

# MAINE STATE LEGISLATURE

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# E I G H T Y - N I N T H   L E G I S L A T U R E

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**Legislative Document**

**No. 910**

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H. P. 1595

House of Representatives, February 14, 1939.

Referred to Committee on Judiciary and sent up for concurrence. 500 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Dow of Norway.

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## S T A T E   O F   M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-NINE

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### **AN ACT Relating to Jurisdiction on Divorce Libels.**

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

**Sec. 1. R. S., c. 73, § 2, amended.** Section 2 of chapter 73 of the revised statutes is hereby amended to read as follows:

**‘Sec. 2. Causes for which divorce may be granted.** 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 confined 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. But 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.~~ The superior court and the court of probate have concurrent jurisdiction of libels for divorce in all counties and in all matters relating thereto under chapter 73. If either party requests in writing filed with the register of probate on or before the return day of the libel, or the court orders it, the case shall be removed to the superior court.'

Sec. 2. R. S., c. 73, additional. Chapter 73 of the revised statutes is hereby amended by adding thereto new sections to be numbered sections 2-A, 2-B, and 2-C, and to read as follows:

'Sec. 2-A. Fee. The entry fee to be paid to the clerk of court, or the register of probate for the filing of a libel for divorce, or petition for annulment of marriage shall be \$5.'

'Sec. 2-B. Co-respondent not to be named; exception. In a libel for divorce, wherein the commission of adultery is alleged as ground for divorce or as the ground for contesting the divorce, no libel, cross-libel or answer at the time of filing shall name any person as co-respondent. The party alleging such adultery may by motion, after the libel has been entered, upon an ex-parte hearing before a justice of the superior court, or a judge of the court of probate, obtain permission to amend his libel, cross-libel, or answer by inserting the name of the co-respondent if the judge finds probable cause has been shown that such accused person has committed adultery as alleged, and thereupon notice shall be sent to said co-respondent and to the other party to the libel. The evidence produced at such ex-parte hearing shall not be reported or made a part of the record in the case and the motion for said amendment shall not be read to the court during the divorce proceedings, but the clerk of the court, or the register of probate, shall make an entry in the docket of "Motion to insert name of co-respondent allowed", or motion to insert name of co-respondent denied", as the case may be. If the amendment is allowed upon affidavits they shall be retained by the court and placed in the custody of the clerk of the court, or of the register of probate for the county and in the court where the divorce proceedings are brought, and shall be open for the purposes of inspection, and taking copies thereof, to counsel of record, or the libellee or any co-respondent named in the amended libel. A person named as co-respondent in an amended libel, cross libel or answer may appear and contest the charge of adultery therein made against him.'

'Sec. 2-C. Attorney for investigation may be appointed; compensation. Any justice of the superior court, or judge of court of probate, may appoint an attorney to investigate and report to the court in relation to any libel for divorce or to have a marriage declared void, and may direct such

attorney, or any other attorney, to defend it. The attorney may be appointed either before or after a decree of divorce has been granted. His compensation shall be fixed by the court, and shall be paid by the county where the libel is pending, together with any expenses approved by the court, upon certificate by a justice or judge thereof to the county treasurer. The state police, the sheriff of the county or any of his deputies, and the local police shall assist the attorney so appointed, upon his request.'