

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

TITLE FIVE.

Domestic relations.

- CHAP. 59. Marriage and its solemnization, record of births and deaths, parents and children, and the adoption of children.
60. Divorce and dissolution of marriages.
61. The rights of married women.
62. Masters, apprentices and servants.

CHAPTER 59.

MARRIAGE AND ITS SOLEMNIZATION, RECORD OF BIRTHS AND DEATHS, AND THE ADOPTION OF CHILDREN.

MARRIAGE AND ITS SOLEMNIZATION.

- SEC. 1, 2. Marriages prohibited within certain degrees of relationship.
3. White persons prohibited from intermarrying with negroes, mulattoes or indians. Insane persons and idiots incapable of contracting marriage.
4. Bigamy prohibited.
5. Intention of marriage to be published; how to be published; certificate of publishment to be furnished person solemnizing marriage.
6. Consent of parents, guardians and masters of minors to be obtained before marriage.
7. Residents going out of state for purpose of marriage, to file certificate with town clerk on return. Penalty for neglect.
8. Caution, with reasons therefor, may be filed with clerk when unlawful marriage is supposed to be intended. In such case clerk to withhold certificate and notify person filing caution. Two justices of the peace to decide on sufficiency of reasons after notice to both parties.
9. Marriage in another state, with intent to evade the preceding provisions, void in this state.
10. Marriages solemnized among quakers or friends in the form heretofore practiced in their meetings valid, and not affected by foregoing provisions. Clerk of meeting to deliver a list of such marriages to the clerk of his town once a year. Penalty for neglect.
11. Justices of the peace, and ordained ministers and licensed preachers commissioned by the governor and council for that purpose, may solemnize marriages within certain limits.
12. Ministers and preachers to hold office during the pleasure of the executive; commission to be conclusive evidence of being minister; when commission is revoked, copy of revocation to be filed in clerk's office of county.
13. Penalty for marrying persons in violation of the foregoing provisions.
14. Penalty for marrying by persons not authorized.
15. Persons authorized to solemnize marriages, to keep record and make return to town clerk within one year. Penalty for neglect.
16. Attested copy of such record to be received in all courts as evidence of marriage.
17. Marriages valid notwithstanding informalities or want of authority on the part of person solemnizing same, if consummated in good faith by either of the persons married.
18. Penalty for giving false certificate of intention.

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SEC. 19. Town clerk to make annual return of marriages to clerk of courts for his county; clerk of courts to record same in a book to be kept for the purpose; fees for recording.

RECORD OF BIRTHS AND DEATHS.

20. Town clerk to record all births and deaths.
21. Parents and others to give notice of births and deaths to clerk.
22. Penalty for neglect to perform duties required in the two preceding sections.

PARENTS AND CHILDREN.

23. Property of minor children to be applied to their support in certain cases.
24. Father by last will may appoint guardian to minor children, until fourteen years of age.
25. Mother of an illegitimate child may bind him during minority.
26. Power of mother to bind her children to cease in case of her subsequent marriage; and not be exercised during its continuance, either by herself or her husband.

ADOPTION OF CHILDREN.

27. Who may adopt children. Who may be adopted. Leave to be obtained of judge of probate of county.
28. Proceedings in probate court for this purpose.
29. Legal effect of such adoption.
30. Appeal from decree of probate court may be had to supreme court. No bond in such case to be required of child or friend, nor costs awarded against either.

MARRIAGE AND ITS SOLEMNIZATION.

Marriages prohibited within certain degrees.

R. S., c. 87, § 1.

Same subject.

R. S., c. 87, § 2.

Certain marriages void.

34 Maine, 77.

R. S., c. 87, § 3.

Bigamy prohibited.

R. S., c. 87, § 4.

Intentions of marriage to be published.

R. S., c. 87, § 8.

1841, c. 8.

1852, c. 282,

§ 1, 2.

Consent of parents, guardians and

masters of

minors.

24 Maine, 531.

R. S., c. 87, § 7.

1852, c. 282, § 2.

SEC. 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.

SEC. 2. 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. 3. No white person shall intermarry with a negro, indian, or mulatto; and no insane person or idiot shall be capable of contracting marriage.

SEC. 4. All marriages, contracted while either of the parties has a former wife or husband not divorced, living, are void.

SEC. 5. All residents of this state, intending to be joined in marriage, shall have their intentions published at three public religious meetings, on different days, three days apart at least, in the town where each of them dwells; or by having them posted up by the clerk of such town, fourteen days in some public and conspicuous place therein, and if there is no such clerk, in an adjoining town; and they shall deliver a certificate of such publishment from such clerk to the person solemnizing the marriage.

SEC. 6. The consent of the parent, guardian, or other person having the care and government of a male under twenty-one, and a female under eighteen years of age, must be obtained before their marriage.

SEC. 7. 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 file a certificate or declaration of their marriage with the clerk of the town, in which each of them then lived, within seven days after their return, under a penalty of ten dollars, to be recovered by any person suing therefor, one half to his own use, and the other half to the use of the town where the forfeiture is incurred.

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Certificate to be filed of marriage out of the state. Penalty for neglect. 1852, c. 282, § 3.

SEC. 8. Any person believing that parties are about to contract matrimony, 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 the clerk to enter such notice, he shall withhold the certificate, and notify the person filing the caution, who shall, within seven days thereafter, unless the justices certify that a longer time is necessary, procure the decision of two justices of the peace, after notice to both parties, upon the sufficiency of such reasons, which shall be duly certified to said clerk, and he shall deliver or withhold the certificate accordingly. If the decision is against the sufficiency, the justices shall enter judgment against the applicant for costs, and issue execution therefor.

Proceedings when marriage is forbidden. R. S., c. 87, § 9.

SEC. 9. When residents of this state, with intent to evade the preceding provisions, 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 shall be void in this state.

Marriage in another state in evasion of these provisions, void. R. S., c. 87, § 5.

SEC. 10. All marriages solemnized among the quakers or friends, in the form heretofore practiced in their meeting, shall be 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 once every year deliver a list thereof to the clerk of his town, on penalty of forfeiting fifty dollars, one half to the use of the county, and the other to the use of the prosecutor.

Marriage among quakers. R. S., c. 87, § 10.

SEC. 11. Every justice of the peace appointed for a county or for the state and residing therein; and every ordained minister of the gospel, and every person licensed to preach by an association of ministers, religious seminary, or ecclesiastical body, duly appointed and commissioned for that purpose by the governor and council; may solemnize marriages within the limits of their appointment.

Who may solemnize marriages. 18 Maine, 308. R. S., c. 86, § 11, 12. 1852, c. 287, § 1, 2. 1855, c. 153, § 1.

SEC. 12. Such ordained or licensed minister shall hold his office during the pleasure of the executive; and the commission shall be conclusive evidence that he is an ordained or licensed minister, and when the commission is revoked, a copy of the revocation shall be filed in the clerk's office of said county.

Tenure of office of ministers. R. S., c. 87, § 13.

SEC. 13. If any person commissioned as aforesaid, knowingly and willfully joins persons in marriage contrary to the provisions of this chapter, he shall forfeit the sum of one hundred dollars, two third parts thereof to the use of the county where the offence is committed, and the other to the prosecutor, to be

Penalty for marrying persons in violation of these provisions. R. S., c. 87, § 14.

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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 is forbidden from joining any persons in marriage after such recovery.

Penalty for marrying by persons not authorized.
R. S., c. 87, § 15.

SEC. 14. If any person thus forbidden, or any minister or other person not authorized to solemnize marriages, joins any persons in marriage, 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.

Persons so authorized, to keep a record and make return.
1846, c. 190, § 1.

SEC. 15. Every person, commissioned as aforesaid, shall keep a record of all marriages solemnized by him, and within one year after the date of each marriage, make a return to the clerk of the town where the marriage is solemnized, certifying the names of the parties, the places of their residence and the date of the marriage; and for any neglect to do so, he shall forfeit the sum of fifty dollars, one half to the use of the county, and the other half to the use of the person suing therefor.

Copies of such, to be legal evidence.
19 Maine, 155.
R. S., c. 87, § 17.

SEC. 16. A copy of a record so 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.

Marriages to be valid, if in good faith.
6 Greenl. 148.
36 Maine, 448.
R. S., c. 87, § 18.

SEC. 17. No marriage, solemnized before any known inhabitant of this state professing to be a justice of the peace, or an ordained or licensed minister of the gospel duly appointed and commissioned, shall be void, nor shall its validity be 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.

Penalty for false certificate of intention.
R. S., c. 87, § 20.

SEC. 18. If any town clerk makes out and delivers to any person a false certificate of the entry of the intention of matrimony, knowing it to be false in any particular, he shall be fined one hundred dollars or imprisoned six months in the county jail.

Town clerk to make annual return of marriages.
R. S., c. 100, § 11.
R. S., c. 87, § 21.

SEC. 19. The clerk of every town shall return to the clerk of the judicial courts for his county, a transcript of all the records of marriages made upon his books during the year for which he was clerk; and said clerk of the courts shall record the same in a book to be kept for that purpose; and be allowed therefor from the county treasury at the rate of twelve cents a page.

RECORD OF BIRTHS AND DEATHS.

Town clerk to record births and deaths.
R. S., c. 38, § 1.

SEC. 20. Every town clerk shall record all births and deaths, which occur in his town and come to his knowledge, stating the time of each, and the names of the parents, if known, for the fees allowed by law, to be paid by such town.

Parents and others to notify clerk.
R. S., c. 38, § 2.

SEC. 21. Parents, householders, masters of workhouses, alms houses, prisons, and vessels, shall give notice to the clerk of their town of the births and deaths, which take place in their families,

houses, or vessels, and the elder person next of kin shall give notice of the death of his kindred.

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SEC. 22. Any person, neglecting to perform the duty required of him in the two preceding sections for the space of six months, shall forfeit and pay one dollar for each offence, to be recovered, on complaint, to the use of the town.

Penalty for neglect.
R. S., c. 88, § 3.

PARENTS AND CHILDREN.

SEC. 23. If any minor, having a father alive, has property sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of his father's family and to all the circumstances of the case, the expenses of his maintenance and education may be defrayed out of his own property, in whole or in part, and the charges therefor allowed accordingly in the settlement of the guardian's account.

Property of minor children to be applied to their support in certain cases.
23 Maine, 569.
R. S., c. 88, § 1.

SEC. 24. Every father, by his last will, may appoint a guardian for his minor children, until the age of fourteen.

Guardian by will.
R. S., c. 88, § 2.

SEC. 25. The mother of an illegitimate child may bind him during minority.

Illegitimate children, &c.
R. S., c. 88, § 3.

SEC. 26. The power of the mother to bind legitimate or illegitimate children shall cease in case of her subsequent marriage; and not be exercised during its continuance, either by herself or her husband.

Termination of her power.
R. S., c. 88, § 4.

ADOPTION OF CHILDREN.

SEC. 27. Any inhabitant of this state not married, or any husband and wife jointly, may petition the judge of probate for their county, for leave to adopt a child not theirs by birth, and for a change of his name; but a written consent must be given to such adoption by the child, if of the age of fourteen years, and by each of his living parents who is not hopelessly insane or intemperate; if there are no such parents, then by the legal guardian; if there is no such guardian, then by the next of kin in this state; if there is no such kin, then by a discreet and suitable person appointed by said judge to act in the proceedings as the next friend of such child.

Who may adopt.
Who may be adopted.
1855, c. 189,
§ 1, 2, 3, 4, 8, 9.

SEC. 28. Thereupon, if the judge is satisfied of the identity and relations of the parties; of the ability of the petitioners to bring up and educate the child properly, having reference to the degree and condition of his parents, and of the fitness and propriety of such adoption, he shall make a decree, setting forth the facts, and declaring that from that date such child, to all legal intents and purposes, is the child of the petitioners, and that his name is thereby changed, without requiring public notice thereof.

Proceedings in probate court for this purpose.
1855, c. 189,
§ 5, 9.

SEC. 29. By such decree the natural parents shall be divested of all legal rights in respect to such child, and he shall be free from all legal obligations of obedience and maintenance in respect to them; and shall be, for the custody of the person and right of obedience, but not of inheritance, to all intents and pur-

Legal effect of such adoption.
1855, c. 189,
§ 6, 7.

CHAP. 59. poses, the child of his adopters, as if they had been his natural parents.

Appeal from the decree of the probate court. 1855, c. 189, § 10.

SEC. 30. Any petitioner, or any such child by any next friend, may appeal to the supreme court of probate from any such decree, in the same manner and with the same effect, as in other cases, but no bond to prosecute his appeal shall be required of such child or next friend, nor any costs be awarded against either.

CHAPTER 60.

DIVORCE AND ANNULING OF MARRIAGES.

WHAT MARRIAGES VOID WITHOUT PROCESS.

SEC. 1. Certain marriages void without process.

DIVORCE FROM BONDS OF MATRIMONY.

2. In what cases a divorce may be granted by supreme court.
3. Libel, manner of filing, and service. Notice returnable in county where libellant resides.
4. To be tried by a jury when either party requests or court orders.
5. Pending libel, court may order husband to pay for wife's defence or prosecution thereof, and provide for her support. Care of minor children.
6. Dower, alimony, and other provisions for wife in case of divorce.
7. Provisions for husband in case of divorce for adultery of wife. Exceptions.
8. New trial may be had within three years, except in certain cases.
9. Divorce decreed out of the state, when void and when valid.
10. Issue not debarred from inheriting, by divorce.

DIVORCE FROM BED AND BOARD.

11. Causes of divorce from bed and board. Libel, how filed.
12. Lien on the lands of the husband in case of wife filing libel.
13. Provisions for the wife from the husband's estate. Court to allow alimony.

ANNULING ILLEGAL MARRIAGES.

14. Illegal marriages, how annulled.
15. Issue, when legitimate and when not, after divorce.
16. Issue of second marriage, when legitimate.

GENERAL PROVISIONS.

17. Court may free wife from restraint pending a libel.
18. Both parties guilty of adultery or collusion, divorce not to be granted.
19. Disposal of minor children on divorce, and compulsory powers of court.

WHAT MARRIAGES VOID WITHOUT PROCESS.

Certain marriages void without process.

R. S., c. 89, § 1. 31 Maine, 342, 490, 493. 32 Maine, 589.

SEC. 1. All marriages prohibited by law as specified in sections one, two, three, and four, of chapter fifty-nine, if solemnized in this state, are absolutely void; and the sentence of either party to imprisonment for life and confinement under it, dissolve the bonds of matrimony, without any legal process in either case.

DIVORCE FROM THE BONDS OF MATRIMONY.

Divorce may be decreed by supreme court

SEC. 2. A divorce from the bonds of matrimony may be decreed by any justice of the supreme judicial court, at any term