

# MAINE STATE LEGISLATURE

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REPORT  
OF  
THE COMMISSIONER  
ON THE  
REVISION AND CONSOLIDATION  
OF THE  
PUBLIC LAWS  
OF THE  
STATE OF MAINE  
UNDER  
RESOLVE OF APRIL 15, 1927

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## TITLE FIVE.

## Domestic Relations.

- Chap. 72. Marriage and its solemnization. Registration of vital statistics.  
Parents and children. Protection of neglected children.  
73. Divorce and the annulling of marriages.  
74. The rights of married women.
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## CHAPTER 72.

**Marriage and its Solemnization. Registration of Vital Statistics. Parents and Children. Protection of Neglected Children.**

**Marriage and its Solemnization.**

**Sec. 1. Marriages prohibited within certain degrees.** R. S. c. 64, § 1. No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister; and no woman shall marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother, brother's son, sister's son, father's brother, or mother's brother.

**Sec. 2. Void marriages.** R. S. c. 64, § 2. 1917, c. 40. No insane or feeble minded person or idiot is capable of contracting marriage.

See c. 73, § 16; 46 Me. 510; \*76 Me. 421, 595; 97 Me. 133.

**Sec. 3. Polygamy.** R. S. c. 64, § 3. Marriages, contracted while either of the parties has a former wife or husband not divorced, living, are void.

**Sec. 4. Intentions of marriage to be recorded.** R. S. c. 64, § 4. 1917, c. 100. Residents of the state intending to be joined in marriage shall cause notice of their intentions to be recorded in the office of the clerk of the town in which each resides, at least five days before a certificate of such intentions is granted; and if one only of the parties resides in the state, they shall cause notice of their intentions to be recorded in the office of the clerk of the town in which such party resides, at least five days before such certificate is granted; and if there is no such clerk in the place of their residence, the like entry shall be made with the clerk of an adjoining town; and if both parties reside out of the state they shall cause notice of their intentions to be recorded in the office of the clerk of the town in which such parties propose to have the marriage solemnized, at least five days before such certificate is granted; and the book in which such record is made, shall be labeled on the outside of its cover, "Record of Intentions of Marriage," and be kept open to public inspection in the office of the clerk.

Upon application by both of the parties to an intended marriage, when both parties are residents of this state, or both parties are non-residents, or upon

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application of the party residing within the state when one of the parties is a resident and the other a non-resident, a judge of probate or the justice of a police, or municipal court, or trial justice, may after hearing such evidence as is presented, grant a certificate stating that in his opinion it is expedient that the intended marriage be solemnized without delay. Upon the presentation of such a certificate, or a copy thereof certified by the clerk of the court by which the certificate was issued, or in extraordinary or emergency cases when the death of either party is imminent, upon the authoritative request of a minister, clergyman, priest, rabbi, or attending physician, the clerk or registrar of the city or town in which the intention to be joined in marriage has been filed shall at once issue the certificate as prescribed in this section.

The five days' notice required by the provisions of this section shall not apply to cases in which either of the parties to an intended marriage has arrived as an immigrant from a foreign country within five days.

**Sec. 5. Clerk to give certificate to parties, but not to paupers, nor to minors without written consent of parties.** R. S. c. 64, § 5. The clerk shall deliver to the parties a certificate specifying the time when such intentions were entered with him; and it shall be delivered to the minister or magistrate before he begins to solemnize the marriage; but no such certificate shall be issued to a male under twenty-one, or to a female under eighteen years of age, without the written consent of their parents or guardians first presented, if they have any living in the state; nor to a town pauper when the overseers of such town deposit a list of their paupers with the clerk.

**Sec. 6. Certificate of record of intentions of marriage, how printed.** R. S. c. 64, § 6. All such certificates shall have conspicuously printed thereon the following words: "The laws of Maine provide for a fine not exceeding one thousand dollars or imprisonment not exceeding five years to be the punishment of any clergyman or other person, who shall solemnize a marriage within this state unless authorized to solemnize marriages therein." Following the above words, said certificate shall contain the blank form for the return to the clerk with a space for the entry of the date of the commission or license issued to the person solemnizing such marriage.

See § 14.

**Sec. 7. Certificate of marriage out of state to be filed.** R. S. c. 64, § 8. When residents of this state go into another state for the purpose of marriage, and it is there solemnized, and they return to dwell here, they shall, on the blank prepared by the state registrar for that purpose, fill out and file a certificate of their marriage with the clerk of the town in which each of them lived, within seven days after their return. The clerk shall then record such marriage.

**Sec. 8. Proceedings when marriage is forbidden.** R. S. c. 64, § 9. Any person, believing that parties are about to contract marriage when either of them cannot lawfully do so, may file a caution and the reasons therefor, in the office of the clerk where notice of their intentions should be filed. Then if either party applies to enter such notice, the clerk shall withhold the certificate, until a decision is made by two justices of the peace, approving the marriage, after due notice to, and hearing all concerned; provided, that the person filing the caution, shall, within seven days thereafter, procure the decision of such justices, unless they certify that further time is necessary for the purpose. In which case a certificate shall be withheld until the expiration of the certified time. He shall, finally, deliver or withhold the certificate in accordance with the final decision of said justices. If the decision is against the sufficiency, the

justices shall enter judgment against the applicant for costs, and issue execution therefor.

88 Me. 252; 120 Me. 293.

**Sec. 9. Marriage in another state in evasion of law, void here.** R. S. c. 64, § 10. When residents of this state, with intent to evade the provisions of sections one, two and three of this chapter, and to return and reside here, go into another state or country, and there have their marriage solemnized, and afterwards return and reside here, such marriage is void in this state.

**Sec. 10. Marriage among Quakers.** R. S. c. 64, § 11. Marriages solemnized among Quakers or Friends, in the form heretofore practiced in their meeting, are valid, and not affected by the foregoing provisions; and the clerk or the keeper of the records of the meeting in which they are solemnized, shall make return thereof as provided in section seventeen.

**Sec. 11. Persons authorized to solemnize marriages; secretary of state to issue license; license or certified copy to be received as evidence; revocation of license.** R. S. c. 64, § 12. Every justice of the peace and every notary public residing in this state may solemnize marriages therein. *The governor, with the advice and consent of the council, may appoint women, otherwise eligible under the constitution, to solemnize marriages, and women so appointed shall have the same rights and obligations in the solemnization of marriages as justices of the peace.* 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. Such application shall be made upon blanks furnished by the secretary of state which shall be signed by the applicant and set forth the necessary facts in the premises, which facts shall be certified to by the clerk, treasurer, or any of the municipal officers of the town wherein the applicant resides, or wherein the ceremony is to be performed. Upon receipt of such application the secretary of state shall issue to the applicant a license under the seal of the state to the effect that he is authorized to solemnize marriages in this state. Such license, or a certified copy thereof shall be received as evidence in all courts of his authority in the premises, and a copy of the record of any marriage solemnized by such licensee duly made and kept, attested or sworn to by the clerk of the town in which the marriage intention was recorded or in which the marriage was solemnized shall be received in all courts as evidence of the fact of marriage. Such license shall continue until revoked by the governor for cause, after notice and an opportunity to be heard thereon.

18 Me. 310; 42 Me. 288; 72 Me. 548.

**Sec. 12. Copy of record, legal evidence.** R. S. c. 64, § 15. A copy of a record of marriage duly made and kept, attested or sworn to by a justice of the peace, commissioned minister, or town clerk, shall be received in all courts as evidence of the fact of marriage.

19 Me. 158; 120 Me. 290.

**Sec. 13. Marriage valid, if consummated in good faith by either party.** R. S. c. 64, § 16. 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.

\*6 Me. 149; 36 Me. 454; 61 Me. 177; \*75 Me. 131.

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**Sec. 14. Penalties.** R. S. c. 64, §§ 5, 7, 8, 11, 13, 14, 17, 20, 39. Whoever contracts a marriage, or makes false representations to procure the certificate provided for in section five, or the solemnization of marriage contrary to this chapter shall forfeit one hundred dollars.

The clerk of any town, or his deputy who intentionally violates the provisions of section five of this chapter or falsely states the residence of either party named in the certificate mentioned in said section shall forfeit twenty dollars for each offense.

Any person who fails to make the report of his marriage to the town clerk as required by section seven of this chapter shall forfeit twenty dollars, half to the prosecutor and half to the town where the forfeit is incurred.

Any person who wilfully neglects or refuses to perform the duty imposed upon him by the provisions of section ten of this chapter shall be punished by a fine of not more than one hundred dollars for each offense, for the use of the town in which the offense occurred.

Whoever knowingly and wilfully joins persons in marriage contrary to this chapter, shall be punished by a fine of one hundred dollars; and such offender is forbidden to join any persons in marriage thereafter.

If any person thus forbidden, or any minister or other person not authorized to solemnize marriages, joins any person in marriage, he shall be confined to hard labor in the state prison for not more than five years, or fined not exceeding one thousand dollars.

A town clerk who makes out and delivers to any person a false certificate of the entry of the intention of marriage, knowing it to be false in any particular, shall be fined one hundred dollars or imprisoned six months.

### Registration of Vital Statistics.

**Sec. 15. Registrar of vital statistics; to furnish blanks for registration of births, marriages, deaths, and divorces.** R. S. c. 64, § 18. The commissioner of health shall be the registrar of vital statistics for the state, and shall furnish to clergymen, and others authorized to marry, to sextons, to physicians, town clerks, clerks of the society of Friends, and clerks of courts, a copy of the provisions of this chapter relating to the registration of vital statistics, and suitable blanks for recording births, marriages, deaths, and divorces, so printed, with appropriate headings, as readily to show the following facts and such others as may be deemed necessary to secure an accurate registration.

I. The record of birth shall state its date and place of occurrence, full christian and surname, if named, color and sex of child, whether living or still-born, and the full christian and surnames, color, occupation, residence and birthplace of parents.

II. The record of marriage shall state its date and place of occurrence, the name, residence, and official character of the person by whom solemnized, the full christian and surnames of the parties, the age, color, birthplace, occupation, and residence of each, the condition, whether single or widowed, whether first, second, or other marriage; and the full christian and surnames, residence, color, occupation, and birthplace of their parents.

III. The record of death shall state its date, the full christian and surname of the deceased, the sex, color, condition, whether single or married, age, occupation, place of birth, place of death, the full christian and surnames and birthplaces of parents, and the disease or other cause of death, so far as known.

**Sec. 16. Report of birth to town clerk.** R. S. c. 64, § 19. The attending

physician, accoucheur, midwife, or other person in charge, who shall attend at the birth of any child, living or still-born, within the limits of any town or city in this state, shall report to the clerk of such town or city within six days thereafter, all the facts regarding such birth, as required in section fifteen.

**Sec. 17. Copy of record of marriages, forwarded to town clerks. R. S. c. 64, § 20.** Every person authorized to unite persons in marriage shall make a record of every marriage solemnized before him, in conformity with the requisitions prescribed for blank records of marriages in section fifteen, and shall within six days thereafter, deliver or forward to the clerk of each town in which the marriage intention was recorded, and to the clerk of the town in which the marriage was solemnized, a copy of such record of marriage.

**Sec. 18. Physicians in attendance to furnish certificate of name, age, disease, and date of birth of deceased. R. S. c. 64, § 21.** A physician who has attended a person during his last illness shall within twenty-four hours after the death of said person make a certificate stating, to the best of his knowledge and belief, the name of the deceased, his age, the disease of which he died, and the date of his death, and shall either deliver it to the person superintending the burial or leave it with the family of the deceased or at the said physician's office where it may be obtained when called for; and a physician or midwife who has attended at the birth of a child dying immediately thereafter, or at the birth of a still-born child, shall, when requested, forthwith furnish for registration a certificate, stating to the best of his knowledge and belief the fact that such child died after birth or was born dead. It shall be a misdemeanor for any person to make a false return in regard to any birth or death.

**Sec. 19. Town clerk to be furnished with record of any death in town; permit for burial. R. S. c. 64, § 22.** Whenever any person shall die, or any still-born child be brought forth in this state, the undertaker, town clerk, or other person superintending the burial of said deceased person, shall obtain from the physician attending such bringing forth or last sickness, a certificate, duly signed, setting forth as far as may be, the facts required by section eighteen; and the undertaker or other person having charge of the burial of said deceased person, shall add to said certificate the other facts required by section fifteen; and having duly signed the same, shall forward it to the clerk of the town or city where said person died and obtain a permit for burial; and in case of any contagious or infectious disease, said certificate shall be made and forwarded immediately.

91 Me. 75.

**Sec. 20. Notice of death from tuberculosis. R. S. c. 64, § 23.** When a town or city clerk receives a certificate of the death of any person who has died of tuberculosis in his town, he shall forthwith send a copy of said certificate to the health officer of his town or city, or where there is no health officer, to the secretary of the local board of health.

**Sec. 21. If no attending physician in last sickness, clerk may issue certificate, upon such facts as can be obtained. R. S. c. 64, § 24.** Whenever any deceased person did not have the attendance of a physician in his or her last sickness, the town clerk may issue and sign the certificate of death, upon presentation of such facts as may be obtained of relatives, persons in attendance upon said deceased person during said last sickness or present at the time of death, or from any other source, and the permit for burial shall be issued upon such information. Said certificate and permit shall not be required before burial in cases where it is impracticable to obtain the same within a reasonable time after death, but in all such cases said certificate shall be obtained as soon as practicable after death.

**Sec. 22. Regulation of removal of bodies of persons dying of cholera, or other**

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pestilential disease; certificate of cause of death; heart failure not deemed sufficient cause for burial permit; permit, when body is brought into this state for burial. R. S. c. 64, § 25. No body of a deceased person whose death was caused by cholera, yellow fever, diphtheria, scarlet fever, typhus fever, typhoid fever, smallpox, or other pestilential disease, shall be removed from place to place in this state by any railroad, steamboat, or other common carrier, unless there shall be attached to the outer case in which said body is enclosed, a certificate from the board of health where such person died, stating the disease causing such death, and that necessary precautions against infection satisfactory to said board have been observed. A certificate of death giving heart failure as the only cause of death shall not be deemed sufficient upon which to issue a burial permit, and such certificate must be returned to the physician who made it for the proper correction and definition. If the body of a deceased person is brought into this state from without for burial, and if it is accompanied by a permit issued by the legally constituted authorities of the state from which it was brought, such permit shall be received as sufficient authority upon which the clerk of the town in which said body is to be buried shall issue a permit for burial; but if it is not accompanied by such permit, then the person or persons in charge of it shall apply for a burial permit to the clerk of the town in which it is to be buried, and the clerk of the town shall issue such permit when furnished with satisfactory information.

Sec. 23. Reports to clerk of births and deaths. R. S. c. 64, § 26. Within six days following such events, parents shall report to the clerk of their city or town the births or deaths of their children; householders shall report every birth or death happening in their houses; the eldest person, next of kin, shall report the death of his kindred; the keeper of a workhouse, house of correction, prison, hospital, almshouse, or other institution, and the master or other commanding officer of a ship, shall report every birth or death happening among the persons under his charge; and parents and other persons enumerated in this section shall not be absolved from the duty of reporting births until the names of the children have been given to the clerk of the city or town in which the births occur.

Sec. 24. Birth, marriage, or death, in unincorporated place. R. S. c. 64, § 27. When a birth, marriage, or death occurs in an unincorporated place, it shall be reported to the town clerk in the town which is nearest to the place at which the birth, marriage, or death took place, and shall be recorded by the town clerk to whom the report is made; and all such reports and records shall be made and recorded and returned to the state registrar as is provided herein.

Sec. 25. Clerk to make certified copy of record on first Monday of each month, and transmit to clerk of town where person or parents of child were resident at time of death. R. S. c. 64, § 28. 1917, c. 29. The clerk of each town shall, on the first Monday of each month, make a certified copy of the record of all deaths and births recorded in the books of said town during the previous month, whenever the deceased person or the parents of the child born were resident in any other town in this state at the time of said death or birth, or whenever they were recently resident in any other town, or whenever the remains of any deceased person have been carried to any other town for burial or whenever the deceased person was born in any other town of this state, and shall transmit said certified copies to the clerk of the town in which said deceased person or parents were resident at or near the time of said birth or death, or to which the remains of such deceased person have been carried for burial, or in which said deceased person was born as aforesaid, stating in addition the



name of the street and the number of the house, if any, where such deceased person or parents so resided, whenever the same can be ascertained; and the clerk so receiving such certified copies shall record the same in the books kept for recording deaths or births. Such certified copies shall be made upon blanks to be furnished for that purpose by the registrar of vital statistics.

**Sec. 26. No interment, or disinterment, to be made without permit. R. S. c. 64, § 29.** Except as provided in section twenty-one, no interment or disinterment of the dead body of any human being, or disposition thereof in any tomb, vault, or cemetery, shall be made without a permit as aforesaid, from the clerk of the town or city where said person died, or in case of disinterment, is buried, nor otherwise than in accordance with such permit. No undertaker or other person shall assist in, assent to, or allow any such interment or disinterment to be made, except as provided in section twenty-one, until such permit has been given as aforesaid; and every undertaker or other person having charge of any burial place as aforesaid, who shall receive such permit, shall preserve and return the same to the clerk of the town in which the death occurred within six days after the day of burial.

See c. 135, § 48.

**Sec. 27. Sub-registrars may be appointed who may issue burial permits. R. S. c. 64, § 30. 1923, c. 139.** The town or city clerk may appoint two or more suitable and proper persons, in each town or city, as sub-registrars, who shall be authorized to issue burial permits, and permits for transportation of dead human bodies, based upon a death certificate, as hereinbefore provided, in the same manner as is required of the town or city clerk; and the said death certificate upon which the permit is issued shall be forwarded to the town clerk within six days after receiving the same, and all permits by whomsoever issued shall be returned to the town clerk as required by section twenty-six. The appointment of sub-registrars shall be made with reference to locality, so as to best suit the convenience of the inhabitants of the town, and such appointment shall be in writing and recorded in the office of the town or city clerk; the sub-registrars in any town shall hold office at the pleasure of the town clerk.

**Sec. 28. Clerks and sub-registrars may issue burial permits in contiguous towns. R. S. c. 64, § 31.** Town clerks and sub-registrars may issue burial permits to persons in contiguous towns, when by so doing it would be more convenient for those seeking a permit, but in all cases the permit shall be made returnable to the town clerk of the town in which the death occurred.

**Sec. 29. Assessors to make return of all births. R. S. c. 64, § 32.** The assessors shall, when taking the annual inventory, collect and return to the town clerk, before the first day of June, the births which have occurred within their respective jurisdictions during the year ending December thirty-first next preceding, together with the names of such children.

**Sec. 30. Town clerks required to make returns to state registrar, monthly; copies to be typewritten or in legible hand. R. S. c. 64, § 33.** The clerk of every town shall keep a chronological record of all births, marriages, and deaths reported to him, or known to him, and shall, between the tenth and the fifteenth of every month, transmit to the state registrar a copy of the record of all births, marriages, and deaths which have occurred within the month next preceding, together with the names, residences, and official stations of all persons who have neglected to make returns to him in relation to the subject matters of such records, which the law required them to make, all to be made upon blanks to be prepared and furnished by the state registrar; and if no births, marriages, or deaths have occurred in the aforementioned period of time or month, for

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which returns are to be made, the town clerk shall send the state registrar a statement to that effect. Whenever a birth, marriage, or death, required by law to be returned to such clerk, is reported to him, or he learns of it, too late for inclusion in his returns as provided hereunder to the state registrar, he shall, after it is reported to him, or after he has knowledge of it, make due returns thereof to the state registrar forthwith. The registrar of vital statistics shall require all copies which are transmitted under the provisions of this section to be typewritten or written with black durable ink in a fair or legible hand.

Clerks of cities shall transmit to the board of registration list of male persons over twenty-one years of age deceased since the preceding election; c. 6, § 27.

Clerks of cities and towns shall report to treasurer of state names of persons dying, and next of kin, c. 77, § 32.

**Sec. 31. Clerk of courts required to make return of divorces, annually.** R. S. c. 64, § 34. The clerks of courts for the several counties shall, annually, during the month of February, make returns to the registrar of vital statistics relating to libels for divorce in their respective counties for the calendar year next preceding. Such returns shall specify the following details; the number of divorces granted; and the names of the parties including the maiden name and any other former name of female, if any, when ascertainable.

**Sec. 32. Duty of state registrar.** R. S. c. 64, § 35. The state registrar shall cause the returns made to him in pursuance of the two preceding sections to be arranged alphabetically for convenient reference, and carefully preserved in his office. He shall annually make and publish a general abstract and report of the returns of the preceding year in such form as will render them of practical utility, not more than two thousand copies of which shall be printed and bound in cloth, one copy of which shall be forwarded to every town, one copy to each senator and representative, one copy to each state and territory in the union, and the remainder to such departments, libraries, and persons as the state registrar shall direct.

**Sec. 33. Appropriation.** R. S. c. 64, § 36. The sum of three thousand dollars a year, is hereby appropriated for printing and binding the circulars and blanks, for postage and expressage, and to defray the expenses of clerical work and the necessary traveling expenses of the state registrar in carrying out the provisions of this chapter relating to the registration of vital statistics.

**Sec. 34. Clerk's record or certified copy, prima facie evidence.** R. S. c. 64, § 37. The town clerk's record of any birth, marriage, or death, or a duly certified copy thereof, shall be prima facie evidence of such birth, marriage, or death, in any judicial proceeding.

119 Me. 297; 120 Me. 290.

**Sec. 35. Defective and erroneous records, how perfected.** R. S. c. 64, § 38. If the record relating to a birth, marriage, or death does not contain all the required facts, or if it is alleged that the facts are not correctly stated therein, the town clerk shall receive an affidavit containing the facts required for record, if made by a person who was required by law to furnish information for the original record, or, at the discretion of the town clerk, by one or more credible persons having knowledge of the case. The town clerk shall file such affidavit and record it in a separate book to be kept for that purpose, with the name and residence of any deponent and the date of such record, and shall thereupon draw a line through the incorrect statements in the original record without erasing them, and shall then enter the facts required to amend the record; and forthwith, if a copy of the record has been sent to the state registrar of vital statistics, shall forward to the registrar a certified copy of the corrected record upon blanks to be provided by said registrar; and the registrar shall thereupon amend the record

in his office and state in the margin thereof his authority therefor. Reference to the record of the affidavit shall be made by the clerk on the margin of the original record. If the clerk furnishes a copy of such record, he shall certify to the facts contained therein as amended, and shall state in addition that the certificate is issued under the provisions of this section, a copy of which shall be printed on every such certificate. Such affidavit, or a certified copy of the record of any other city or town or of a written statement made at the time by any person since deceased who was required by law to furnish evidence thereof, may, at the discretion of the clerk, be made the basis for the record of a birth, marriage, or death not previously recorded, and such copy of a record may also be made the basis for completing the record of a birth, marriage, or death which does not contain all the required facts. Any oath which is required by the provisions of this section may be administered by the clerk or deputy clerk of a city or town; they shall receive no fee therefor.

**Sec. 36. Duties of clerks.** R. S. c. 64, § 40. The clerk of each city or town shall enforce, so far as comes within his power, sections ten, sixteen, seventeen, eighteen, nineteen, twenty-three, twenty-six, and twenty-nine of this chapter, and when he knows of any birth, marriage, or death, which is not reported to his office in accordance with the provisions of this chapter, he shall collect so far as he is able to do so, the facts called for in the blank certificates of birth, of marriage, or of death, as furnished by the state registrar, and shall record them as is herein prescribed; for each birth or death or marriage duly reported to the town clerk; physicians or persons solemnizing marriages shall receive twenty-five cents from the town in which the birth or death or marriage has occurred.

**Sec. 37. Duty of state registrar of vital statistics, when provisions of law as to registration of vital statistics are not complied with.** R. S. c. 64, § 41. When the state registrar of vital statistics believes that, in any place in this state, the records of births, marriages, or deaths are not made as is provided by law, or that any person neglects or fails to perform any duty required in the law relating to the registration of vital statistics, the said registrar may visit such places and make such investigations as he may deem necessary, and all records, blanks and papers of town clerks relating to births, marriages, or deaths shall be open to his examination. All actual traveling and other necessary expenses thus incurred by the state registrar, or incurred in attending the prosecution of cases brought by county attorneys, under the provision of section forty-one, shall be paid by the state from the appropriation provided in section thirty-three, but not more than two hundred dollars shall thus be paid to the state registrar for such expenses in one year.

**Sec. 38. Registrar of vital statistics to ascertain from what towns complete returns are lacking, and to send blanks to clerks for completion.** 1927, c. 213, § 1. The state registrar of vital statistics shall, as soon as practicable, ascertain from what cities, towns, and plantations and from what years, prior to eighteen hundred ninety-two, complete returns of births, marriages, and deaths have not been made to the state, or are not to be found among the records of his office, and shall convey this information to the clerks of such cities, towns, and plantations, together with suitable blanks upon which to make returns.

**Sec. 39. Clerks of towns to complete returns.** 1927, c. 213, § 2. Such clerks may, within a period of ten years, from July fifteen, nineteen hundred and twenty-seven, under the direction of the state registrar of vital statistics, cause to be transcribed in full upon such blanks all records of births, marriages, and deaths prior to eighteen hundred ninety-two in the possession of the city, town, or plantation and of the churches situated in the city, town, or plantation, not al-

ready returned, and shall transmit the same, properly certified, to the state registrar of vital statistics, within such reasonable time as he may prescribe.

**Sec. 40. Inscriptions on gravestones may be copied and recorded; blank forms to be furnished by registrar; compensation.** 1927, c. 213, § 3. If the death records of the city, town, or plantation prior to eighteen hundred ninety-two are incomplete, the clerk of such city, town, or plantation may, within ten years from July fifteen, nineteen hundred twenty-seven, as may be prescribed by the said state registrar of vital statistics, cause to be copied at the expense of the city, town, or plantation, under the direction of the said state registrar of vital statistics, the inscriptions on all gravestones in the city, town, or plantation erected to the memory of any person who died prior to eighteen hundred ninety-two, so far as the same relates to the name of the deceased, date of death, age or date of birth, if given, and the name of the cemetery, and shall cause such records to be recorded in the books or archives of the city, town or plantation. The state registrar of vital statistics shall furnish each of said clerks with suitable blank forms for the return of such records, which shall be copied, certified, and returned to the said state registrar of vital statistics within such reasonable time as he may prescribe as provided in section thirty-nine hereof. The work of transcription and certification shall be distributed as fairly and evenly as may be over said period of ten years.

**Sec. 41. Penalties.** R. S. c. 64, §§ 33, 39, 41. Any city or town clerk, who neglects or refuses to make or cause to be made the returns as required by section thirty of this chapter shall forfeit not less than twenty dollars, nor more than one hundred dollars, to the use of the state.

If any person wilfully neglects or refuses to perform any duty imposed upon him by the provisions of sections fifteen to forty, inclusive, of this chapter, he shall be punished by a fine of not more than one hundred dollars for each offense, for the use of the town in which the offense occurred, and the state registrar shall enforce this section as far as comes within his power; when the state registrar knows, or has good reason to believe, that any penalty or forfeiture hereunder has been incurred, he shall forthwith give notice thereof, in writing, to the county attorney of the county in which said penalty or forfeiture has occurred, which notice shall state as near as may be the time of such neglect, the name of the person or persons incurring the penalty or forfeiture, and such other facts relating to the default of duty as said registrar may have been able to learn, and upon receipt of such notice the county attorney shall prosecute the defaulting person or persons.

Any person who refuses to permit or hinders the examination or investigation of the state registrar as provided in section thirty-seven of this chapter, shall be punished by fine of not less than five, nor more than twenty dollars.

#### Publication of Ancient Vital Statistics.

**Sec. 42. Publication of ancient records of vital statistics.** R. S. c. 64, § 42. 1919, c. 33, § 1. Whenever the record of the births, marriages, and deaths of any town in the state, previous to the year eighteen hundred ninety-two, beginning at the very earliest date, shall be collected from church records, church registers, records of clergymen, family bibles, public records, and other available sources, and shall be printed and verified in the manner required by the standing committee of the Maine Historical Society, under the editorship of some person selected by said committee, whose services shall be rendered free and without any compensation, and the work shall appear to them to have been prepared with

accuracy, the librarian of the state library shall purchase five hundred copies of such record at a price not exceeding one cent per page; provided, that the written copies of the town records shall become the property of the state, and shall be deposited in the office of the registrar of vital statistics; and provided, further, that not more than one thousand dollars shall be expended by authority of this section in any one year.

**Sec. 43. Distribution of volumes.** R. S. c. 64, § 43. 1919, c. 33, § 2. The volumes purchased, as aforesaid shall be distributed by the state registrar as follows: one copy to the state library; one copy to the free public library of each town and city of the state; one copy to each state and territorial library in the United States; one copy to the library of congress; one copy to each incorporated historical society in the state; one copy to the library of each college in the state; and one copy to each registry of deeds. The remainder shall be placed in the state library for the purpose of exchange.

#### Parents and Children.

**Sec. 44. Father and mother joint natural guardians of children; neither has paramount rights.** R. S. c. 64, § 44. 1927, c. 78, § 1. The father and mother are the joint natural guardians of their minor children and are jointly entitled to the care, custody, control, services, and earnings of such children; and neither parent has any rights paramount to the rights of the other with reference to any matter affecting such children.

Liability of parent for injury by minor to schoolhouse and school furnishings, c. 19, § 194; 90 Me. 312; 94 Me. 471.

\*124 Me. 38; 126 Me. 112.

**Sec. 45. Parents may maintain joint action for loss of services; either may sue when one refuses.** 1927, c. 78, § 2. The parents of a minor child jointly may maintain an action for loss of the services or earnings of such child when such loss is caused by the negligent or wrongful act of another. But where one parent refuses to sue, the other may sue alone. Nothing contained herein shall be deemed to limit, amend, supersede, or affect the provisions of the workmen's compensation law or acts in amendment thereof.

**Sec. 46. When one parent is dead or has abandoned child, rights devolve on other.** 1927, c. 78, § 3. If one of the parents of a minor child be dead or has abandoned such child, all parental rights respecting such child shall devolve upon the other parent.

**Sec. 47. When parents live apart, judge of probate may decree as to care and custody; appeals.** R. S. c. 64, § 45. 1917, c. 8. If the father and mother of a minor child are living apart from each other, the judge of probate in the county where either resides, on petition of either, and after such notice to the other as he may order, may decree which parent shall have the exclusive care and custody of the person of such minor, or he may apportion the care and custody of the said minor between the parents, as the good of the child may require; which decree shall be in force until further order of the judge of probate. An appeal shall lie from such decree to the supreme court of probate, which appeal shall be heard and determined by the justice presiding, but the decree of the judge of probate shall be in force until reversed.

See c. 80, § 3; 94 Me. 471.

**Sec. 48. Vested jurisdiction of courts not affected.** R. S. c. 64, § 46. 1927, c. 78, § 4. Nothing contained in the three preceding sections shall be deemed to abrogate any power or jurisdiction now vested in any court over the care and custody of minor children.

94 Me. 471.

**Sec. 49. Administrators, etc., may pay funds to a minor not having a guardian in certain cases; limitation on amount; when payment may be made to either parent. R. S. c. 64, § 48.** Whenever, under any decree or order of the supreme judicial court of this state, or of any justice thereof, in term time or in vacation, or of any judge of any probate court in this state, any receiver, master, executor, administrator, trustee, guardian, or other person acting under authority of either of said courts, or any justice or judge thereof, shall have in his hands any funds not exceeding two hundred dollars to be distributed or paid to any person under the age of twenty-one years, not having a guardian legally appointed in this state, payment may be made directly to such minor, if such minor be ten years of age and such minor's receipt therefor shall be a sufficient voucher for such payment in the settlement in court of any account by the party who makes such payment, and shall discharge and release him from any and all further liability on account of the same. When said minor is under ten years of age the payment may be made to either parent at the discretion of said person paying said money; provided, however, that where the money is paid directly to said minor the person paying the same may, in his discretion, require on such receipt the counter signature of one or both of the parents of such minor, and when the minor is under ten years of age the person paying the same shall receive the receipt of either or both parents, or if neither parent is living may withhold payment until further order of court, or until the appointment of a guardian.

#### Protection of Children.

**Sec. 50. Designation of state and municipal boards changed. R. S. c. 64, § 49. 1917, c. 297. 1919, c. 171.** The state board of mother's aid, as now constituted, under the provisions of chapter one hundred sixty-one, shall be a state board of children's guardians, hereinafter referred to as the state board, and in each city, town, or plantation, the municipal board of mother's aid, as provided for in said chapter one hundred sixty-one, shall be a municipal board of children's guardians, hereinafter referred to as the municipal board.

**Sec. 51. Compensation of probation officers for services. R. S. c. 64, § 50. 1917, c. 297. 1919, c. 171.** County probation and associate probation officers performing any of the duties specified in the following sections of this chapter shall be allowed, by their respective counties, their actual expenses and such compensation as their respective boards of county commissioners may from time to time determine.

**Sec. 52. Investigations and prosecutions. R. S. c. 64, § 51. 1917, c. 297. 1919, c. 171.** All municipal boards, their agents and employees, all county probation officers and associate probation officers, and the state board and its agents, so far as funds are available, shall investigate all cases of cruel or injurious treatment of children coming to their knowledge, and shall cause offenders against any law for the protection of children or prevention of cruelty to the same to be prosecuted. The costs of court proceedings under this section shall be taxed and paid in the same manner as in any criminal process. All fines imposed for the punishment of offenses under any of the last thirteen sections of this chapter shall be paid over to the county treasurer of the county in which the offenses may have been committed.

**Sec. 53. Warrants to be issued on complaint of cases of neglect to children; child may be given into custody of individual or child welfare institution; court may direct municipal board to care for child pending hearing. R. S. c. 64, § 53. 1917, c. 297. 1919, c. 171.** When complaint in writing signed by any agent of

the state board, sheriff, deputy sheriff, county probation officer or associate probation officer, police officer, constable, member or agent of a municipal board, or any officer or agent of any society for the protection of children or prevention of cruelty to children or by three or more citizens of any town or city is made under oath to the probate court of the county or the municipal or police court having jurisdiction in the said city or town, alleging that such child in such city or town is cruelly treated or wilfully neglected by its parents or parent or by the wilful failure of such parent or parents, is not provided with suitable food, clothing, or privileges of education, or is kept at or allowed to frequent any disorderly house, house of ill fame, gambling place, or other place where intoxicating liquors are sold or other places injurious to the health and morals, or that such child is an orphan without means of support or kindred of sufficient ability who will furnish such support, and praying that suitable and proper provision be made for the care, custody, support, and education of the child named in such complaint, the court to whom such complaint is made shall issue a warrant causing the parents or other persons having custody or control of such child, if any, and the child if necessary to be brought before it, or shall cause notice to be given to said parents or said other persons in such manner or in such length of time as the court deems proper. The court shall cause notice in writing to be given to the municipal board of the town where the child is residing at least ten days before the date set for the hearing, provided, however, that the municipal board may waive such notice. If upon hearing it shall appear that any material allegations of said complaint are true, the court may order said child into the custody of any suitable person or any duly incorporated children's institution or child welfare organization consenting to receive the same, whose standards of care and maintenance are approved by the state board or into the custody of the state board itself. The court shall cause a copy of the order of commitment and of any subsequent modifications thereof to be sent forthwith to the state board. The court may direct the municipal board where the child is residing to make such provision for its care as may be necessary pending hearing and the expense, if any, of such care shall be paid in the same manner as provided in section fifty-five for the care of children committed to children's institutions or child welfare organizations or the state board.

**Sec. 54. Orders of court to divest parent of legal rights, but not to relieve of responsibility for support; appeal; condition of child may be investigated and decree altered.** R. S. c. 64, § 54. 1917, c. 297. 1919, c. 171. Orders and decrees provided for in the preceding sections shall have the same effect to divest the parent or parents of all legal rights in respect to said child as specified in section thirty-eight of chapter eighty, but shall not relieve the parent or parents of liability for the support of such child, or from the penalties for failure to support which are provided in sections forty-three, forty-five, forty-six and forty-seven of chapter one hundred twenty-nine. Such orders shall not extend beyond the time when the child arrives at the age of twenty-one years. The children's institution or organization or state board to which said child is committed shall have full custody and control over said child thereafter for said time, and shall have authority to give the consent required in section thirty-six of said chapter eighty. An appeal may be taken from the order or decree of any probate, municipal, or police court determining the custody of the child under the provisions of this chapter to the next term of the supreme judicial court to be holden within the county not earlier than fourteen days after the signing of said order or decree, provided that in counties having a superior court said appeal from any municipal or police court shall lie solely to said superior court next to be holden

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not earlier than fourteen days after the signing of said order or decree. The proceedings under such appeal from a probate court shall follow the form prescribed for appeal from probate courts and under such appeal from a municipal or police court shall follow the provisions of any special charter of the municipal or police court concerned, but pending action upon any such appeal the court may order the custody of the child to be retained by said suitable person, children's institution or child welfare organization or state board. Upon application by the state board, by a municipal board, by the parents or parent of any such child, or by the children's institution or child welfare organization or suitable person to which such child may have been committed to the court making the commitment, said court shall examine into the conditions and welfare of the said child, and may at any time make such further order in relation to his care, custody, support and education as justice may demand.

**Sec. 55. Bond required when child given into custody of individual; state board may provide for maintenance and education; state to recover from town; children or parents not to be considered paupers. R. S. c. 64, § 55. 1919, c. 171.** Whenever the court deems it suitable and conducive to the public welfare that any such child be placed under the control of an individual, the court shall first take a bond from such person running to the state in such sum and with such sureties as the court approves, conditioned that such person shall humanely treat and properly support, clothe, and educate the child, and in case of non-performance of the conditions of said bond a suit may be commenced thereon and the sum so recovered shall be paid into the treasury of the state for the joint benefit of the state and town of settlement, if any, of said child in proportion to the amount of expense incurred by the state and said town because of the failure of said person so to treat, support, clothe, and educate said child. The state board shall provide for the maintenance and education in or by duly incorporated children's institutions and child welfare organizations, where such are available, and otherwise direct in family homes, of any children committed to its custody under the provisions of the preceding sections. Bills itemizing the expense of maintenance and education of children committed under the provisions of this chapter, when approved by the state board and audited by the state auditor, shall be paid by the treasurer of the state, who shall recover from the town of settlement, if any, of any such child, one-half, but not exceeding an average of two dollars per week, of any such payments on account of said child. At the request of the parents or next friend of any dependent child under sixteen years of age who is without parent or grandparent of sufficient ability, or without other relatives able and willing to provide for its care, said request being approved by the municipal board of the city or town where the child is domiciled or by any duly incorporated children's institution or organization, the state board may make similar provision, without intervention of court, for the care of such child. No such child, nor the parents or grandparents of such child who are unable to provide for its care, shall be deemed paupers by reason of any care furnished to the child under the provisions of this chapter.

122 Me. 172.

**Sec. 56. Child to be placed in family or institution of same religious faith as that of the parents; written promise made by either parent to be carried out. R. S. c. 64, § 56. 1917, c. 297, § 7.** Any child who shall come in any way under the inspection or supervision of the state department of public welfare or under the provisions of sections fifty-two to sixty-two, inclusive, shall, when placed in a family be placed in a family of the same religious faith as that of the parents or surviving parent of such child, where a suitable family of such faith can be



found willing to take such child. Any written promise made by either parent shall be faithfully carried out by the agent, institution, or private person concerned. If such family can not be found, then such child shall be placed in an institution maintained for children of such faith. In case no institution of such faith exists in this state or is able to take care of said child, then it may be placed in such family or institution as may be approved by the state department of public welfare until such a family has been secured; provided, however, that if the parents of such child are of different religious faiths, or the faith of its parents cannot for any reason be ascertained, then such child shall be placed in a family or institution of that religious faith in which such child has been reared and educated, but where no such family or institution can be found to take such child, then in some family or institution approved by said board until such family or institution can be found. No child when placed in any home or institution shall be denied the opportunity of attending the religious worship or exercising the religious belief of its parents or surviving parent or in which it was reared and educated.

See c. 152, § 67.

**Sec. 57. No child under sixteen to be placed in almshouse; exceptions. R. S. c. 64, § 57. 1917, c. 297, § 8.** No child under sixteen years of age shall be placed in any almshouse in this state or be suffered by the overseers of the poor to remain in such almshouse except in cases of emergency, and then for a period not exceeding sixty days, provided that children under two years of age may be kept in almshouses when their mother is also an inmate; provided further, that with the consent of the state department of public welfare children when in need of medical or surgical treatment may be kept in hospitals or infirmaries connected with such almshouses for such length of time as they are in need of such treatment; provided also that when upon a certificate of two physicians who are graduates of some legally organized medical college and have practiced three years in this state, it shall be made to appear that any child is a proper subject for the Pownal state school, such child may with the consent of and under such regulations as the state department of public welfare may determine, be kept in the almshouse until such time as it can, under the provisions of section forty-nine, chapter one hundred fifty-five, be committed to said school. Whenever any child or children under sixteen years of age are placed or allowed by the overseers of the poor to remain in an almshouse, or in hospitals or infirmaries connected therewith, notice of that fact giving the name, parentage and such other facts as the state department of public welfare may require, shall be sent by the overseers of the poor to said department within forty-eight hours of the entrance of such child into the almshouse, infirmary or hospital. A similar notice within the same time shall be sent by the overseers of the poor to the said board when the child is discharged from said almshouse, hospital or infirmary.

**Sec. 58. Persons maintaining homes or maternity hospitals to have license. R. S. c. 64, § 58. 1917, c. 176. 1921, c. 86.** No person, firm, corporation, or association shall conduct or maintain a maternity hospital, or conduct or maintain a boarding house or home for three or more children under sixteen years of age, unattended by parents or guardian, excepting children related to such persons by blood or marriage, or who have been legally adopted by such persons, or engage in, or assist in conducting a business of placing out or finding homes or otherwise disposing of children under sixteen years of age, without having in full force a written license therefor from the state department of health; provided, that nothing in this section shall apply to any institution, which is or shall come under the supervision of the state department of public

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welfare by the provisions of chapter one hundred fifty-seven. Any licenses issued by the state board of charities and corrections, under former legislation and remaining in force shall continue in force until the expiration of the period for which they were granted unless sooner revoked by the commissioner of health for cause.

**Sec. 59. Terms used in section 58, defined. 1917, c. 149.** The term "boarding house for children" as used in section fifty-eight, shall be held to mean a house or other place conducted or maintained by any one who advertises himself or holds himself out as conducting a boarding place for children under sixteen years of age, or who receives illegitimate children under sixteen years of age, or who has in his custody or control three or more children under sixteen years of age unattended by parents or guardians, for the purpose of providing such children with food or lodging, excepting children related to him by blood or marriage or who have been legally adopted by him.

The term "home for children" as used in said section fifty-eight, shall be held to mean any children's home, orphanage, or other institution, association, organization, or individual engaged in receiving, caring for, and finding homes for orphaned, dependent, and neglected children.

Whoever advertises himself or holds himself out as placing or finding homes for, or otherwise disposing of children under sixteen years of age, or whoever within a period of six months, actually places or assists in placing in homes of persons other than relatives or causes or assists in causing the adoption or disposal otherwise of more than two children under sixteen years of age, shall be deemed as engaged or assisting in conducting a business of placing out or finding homes for children within the meaning of said section fifty-eight.

The term "maternity hospital" as used in said section fifty-eight shall be held to mean a house or other place maintained or conducted by any one who advertises himself or holds himself out as having or conducting a maternity hospital or boarding house as herein defined; or a house or any other place in which any person receives, cares for, or treats, within a period of six months, more than one woman during pregnancy, or during or after delivery, except women related to him by blood or marriage: Provided, however, that nothing herein shall be construed to prevent a nurse from practicing her profession in the home of the patient, or in any hospital which is otherwise under the supervision of the state department of public welfare other than a maternity hospital or boarding house for children.

**Sec. 60. Parents or guardians may petition for restoration of custody. R. S. c. 64, § 59. 1919, c. 171.** Whenever a child is in the custody of any children's institution, or child's welfare organization, or suitable person, or of the state board, the parents or either of them may make application in writing to any justice of the supreme judicial court to have its custody restored to him or them, such notice on the application and the time and place of the hearing thereon as the court orders, shall be given to such person, institution, or organization or to the state board and to the municipal board of the town where the proceedings therein were commenced; and if, upon such hearing it appears that the applicant is of sufficient ability and inclination suitably to provide for maintenance and education of said child, and that justice requires that its custody be restored to said applicant, the judge shall so order, and the custody and control of said child shall thereafter be given to said applicant until the further order of the court.

**Sec. 61. State or town may recover from parents. R. S. c. 64, § 60. 1919, c. 171.** The state, any town or county incurring expenses under sections fifty-

two, fifty-three, fifty-four, fifty-five and sixty of this chapter, through the fault of parents who are able to support and educate their children, but wrongfully neglect and refuse to do so, may recover of them or either of them, in an action of debt, the amount so expended.

**Sec. 62. Penalty for failure to perform duty.** R. S. c. 64, § 62. Whoever violates any provision of section fifty-six of this chapter, or wilfully fails, neglects or refuses to perform any of the duties imposed upon him by the provisions of the twelve preceding sections, shall be fined not more than five hundred dollars, or be imprisoned for not more than six months.

Note. Crimes against children, c. 129, §§ 31-42.

Criminal proceedings for desertion of families, c. 129, §§ 38-47.

Proceedings when child under age of sixteen years is arrested and charged with crime, c. 147, §§ 15-21.

## CHAPTER 73.

### Divorce and Annulling Illegal Marriages.

**Sec. 1. Certain marriages void, without process.** R. S. c. 65, § 1. Marriages prohibited in sections one, two and three, of chapter seventy-two, if solemnized in this state, are absolutely void; and the sentence of either party to imprisonment for life and confinement under it, dissolves the bonds of matrimony, without legal process in either case.

31 Me. 491; 32 Me. 589; \*76 Me. 421; \*97 Me. 133.

### Divorce from Bonds of Matrimony.

**Sec. 2. Causes for which divorce may be granted.** R. S. c. 65, § 2. 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 three consecutive years next prior to the filing of the libel, gross and confirmed 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 libellant resided here when the cause of divorce accrued, or had resided here in good faith for one 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 supreme judicial court has jurisdiction of libels for divorce in all counties except the county of Cumberland.

32 Me. 338; \*43 Me. 261; 45 Me. 379; \*51 Me. 481; 54 Me. 366; 58 Me. 162, 514;

60 Me. 452; 61 Me. 377, 397; 69 Me. 535; \*78 Me. 409; 88 Me. 120; 111 Me. 406;

114 Me. 60; \*118 Me. 454; 119 Me. 81; \*120 Me. 395; 121 Me. 104; 123 Me. 448; 125

Me. 397; \*126 Me. 342.

**Sec. 3. Commencement of proceedings; service.** R. S. c. 65, § 3. The libellant may file in the clerk's office a libel, signed by him, or insert it in a writ of attachment with power to attach real and personal property, to respond to the decrees of the court as in other suits; and service thereon shall be made by summons and copy, fourteen days before it is returnable; the court in any county or a justice thereof in vacation, may order notice as in other suits.

69 Me. 338; 119 Me. 81; \*120 Me. 379; 123 Me. 148.

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**Sec. 4. Libelee's residence to be named in libel, when known.** R. S. c. 65, § 4. 1927, c. 118. When the residence of the libelee can be ascertained, it shall be named in the libel and actual notice shall be obtained; if the libelee 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 libelee is not known to the libelant, and cannot be ascertained by reasonable diligence, the libelant shall so allege under oath in the libel. Where notice by publications is ordered upon any libel which sets out adultery as a ground for divorce the name of any alleged paramour of the libelee, if set out in the libel, shall be omitted from the published notice and a copy of such libel wherein are inserted, in place of such names, the words, "(a certain man named in the libel)" or "(a certain woman named in the libel)," as the case may be, shall, if otherwise correct, be considered and held to be for all purposes a true copy of such libel.

87 Me. 492; 108 Me. 99.

**Sec. 5. Perjury, penalty for.** R. S. c. 65, § 5. Whoever falsely and corruptly swears or affirms to any facts required as aforesaid, is guilty of perjury, and shall be punished by imprisonment not less than two, nor more than ten years.

See c. 133, § 1.

**Sec. 6. Pending libel, wife's expenses to be paid by husband.** R. S. c. 65, § 6. Pending a libel, the court, or any justice thereof in vacation, may order the husband to pay to the clerk, for the wife, sufficient money for her defense or prosecution thereof, and to make reasonable provision for her separate support; enter such decree for the care and custody of the minor children as they think right; and enforce obedience by appropriate processes.

46 Me. 381; 65 Me. 409; 69 Me. 338; \*112 Me. 419; 123 Me. 243.

**Sec. 7. Court may free wife from restraint pending libel.** R. S. c. 65, § 7. After a libel is so filed in any county, the court, on the petition of the wife, may prohibit the husband from imposing any restraint on her personal liberty during its pendency.

**Sec. 8. Jury trial.** R. S. c. 65, § 8. 1917, c. 181. If either party requests in writing filed with the clerk on or before the return day of the libel, or the court orders it, the case shall be submitted to a jury; and if they find the allegations are true, and that a divorce ought to be granted according to section two, the court shall so decree. In all libels for divorce returnable to the supreme judicial court the libel shall be in order for hearing at the first or return term, provided service of said libel has been made in accordance with this chapter not less than sixty days before said return term.

58 Me. 162; 119 Me. 14.

**Sec. 9. Alimony, and other provisions for wife in case of divorce for husband's fault.** R. S. c. 65, § 9. When a divorce is decreed for impotence, the wife's real estate shall be restored to her, and the court may enter judgment for her against her husband for so much of her personal property as came to him by the marriage, or its value in money, as it thinks reasonable; and may compel him to disclose, on oath, what personal estate he so received, how it has been disposed of, and what then remains. When a divorce is decreed to the wife for the fault of the husband for any other cause, she shall be entitled to one-third, in common and undivided of all his real estate, except wild lands, which shall descend to her as if he were dead; and the same right to a restoration of her real and personal estate, as in case of divorce for impotence. The court may also decree to her reasonable alimony out of his estate, having regard to his ability; and to effect the purposes aforesaid, may order so much of his real estate, or the rents and profits thereof, as is necessary, to be assigned and set

out to her for life; or instead of alimony, may decree a specific sum to be paid by him to her; and use all necessary legal processes to carry its decrees into effect.

27 Me. 220; 41 Me. 230; 55 Me. 21; \*59 Me. 150, 153; 60 Me. 452; 61 Me. 377, 398;  
62 Me. 123; 65 Me. 409; \*69 Me. 533; \*107 Me. 35; 117 Me. 236; 122 Me. 156.

**Sec. 10. Provisions for husband in case of divorce for fault of wife. R. S. c. 65, § 10.** When a divorce is decreed to the husband for the fault of the wife, he shall be entitled to one-third, in common and undivided of all her real estate, except wild lands, which shall descend to him as if she were dead; and the court may allow him so much of her personal estate as seems reasonable. In all cases the right, title, and interest of the libelee in the real estate of the libellant shall be barred by the decree.

69 Me. 533.

**Sec. 11. New trial within three years, when granted. R. S. c. 65, § 11.** Within three years after judgment on a libel for divorce, a new trial may be granted as to the divorce when the parties have not cohabited, nor either contracted a new marriage since the former trial; and when either of the parties has contracted a new marriage since the former trial, a new trial may be granted as to alimony or specific sum decreed, on such terms as the court may impose and justice require, when it appears that justice has not been done through fraud, accident, mistake, or misfortune.

55 Me. 375; 63 Me. 424; 66 Me. 270, 537; 64 Me. 420; 119 Me. 17; \*120 Me. 407.

**Sec. 12. Divorces decreed out of the state. R. S. c. 65, § 12.** When residents of the state go out of it for the purpose of obtaining a divorce for causes which occurred here while the parties lived here, or which do not authorize a divorce here, and a divorce is thus obtained, it shall be void in this state; but in all other cases, a divorce decreed out of the state according to the law of the place, by a court having jurisdiction of the cause and of both parties, shall be valid here.

\*9 Me. 146; 76 Me. 536; \*78 Me. 189.

**Sec. 13. Issue inherit. R. S. c. 65, § 13.** A divorce does not bar the issue of the marriage from inheriting, or affect their rights.

**Sec. 14. Disposal of minor children, and change of name; compulsory powers of court. R. S. c. 65, § 14. 1917, c. 175.** The court making a decree of nullity, or of divorce, or any justice thereof in vacation, may also decree concerning the care, custody, and support of the minor children of the parties and with which parents any of them shall live, or grant the care and custody of said children to a third person or to some suitable society or institution for the care and protection of children, alter its decree from time to time as circumstances require; change the name of the wife, at her request; and in execution of the powers given it in this chapter may employ any compulsory process which it deems proper, by execution, attachment, or other effectual form.

64 Me. 488; 65 Me. 409; 66 Me. 537; 80 Me. 483.

### Annuling Illegal Marriages.

**Sec. 15. Illegal marriages, how annulled. R. S. c. 65, § 15.** When the validity of a marriage is doubted, either party may file a libel as for divorce; and the court shall decree it annulled or affirmed, according to the proof; but no such decree affects the rights of the libelee, unless he was personally notified to answer, or did answer to the libel.

55 Me. 362; \*76 Me. 422; 97 Me. 132.

**Sec. 16. Issue, when legitimate, and when not. R. S. c. 65, § 16.** When a marriage is annulled on account of the consanguinity or affinity of the parties,

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the issue is illegitimate; but when on account of nonage, insanity, or idiocy, the issue is the legitimate issue of the parent capable of contracting marriage.

See c. 72, § 2; 76 Me. 422.

**Sec. 17. Issue of second marriage, when legitimate. R. S. c. 65, § 17.** When a marriage is annulled on account of a prior marriage, and the parties contracted the second marriage in good faith, believing that a prior husband or wife was dead, that fact shall be stated in the decree of nullity; and the issue of such second marriage, begotten before the commencement of the suit, is the legitimate issue of the parent capable of contracting.

Note. Clerks of courts shall make return of libels for divorce to state registrar of vital statistics, c. 72, § 31.

## CHAPTER 74.

## Rights of Married Women.

**Sec. 1. Rights of married women to hold and dispose of property; exceptions. R. S. c. 66, § 1.** A married woman, of any age, may own in her own right real and personal estate acquired by descent, gift, or purchase; and may manage, sell, convey, and devise the same by will, without the joinder or assent of her husband; but such conveyance without the joinder or assent of the husband, shall not bar his right and interest by descent in the estate so conveyed. Real estate directly conveyed to her by her husband, cannot be conveyed by her without the joinder of her husband, except real estate conveyed to her as security or in payment of a bona fide debt actually due to her from her husband. When payment was made for property conveyed to her from the property of her husband, or it was conveyed by him to her without a valuable consideration, it may be taken as the property of her husband to pay his debts contracted before such purchase.

27 Me. 130; 31 Me. 564; 32 Me. 33; 34 Me. 151, 542, 572; \*35 Me. 428; 36 Me. 70, 85; 37 Me. 396, 399; 41 Me. 573; 42 Me. 116; \*43 Me. 189; 45 Me. 445, 480; 47 Me. 134, \*335; 48 Me. 180, 346; 49 Me. 482; 50 Me. 93, \*374; 51 Me. 50, 252, 348, 357, 519; 53 Me. 47; 55 Me. 180, \*247; 57 Me. 301, 562; \*58 Me. 141; 60 Me. 229; 62 Me. 271; 63 Me. 319, 321; \*64 Me. 181; \*65 Me. 444-5; 67 Me. 195; 69 Me. 252; 71 Me. 157; 75 Me. 474, 260; 76 Me. 494; \*77 Me. 524; \*78 Me. 18; 80 Me. 279, \*478; 81 Me. 23, \*376; \*82 Me. 264; 84 Me. 362, 541; \*88 Me. 22; \*91 Me. 553; 96 Me. 530; \*97 Me. 494; 100 Me. 511; \*107 Me. 445; 112 Me. \*369, 431; 120 Me. 287.

**Sec. 2. A woman does not lose, and a husband does not acquire, rights to her property by marriage. R. S. c. 66, § 2.** A woman, having property, is not deprived of any part of the same by her marriage, since the twenty-first day of April, eighteen hundred and forty-four; and a husband, by marriage since that time, acquires no right to any property of his wife. His rights acquired before that time are not affected by this chapter. A married woman may release to her husband the right to control her property, or any part of it, and to dispose of the income thereof for their mutual benefit, and may in writing revoke the same.

48 Me. 268; 63 Me. 521; \*64 Me. 181; 68 Me. 104, 277; 69 Me. 252; 71 Me. 134; \*72 Me. 116; \*81 Me. 376; \*91 Me. 553.

**Sec. 3. May be paid for her labor, not done for her family. R. S. c. 66, § 3.** She may receive the wages of her personal labor, not performed for her own family, maintain an action therefor in her own name, and hold them in her own right against her husband or any other person.

58 Me. 55; \*64 Me. 181; 66 Me. 184; 76 Me. 524; 80 Me. 348; \*88 Me. 22; \*91 Me. 553; 107 Me. 483; 120 Me. 514.

**Sec. 4. Husband not liable for wife's debts or torts; her property, but not her body, liable as if sole.** R. S. c. 66, § 4. A husband married since April twenty-six, eighteen hundred and fifty-two, is not liable for the debts of his wife contracted before marriage, nor for those contracted afterward in her own name, for any lawful purpose; nor is he liable for her torts committed after April twenty-six, eighteen hundred and eighty-three, in which he takes no part; but she is liable in all such cases; a suit may be maintained against her therefor, and her property may be attached and taken on execution for such debts and for damages for such torts as if she were sole; but she cannot be arrested.

41 Me. 245; 42 Me. 116; 55 Me. 516; 57 Me. 547; 63 Me. 409; 64 Me. 181; 65 Me. 222; 69 Me. 110, 252; 76 Me. 426; \*80 Me. 537; 82 Me. 260; 91 Me. 546; \*95 Me. 107; 96 Me. 533; 112 Me. 370; \*118 Me. 346; 121 Me. 228; \*124 Me. 391.

**Sec. 5. Capacity to prosecute or defend suits at law, with or without joinder of husband; neither liable to arrest.** R. S. c. 66, § 5. She may prosecute and defend suits at law or in equity, either of tort or contract, in her own name, without the joinder of her husband, for the preservation and protection of her property and personal rights, or for the redress of her injuries, as if unmarried, or may prosecute such suits jointly with her husband, and the husband shall not settle or discharge any such action or cause of action without the written consent of the wife. Neither of them can be arrested on such writ or execution, nor can he alone maintain an action respecting his wife's property.

33 Me. 197; 35 Me. 339; 46 Me. 298; 51 Me. 79; \*54 Me. 159; \*55 Me. 247, 359; \*58 Me. 55; 67 Me. 309; 68 Me. 104, 277; \*70 Me. 382; 76 Me. 423; 80 Me. 537; 84 Me. 82; \*88 Me. 22; \*91 Me. 553; 110 Me. 305; \*120 Me. 480.

**Sec. 6. Proceedings in equity between husband and wife.** R. S. c. 66, § 6. A wife may bring a bill in equity against her husband for the recovery, conveyance, transfer, payment, or delivery to her of any property, real or personal or both, exceeding one hundred dollars in value, standing in his name, or to which he has the legal title, or which is in his possession, or under his control, which in equity and good conscience belongs to her and which he neglects or refuses to convey, transfer, pay over, or deliver to her, and upon proper proof, may maintain such bill. And a husband shall have the same right to bring and maintain a bill in equity against his wife for the purposes aforesaid, subject to the limitations aforesaid. Marriage shall be no bar to the maintenance of a bill in equity by a wife against her husband, or by a husband against his wife, brought for the purposes aforesaid. No costs shall be awarded against either party in any such proceedings. If it satisfactorily appears to the court on hearing that the party bringing the bill has conveyed or transferred any of her or of his property, real or personal, to the other party to the bill for the purpose of cheating, defrauding, hindering, or delaying her or his creditors, the bill shall be dismissed. An appeal from any final decree may be taken as in other equity causes. There shall be no survival of the right to institute proceedings under this section, and if a wife or husband dies after the commencement of proceedings hereunder and before the final determination and disposition of the same, such proceedings shall abate.

See c. 90, § 6, ¶ ix; \*113 Me. 227; \*118 Me. 337; 124 Me. 263.

**Sec. 7. Action by married woman for alienation of affections of husband.** R. S. c. 66, § 7. Whoever, being a female person more than eighteen years of age, debauches and carnally knows, carries on criminal conversation with, alienates the affections of, the husband of any married woman, or by any arts, enticements, and inducements deprives any married woman of the aid, comfort, and society of her husband, shall be liable in damages to said married woman in

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an action on the case brought by her within three years after the discovery of such offense.

\*115 Me. 341; \*118 Me. 441; 120 Me. 482; \*122 Me. 40; \*126 Me. 320.

**Sec. 8. Descent of property of married woman, dying intestate; husband and wife may dispose of it by antenuptial settlement.** R. S. c. 66, § 8. When a married woman dies intestate, her property, real and personal, descends as provided in chapter eighty-eight; and administration and distribution may take place accordingly; but a husband and wife, by a marriage settlement executed in presence of two witnesses before marriage, may determine what rights each shall have in the other's estate during the marriage, and after its dissolution by death, and may bar each other of all rights in their respective estates not so secured to them.

See c. 88, §§ 9-12; 45 Me. 262; \*69 Me. 251; \*82 Me. 237; \*95 Me. 77; 96 Me. 533; 105 Me. 63; 116 Me. 321; 125 Me. 82.

**Sec. 9. Husband and father compelled to contribute to support of wife or minor children.** R. S. c. 66, § 9. 1927, c. 98. Whenever a man, having a wife, a minor child, or children, residing in this state, and being of sufficient ability, or being able to labor and provide for them, wilfully and without reasonable cause, refuses or neglects to provide suitable maintenance for them, the supreme judicial court, the superior courts, the probate courts, and any municipal court, in term time or vacation, in the county where the wife or such minor child or children reside, on petition of the wife for herself and for such child or children, or of such child or children by their guardian, after such notice to the husband or father as it may order, and hearing, may order him to contribute to the support of his wife and such minor child or children or either of them such sums payable weekly, monthly, or quarterly, as are deemed reasonable and just, and may enforce obedience by appropriate decrees. Execution may also issue for said sums, when payable and for costs. Any party aggrieved by any order or decree authorized by this section and made by a probate court or municipal court may appeal from said order or decree in the same manner as provided for appeals from such court in other causes. Provided, however, that pending the determination of such appeal, the order or decree appealed from shall remain in force and obedience thereto may be enforced as if no appeal had been taken. Said appeal shall be in order for hearing at the first term of the court appealed to held after said appeal is taken, and no continuance thereof shall be had without the consent of the appellant or without legal cause shown therefor to the justice of said court to which appeal is had.

103 Me. 211; 104 Me. 354; \*122 Me. 15.

Note. Criminal proceedings for desertion of families, c. 123, §§ 43-47.

**Sec. 10. Proceedings in probate court for protection of wife deserted by, or living apart from her husband.** R. S. c. 66, § 10. If a husband, 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 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 the petition of either the husband or wife, or of the guardian or next friend of either who may be insane, may make further orders relative 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 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 enforce obedience by appropriate process.

123 Me. 530.

**Sec. 11. Proceedings by husband deserted by or living apart from wife; decree bars wife's rights in husband's property.** R. S. c. 66, § 11. If a wife, 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 the preceding section, the probate 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.

**Sec. 12. Deserted wife obtaining decree may convey her property as if sole; decree bars husband's rights.** R. S. c. 66, § 12. If the probate 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 ten, 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. 13. Petition, where brought; notice.** R. S. c. 66, § 13. The petition under the provisions of the three preceding sections 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.

**Sec. 14. Rights of issue, marriage settlement or contract not affected.** R. S. c. 66, § 14. The provisions of the foregoing sections 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. 15. Appeal.** R. S. c. 66, § 15. Any party aggrieved by any order or decree hereinbefore provided for may appeal to the supreme judicial court in the same manner as provided for probate appeals.

**Sec. 16. Certified copy of any decree shall be filed in office of register of deeds.** R. S. c. 66, § 16. Whenever any decree provided for in sections ten and eleven hereof 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, shall forthwith file in the office of the register of deeds *in the same county*, [in any county 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.

Note. The change indicated has been suggested by Judge Ayer and H. A. Peabody, Register of Probate.