STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

AUGUSTA
KENNEBEC JOURNAL PRINT
1910

OFFICE OF THE ATTORNEY GENERAL,
WATERVILLE, MAINE, August 19, 1910.

Subject: Marriage; Persons authorized to solemnize marriages; Ceremony by British Consular Officer.

Hon. Bert M. Fernald, Augusta, Maine.

SIR:—I have the honor to acknowledge the request from your office for advice upon the following proposition:

Whether the law in force in the State of Maine is to be understood as prohibiting the solemnization of marriages therein by a British Consular officer, (1) where both parties to the marriage are British subjects, and (2) where one party is a British subject and the other a subject or citizen of a state other than the United States.

It is common learning that statutes requiring a ceremonial marriage usually make express provisions as to the persons by whom such marriages may be solemnized. The State of Maine has provided by its latest revision of this law—P. L. 1909, Chap. 161—as follows:

> "Every justice of the peace or 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."

The act just quoted was intended to take the place of R. S., Chap. 61, Secs. 11 and 12, which were repealed by said Chap. 161, P. L. 1909. The act in its present form does not in express terms prohibit a British Consular officer from selomnizing marriages, but it is evident that the words enumerating the persons who may solemnize marriages are words of exclusion as well as inclusion, for the 13th section of R. S., Chap. 61, provides a penalty to be inflicted upon any person who knowingly and wilfully joins persons in marriage contrary to the provisions of said Chapter 61, R. S. It is my opinion, therefore, that our law prohibits the solemnization of marriages in this state by a British Consular officer, and as no exceptions

are made dependent upon the nationality of the persons joined in marriage, I am constrained to believe that the authority to solemnize marriages in this State could not be extended to a British Consular officer, even if one or both of the persons contracting the marriage should be British subjects.

Further inquiry is made as to whether a marriage solemnized by a British Consular officer, where both or one of the parties is a British subject would be recognized as valid by the local courts.

Section 16 of Chap. 61 of the Revised Statutes just referred to, provides:

> "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."

You will observe that this relates to a marriage solemnized before any "known inhabitant of the state," etc. Whether this section just quoted would have any effect in case of a marriage solemnized by a British Consular officer, I would not care to express an opinion.

In an early New England case, Londonderry v. Chester, 2 N. H., 268, which is extensively annotated in Vol. 9, Am. Dec., at page 73, the annotator says:

> "Whatever the form of ceremony, or even if all ceremony was dispensed with, if the parties agreed presently to take each other for husband and wife and from that time lived together professedly in that relation, proof of these facts would be sufficient to constitute proof of a marriage binding upon the parties, and which would subject them and others to legal penalties for a disregard of its obligations. This has become the settled doctrine of the American courts; the few cases of dissent or apparent dissent being borne down by a great weight of authority in favor of the rule as we have stated."

This exceedingly broad view, however, is not applicable in a criminal prosecution, where the fact of marriage is essential to the crime. In a very early case in our own state, Damons

Case, 6 Me., 148, (a criminal proceeding), the court, speaking through Parris, J., says:

> "The mere reputation of a marriage, or proof of cohabitation, or other circumstances from which the marriage may be inferred and which are sufficient in almost all civil personal actions, cannot, in cases of this nature, be admissible. There must be evidence of a marriage in fact, by a person legally authorized, and between parties legally competent to contract."

These are statements of the broad rule which would be applicable to the civil side of the question, and of the strict rule applicable to the criminal side of the question, and both have been given because it was not made clear in your letter of inquiry as to whether the person for whom you made inquiry had in mind a recognition of a valid marriage in a civil or criminal proceeding.

Respectfully yours,

WARREN C. PHILBROOK,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL,
WATERVILLE, MAINE, February 4th, 1909.

Subject: Alien Paupers.—P. L. 1905, C. 142.

Hon. Fred W. Bunker, Council Chamber, Augusta, Maine.

SIR:—In accordance with your request for a written opinion as to the effect and intent of chapter one hundred forty-two of the Public Laws of nineteen hundred and five, relating to alien paupers, I have the honor to advise as follows:

Prior to the passage of the act in question there seems to be no doubt that an alien might, under our statutes, gain a pauper settlement in this state and that, having gained such settlement, he was entitled to the same support from the town, in case of distress, as would be enjoyed by a citizen of the state who had gained such settlement. Obviously, then, prior to the passage of the act in question, cases might arise in which a town would be liable to support an alien pauper.

In a case decided many years ago in this state, Belgrade vs. Dearborn, 21 Me., 334, a legal settlement was declared to be a settlement which gives a right to support from the town in cases of falling into distress and becoming necessitous. In other