

MAINE STATE LEGISLATURE

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CHAPTER 13
 DIVORCE AND ANNULMENT

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SUBCHAPTER I

ANNULMENT

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§ 631. Certain marriages void, without process

Marriages prohibited in sections 31, 32 and 33, 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.

R.S.1954, c. 166, § 51.

§ 632. Annulment of illegal marriages

When the validity of a marriage is doubted, either party may file a complaint as for divorce, and the court shall order it annulled or affirmed according to the proof; but no such order affects the rights of the defendant unless he was actually notified of the action or answered to the complaint.

R.S.1954, c. 166, § 52; 1959, c. 317, § 296.

§ 633. Legitimacy of issue

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, mental illness or idiocy, the issue is the legitimate issue of the parent capable of contracting marriage.

R.S.1954, c. 166, § 53; 1959, c. 242, § 8.

§ 634. Issue of 2nd marriage legitimate

When a marriage is annulled on account of a prior marriage, and the party who was capable of contracting the 2nd marriage contracted the 2nd marriage in good faith, believing that a prior husband or wife was dead, or that the former marriage was void, or that a divorce had been decreed leaving the party to the former marriage free to marry again, that fact shall be stated in the decree of nullity. The issue of such 2nd marriage, begotten before the commencement of the action, is the legitimate issue of the parent capable of contracting.

R.S.1954, c. 166, § 54.

§ 635. Jurisdiction

The District Court shall possess original jurisdiction, concurrent with the Superior Court, of actions for annulment of marriage under this subchapter.

1963, c. 402, § 271.

SUBCHAPTER II

DIVORCE

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ARTICLE 1. GENERAL PROVISIONS

§ 661. False swearing as perjury

Whoever falsely and corruptly swears or affirms to any facts required by this chapter is guilty of perjury and shall be punished by imprisonment for not less than 2 years nor more than 10 years.

R.S.1954, c. 166, § 58.

§ 662. Certain divorces validated

All divorces heretofore granted in this State on libels inserted in a writ of attachment, and otherwise valid except for want of attachment nominal or otherwise upon the writ, are validated.

R.S.1954, c. 166, § 62.

§ 663. Out-of-state divorces

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.

R.S.1954, c. 166, § 67.

§ 664. Jurisdiction

The District Court shall possess original jurisdiction, concurrent with the Superior Court, of actions for divorce under this subchapter.

1963, c. 402, § 272.

ARTICLE 2. GROUNDS AND PROCEDURE

§ 691. Grounds; jurisdiction

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 complaint, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium or other drugs, cruel and abusive treatment or, on the complaint 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 the parties were married in this State or cohabited here after marriage, or if the plaintiff resided here when the cause of divorce accrued, or had resided here in good faith for 6 months prior to the commencement of proceedings, or if the defendant 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 actions for divorce in all counties.

R.S.1954, c. 166, § 55; 1959, c. 317, § 297.

§ 692. Attachment or trustee process

Attachment of real or personal property or on trustee process may be used in connection with the commencement of an action for divorce.

R.S.1954, c. 166, § 56; 1959, c. 317, § 298.

§ 693. Pending divorce wife's expenses paid by husband

Pending a divorce action, the court may order the husband to pay to the wife, or to her attorney for the wife, sufficient money for her defense or prosecution thereof, and to make reasonable provision for her separate support, on a motion for which costs and counsel fees may be ordered; 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 and counsel fees shall be taxed as in other actions.

R.S.1954, c. 166, § 59; 1961, c. 317, § 553.

§ 694. Court may free wife from restraint pending divorce

Pending a divorce action, the court, on motion of the wife, may prohibit the husband from imposing any restraint on her personal liberty; and enforce obedience by appropriate processes.

R.S.1954, c. 166, § 60; 1961, c. 317, § 554.

ARTICLE 3. ALIMONY AND PROPERTY RIGHTS

§ 721. Alimony for wife

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 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 the court 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.

R.S.1954, c. 166, § 63; 1961, c. 317, § 555.

§ 722. Payment of alimony; attorney's fees; support of minor children; execution

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 the divorce

action or for payment of counsel fees, or for the alteration of an existing decree for the custody or support of minor children, the court may order the husband or father to pay to the wife or mother, or to counsel for the wife or mother, sufficient money for the prosecution or defense thereof, upon default of which order execution may issue as in actions of tort. Execution for attorney's fees shall not issue until the action for divorce has been heard. Petition for such execution may be signed by the person seeking same or his attorney of record in such divorce action. At the time of making a final decree in any divorce action, the court may order that execution and such reasonable attorney's fee as the court shall order shall issue against the body of any party to the action charged with the payment of support of minor children or payments of alimony or a specific sum in lieu thereof, upon default of any payment, and the court shall order that the clerk of said court shall issue such execution. 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 the divorce action, or for payment of counsel fees, the county having jurisdiction of the process shall bear the expense of his support and commitment 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 Title 14, chapters 503 and 505. 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.

R.S.1954, c. 166, § 64; 1955, c. 142; c. 308; 1959, c. 317, § 300.

§ 723. Provisions for husband when wife at fault

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. The court may allow him so much of her personal estate as seems reasonable. In all cases the right, title and interest of the defendant in the real estate of the plaintiff shall be barred by the decree.

R.S.1954, c. 166, § 65; 1959, c. 317, § 301.

§ 724. Issue inherit despite divorce

A divorce does not bar the issue of the marriage from inheriting nor affect their rights.

R.S.1954, c. 166, § 68.

§ 725. Descent of real estate in divorce

No rights acquired under sections 721 and 723 by a plaintiff in the real estate of the defendant are effectual against any person except the defendant, his heirs and devisees and persons having actual notice of such divorce unless an abstract of the decree of divorce, setting forth the names and residence of the parties, the date of the decree and the court where granted, is filed in the registry of deeds for the county or registry district where the real estate is situated.

The clerk of the court granting the divorce, at the written request of the plaintiff or his attorney, shall within 5 days of the receipt of said request make and send such an abstract, for recording, by registered mail, or deliver said abstract, to such registry or registries as so requested.

When a divorce has been granted out of the State, the plaintiff, or his attorney, shall cause a duly authenticated copy of such order to be filed with the clerk of courts in each of the counties where the real estate or any part thereof is situated, and upon written request of said plaintiff or his attorney, said clerk, within 5 days thereof, shall make and send such abstract, for recording, by registered mail, or deliver said abstract, to such registry or registries as so requested.

Such abstract shall be deemed recorded as of the time of its receipt in the registry where filed. Such abstract if received within 10 days of the date of the order of divorce shall have effect as if actually received on the date of the order of divorce.

The clerk of courts shall be paid \$2.50 for each such abstract, \$1 of which he shall pay to the register and \$1.50 of which he shall retain as his fee and costs of registered mail, and an additional \$2 as filing fee of the authenticated copy of foreign divorce decree.

No such rights acquired under said sections 721 and 723, after September 1, 1955, shall be effectual against the defendant or any other person, unless said abstract of the order of divorce shall have been recorded, in the manner provided, within one year from the date of said order of divorce.

1955, c. 428; 1959, c. 12; 1961, c. 317, § 556.

ARTICLE 4. CUSTODY AND SUPPORT OF CHILDREN

§ 751. Investigation where custody of children involved

Whenever in any divorce action the custody of a minor child is involved, the court may request the State Department of Health and Welfare to investigate conditions and circumstances of the child and its parents. Upon completion of investigation the department shall submit a written report to the court at least 5 days before date of hearing and at the same time forward a copy thereof to all counsel of record. Upon request of any interested party the court shall require the person making the report to testify at time of hearing.

R.S.1954, c. 166, § 69; 1963, c. 168.

§ 752. Custody of children; change of wife's name; compulsory process; support and maintenance

The court making an order of nullity or of divorce may make an order 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 3rd person or to some suitable society or institution for the care and protection of children or to the Department of Health and Welfare. It may alter its order concerning the care, custody and support of the minor children from time to time as circumstances require, whether or not either parent be then living, upon motion of either party, such society or institution as aforesaid, the State Department of Health and Welfare, any 3rd person to whom care or custody has been granted, any blood relative or any person standing in loco parentis to said minor children; change the name of the wife, at her request; and in execution of the powers given it under this Title 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 this Title where the husband is committed to jail on any execution issued upon order 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 commitment and support in jail.

The expense of maintenance and education of children committed to care and custody of the Department of Health and Wel-

fare under this section shall be borne in accordance with Title 22, section 3794. The Department of Health and Welfare shall have all the powers as to the person, property, earnings and education of every child committed to its custody under this section during the term of commitment which a guardian has to a ward.

An original order made pursuant to this section granting the care and custody of a minor child to the Department of Health and Welfare shall not extend beyond the time when the child shall reach the age of 18 years. But upon application by the department, the court, for sufficient cause, may extend such order to the time when the child shall reach the age of 21 years.

The order of the court for support of minor children may run against the father or the mother in whole or in part or against both as the court in its sound discretion shall determine, irrespective of the fault of the father or the mother in the divorce action. When the order is to run against both, the court shall specify the amount each shall pay.

R.S.1954, c. 166, § 70; 1955, c. 143; 1961, c. 41; 1963, c. 265; c. 414, § 146.