

MAINE STATE LEGISLATURE

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SEVENTH REVISION

THE
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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, 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.

CHAPTER 74.

Rights of Married Women and Judicial Separation.

Sections 1-9 Rights of Married Women.

Sections 10-16 Judicial Separation of Husband and Wife.

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. 189, *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; and a husband, by marriage acquires no right to any property of his wife. 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; 126 Me. 566.

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 is not liable for the debts of his wife contracted before marriage, nor for those contracted in her own name, for any lawful purpose; nor is he liable for her torts 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

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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. 91, § 36, ¶ 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 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-nine; 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. 89, §§ 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 superior court, 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.

Criminal proceedings for desertion of families, c. 129, §§ 44-48.

Judicial Separation of Husband and Wife.

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 provided for in sections ten to fourteen inclusive may take an appeal 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. 1929, c. 202. Whenever any decree provided for in sections ten and eleven hereof shall become effective either by reason of ex-

piration 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 county or counties where real estate which may be affected by such decree is situated under seal of the probate court, a certified copy thereof which the register of deeds shall record without fee.

CHAPTER 75.

Courts of Probate.

- Sections 1-2 Courts of Record. Jurisdiction in Equity.
- Sections 3-20 Selection, Powers, and Duties of Judges of Probate.
- Sections 21-30 Election, Powers, and Duties of Registers of Probate.
- Sections 31-37 Supreme Court of Probate.
- Sections 38-47 Costs and Fees.
- Sections 48-49 Rules of Practice.
- Sections 50-52 Notices.

Courts of Record. Jurisdiction in Equity.

Sec. 1. Courts of record; seal; punishment for contempt. R. S. c. 67, § 1. Courts of probate are courts of record. Each shall have an official seal, of which the register shall have the custody. They may issue any process necessary for the discharge of their official duties, and punish for contempt of their authority.

*47 Me. 86; 63 Me. 248.

Sec. 2. Jurisdiction in equity. R. S. c. 67, § 2. The courts of probate shall have jurisdiction in equity, concurrent with the supreme judicial court and the superior court, of all cases and matters relating to the administration of the estates of deceased persons, to wills, and to trusts which are created by will or other written instrument. Such jurisdiction may be exercised upon bill or petition according to the usual course of proceedings in equity.

119 Me. 287; *120 Me. 151; 121 Me. 401.

Selection, Powers, and Duties of Judges of Probate.

Sec. 3. Judges, how selected; terms commence, when. R. S. c. 67, § 3. Judges of probate are elected or appointed as provided in the constitution. Their election is effected and determined as is provided respecting county commissioners; and they enter upon the discharge of their duties on the first day of January following; but, when appointed to fill vacancies, their terms commence on their appointment.

See Const. Me. Art. vi, § 7; c. 8, § 55; c. 92, §§ 1-4.

Sec. 4. Officers to execute processes and attend courts. R. S. c. 67, § 4. Sheriffs and their deputies, and constables, shall execute all legal processes directed to them by any such judge who may, when necessary, require such officer, when not in attendance upon any other court, to attend during the sitting of the probate court, for which he shall be paid as in other courts for similar services.

47 Me. 86.