

MAINE STATE LEGISLATURE

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SEVENTY-FOURTH LEGISLATURE

SENATE.

No. 205

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND NINE.

AN ACT regulating annulment of marriage and divorce.

Be it enacted by the People of the State of Maine, as follows:

Section 1. *Be it enacted, etc.,* That a marriage may be
2 annulled for any of the following causes existing at the
3 time of the marriage:

a. Incurable physical impotency, or incapacity for copula-
5 tion, at the suit of either party: *Provided,* That the party
6 making the application was ignorant of such impotency or
7 incapacity at the time of the marriage.

b. Consanguinity or affinity according to the table of de-
9 grees established by law, at the suit of either party; but when
10 any such marriage shall not have been annulled during the

11 lifetime of the parties the validity thereof shall not be in-
12 quired into after the death of either party.

c. When such marriage was contracted while either of
14 the parties thereto had a husband or wife living, at the suit
15 of either party.

d. Fraud, force or coercion, at the suit of the innocent
17 and injured party, unless the marriage has been confirmed
18 by the acts of the injured party.

e. Insanity of either party, at the suit of the other, or at
20 the suit of the committee of the lunatic, or of the lunatic
21 on regaining reason, unless such lunatic, after regaining rea-
22 son, has confirmed the marriage: *Provided*, That where
23 the party *compos mentis* is the applicant, such party shall
24 have been ignorant of the other's insanity at the time of the
25 marriage, and shall not have confirmed it subsequent to the
26 lunatic's regaining reason.

f. At the suit of the wife when she was under the age of
28 sixteen years at the time of the marriage, unless such mar-
29 riage be confirmed by her after arriving at such age.

g. At the suit of the husband when he was under the age
31 of eighteen at the time of the marriage, unless such marriage
32 be confirmed by him after arriving at such age.

Sect. 2. Divorce shall be of two kinds:

a. Divorce from the bonds of matrimony, or divorce *a*
3 *vinculo matrimonii*.

b. Divorce from bed and board, or divorce *a mensa et*
5 *thoro*.

Section 3. The causes for divorce from the bonds of
2 matrimony shall be:

a. Adultery.

b. Bigamy, at the suit of the innocent and injured party
5 to the first marriage.

c. Conviction and sentence for crime by a competent court
7 having jurisdiction, followed by a continuous imprisonment
8 for at least two years, or in the case of indeterminate sen-
9 tence, for at least one year: *Provided*, That such convic-
10 tion has been the result of trial in some one of the states of
11 the United States, or in a Federal Court, or in some one of
12 the territories, possessions or courts subject to the jurisdic-
13 tion of the United States, or in some foreign country grant-
14 ing a trial by jury, followed by an equally long term of im-
15 prisonment.

d. Extreme cruelty, on the part of either husband or wife,
17 such as to endanger the life or health of the other party or
18 to render cohabitation unsafe.

e. Wilful desertion for two years.

f. Habitual drunkenness for two years.

Sect. 4. The causes for divorce from bed and board
2 shall be:

a. Adultery.

b. Bigamy, at the suit of the innocent and injured party
5 to the first marriage.

c. Conviction and sentence for crime by a competent court
7 having jurisdiction, followed by a continuous imprisonment

8 for at least two years, or in the case of indeterminate sen-
 9 tence, for at least one year: *Provided*, That such convic-
 10 tion has been the result of trial in some one of the states of
 11 the United States, or in a Federal Court, or in some one of
 12 the territories, possessions or courts subject to the jurisdic-
 13 tion of the United States, or in some foreign country grant-
 14 ing a trial by jury, followed by an equally long term of im-
 15 prisonment.

d. Extreme cruelty, on the part of either husband or wife,
 17 such as to endanger the life or health of the other party or
 18 to render cohabitation unsafe.

e. Wilful desertion for two years.

f. Habitual drunkenness for two years.

g. Hopeless insanity of the husband.

Sect. 5. No decree for divorce shall be granted if it ap-
 2 pears to the satisfaction of the court that the suit has been
 3 brought by collusion, or that the plaintiff has procured or
 4 connived at the offense charged, or has condoned it, or has
 5 been guilty of adultery not condoned.

Sect. 6. The court of this State shall
 2 have and entertain jurisdiction of all actions for annulment
 3 of marriage, or for divorce.

Sect. 7. For purposes of annulment of marriage, juris-
 2 diction may be acquired by personal service upon the de-
 3 fendant within this State when either party is a *bona fide*
 4 resident of this State at the time of the commencement of the
 5 action.

Sect. 8. For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by personal service upon the defendant within this State, under the following conditions:

a. When, at the time the cause of action arose, either party was a *bona fide* resident of this State, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a *bona fide* resident of this State.

b. When, since the cause of action arose, either party has become, and for at least two years next preceding the commencement of the action has continued to be, a *bona fide* resident of this State: *Provided*, The cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this State.

Sect. 9. When the defendant cannot be served personally within this State, and when at the time of the commencement of the action the plaintiff is a *bona fide* resident of this State, jurisdiction for the purpose of annulment of marriage may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this State, or by additional substituted service upon the defendant within this State, as prescribed by law.

Sect. 10. When the defendant cannot be served personally within this State, and when at the time of the commencement of the action the plaintiff is a *bona fide* resident of this State, jurisdiction for the purpose of divorce, whether absolute or from bed and board, may be acquired by publication, to be followed where practicable by service upon or notice to the defendant without this State, or by additional substituted service upon the defendant within this State, as prescribed by law, under the following conditions:

a. When, at the time the cause of action arose, the plaintiff was a *bona fide* resident of this State, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless the plaintiff has been for the two years next preceding the commencement of the action a *bona fide* resident of this State.

b. When, since the cause of action arose, the plaintiff has become, and for at least two years next preceding the commencement of the action has continued to be, a *bona fide* resident of this State: *Provided*, The cause of action alleged was recognized in the jurisdiction in which the plaintiff resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this State.

Sect. 11. Any one charged as *particeps criminis* shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

Sect. 12. All hearings and trials shall be had before the
2 court, and not before a master, referee, or any other dele-
3 gated representative, and shall in all cases be public.

Sect. 13. In all uncontested cases, and in any other case
2 where the court may deem it necessary or proper, a disinter-
3 ested attorney may be assigned by the court actively to de-
4 fend the case.

Sect. 14. No decree for annulment of marriage, or for
2 divorce, shall be granted unless the cause is shown by af-
3 firmative proof aside from any admissions on the part of the
4 defendant.

Sect. 15. No record or evidence in any case shall be im-
2 pounded, or access thereto refused.

Sect. 16. If after the hearing of any cause, or after a
2 jury trial resulting in a verdict for the plaintiff, the court
3 shall be of opinion that the plaintiff is entitled to a decree
4 annulling the marriage, or to a decree for divorce from the
5 bonds of matrimony, a decree *nisi* shall be entered.

Sect. 17. A decree *nisi* shall become absolute after the
2 expiration of one year from the entry thereof, unless ap-
3 pealed from or proceedings for review are pending, or the
4 court before the expiration of said period for sufficient cause,
5 upon its own motion, or upon the application of any party,
6 whether interested or not, otherwise orders; and at the ex-
7 piration of one year such final and absolute decree shall then
8 be entered upon application to the court by the plaintiff, un-
9 less prior to that time cause be shown to the contrary.

Sect. 18. In all cases of divorce from bed and board for
2 any of the causes specified in Section 4 of this act, the court
3 may decree a separation forever thereafter, or for a limited
4 time, as shall seem just and reasonable, with a provision that
5 in case of a reconciliation at any time thereafter, the parties
6 may apply for a revocation or suspension of the decree; and
7 upon such application the court shall make such order as
8 may be just and reasonable.

Sect. 19. The court upon granting a divorce from the
2 bonds of matrimony to a woman may allow her to resume
3 her maiden name, or the name of a former deceased hus-
4 band.

Sect. 20. In an action brought by the wife, the legitimacy
2 of any child born or begotten before the commencement of
3 the action shall not be affected.

Sect. 21. In an action brought by the husband, the legiti-
2 macy of any child born or begotten before the commission
3 of the offense charged shall not be affected; but the legiti-
4 macy of any other child of the wife may be determined as
5 one of the issues of the action. All children begotten before
6 the commencement of the action shall be presumed to be
7 legitimate.

Sect. 22. Full faith and credit shall be given in all the
2 courts of this State to a decree of annulment of marriage or
3 divorce by a court of competent jurisdiction in another state,
4 territory or possession of the United States when the juris-
5 diction of such court was obtained in the manner and in sub-

6 stantial conformity with the conditions prescribed in Sec-
7 tions 7, 8, 9 and 10 of this act. Nothing herein contained
8 shall be construed to limit the power of any court to give
9 such effect to a decree of annulment or divorce by a court
10 of a foreign country as may be justified by the rules of inter-
11 national comity: *Provided*, That if any inhabitant of this
12 State shall go into another state, territory or country in or-
13 der to obtain a decree of divorce for a cause which occurred
14 while the parties resided in this State, or for a cause which
15 is not ground for divorce under the laws of this State, a
16 decree so obtained shall be of no force or effect in this State.

Sect. 23. All acts and parts of acts inconsistent with this
2 act, be and the same are hereby repealed: *Provided*, That
3 nothing in this act contained shall affect or apply to any ac-
4 tions for annulment of marriage, or for divorce, now pend-
5 ing.

Sect. 24. This act shall take effect on the day of
2, A. D.

STATE OF MAINE.

IN SENATE,

February 16, 1909.

Presented by Mr. LOONEY of Cumberland and on his motion tabled for printing.

F. G. FARRINGTON, *Secretary*.