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judge of probate shall direct that sufficient assets, if such there are, shall be retained by the executor or administrator, unless the heirs or devisees of the estate give bond to the executor or administrator, with one or more sureties, approved by the judge to pay whatever is found due on said claim. (R. S. c. 152, § 18. 1957, c. 126, § 3.)

Effect of amendment. — The 1957 amendment changed the time mentioned near the beginning of the section from "12 months" to "6 months" and made other minor changes in phraseology.

Sec. 20. Remedy on claim not filed within 6 months. — When such claim has not been filed in the probate office within said 6 months, the claimant may have remedy against the heirs or devisees of the estate within 6 months after it becomes due and not against the executor or administrator. (R. S. c. 152, § 20. 1957, c. 126, § 4.)

Effect of amendment. — The 1957 amendment changed the first time mentioned from "12 months" to "6 months" and the second time mentioned from "one year" to "6 months".

Sec. 21. Limitations claimed for or against old administrator continued.

Applied in State v. Crommett, 151 Me. 188, 116 A. (2d) 614.

Chapter 166.

Domestic Relations. Marriage. Divorce.

Parents and Children.

Sec. 19. Custody and support decreed when parents live apart.

Cited in Dumais v. Dumais, 152 Me. 24, 122 A. (2d) 322.

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.

Rights of Married Persons.

Sec. 40. Proceedings in equity between husband and wife.

Cited in Dumais v. Dumais, 152 Me. 24, 122 A. (2d) 322.

Judicial Separation.

Sec. 44. Protection of wife deserted by or living apart from her husband.

Cited in Dumais v. Dumais, 152 Me. 24, 122 A. (2d) 322.

Divorce.

The law of divorce, etc.

In accord with original. See Dumais v. Dumais, 152 Me. 24, 122 A. (2d) 322.

And jurisdiction of court is derived from statute provisions.

The subject matter—divorce—is entirely governed by the statutes, to which alone the courts may look for jurisdiction. Equity on this ground has no jurisdiction of the case insofar as divorce is concerned. Dumais v. Dumais, 152 Me. 24, 122 A. (2d) 322.

Sec. 55. Causes for divorce; jurisdiction.

I. GENERAL CONSIDERATION.

Upon establishing a cause for divorce alleged in the libel, the libelant 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 libelant 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.

Given cause, the libelant is entitled of right to a divorce. The decision does not lie within the discretion of the court. Dumais v. Dumais 152 Me. 24, 122 A. (2d) 322.

Equity without jurisdiction to enjoin divorce proceedings.—Equity court did not have jurisdiction of a bill by husband, a Catholic, to enjoin divorce proceedings by wife, a non-Catholic, on ground that wife had signed antenuptial religious promises relating to divorce and the religious education and custody of children. Dumais v. Dumais, 152 Me. 24, 122 A. (2d) 322.

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 prosecution 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 manner 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.

Welfare of children governs court in its decree.

The rule is plainly and firmly established that the welfare of the child is the controlling fact in determining care and custody. The paramount consideration for the court is the present and future welfare and well-being of the child. Dumais v. Dumais, 152 Me. 24, 122 A. (2d) 322.

Chapter 167.

Uniform Reciprocal Enforcement of Support Act.

General Provisions.

Sec. 1. Purposes.

Purpose and effect generally.—The purpose of the Uniform Reciprocal Enforcement of Support Act was to remedy a deplorable situation. Under the law, as it existed prior to its enactment, a child or child's guardian could compel a father to support a child only by coming to the state having jurisdiction over the father and bringing proceedings in the courts of that state. As the law is now, the child may in the state of his or her domicile initiate proceedings against the father in that state for action to be taken by the state having jurisdiction of the father. The final decision, or judgment, must be made by the court having jurisdiction over the father and while the initiating state makes recommendations, these are not binding on the responding state. Rosenberg v. Rosenberg, 152 Me. 161, 125 A. (2d) 863.

Civil Enforcement.

Sec. 7. Choice of law.

The laws which govern the liability of a father living in Maine to support his daughter living in New York are those of the responding state (Maine) and not the laws of the initiating state (New York). Rosenberg v. Rosenberg, 152 Me. 161, 125 A. (2d) 863.