

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING THE

EXTRA SESSION OF 1853, AND SESSION OF 1854.



Augusta:

WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1854.

THIRTY-THIRD LEGISLATURE.

HOUSE.

No. 33.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND
FIFTY-FOUR.

AN ACT in relation to divorce and dissolution of marriages, and giving jurisdiction to the supreme judicial court therein.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. All marriages prohibited by law, on
2 account of consanguinity or affinity between the
3 parties, or for the cause that either of the parties has
4 a former husband or wife then living, except as here-
5 inafter provided, or was an idiot, or insane, when the
6 marriage was solemnized, and all marriages between
7 a white person and a negro, Indian or mulatto, shall,
8 if solemnized in this state, be absolutely void without
9 any decree of divorce or other legal process ; and

10 the sentence of either party to imprisonment for life
11 in the state prison, and confinement under such sen-
12 tence, shall dissolve the bond of matrimony without
13 any legal process.

SECT. 2. All questions of divorce and dissolution
2 of marriage shall be heard and tried by the supreme
3 judicial court held by one justice thereof in the
4 county where the parties or either of them reside at
5 the time of filing the libel, and the court shall take
6 jurisdiction of the cause and parties in all cases in
7 which they were married in this state or had cohab-
8 ited therein as man and wife.

SECT. 3. The party complaining may file his or
2 her libel in the office of the clerk of the court, setting
3 forth, as particularly as the nature of the case will
4 admit, the cause or causes of complaint, which shall
5 be signed by the party complaining; and shall cause
6 the other party, if in this state, to be served with an
7 attested copy of the same, and with a summons to be
8 at the court; and such service to be made fourteen
9 days at least before its session, where the trial is to
10 be had.

SECT. 4. If the party complained of be not in the
2 state, the libel may be presented to the court in

3 session in any county ; and such court shall order
4 what notice shall be given to the other party, and the
5 manner of giving it, returnable in the county where
6 the libelant resides.

SECT. 5. The libel may in all cases, at the option
2 of the libelant, be presented in the first instance to
3 the court as provided in the fourth section, and notice
4 ordered and given as therein mentioned.

SECT. 6. Pending any libel for divorce the court
2 may order the husband to pay to the clerk for the use of
3 the wife such sum or sums of money as shall in the
4 exercise of sound discretion be deemed proper, to be
5 expended by her in the prosecution or defence of said
6 libel ; may order him to make reasonable provision
7 for her separate support ; and may enter such decree
8 touching the care and custody of the minor children
9 of said parties as shall be judged expedient.

SECT. 7. In the trial of all libels for divorce pending
2 or hereafter to be commenced, the libelant shall not
3 be restricted to the proof of causes happening within
4 the state, or where either of the parties are residing
5 in the state, but may allege and prove any facts tending
6 to show that the divorce would be reasonable and
7 proper, conducive to domestic harmony, for the good

8 of the parties, and consistent with the peace and
9 morality of society.

SECT. 8. All libels for divorce from the bonds of
2 matrimony shall be tried by a jury; and the jury, after
3 having received the direction of the court, shall have
4 a right to determine at their discretion the law and
5 the fact; but they shall in no way be influenced, con-
6 trolled, or governed in such determination by any rule
7 which has been, is, or hereafter may be adopted by
8 said court, or any other instructions which are incon-
9 sistent with the provisions of this act. *Provided,*
10 *however,* if both parties agree so to do, any such libel
11 shall be submitted to and tried by the court aforesaid,
12 who shall be governed by the same principles as are
13 herein specified in case of a trial by jury.

SECT. 9. When a libel is filed in said court, the
2 libelant shall not be required to make a distinct
3 count for each alleged cause of divorce, but may
4 declare generally the cause or causes for which
5 the divorce is asked, and may amend in any stage
6 of the proceedings as matter of right, and without
7 terms; and if the jury find that one or more of the
8 allegations in the libel are true, that the prayer of the
9 libelant is reasonable and proper, and that a divorce

10 would be conducive to domestic harmony, for the
11 good of the parties, and consistent with the peace and
12 morality of society, the court shall decree the same.

SECT. 10. Whenever the validity of a marriage is
2 denied or doubted, either party may file a libel for
3 annulling the same in like manner as a libel for a
4 divorce, and the same proceedings shall be had
5 thereon ; and upon due proof of the nullity of the mar-
6 riage, it shall be declared void by a decree of said
7 court ; and upon due proof of its validity, the court
8 by its decree shall affirm the marriage.

SECT. 11. No such decree of dissolution or affirma-
2 tion shall prejudice the rights of the party against
3 whom the same may be passed, unless such party had
4 been notified in the manner prescribed in this act
5 to answer to the libel, or had appeared and answered
6 to the same.

SECT. 12. Upon dissolution of a marriage by a de-
2 cree of nullity on account of consanguinity or affinity
3 between the parties, or of any marriage between a
4 white person and negro, Indian or mulatto, the issue
5 of the marriage shall be deemed to be illegitimate.

SECT. 13. If the dissolution of the marriage be on
2 account of the nonage, insanity, or idiocy of either of

3 the parties, the issue of the marriage shall be deemed
4 to be the legitimate issue of the parent who at the
5 time of the marriage was capable of contracting
6 marriage.

SECT. 14. When a marriage is declared void in
2 manner provided in this act, on account of a prior
3 marriage of either of the parties, and it shall appear
4 that the second marriage was contracted in good
5 faith, and in the full belief of the parties that the
6 former husband or wife was dead, that fact shall be
7 stated in the decree of nullity ; and the issue of such
8 second marriage, born or begotten before the com-
9 mencement of the suit, shall be deemed to be the
10 legitimate issue of the parent, who at the time of the
11 marriage, was capable of contracting ; and such
12 legitimacy shall be presumed on the same principles
13 of evidence, as in a case where both parties were
14 enabled to contract lawful marriage, at the time of
15 the solemnization of the supposed marriage.

SECT. 15. When a divorce shall be decreed for the
2 impotency of either of the parties, the wife shall have
3 all her real and personal estate restored to her which
4 had come to her husband's hands by virtue of the
5 marriage, (or otherwise, without adequate considera-

tion paid therefor,) or any part thereof, or the value,
or any part of the value thereof in money, as the
court may judge to be reasonable, just and right; and
said court may make use of such process as may be
necessary to compel the husband to disclose, on oath,
what real or personal estate, or both, of the wife, had
so come to his hands, what consideration was paid
therefor, and how it had been disposed of, and how
much remained in his hands at the time of divorce;
upon which, or upon any other legal evidence, the
court may enter such judgment as the case may re-
quire, and enforce the same by any proper process.

SECT. 16. When a divorce is granted to the wife,
on the libel of the wife for any other cause than that
specified in the preceding section, she shall be entitled
to her dower in the estate of her husband, to be as-
signed to her in the same manner as though her hus-
band were dead; and the real estate which her hus-
band held in her right, the court may assign to the
wife for her own use, and also the personal estate
which the husband received in virtue of the
marriage, or such part thereof as said court shall
deem reasonable; or a sum of money, equal in value
to the whole of the same; or to such part thereof as

13 shall be judged proper ; and if such personal estate,
14 so assigned, or its value, together with her dower in
15 the husband's real estate, should be insufficient for
16 her reasonable and comfortable support, the court
17 may allow her alimony out of her husband's estate,
18 so long as she remains unmarried. *Provided, however,*
19 if there be issue living at the time of such divorce,
20 then the court may decree what shall be right in
21 respect to the assignment of the personal property
22 aforesaid, or to the value thereof, or granting alimony;
23 and the court in the above case, to effectuate any
24 purpose aforesaid, may order the real estate of the
25 husband, or any part of it, or of the rents and profits,
26 to be assigned and set out to the wife for and during
27 such time as may be deemed proper, and employ such
28 legal process as it may deem necessary to carry any
29 such decree into execution.

SECT. 17. When the divorce shall be decreed on
2 the libel of the husband for any other cause, the hus-
3 band shall hold her personal estate which by law came
4 to his hands by virtue of the marriage, forever, and
5 her real estate which came to him in manner afore-
6 said, during his natural life if they have had a child
7 born alive during the marriage ; otherwise during her

8 natural life only if he should survive her ; but the court
9 may allow her for her subsistence, so much of her
10 personal or real estate as shall be judged necessary.

SECT. 18. After a libel has been filed for the disso-
2 lution of a marriage, or for a divorce from the bonds
3 of matrimony, said court may, in any county, on the
4 petition of the wife, prohibit the husband from im-
5 posing any restraint on her personal liberty during the
6 pendency of such libel.

SECT. 19. The court, when decreeing the dissolu-
2 tion of a marriage or a divorce from the bonds of
3 matrimony, may make such further decree as may be
4 expedient concerning the custody, care and main-
5 tenance of the minor children of the parties ; and
6 may determine with which of the parents the children,
7 or any of them, shall remain ; and the court may,
8 from time to time, revise and alter such decree as to
9 the custody, care and maintenance of the children,
10 as the circumstances of all concerned may require or
11 render expedient.

SECT. 20. When an inhabitant of this state shall
2 go into any other state or country in order to obtain
3 a divorce for any cause which had occurred here and

4 whilst the parties resided here, a divorce so obtained
5 shall be of no force or effect in this state.

SECT. 21. In all other cases a divorce decreed in
2 any other state or country according to the law of
3 the place, by a court having jurisdiction of the cause,
4 shall be valid in this state.

SECT. 22. In the execution of the powers given in
2 this act, the court may employ such compulsory pro-
3 cess as may be deemed proper and necessary, whether
4 by execution or attachment or such other form as
5 shall be effectual.

SECT. 23. No judgment upon a libel for divorce
2 from the bonds of matrimony rendered under the pro-
3 visions of this act adverse to the libelant, shall be a
4 bar to any subsequent libel between the same parties ;
5 *provided*, that any new and substantial cause for
6 divorce shall be alleged therein.

SECT. 24. Any justice of the supreme judicial court
2 at any term thereof, held as provided in section two,
3 may in the exercise of sound discretion, and on such
4 conditions as shall be reasonable, grant a new trial in
5 cases of divorce from the bonds of matrimony whenever
6 the said justice shall judge it reasonable and proper,

7 and whenever the parties have not lived together
8 since the former trial, on application of the party ag-
9 grieved by the judgment then given; *provided* such
10 new trial shall not be granted after the lapse of three
11 years after the former judgment.

SECT. 25. Chapter eighty-nine of the revised stat-
2 utes, chapter one hundred and six of the laws of
3 eighteen hundred and forty-nine, and chapter one
4 hundred and seventy-one of the laws of eighteen
5 hundred and fifty, and all other acts and parts of acts
6 inconsistent with this act, are hereby repealed, saving
7 and excepting all orders and decrees, with power to
8 revise and enforce them, made under the same, and
9 all actions, processes, matters and things now pend-
10 ing under either of said acts.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
April 14, 1854. }

ORDERED, That 350 copies of this act be printed for the use
of the Legislature.

JOHN J. PERRY, *Clerk.*