotten, with as much precision as the case admits; and that being put on the discovery of the truth during the time of her travail, she accused the respondent of being the father of her child, and that she has been constant in such accusation.

In the event that a Caesarian operation, so called, is performed for the delivery of such bastard child, such accusation of the respondent shall be sufficient, if made within 5 days next prior to the performance of such Caesarian operation upon her, to a duly registered physician, a duly registered osteopathic practitioner, or to a duly qualified registered nurse, and the allegations in the declaration shall be varied to accord therewith.

1 Me. 305; 6 Me. 461; 12 Me. 29; 37 Me. 548; 55 Me. 361; 56 Me. 317; *70 Me. 416; 83 Me. 146; 92 Me. 126; 125 Me. 55; 135 Me. 147.

Sec. 28. On what conditions complainant may maintain her prosecution. R. S. c. 111, § 6. When the complainant has made said accusation; been examined on oath as aforesaid; been put upon the discovery of the truth of such accusation at the time of her travail, and thereupon has accused the same man with being the father of the child of which she is about to be delivered; has continued constant in such accusation, and prosecutes him as the father of such child before such court; he shall be held to answer to such complaint; and she may be a witness in the trial.

8 Me. 164; 18 Me. 307, 374; 23 Me. 574; 33 Me. 481; 34 Me. 238; 35 Me. 434; *39 Me. 471; 44 Me. 347; *56 Me. 317; 57 Me. 491; 64 Me. 372; 67 Me. 246; 83 Me. 147; 92 Me. 125, 126; 125 Me. 55.

Sec. 29. Proceedings after verdict. R. S. c. 111, § 7. If, on such issue, the jury finds the respondent not guilty, he shall be discharged; but if they find him guilty, or the facts in the declaration filed are admitted by default or on demurrer, he shall be adjudged the father of said child; stand charged with its maintenance, with the assistance of the mother, as the court orders; and shall be ordered to pay the complainant her costs of suit and for the expense of her delivery and of her nursing, medicine, and medical attendance during the period of her sickness and convalescence, and of the support of such child to the date of rendition of judgment; and shall give a bond, with sufficient sureties approved by the court, or by the clerk of said court in term time, or in vacation, to the complainant to perform said order, and a bond, with sufficient sureties so approved, to the town liable for the maintenance of such child, and be committed until he gives them. The latter bond shall be deposited with the clerk of the court for the use of such town. If the respondent does not comply with that part of the order relative to payment of expenses and costs of suit, execution may issue therefor as in actions of tort.

2 Me. 170; 37 Me. 548; 61 Me. 406; 70 Me. 415; 72 Me. 255; *80 Me. 357, 361; 112 Me. 106; 132 Me. 119; 133 Me. 329.

Sec. 30. Complainant not to settle with the father, if the town objects in writing. R. S. c. 111, § 8. No woman, whose accusation and examination on oath have been taken by a justice of the peace at her request, shall make a settlement with the father, or give him any discharge to bar or affect such complaint if objected to in writing by the overseers of the poor of the town interested in her support or the child's.

18 Me. 151; 61 Me. 406; 132 Me. 119.

Sec. 31. Town, failing in suit, pays costs. R. S. c. 111, § 9. A town prosecuting in behalf of the complainant is liable to the respondent, if he prevails, for his costs of court, to be recovered in an action of the case; or the court may, on his motion, enter judgment against the town for such costs and issue execution thereon.

61 Me. 406.

Sec. 32. Discharge of father from imprisonment after 6 months; action to recover sums due. R. S. c. 111, § 10. When the father of such bastard child has remained for 6 months in jail, without being able to comply with the order of the court, he may be liberated by taking the poor debtor's oath, as persons committed on execution; but he shall give 15 days' notice of his intention to do so, to the mother, if living, and to the clerk of the town where the child has its legal settlement, if in the state. The mother and said town may, after such liberation, recover of him by action of debt any sum of money, which ought to have been paid pursuant to the order of the court.

19 Me. 411; 32 Me. 21; 133 Me. 329.

Sec. 33. Complainant dying before trial. R. S. c. 111, § 11. When the complainant dies before trial, her executor or administrator may prosecute her action to final judgment; and in case of judgment against the respondent, the bond for performance of the order of court, required by the provisions of section 29, shall run to such executor or administrator, who, after payment of the costs of prosecution, shall appropriate to the support of the child the money recovered of the respondent.

85 Me. 224.

Sec. 34. Blood grouping tests. 1939, c. 259. After return day, the court, in term time or vacation on motion of the respondent, shall order the complainant, her child, and the respondent to submit to one or more blood grouping tests to determine whether or not paternity of the respondent can be excluded, the specimens for the purpose to be collected and the tests to be made by duly qualified physicians and under such restrictions as the court shall direct, the expenses therefor to be audited by the court and borne by the respondent. The results of such tests shall be admissible in evidence, but only in cases where exclusion is established. The order for such tests may also direct that the testimony of the examining physicians may be taken by deposition.

Rights of Married Women

Sec. 35. Rights of married women to hold and dispose of property; exceptions. R. S. c. 74, § 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 such conveyance without the joinder or assent of the husband shall not bar his right and interest by descent in the estate so conveyed.

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.

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. 250, 474; 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; 96 Me. 530; *97 Me. 494; 100 Me. 511; *107 Me. 445; 112 Me. *369, 431; 120 Me. 287.

Sec. 36. A woman does not lose and a husband does not acquire rights to her property by marriage. R. S. c. 74, § 2. A woman, having property, is not deprived of any part of the same by her marriage; and a husband, by marriage acquires no right to any property of his wife. 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.

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.

Sec. 37. May be paid for her labor not done for her family. R. S. c. 74, § 3. A married woman 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.

58 Me. 55; *64 Me. 181; 66 Me. 184; 76 Me. 524; 80 Me. 348; *88 Me. 22; *91 Me. 553; 107 Me. 483; 120 Me. 514; 126 Me. 566; 136 Me. 33.

Sec. 38. Husband not liable for wife's debts or torts; her property, but not her body, liable as if sole. R. S. c. 74, § 4. A husband is not liable for the debts of his wife contracted before marriage, nor for those contracted in her own name, for any lawful purpose; nor is he liable for her torts in which he takes no part; but she is liable in all such cases. A suit may be maintained against her 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.

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; 96 Me. 533; 112 Me. 370; *118 Me. 346; 121 Me. 228; *124 Me. 391; 135 Me. 159.

Sec. 39. Capacity to prosecute or defend suits at law, with or without joinder of husband; neither liable to arrest. R. S. c. 74, § 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 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.

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; 110 Me. 305; *120 Me. 480; 131 Me. 280; 135 Me. 54, 159.

Sec. 40. Proceedings in equity between husband and wife. R. S. c. 74, § 6. A wife may bring a bill in equity against her husband for the recovery, conveyance, transfer, payment, or delivery to her of any property, real or personal or both, exceeding \$100 in value, standing in his name, or to which he has the legal title, or which is in his possession, or under his control, which in equity and good conscience belongs to her and which he neglects or refuses to convey, transfer, pay over, or deliver to her, and upon proper proof, may maintain such bill. And a husband shall have the same right to bring and maintain a bill in equity against his wife for the purposes aforesaid, subject to the limitations aforesaid. Marriage shall be no bar to the maintenance of a bill in equity by a wife against her husband or by a husband against his wife, brought for the purposes aforesaid. No costs shall be awarded against either party in any such proceedings. If it satisfactorily appears to the court on hearing that the party bringing the bill has conveyed or transferred any of her or of his property, real or personal, to the other party to the bill for the purpose of cheating, defrauding, hindering, or delaying her or his creditors, the bill shall be dismissed. An appeal from any final decree may be taken as in other equity causes. There shall be no survival of the right to institute proceedings under the provisions of this section, and if a wife or husband dies after the commencement of proceedings hereunder and before the final determination and disposition of the same, such proceedings shall abate.

See c. 95, § 4, sub-§ IX, re equity powers to hear and determine property matters between wife and husband; *113 Me. 227; *118 Me. 337; 124 Me. 263; 135 Me. 54.

Sec. 41. Action by married woman for alienation of affections of husband. R. S. c. 74, § 7. 1941, c. 104, § 2. Whoever, being a female person more than 18 years of age, debauches and carnally knows, carries on criminal conversation with, alienates the affections of, the husband of any married woman, or by any arts, enticements, and inducements deprives any married woman of the aid, comfort, and society of her husband, or, whoever, being a male person, alienates the affections of the husband of any married woman, or by any arts, enticements, and inducements, deprives any married woman of the aid, comfort, and society of her husband, shall be liable in damages to said married woman in an action on the case brought by her within 3 years after the discovery of such offense.

See c. 99, § 91, re suits for breach of promise to marry; *115 Me. 341; *118 Me. 441; 120 Me. 482; *122 Me. 40; *126 Me. 320; 130 Me. 414; 132 Me. 202.

Sec. 42. Descent of property of married woman, dying intestate; husband and wife may dispose of it by antenuptial settlement. R. S. c. 74, § 8. When a married woman dies intestate, her property, real and personal, descends as provided in chapter 156; and administration and distribution may take place accordingly; but a husband and wife, by a marriage settlement executed in presence of 2 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.

See c. 156, §§ 9-12, re rights of surviving husbands and wives; 45 Me. 262; *69 Me. 251; *82 Me. 237; *95 Me. 77; 96 Me. 533; 105 Me. 63; 116 Me. 321; 125 Me. 82; 139 Me. 243.

Sec. 43. Husband and father compelled to contribute to support of wife or minor children. R. S. c. 74, § 9. 1933, c. 36. 1937, c. 124. 1939, c. 214. Whenever a man, having a wife, a minor child or children, residing in this state, 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 main-

tenance for them, the superior court, the probate courts, and any municipal court, in term time, or any judge or justice of said courts in vacation, in the county where the wife or such minor child or children reside, on petition of the wife for herself and for such child or children, or of such child or 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 and such minor child or children or either of them such sums payable weekly, monthly, or quarterly, as are deemed reasonable and just, and may enforce obedience by appropriate decrees. Pending petition hereunder the court may order the husband to pay to the court for the wife sufficient money for the prosecution thereof upon default of which order execution may issue as in actions of tort. Execution may also issue for said sums, when payable and for costs and when the husband is committed to jail on execution the county having jurisdiction of the process shall bear the expense of his support. Any party aggrieved by any order or decree authorized by the provisions of this section and made by a probate court or municipal court may appeal from said order or decree in the same manner as provided for appeals from such court in other causes, and appeal may be taken from the superior court to the law court. Provided, however, that pending the determination of such appeal, the order or decree appealed from shall remain in force and obedience thereto may be enforced as if no appeal had been taken. Said appeal shall be in order for hearing at the 1st term of the court, appealed to, held after said appeal is taken, and no continuance thereof shall be had without the consent of the appellant or without legal cause shown therefor to the justice of said court to which appeal is had.

See c. 125, §§ 1-4, 14, re criminal proceedings for desertion of families; 103 Me. 211; 104 Me. 354; *122 Me. 15; 132 Me. 302; 136 Me. 7.

Judicial Separation of Husband and Wife

Sec. 44. Proceedings in probate court for protection of wife deserted by or living apart from her husband. R. S. c. 74, § 10. If a husband, without just cause, deserts his wife, or if his wife, for just cause, is actually living apart from him, and if such desertion or living apart has continued for a period of at least 1 year next prior to the filing of the petition hereinafter referred to, the probate court may, upon her petition, or if she is insane, upon the petition of her guardian or next friend, enter a decree that such wife is so deserted or is so living apart and may prohibit the husband from imposing any restraint on her personal liberty during such time as such court shall by order direct; and upon the petition of either the husband or wife, or of the guardian or next friend of either who may be insane, may make further orders relative to the care, custody, and maintenance of the minor children of the parties, may determine with which of their parents such children or any of them shall remain, may order the husband to pay to such court for the wife sufficient money for the prosecution of such petition, and may from time to time, upon a similar petition, revise or alter any such order and make a new order in lieu thereof, as the circumstances of the parties or such minor children or any of them may require, and may enforce obedience by appropriate process.

See §§ 47, 49; 123 Me. 530; 128 Me. 126.

Sec. 45. Proceedings by husband deserted by or living apart from wife; decree bars wife's rights in husband's property. R. S. c. 74, § 11. If a wife, without just cause, deserts her husband, or if he is living apart from her for just cause, and if such desertion or living apart has continued for the period set out in

the preceding section, the probate court may upon petition of the husband, or if he is insane, upon the petition of his guardian or next friend, enter a decree that such husband is so deserted or is so living apart, and such husband may thereafter convey his real property in the same manner as if he were sole, and no portion of his estate shall descend to his said wife at his decease, neither shall she be entitled to receive any distributive share thereof or to waive any will made by him in her favor.

See §§ 47, 49.

Sec. 46. Deserted wife obtaining decree may convey her property as if sole; decree bars husband's rights. R. S. c. 74, § 12. If the probate court has entered a decree that a wife has been deserted by her husband, without just cause, or has lived apart from him for just cause, for the period set out in section 44, she may convey her real property in the same manner and with the same effect as if she were sole, and no portion of her estate shall descend to her said husband at her decease, neither shall he be entitled to receive any distributive share thereof or to waive the provisions of any will made by her in his favor.

See §§ 47, 49.

Sec. 47. Petition, where brought; notice. R. S. c. 74, § 13. The petition under the provisions of the 3 preceding sections may be brought and determined in the county in which either of the parties lives, except that if the petitioner has left the county in which the parties lived together and the respondent still lives therein, the petition shall be brought in that county, and such notice shall be given thereon as the judge of said court shall direct.

See § 49.

Sec. 48. Rights of issue, marriage settlement or contract not affected. R. S. c. 74, § 14. The provisions of the 4 preceding sections shall not bar the issue of the marriage from inheriting or affect their rights, neither shall it invalidate any marriage settlement or contract between the parties.

See § 49.

Sec. 49. Appeal. R. S. c. 74, § 15. Any party aggrieved by any order or decree provided for in sections 44 to 48, inclusive, may take an appeal in the same manner as provided for probate appeals.

Sec. 50. Certified copy of any decree shall be filed in office of register of deeds. R. S. c. 74, § 16. Whenever any decree provided for in sections 44 and 45 shall become effective either by reason of expiration of the time within which an appeal might have been taken or of final judgment on appeal, the register of probate shall forthwith file in the office of the register of deeds in the county or counties where real estate which may be affected by such decree is situated, under seal of the probate court, a certified copy thereof which the register of deeds shall record without fee.

Illegal Marriages and Annulment Thereof

Sec. 51. Certain marriages void, without process. R. S. c. 73, § 1. Marriages prohibited in sections 1, 2, and 3, 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.

31 Me. 491; 32 Me. 589; *76 Me. 421; *97 Me. 133.

Sec. 52. Illegal marriages, how annulled. R. S. c. 73, § 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 libelee, unless he was personally notified to answer, or did answer to the libel.

55 Me. 362; *76 Me. 422; 97 Me. 132; 136 Me. 238, 406.

Sec. 53. Issue, when legitimate, and when not. R. S. c. 73, § 16. When a marriage is annulled on account of the consanguinity or affinity of the parties, 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.

See § 2; 76 Me. 422.

Sec. 54. Issue of second marriage, when legitimate. R. S. c. 73, § 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.

Divorce

Sec. 55. Causes for which divorce may be granted; jurisdiction. R. S. c. 73, § 2. A divorce from the bonds of matrimony may be decreed in the county where either party resides at the commencement of proceedings, for causes of adultery, impotence, extreme cruelty, utter desertion continued for 3 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 1 year prior to the commencement of proceedings, or if the libelee is a resident of this state. 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. The superior court has jurisdiction of libels for divorce in all counties.

32 Me. 338; *43 Me. 261; 45 Me. 379; *51 Me. 481; 54 Me. 366; 58 Me. 162, 514; 60 Me. 452; 61 Me. 377, 397; 69 Me. 535; *78 Me. 409; 88 Me. 120; 111 Me. 406; 114 Me. 60; *118 Me. 454; 119 Me. 81; *120 Me. 395; 121 Me. 104; 123 Me. 448; 125 Me. 397, 506; *126 Me. 342; 127 Me. 126; 129 Me. 487; 136 Me. 65, 238.

Sec. 56. Commencement of proceedings; service. R. S. c. 73, § 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, 14 days before it is returnable; the court in any county or a justice thereof in vacation, may order notice as in other suits.

69 Me. 338; 119 Me. 81; *120 Me. 379; 123 Me. 148.

Sec. 57. Residence of libelee, how alleged; notice, how given. R. S. c. 73, § 4. 1931, c. 5. When the residence of the libelee can be ascertained, it shall be named in the libel and actual notice shall be obtained; if the libelee is out of the state, notice shall be given in such manner and by such means as the court may

order. When a libel is inserted in a writ of attachment, as provided in the preceding section, the residence of the libelee shall be regarded as named in the libel if such residence is named in the writ, and for this purpose the libel and the writ together shall be regarded as constituting the libel. When the residence of the libelee is not known to the libelant, and cannot be ascertained by reasonable diligence, the libelant shall so allege under oath in the libel. Where notice by publication is ordered upon any libel which sets out adultery as a ground for divorce the name of any alleged paramour of the libelee, if set out in the libel, shall be omitted from the published notice and a copy of such libel wherein are inserted, in place of such names, the words, "(a certain man named in the libel)" or "(a certain woman named in the libel)," as the case may be, shall, if otherwise correct, be considered and held to be for all purposes a true copy of such libel.

87 Me. 492; 108 Me. 99; 130 Me. 326.

Sec. 58. Perjury, penalty for. R. S. c. 73, § 5. Whoever falsely and corruptly swears or affirms to any facts required as aforesaid is guilty of perjury, and shall be punished by imprisonment for not less than 2 years, nor more than 10 years.

See c. 122, § 1, re definition of perjury.

Sec. 59. Pending libel, wife's expenses to be paid by husband. R. S. c. 73, § 6. 1939, c. 261, § 2. 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, custody, and support of the minor children as the court deems proper; and in all cases enforce obedience by appropriate processes on which costs shall be taxed as in other actions.

46 Me. 381; 65 Me. 409; 69 Me. 338; *112 Me. 419; 123 Me. 243; 136 Me. 65.

Sec. 60. Court may free wife from restraint pending libel. R. S. c. 73, § 7. Pending a libel, the court, or any justice thereof in vacation, on petition of the wife, may prohibit the husband from imposing any restraint on her personal liberty; and enforce obedience by appropriate processes.

130 Me. 414.

Sec. 61. Issues for jury in divorce libels; when in order for hearing. R. S. c. 73, § 8. 1931, c. 4. Whenever, in a hearing on a libel for divorce, any question of fact arises which may properly be submitted to a jury, issues may be framed for that purpose, under the direction of the presiding justice, and the findings of a jury thereon shall have the same force and effect as similar findings in probate appeals. All libels for divorce shall be in order for hearing at the first or return term, provided service of said libel has been made in accordance with the provisions of this chapter not less than 60 days before said return term.

See c. 140, § 32 et seq., re supreme court of probate; 58 Me. 162; 119 Me. 14.

Sec. 62. Alimony, and other provisions for wife in case of divorce for husband's fault. R. S. c. 73, § 9. 1939, c. 271, § 1. 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 $\frac{1}{3}$ 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 sufficient money for her defense or prosecution of hearings affecting alimony; 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 or payable in such manner and at such times as the court may direct; and may at any time alter, amend, or suspend a decree for alimony or specific sum when it appears that justice requires; and use all necessary legal processes to carry its decrees into effect.

See c. 156, § 1, re rules of descent; 27 Me. 220; 41 Me. 230; 55 Me. 21; *59 Me. 150, 153; 60 Me. 452; 61 Me. 377, 398; 62 Me. 123; 65 Me. 409; *69 Me. 533; *107 Me. 35; 117 Me. 236; 122 Me. 156; 136 Me. 65.

Sec. 63. Payment of alimony. 1937, c. 155. 1939, c. 91. 1941, c. 81. 1943, c. 139. Pending a petition to enforce a decree of alimony, or a decree for payment of money instead thereof, or for the support of minor children, or a decree for support pending libel, or for payment of counsel fees, the court may order the husband or father to pay to the clerk of the court, or to counsel for the wife or mother sufficient money for the prosecution thereof, upon default of which order execution may issue as in actions of tort. Petition for such execution may be signed by the person seeking same or his attorney of record in such divorce action. When the husband or father is committed to jail on execution issued upon decree of alimony, or for payment of money instead thereof, or for the support of his minor children, or for support pending libel, or for payment of counsel fees, the county having jurisdiction of the process shall bear the expense of his support and he may be discharged from imprisonment by payment of the execution and all costs and expenses of his commitment and support, and he shall not be entitled to relief therefrom under the provisions of chapter 107; provided, however, that he may petition the court issuing such execution for relief, whereupon a judge of such court after due notice to the wife or mother, and hearing thereon, may order his discharge from imprisonment on such terms and conditions as justice may require.

Sec. 64. Provisions for husband in case of divorce for fault of wife. R. S. c. 73, § 10. When a divorce is decreed to the husband for the fault of the wife, he shall be entitled to $\frac{1}{3}$ in common and undivided of all her real estate, except wild lands, which shall descend to him as if she were dead; and the court may allow him so much of her personal estate as seems reasonable. In all cases the right, title, and interest of the libelee in the real estate of the libelant shall be barred by the decree.

See c. 156, § 1, re rules of descent; 69 Me. 533; 130 Me. 521.

Sec. 65. New trial within 3 years, when granted. R. S. c. 73, § 11. 1937, c. 7. 1939, c. 271, § 2. Within 3 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.

55 Me. 375; 63 Me. 424; 66 Me. 270, 537; 64 Me. 420; 119 Me. 17; *120 Me. 407; 136 Me. 65; 137 Me. 39.

Sec. 66. Divorces decreed out of the state. R. S. c. 73, § 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.

*9 Me. 146; 76 Me. 536; *78 Me. 189; 136 Me. 480; 137 Me. 194.

Sec. 67. Issue inherit. R. S. c. 73, § 13. A divorce does not bar the issue of the marriage from inheriting, or affect their rights.

Sec. 68. Investigation of cases in which custody of children is involved. 1935, c. 48. Whenever in any divorce action the custody of a minor child is involved, and the court determines that the proper disposition of the case requires an investigation of the conditions and antecedents of the child and its parents for the purpose of determining the fitness of either parent to have custody of such child, the court may notify the bureau of social welfare. It shall then be the duty of the bureau to make such an investigation and submit to the court a full report in writing with a recommendation as to the disposition of such child and any other information regarding the case which the court may require; provided that within the discretion of the court the action may be continued to the succeeding term for the completion of such report. Such report shall be available for examination by counsel before a decree is made, and upon request of any interested party the court shall require the person making the report to testify subject to cross-examination and to rebuttal.

Sec. 69. Disposal of minor children; change name of wife; employ compulsory process deemed proper; expense of maintenance and education. R. S. c. 73, § 14. 1935, c. 38. 1939, c. 156; c. 261, § 3. 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 parents any of them shall live, or grant the care and custody of said children to a third person or to some suitable society or institution for the care and protection of children or to the department of health and welfare, and may also 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 under the provisions of this chapter may employ any compulsory process which it deems proper, by execution, attachment, or other effectual form, on which costs shall be taxed as in other actions. In all proceedings under the provisions of this chapter where the husband is committed to jail on any execution issued upon decree for alimony, or for payment of money instead thereof, or for the support of the minor children of the parties, the county having jurisdiction of the proceedings shall bear the expense of his support in jail.

The expense of maintenance and education of children committed to care and custody of the department of health and welfare under the provisions of this section shall be borne in accordance with the provisions of section 240 of chapter 22.

64 Me. 488; 65 Me. 409; 66 Me. 537; 80 Me. 483; 127 Me. 357; 136 Me. 7, 65.