

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....
1841.

TITLE SIXTH.

Of domestic relations.

- CHAPTER 87. Of marriage, and its solemnization.
88. Of parents and children.
89. Of divorce, and dissolution of marriages.
90. Of masters, apprentices and servants.

CHAPTER 87.

OF MARRIAGE, AND ITS SOLEMNIZATION.

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| <p>SECT. 1, 2. Marriages prohibited, within certain degrees.</p> <p>3. Certain marriages void.</p> <p>4. Bigamy not allowed.</p> <p>5. Marriage in another state, in evasion of these provisions, void.</p> <p>6. Publication of intentions of marriage.</p> <p>7. Consent of parent or guardian of a person under age.</p> <p>8. Manner of publishing, where there is no town clerk.</p> <p>9. Proceedings, when banns are forbidden.</p> <p>10. Form of marriage among quakers, and certificate thereof.</p> <p>11. Justices may solemnize marriages.</p> <p>12. Also commissioned ministers.</p> <p>13. Tenure of office of such ministers.</p> <p>14. Penalty, for marrying persons, contrary to the foregoing provisions.</p> <p>15. Punishment, if unauthorized persons undertake to solemnize marriages.</p> <p>16. Record of marriages, and return thereof.</p> <p>17. Copies of such records, to be legal evidence.</p> <p>18. What marriages shall be valid.</p> <p>19. Penalty, for pulling down publications.</p> | <p>SECT. 20. Penalty, for false certificate of publication.</p> <p>21. Town clerk to make annual returns of marriages.</p> <p>22. Mode of authorizing a wife to contract, when deserted by her husband.</p> <p>23. Sale of her real estate in such case.</p> <p>24. She may be a party to suits.</p> <p>25. Payments due to her, in her own right.</p> <p>26. Mode of proceeding, in such cases.</p> <p>27. Her contracts to bind her husband.</p> <p>28. Husband may join in suits commenced by her.</p> <p>29. Wife of a person, sentenced to state prison, may be authorized to contract.</p> <p>30. Notice to husband. Duration of authority.</p> <p>31. Manner of securing to a married woman, the avails of her real estate, taken for public uses.</p> <p>32. Married woman, removing into this state without her husband, may contract as a feme sole.</p> <p>33. Effect, if her husband afterwards come into the state.</p> |
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Marriages prohibited, within certain degrees.
1821, 70, § 1.

Same subject.
1821, 70, § 1.

SECTION 1. No man shall marry his mother, grandmother, daughter, grand daughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's daughter, wife's grand daughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister.

SECT. 2. No woman shall marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, grand daughter'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.

SECT. 3. No white person shall intermarry with any negro, indian or mulatto; and no insane person or idiot shall be capable of contracting marriage.

SECT. 4. All marriages contracted, while either of the parties has a former wife or husband living, shall be void, unless the former marriage shall have been dissolved, by a decree of divorce.

SECT. 5. When any persons, resident in this state, shall undertake to contract a marriage, contrary to the preceding provisions of this chapter, and shall, in order to evade those provisions, and with an intention of returning to reside in this state, go into another state or country, and there have their marriage solemnized, and shall afterwards return and reside here, such marriage shall be deemed and held void, in this state.

SECT. 6. All persons resident in this state, intending to be joined in marriage, shall have their intentions published at three public religious meetings, on different days at three days' distance, exclusively, at least, from each other, in the city, town, or plantation, where they respectively dwell; or have such intentions posted up by the clerk of such town or plantation fourteen days, in some public and conspicuous place therein, and shall deliver a certificate of such publishment, under the hand of the town or plantation clerk, to the minister or justice of the peace, solemnizing the marriage.

SECT. 7. When a male under twenty one years, or a female under eighteen years of age, is to be married, the consent of the parent, guardian, or other person, having the care and government of such party, if within the state, shall be first obtained.

SECT. 8. If the parties or either of them, live in a town or place, where there is no clerk, publishment shall be made, as above directed, in the adjoining town or plantation, and a certificate of such clerk shall be obtained before marriage.

SECT. 9. When the banns of matrimony between any persons are forbidden, and the reasons assigned in writing, by the person forbidding, and left with the town or plantation clerk, he shall issue no certificate as aforesaid, until a decision shall be made by two justices of the peace of the same county, approving the marriage, after due notice to, and a hearing of, all concerned; provided the person, forbidding the banns, shall, within seven days after filing his reasons, procure the decision of such justices, unless they shall certify that further time is necessary for the purpose, in which case a certificate shall be withheld, until the expiration of the certified time; and by the decision of such justices, he shall govern himself; and, if the decision be against the person forbidding, he shall pay all costs to the persons, whose marriage was forbidden, and the justices shall enter judgment therefor, and issue execution accordingly.

SECT. 10. All marriages, solemnized among the people called, quakers or friends, in the form heretofore practised, and in use in their meeting, shall be good and valid, and shall not be construed, as affected by any of the foregoing provisions in this chapter; and the clerk of the meeting, or the keeper of the records of the meeting, in which such marriages shall be solemnized, shall, once every

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Certain marriages void.

1821, 70, § 2.

Bigamy forbidden.

1834, 116, § 3.

Marriages in another state, in evasion of these provisions, void.

1821, 70, § 1.

16 Mass. 157.

8 Pick. 433.

Publication of intentions of marriage.

1821, 70, § 5.

Consent of parent or guardian of a person under age.

1821, 70, § 5.

Manner of publishing, where there is no town clerk.

1821, 70, § 5.

Proceedings, when banns are forbidden.

1821, 70, § 6.

Form of marriage among quakers, and certificate thereof.

1821, 70, § 9.

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year, deliver a list of all such marriages to the clerk of the town, in which such clerk resides, on penalty of forfeiting fifty dollars; one half to the use of the county, and the residue to the use of the prosecutor.

Justices may solemnize marriages.
1821, 70, § 3.
1 Mass. 240.
7 Mass. 48.

SECT. 11. Every justice of the peace, appointed for any particular county, and in which he resides, may solemnize marriages in such county, where either of the parties reside; and every justice of the peace, appointed for each and every county in the state, may solemnize marriages in any county where either of the parties resides.

Also commissioned ministers.
1821, 70, § 3.

SECT. 12. Every ordained minister of the gospel, duly appointed and commissioned for that purpose, by the governor and council, shall have power to solemnize marriages within the county, for which he was appointed, and in which he resides; and in any other counties, when such power is given and expressed in his commission, between parties, either of whom resides in the county where the marriage is solemnized.

Tenure of office, of such ministers.
1821, 70, § 4.

SECT. 13. Such ordained minister shall hold his office, during the pleasure of the executive; and the commission shall be conclusive evidence, that he is an ordained minister; and when the commission shall be revoked, a copy of such revocation shall be filed in the clerk's office of said county.

Penalty, for marrying persons, contrary to the foregoing provisions.
1821, 70, § 7.

SECT. 14. If any justice of the peace, or minister commissioned as aforesaid, shall, knowingly and wilfully, join any persons in marriage, contrary to the provisions of this chapter, he shall forfeit and pay the sum of one hundred dollars; two third parts thereof to the use of the county, in which the offence was committed, and the residue to the prosecutor; to be sued for and recovered by the county treasurer, or by the parent, guardian or other person, under whose immediate care and government either of the parties was, at the time of such marriage: and every justice or minister, against whom such recovery shall be had, is forbidden from joining any persons in marriage afterwards.

Punishment, if unauthorized persons undertake to solemnize marriages.
1821, 70, § 7.

SECT. 15. If any person, thus forbidden, or any minister or other person, who is not authorized to solemnize marriages, shall join any persons in marriage, on conviction thereof upon indictment, he shall be punished by confinement to hard labor in the state prison for a term, not exceeding five years, or by fine, not exceeding one thousand dollars.

Records of marriages, and return thereof.
1821, 70, § 8.

SECT. 16. Each justice and minister shall keep a record of all marriages solemnized before him, and in the month of April, annually, shall make a return to the clerk of the town or plantation, in which the marriage is solemnized, certifying the names of the parties so married by him, and the place of their residence, and the date of the marriage; and for his neglect to comply with this requisition, he shall forfeit and pay the sum of fifty dollars; one half to the use of the county, and the other half to the person suing for the same.

Copies of such records, to be legal evidence.

SECT. 17. An attested or sworn copy of the record of a marriage, made and kept, as before mentioned, by a justice of the peace, or commissioned minister, or by the clerk of any town or plantation, shall be received in all courts, as evidence of the fact of mar-

riage; but where such cannot be produced, other presumptive evidence may be admitted.

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SECT. 18. No marriage solemnized before any known inhabitant of this state, professing to be a justice of the peace or an ordained minister of the gospel, duly appointed and commissioned to solemnize marriages, shall be deemed void, nor shall the validity thereof be in any manner affected, on account of any want of jurisdiction or authority in such supposed justice or commissioned minister, or on account of any omission or informality in entering the intention of marriage or publication of the banns; provided, the marriage be in other respects lawful, and consummated with a full belief on the part of the persons married, or either of them, that they have been lawfully joined in marriage.

What marriages shall be valid.
6 Greenl. 148.

SECT. 19. Whoever shall pull down any written posted publication, before the end of said fourteen days, shall forfeit and pay ten dollars for the use of the town or plantation.

Penalty for taking down publications.
1821, 70, § 7.

SECT. 20. If any city, town, or plantation clerk shall make out and deliver, to any person, a false certificate of the publication of the banns of matrimony between two persons, knowing the same to be false in any particular, and be thereof convicted, he shall be fined one hundred dollars, or be imprisoned for the term of six months in the common jail of the county, where the offence is committed.

Penalty, for false certificate of publication.

SECT. 21. The clerk of every city, town or plantation shall return, to the clerk of the judicial courts for his county, a transcript of all records of marriages made upon his books; during the year for which he is clerk; and it shall be the duty of the clerk of said courts to record the same in a book, to be kept for that purpose; and he shall be allowed, from the county treasury, for recording, at the rate of twelve cents a page.

Town clerk, to make annual returns of marriages.

CERTAIN PROVISIONS RESPECTING HUSBAND AND WIFE.

SECT. 22. The supreme judicial court, on application of any married woman, whose husband has absented himself from the state, abandoning her, and not making sufficient provision for her maintenance, may empower her, during his absence, and till his return, in her own name, to make and execute any contract under seal or otherwise.

Mode of authorizing a wife to contract, when deserted by her husband.
1821, 57, § 9.

SECT. 23. She may also be so authorized to make sale of any estate, real or personal, of which she is seized or possessed in her own right; and duly execute all legal instruments, necessary for that purpose.

Sale of her real estate, in such case.
1821, 57, § 9.

SECT. 24. She may also commence, prosecute and defend any action, in law or equity, to final judgment and execution, in like manner as if she were unmarried.

She may be a party to suits.
1821, 57, § 9.

SECT. 25. The court may also, on her petition, authorize any person holding money or other personal property, to which the husband is entitled in her right, to pay and deliver the same to the wife; and authorize her to give a discharge for the same, which shall be valid; and to use and dispose of such property, during the absence of the husband, as her own property.

Payments due to her, in her own right.

SECT. 26. The application, for any of the purposes before

Mode of pro-

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ceeding, in such cases.
1821, 57, § 11.

Her contracts to bind her husband.
1821, 57, § 10.

Husband may join in suits, commenced by her.
1821, 57, § 10.

Wife of a person, sentenced to state prison, may be authorized to contract.

Notice to husband. Duration of authority.

Manner of securing, to a married woman, the avails of her real estate, taken for public uses.

Married woman, removing into this state, without her husband, may contract as a feme sole.

Effect, if her husband afterwards come into the state.

mentioned, may be presented and heard in any county; but the court, before granting any of the powers before mentioned, shall order notice to be given, in like manner as is prescribed, in case of libel for divorce filed by a wife, when the party complained of is without the state.

SECT. 27. All contracts, lawfully made by any married woman, by virtue of any power given her as aforesaid, shall be binding on her and her husband, in like manner as if their marriage had taken place after such contracts; and, during his absence, she shall be liable to be sued thereon, as if she were unmarried; and for all other acts done by her, while the power granted to her is continued.

SECT. 28. No suit pending, where the wife shall be a party, pursuant to power granted her as before mentioned, shall abate by his return into the state; but, on his application, he may be admitted to prosecute or defend jointly with her, as if their intermarriage had taken place after the commencement of such suit; but, if he shall not be admitted as a party, judgment shall be rendered, and execution issued and enforced by, or against her, in the same manner, as if judgment had been rendered [by or] against her before their intermarriage.

SECT. 29. When any married man shall be sentenced to confinement in the state prison, and confined under such sentence, the wife, on her petition, may be authorized to make contracts and conveyances, and perform all such acts, as are above mentioned, in case of abandonment by the husband.

SECT. 30. When application therefor shall be made, notice shall be given to the husband, prior to the grant of such powers to his wife; and her contracts shall have the same binding effect, as those made by her, as before mentioned, in case of absence of the husband. The authority of the wife so given shall continue, till the discharge of the husband from the state prison.

SECT. 31. When the real estate of a married woman is taken for any rail road, turnpike, way, or public use, or shall be damaged by the laying out of such way, or any other public work, the damages, awarded therefor, shall be so invested and disposed of, as to secure to her the same benefits of the sum awarded and the income of it, as she would have had, of, and in, the real estate and its income; and, on her application to the supreme judicial court, they may hear and decide the case according to the course of chancery proceedings, and make such decrees, as may enforce and secure her rights.

SECT. 32. When a married woman shall come into this state from any other state or country, without her husband, he having never lived with her in this state, she may make contracts and commence and defend suits, and dispose of property in her own name, as if she were unmarried; and shall be liable to be sued on her contracts, made before his arrival in this state.

SECT. 33. If the husband of such woman shall afterwards come into this state, and claim his marital rights, his arrival shall have the same effect, as to contracts made by her, or suits pending, in which she is a party, as if they had been first married at the time of his arrival here, and shall have no other.