

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 1566**

H. P. 1087

House of Representatives, May 7, 1957.

Reported by Report "A" from Committee on Judiciary and printed under joint rules No. 10.

HARVEY R. PEASE, Clerk.

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**STATE OF MAINE**

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FIFTY-SEVEN

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**AN ACT Relating to Judicial Separation.**

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

**Sec. 1. R. S., c. 166, § 44, amended.** Section 44 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 44. Protection of wife deserted by or living apart from husband.** If a husband, a resident of this State 6 months or more, without just cause, deserts his wife or if his wife, for just cause, is actually living apart from him, ~~and if such desertion or living apart has continued for a period of at least one year next prior to the filing of the petition hereinafter referred to the probate Superior Court may, upon her petition, or if she is insane, upon the petition of her guardian or next friend, enter a decree that such wife is so deserted or is so living apart and may prohibit the husband from imposing any restraint on her personal liberty. during such time as such court shall by order direct; and upon~~ **Upon** the petition of either the husband or wife, or of the guardian or next friend of either who may be insane, **such Court** may make further orders relative to the support of the wife and to the care, custody and maintenance of the minor children of the parties, may determine with which of their parents such children or any of them shall remain, may order the husband to pay to such Court for the wife **or to pay to the wife or to her counsel** sufficient money for the prosecution of such petition, and may from time to time, upon a similar petition, revise or alter any such order and make a new order in lieu thereof, as the circumstances of the parties or such minor children or any of them may require, and may **in all cases** enforce obedience by appropriate ~~process~~ **processes on which costs and counsel fees shall be taxed as in other actions.'**

**Sec. 2. R. S., c. 166, § 45, amended.** Section 45 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 45. Husband deserted by or living apart from wife; decree bars wife's rights in husband's property.** If a wife, a resident of this State 6 months or more, without just cause, deserts her husband, or if he is living apart from her for just cause, ~~and if such desertion or living apart has continued for the period set out in section 44~~ the probate Superior Court may upon petition of the husband, or if he is insane, upon the petition of his guardian or next friend, enter a decree that such husband is so deserted or is so living apart, and such husband may thereafter convey his real property in the same manner as if he were sole, and no portion of his estate shall descend to his said wife at his decease, neither shall she be entitled to receive any distributive share thereof or to waive any will made by him in her favor, **nor be entitled to support or maintenance for herself from him during the decree. The Court may order the husband to pay to it or to the wife or to her counsel sufficient money for her defense against such petition and enforce obedience by appropriate process.'**

**Sec. 3. R. S., c. 166, § 46, amended.** Section 46 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 46. Deserted wife obtaining decree may convey her property as if sole; decree bars husband's rights.** If the probate Superior Court has entered a decree that a wife has been deserted by her husband without just cause, or has lived apart from him for just cause, ~~for the period set out in section 44~~ she may convey her real property in the same manner and with the same effect as if she were sole, and no portion of her estate shall descend to her said husband at her decease, neither shall he be entitled to receive any distributive share thereof or to waive the provisions of any will made by her in his favor.'

**Sec. 4. R. S., c. 166, § 47, amended.** Section 47 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 47. Petition; notice.** The petition under the provisions of ~~the 3 preceding sections 44 to 46, inclusive,~~ may be brought and determined in the county in which either of the parties lives, except that if the petitioner has left the county in which the parties lived together and the respondent still lives therein, the petition shall be brought in that county ~~and such notice shall be given thereon as the judge of said court shall direct.~~ **The petitioner may file in the clerk's office a petition, signed by him or her and service thereon shall be made by summons and copy, 14 days before the term of court to which it is returnable. The court in any county or a justice thereof in vacation, may order notice as in other suits.**

When the residence of the respondent can be ascertained, it shall be named in the petition and actual notice shall be obtained; if the respondent is out of the State, notice shall be given in such manner and by such means as the court may order. When the residence of the respondent is not known to the petitioner and cannot be ascertained by reasonable diligence, the petitioner shall so allege under oath in the petition. Where notice by publication is ordered upon any petition which sets out adultery as a ground for just cause for living apart the name of any alleged paramour of the respondent, if set out in the petition, shall be omit-

ted from the published notice and a copy of such petition wherein are inserted, in place of such names, the words, "a certain man named in the petition" or "a certain woman named in the petition," as the case may be, shall, if otherwise correct, be considered and held to be for all purposes a true copy of such petition.'

Sec. 5. R. S., c. 166, § 47-A, additional. Chapter 166 of the Revised Statutes is hereby amended by adding thereto a new section to be numbered 47-A, to read as follows:

'Sec. 47-A. Execution for support, council fees, etc. Pending a petition to enforce a decree of support of the wife or minor children, or a decree for support pending petition or for payment of counsel fees, or for the alteration of an existing decree for the custody and support of minor children, the court may order the husband and father to pay to the wife and mother, or to counsel for the wife and 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 petition for separation has been heard. Petition for such execution may be signed by the wife or her attorney of record in the separation action. At the time of making a final decree in any separation action, the court may order that execution and such reasonable attorney's fee as the court shall order shall issue against the body of the husband charged with the payment of support of minor children or payments of support, upon default of any payment, and the court shall order that the clerk of said court shall issue such execution. When the husband and father is committed to jail on execution issued upon a decree of support or for the support of his minor children, or for support pending petition, or the 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 the provisions of chapter 120. He may petition the court issuing such execution for relief, whereupon a judge of such court after due notice to the wife and mother, and hearing thereon, may order his discharge from imprisonment on such terms and conditions as justice may require.'

Sec. 6. R. S., c. 166, § 47-B, additional. Chapter 166 of the Revised Statutes is hereby amended by adding thereto a new section to be numbered 47-B, to read as follows:

'Sec. 47-B. Duration of decree. A decree of judicial separation shall remain in force until terminated or set aside by the Court upon mutual consent of both spouses or by a subsequent decree of divorce.'

Sec. 7. R. S., c. 166, § 48, amended. Section 48 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

'Sec. 48. Rights of issue, marriage settlement or contract not affected. The provisions of ~~the 4 preceding~~ sections 44 to 47-B, inclusive, shall not bar the issue of the marriage from inheriting or affect their rights, neither shall it invalidate any marriage settlement or contract between the parties.'

**Sec. 8. R. S., c. 166, § 49, repealed.** Section 49 of chapter 166 of the Revised Statutes is hereby repealed as follows:

~~'Sec. 49. Appeal. Any party aggrieved by any order or decree provided for in sections 44 to 48, inclusive, may take an appeal in the same manner as provided for probate appeals.'~~

**Sec. 9. R. S., c. 166, § 50, amended.** Section 50 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 50. Certified copy of any decree filed in office of register of deeds.** Whenever any decree provided for in sections 44 and 45 shall become effective ~~either~~ by reason of ~~expiration of the time within which an appeal might have been taken or~~ of final judgment ~~on appeal~~, the ~~register of probate clerk of courts~~ shall forthwith file in the office of the register of deeds in the county or counties where real estate which may be affected by such decree is situated, under seal of ~~the probate~~ court, a certified copy thereof which the register of deeds shall record without fee.'