

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1955 SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

**Place in Pocket of Corresponding
Volume of Main Set**

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1955

person creating the interest or his heirs, shall become possessory or the right of entry exercisable notwithstanding the rule against perpetuities. But if a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken is so limited that the specified contingency must occur, if at all, within the period of the rule against perpetuities, said interests shall take effect as limited. This section shall not apply where both such fee simple determinable and such succeeding interest, or both such fee simple and such right of entry are for public, charitable or religious purposes; nor shall it apply to a deed, gift or grant to the state or any political subdivision thereof. (1955, c. 244.)

Sec. 30. Application of §§ 27-33.—Sections 27 to 33, inclusive, shall apply to both legal and equitable interests. (1955, c. 244.)

Sec. 31. Limitation of §§ 27-33.—Except as provided in the first sentence of section 29, sections 27 to 33, inclusive, shall not be construed to invalidate or modify the terms of any limitation which would have been valid prior to August 20, 1955. (1955, c. 244.)

Sec. 32. Severability of §§ 27-33.—If any of the provisions of sections 27 to 33, inclusive, shall be held invalid or unconstitutional in relation to any of the applications thereof, such invalidity or unconstitutionality shall not affect other applications thereof or others of said sections; and to this end sections 27 to 33, inclusive, are declared to be severable. (1955, c. 244.)

Sec. 33. To what instruments effective.—Sections 27 to 33, inclusive, shall apply only to inter vivos instruments taking effect after August 20, 1955, to wills where the testator dies after August 20, 1955, and to appointments made after August 20, 1955, including appointments by inter vivos instruments or wills under powers created before said effective date. (1955, c. 244.)

Chapter 164.

Probate Bonds.

Actions on Bonds.

Sec. 9. Action on administrator's or executor's bond.

It is only when the breach is fraudulently concealed that action may be commenced later than six years from the time of breach of an administrator's or executor's bond, and then it must be commenced within three years from the date of discovery. *Dunton v. Maine Bonding & Casualty Co.*, 150 Me. 205, 107 A. (2d) 776.

Chapter 166.

Domestic Relations. Marriage. Divorce.

Parents and Children.

Sec. 21. Funds paid to minor not having guardian.—Whenever, under any decree or order of the supreme judicial court or superior court of this state or of any justice of either of said courts, 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 \$500 to be distributed or paid to any person under the age of 21 years, not having a guardian legally appointed in this state, payment may be

made directly to such minor, if such minor be 10 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 10 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 10 years of age the person paying the same shall receive 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. (R. S. c. 153, § 21. 1955, c. 199.)

Effect of amendment.—The 1955 amendment substituted "\$500" for "\$200" in line seven of the first sentence.

Sec. 22. Children to care for parents according to ability.

When less than all children, residing within the state, or owning property within the state, shall comply with the obligations imposed upon them by the preceding paragraph, one or more may complain to the superior court in the county where such parent or parents reside; and the court may cause any defaulting child or children so alleged, to be summoned, and upon hearing or default may assess and apportion a reasonable sum upon all children residing within the state, or owning property within the state, as are found to be of sufficient ability for the support of such parent or parents to the time of assessment; and may enforce payment thereof by warrant of distress.

(1955, c. 141.)

Effect of amendment.—The 1955 amendment inserted the words "or owning property within the state" at two places in the

second paragraph. As the rest of the section was not changed by the amendment, only the second paragraph is set out.

Divorce.

Sec. 55. Causes for divorce; jurisdiction.

I. GENERAL CONSIDERATION.

Upon establishing a cause for divorce alleged in the libel, the libellant thereupon gains an absolute right to a divorce. In other words, it is not within the discretion of the court to grant or refuse a divorce, provided the libellant proves his case. The court must look to the statutes for the rules governing divorce. *Kennon v. Kennon*, 150 Me. 410, 111 A. (2d) 695.

Factual findings not disturbed if supported by credible evidence.

In accord with original. See *Kennon v. Kennon*, 150 Me. 410, 111 A. (2d) 695.

III. CAUSES FOR DIVORCE.

D. Habits of Intoxication.

Habits of intoxication must continue, etc.

Gross and confirmed habits of intoxication are a ground for divorce only if they continue to the time of filing of the libel. *Kennon v. Kennon*, 150 Me. 410, 111 A. (2d) 695.

But continuance may be inferred.—It may be inferred, under certain circumstances at least, that gross and confirmed habits of intoxication, once proven, continue to exist in the absence of evidence to the contrary. *Kennon v. Kennon*, 150 Me. 410, 111 A. (2d) 695.

Sec. 64. Payment of alimony; attorney's fees; support of minor children; *capias* execution.—Pending a petition to enforce a decree of alimony, or a decree for payment of money instead thereof, or for the support of minor children, or a decree for support pending libel or for payment of counsel fees, or for the alteration of an existing decree for the custody or support of minor children, the court may order the husband or father to pay to the wife or mother, or to counsel for the wife or mother, sufficient money for the prose-

cution or defense thereof, upon default of which order execution may issue as in actions of tort. Execution for attorney's fees shall not issue until the libel for divorce has been heard. Petition for such execution may be signed by the person seeking same or his attorney of record in such divorce action. At the time of making a final decree in any divorce action, the court may order that execution and such reasonable attorney's fee as the court shall order shall issue against the body of any party to the action charged with the payment of support of minor children or payments of alimony or a specific sum in lieu thereof, upon default of any payment, and the court shall order that the clerk of said court shall issue such execution. When the husband or father is committed to jail on execution issued upon decree of alimony, or for payment of money instead thereof, or for the support of his minor children, or for support pending libel, or for payment of counsel fees, the county having jurisdiction of the process shall bear the expense of his support and commitment and he may be discharged from imprisonment by payment of the execution and all costs and expenses of his commitment and support, and he shall not be entitled to relief therefrom under the provisions of chapter 120; provided, however, that he may petition the court issuing such execution for relief, whereupon a judge of such court after due notice to the wife or mother, and hearing thereon, may order his discharge from imprisonment on such terms and conditions as justice may require. (R. S. c. 153, § 63. 1947, c. 321. 1955, cc. 142, 308.)

Effect of amendments.—The first 1955 amendment deleted, at the end of the fourth sentence, the words "upon the filing with the clerk an affidavit signed by the party to whom such payments are to be made, setting forth the amount in arrears under said decree." It also inserted

the words "and commitment" in the fifth sentence and deleted the former second paragraph, relating to filing false affidavit alleging defaults of payments. The second 1955 amendment inserted the second sentence.

Sec. 65-A. Descent of real estate in divorce.—No rights acquired under the provisions of sections 63 and 65 by a libelant in the real estate of the libelee are effectual against any person except the libelee, his heirs and devisees and persons having actual notice of such divorce unless an abstract of the decree of divorce, setting forth the names and residence of the parties, the date of the decree and the court where granted, is filed in the registry of deeds for the county or registry district where the real estate is situated.

The clerk of the court granting the divorce, at the written request of the libelant or his attorney, shall within 5 days of the receipt of said request make and send such an abstract, for recording, by registered mail to such registry or registries as so requested.

When a divorce has been granted out of the state, the libelant, or his attorney, shall cause a duly authenticated copy of such decree to be filed with the clerk of courts in each of the counties where the real estate or any part thereof is situated, and upon written request of said libelant or his attorney, said clerk, within 5 days thereof, shall make and send such abstract, for recording, by registered mail to such registry or registries as so requested.

Such abstract shall be deemed recorded as of the time of its receipt in the registry where filed; provided, however, that such abstract if received within 10 days of the date of the decree of divorce shall have effect as if actually received on the date of the decree of divorce.

The clerk of courts shall be paid \$2.50 for each such abstract, \$1 of which he shall pay to the register and \$1.50 of which he shall retain as his fee and costs of registered mail, and an additional \$2 as filing fee of the authenticated copy of foreign divorce decree.

No such rights acquired under the provisions of said sections 63 and 65, after September 1, 1955, shall be effectual against the libelee or any other person, unless said abstract of the decree of divorce shall have been recorded, in the man-

ner hereinabove provided, within 1 year from the date of said decree of divorce. (1955, c. 428.)

Sec. 70. Disposal of minor children; change name of wife; employ compulsory process deemed proper; expense of maintenance and education.

The expense of maintenance and education of children committed to care and custody of the department of health and welfare under the provisions of this section shall be borne in accordance with the provisions of section 251 of chapter 25. The department of health and welfare shall have all the powers as to the person, property, earnings and education of every child committed to its custody under the provisions of this section during the term of commitment, which a guardian has to a ward.

(1955, c. 143.)

Effect of amendment.—The 1955 amendment added the second sentence of the second paragraph. As the first and third paragraphs were not changed by the amendment, they are not set out.

Chapter 167.

Uniform Reciprocal Enforcement of Support Act.

Civil Enforcement.

Sec. 11. Officials to represent petitioner. — The county attorney shall represent the petitioner in any proceeding under this chapter when this state is the responding state. (1949, c. 297. 1951, c. 186. 1953, c. 248. 1955, c. 5, § 1.)

Effect of amendment.—The 1955 amendment deleted the words “upon the request of the court” after the words “county attorney.”

Sec. 18. Further duty of responding court.—If a court of this state, acting as a responding state, is unable to obtain jurisdiction of the respondent or his property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the respondent or his property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating state. When it is learned that the respondent is in another county of this state, the clerk shall forward all papers to that county where the clerk shall handle the cause as directed in section 17. (1949, c. 297. 1951, c. 186. 1953, c. 248. 1955, c. 5, § 2.)

Effect of amendment.—The 1955 amendment added the second sentence.

Sec. 21. Additional powers of court.

II. To require the respondent to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary. (1955, c. 5, § 3)

Effect of amendment.—The 1955 amendment deleted the words “or the obligee” after the word “court” in line two of subsection II. As the rest of the section was not changed by the amendment, only subsection II is set out.