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THE MICHIE COMPANY
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prosecuted within the time limited by sections 1 to 21, is of the opinion that justice and equity require it, and that such creditor is not chargeable with culpable neglect in not prosecuting his claim within the time so limited, it may give him judgment for the amount of his claim against the estate of the deceased person; but such judgment shall not affect any payment or distribution made before the filing of such complaint. (R. S. c. 152, § 22. 1961, c. 317, § 540.)

Effect of amendment.—The 1961 amendment substituted "If the superior court, upon complaint" for "If the supreme judicial court or the superior court, upon a bill in equity" at the beginning of this section, substituted "sections 1 to 21" for "the preceding sections" near the middle of the section and substituted "complaint" for "bill" at the end of the section.

Executions after Creditor's Death.

Sec. 24. Executions after creditor's death.—When a judgment creditor dies before the first execution issues or before an execution issued in his lifetime is fully satisfied, such execution may be issued or renewed by order of the court rendering such judgment, or by like order of the district court rendering such judgment, upon application in writing of the executor or general or special administrator of the deceased creditor. Any execution so issued or renewed may be subsequently renewed, but no execution shall issue or be renewed after the time within which it might have been done if the party had not died. (R. S. c. 152, § 24. 1961, c. 317, § 541. 1963, c. 402, § 266.)

Effect of amendments. — The 1961 amendment divided this section into two sentences, substituted "the court rendering such judgment" for "any justice of the court rendering such judgment, in term time or vacation" in the present first sentence and substituted "time" for "term" in the present second sentence.

The 1963 amendment substituted "the district court" for "a municipal court or trial justice" in the first sentence.

Application of 1963 amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Chapter 166.

Domestic Relations. Marriage. Divorce.

Sections 40 to 50-A. Judicial Separation.
Sections 51 to 54-A. Illegal Marriages and Annulment.
Sections 55-70B. Divorce.

Marriage.

Sec. 4. Intention of marriage recorded.

Upon application by both of the parties to an intended marriage, when both parties are residents of this state or both parties are nonresidents, or upon application of the party residing within the state when one of the parties is a resident and the other a nonresident, a judge of probate or a judge of the district court may, after hearing such evidence as is presented, grant a certificate stating that in his opinion it is expedient that the intended marriage be solemnized without delay. Upon the presentation of such a certificate or a copy thereof certified by the clerk of the court by which the certificate was issued, or in extraordinary or emergency cases when the death of either party is imminent, upon the authoritative request of a minister, clergyman, priest, rabbi or attending physician, the clerk or registrar of the city or town in which the intention to be joined in marriage has been filed shall at once issue the certificate as prescribed in this section.

(1963, c. 402, § 267.)

Effect of amendment.—The 1963 amendment substituted "a judge of the district court" for "the judge of a municipal court or trial justice" in the first sentence of the second paragraph.

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

Application of amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Sec. 15. Repealed by Public Laws 1963, c. 244.

Parents and Children.

Cross reference.—See c. 158-A, §§ 1-10, re Uniform Gifts to Minors Act.

Sec. 19. Custody and support decreed when parents live apart. — If the father and mother of a minor child are living apart from each other, the judge of probate or the superior court justice in the county where either resides, on complaint of either and after such notice to the other as he may order, may decree which parent shall have the exclusive care and custody of the person of such minor or he may apportion the care and custody of the said minor between the parents, as the good of the child may require. He may order the father of the minor child or children to contribute to the support of such minor child or children such sums payable weekly, monthly or quarterly as are deemed reasonable and just and may enforce obedience by appropriate decrees, execution issuing for said sums when payable and for costs, which decrees shall be in force until further order of the judge or justice. An appeal shall lie from such decree or decrees to the supreme court of probate, where originating in the court of probate, or to the supreme judicial court where originating in the superior court, but the original decrees shall be in force until reversed. (R. S. c. 153, § 19. 1945, c. 303. 1961, c. 317, § 542.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences and substituted "complaint of either" for "petition of either in term time or vacation" in the present first sentence.

Cited in Dumais v. Dumais, 152 Me. 24, 122 A. (2d) 322; Marino v. Marino, 155 Me. 346, 155 A. (2d) 314.

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, 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. 1961, c. 317, § 543.)

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

The 1961 amendment deleted "in term time or in vacation" formerly following "said courts" near the beginning of the first sentence of this section.

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.

Sec. 22-A. Liability of parents for damage by children.—The parent or parents of any minor who is between 7 and 17 years of age and is living with said parent or parents, which minor or minors willfully or maliciously cause damage to any property or injury to any person, shall be jointly and severally liable with such minor or minors for such damage or injury to an amount not exceeding $250, if such minor or minors would have been liable for such damage or injury if they had been adults. Nothing in this section shall be construed to relieve such minor or minors from personal liability for such damage or injury. (1959, c. 321.)

Bastard Children.

Sec. 29. Proceedings after verdict.—If, on such issue, the jury finds the respondent not guilty, he shall be discharged; but if they find him guilty or the facts in the declaration filed are admitted by default or otherwise, he shall be adjudged the father of said child; stand charged with its maintenance, with the assistance of the mother, as the court orders; and shall be ordered to pay the complainant her costs of the action and for the expense of her delivery and of her nursing, medicine and medical attendance during the period of her sickness and convalescence, and of the support of such child to the date of rendition of judgment; and shall give a bond, with sufficient sureties approved by the court, or by the clerk of said court, to the complainant to perform said order, and a bond, with sufficient sureties so approved, to the town liable for the maintenance of such child, and be committed until he gives them. The latter bond shall be deposited with the clerk of the court for the use of such town. If the respondent does not comply with that part of the order relative to payment of expenses and costs of the action, execution may issue therefor as in civil actions.

The court, upon petition of either the mother or the adjudged father, and upon hearing, limited to the issue of proper maintenance, may alter, amend or suspend any such order, or make a new order in lieu thereof, when it appears that justice so requires. The court may order the adjudged father to pay to the court for the mother sufficient money for the prosecution or defense of such petition. Modification or suspension of the order shall neither invalidate obligations on any bond required under this section, nor operate to release the sureties upon such bond. (R. S. c. 153, § 29. 1959, c. 39; c. 317, § 295. 1961, c. 317, § 544.)

Effect of amendments.—This section was amended twice by the 1959 legislature. P. L. 1959, c. 39 added a new paragraph at the end of the section. Chapter 317, § 295, substituted "the action" for "suit" once in both the first and last sentences of the first paragraph, substituted "otherwise" for "on demurrer" following "by default or" and

deleted "in term time or in vacation" following "said court" in the first sentence of that paragraph.

The 1961 amendment substituted "civil actions" for "actions of tort" at the end of the first paragraph of this section.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 31. Town, failing in action, pays costs. — A town prosecuting in behalf of the complainant is liable to the respondent, if he prevails, for his costs of court, to be recovered in a civil action; or the court may, on his motion, enter judgment against the town for such costs and issue execution thereon. (R. S. c. 153, § 31. 1961, c. 317, § 545.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action on the case" near the middle of this section.

Sec. 32. Discharge of father from imprisonment after 6 months; action to recover sums due. — When the father of such bastard child has remained for 6 months in jail without being able to comply with the order of the court, he may be liberated by taking the poor debtor's oath, as persons committed on execution; but he shall give 15 days' notice of his intention to do so, to the mother if living, and to the clerk of the town where the child has its legal settlement if in the state. The mother and said town may, after such liberation, recover of him by a civil action any sum of money which ought to have been paid pursuant to the order of the court. (R. S. c. 153, § 32. 1961, c. 317, § 546.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of debt" in the last sentence of this section.

Sec. 34. Blood grouping tests.—After return day, the court, on motion of the respondent, shall order the complainant, her child and the respondent to submit to one or more blood grouping tests to determine whether or not paternity of the respondent can be excluded, the specimens for the purpose to be collected and the tests to be made by duly qualified physicians and under such restrictions as the court shall direct, the expenses therefor to be audited by the court and borne by the respondent. The results of such tests shall be admissible in evidence, but only in cases where exclusion is established. The order for such tests may also direct that the testimony of the examining physicians may be taken by deposition. (R. S. c. 153, § 34. 1961, c. 317, § 547.)

Effect of amendment.—The 1961 amendment deleted "in term time or vacation" formerly following "the court" near the beginning of this section.

Rights of Married Persons.

Sec. 35. Rights of married persons to hold and dispose of property.

I. RIGHTS OF MARRIED PERSONS GENERALLY.

History of section.

See Uhl v. Oakdale Auto Co., 157 Me. 263, 170 A. (2d) 914.

And purport.—Section does not purport to remove all disabilities of a married male under twenty-one years of age. Uhl v. Oakdale Auto Co., 157 Me. 263, 170 A. (2d) 914.

This section is in derogation of the common law and must be strictly construed. Uhl v. Oakdale Auto Co., 157 Me. 263, 170 A. (2d) 914.

Disaffirmance on ground of infancy. — A married male under the age of twenty-one years of age may not disaffirm the sale of personal property by disaffirmance after becoming of age, solely on the ground of infancy. Uhl v. Oakdale Auto Co., 157 Me. 263, 170 A. (2d) 914.

Tenancies by the entirety not recognized. —Tenancies by the entirety have not been

recognized since the enactment of this section authorizing married women to hold property. Palmer v. Flint, 156 Me. 103, 161 A. (2d) 837.

Quoted in Chivvis v. Chivvis, 158 Me. 354, 184 A. (2d) 773.

Sec. 37. Labor not done for married woman's family.

Section easily interpreted.—The wording of this section contains no ambiguities, is couched in simple language and is easy of interpretation. McCarthy v. McKechnie, 152 Me. 420, 132 A. (2d) 437.

Interpretation and construction generally.—This section very plainly says that for personal labor not performed for her family a wife may receive wages; that if the necessity requires, she may maintain an action for them in her own name and that upon acquiring the wages she may keep them against her husband or any other person. McCarthy v. McKechnie, 152 Me. 420, 132 A. (2d) 437.

Married woman entitled to separate property in wages earned.—This section of the statute removes a common law disability of a married woman by giving her a separate property in wages earned by her. McCarthy v. McKechnie, 152 Me. 420, 132 A. (2d) 437.

Section removes common law disability; effect of waiver of rights by wife.—This section removes the common law disability of a married woman by giving her a separate property in wages earned, although she may waive her rights to such wages and in such event they become the property of the husband under his common law right. McCarthy v. McKechnie, 152 Me. 420, 132 A. (2d) 437.

Husband without legal right to participate in wages received by wife.—There is nowhere to be found in this statute, by exact wording or by implication, that there is any legal right of the husband to share, control or in any other manner participate in the benefit of wages received by the wife for her personal labor. McCarthy v. McKechnie, 152 Me. 420, 132 A. (2d) 437.

Sec. 38. Husband not liable for wife's debts or torts; her property, but not her body, liable as if sole.—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. An action 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. (R. S. c. 153, § 38. 1961, c. 317, § 548.)

Effect of amendment.—The 1961 amendment substituted "action" for "suit" near the beginning of the last sentence of this section and made a minor change in punctuation in such sentence.

Sec. 39. Capacity to prosecute or defend civil actions, with or without joinder of husband; neither liable to arrest.—She may prosecute and defend civil actions 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 actions jointly with her husband. 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. (R. S. c. 153, § 39. 1961, c. 317, § 549.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences, substituted "civil actions" for "suits at law or in equity" near the beginning of the present first sentence and substituted "actions" for "suits" near the end of such sentence.

Sec. 40. Proceedings between husband and wife.—A wife may bring a civil action against her husband for the recovery, conveyance, transfer, payment or delivery to her of any property, real or personal or both, exceeding $100 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 action. And a husband shall have the same right to bring and maintain a civil action against his wife for the purposes aforesaid, subject to the limitations aforesaid. Marriage shall be no bar to the maintenance of a civil action 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 action has conveyed or transferred any of her or of his property, real or personal, to the other party to the action for the purpose of cheating, defrauding, hindering or delaying her or his creditors, the action shall be dismissed. An appeal from any final judgment may be taken to the law court as in other civil actions. There shall be no survival of the right to institute proceedings under 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. (R. S. c. 153, § 40. 1961, c. 317, § 550.)

Effect of amendment.—The 1961 amendment substituted "civil action" for "bill in equity" and "action" for "bill" throughout this section and rewrote the sixth sentence, relating to appeals.

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

Sec. 41. Action by married woman for alienation of affections of husband.—Whoever, being a female person more than 18 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, or whoever, being a male person, 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 a civil action brought by her within 3 years after the discovery of such offense. (R. S. c. 153, § 41. 1961, c. 317, § 551.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action on the case" near the end of this section.

Quoted in Tantish v. Szendey, 158 Me. 228, 182 A. (2d) 660.

Sec. 43. Husband and father compelled to contribute to support of wife or minor children.—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, willfully and without reasonable cause, refuses or neglects to provide suitable maintenance for them, the superior court, the probate court and the district court in the county where the wife or such minor child or children reside, or in the county where the husband or father may be found on petition of the wife for herself and for such child or children, or of such child or children by their guardian or by the municipality that is providing suitable maintenance, 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. Pending petition hereunder, the court may order the husband to pay to the court for the wife sufficient money for the prosecution thereof, upon default of which order execution may issue as in civil actions. Execution may issue for said sums when payable, and for costs, and when the husband is committed to jail on execution the county having jurisdiction of the process shall bear the expense of his support. Any party aggrieved by any order or decree authorized by this section and made by a probate court or the district court may appeal from said order or decree in the same manner as provided for appeals from such court in other causes, and appeal may be taken from the superior court to the law court. Pending the determination of such appeal, the order or decree appealed from shall re-

main in force and obedience thereto may be enforced as if no appeal had been taken. No continuance of such appeal 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. (R. S. c. 153, § 43. 1949, c. 349, § 137. 1959, c. 75, § 5; c. 199; c. 378, § 74. 1961, c. 317, § 552. 1963, c. 402, §§ 268, 269.)

Effect of amendments.—P. L. 1959, c. 75, § 5, added the words "or in the county where the husband or father may be found" after the word "reside" and before the word "on" in the first sentence. Chapter 199, without giving effect to c. 75, § 5, added the words "or by the municipality that is providing suitable maintenance" after the word "guardian" in the first sentence. P. L. 1959, c. 378, § 74, effective on its approval, January 29, 1960, re-enacted the first sentence so as to give effect to both cc. 75 and 199.

The 1961 amendment, deleted "in term time, or any judge or justice of said courts in vacation" following "municipal court" in the first sentence, substituted "civil actions" for "actions of tort" at the end of the second sentence, deleted "also" preceding "issue" near the beginning of the third sentence, deleted "the provisions of" preceding "this section" near the beginning of the fourth sentence and substituted "No continuance of such appeal" for "Said appeal shall be in order for hearing at the 1st term of the court appealed to, held after said appeal is taken, and no continuance thereof" at the beginning of the sixth sentence.

The 1963 amendment substituted "the district court" for "any municipal court" in the first sentence and substituted "the district" for "municipal" in the fourth sentence.

Application of 1963 amending act.—See note to § 4.

Exceptions do not lie to orders and decrees under this section, whether the case originated in a municipal court, a probate court or in the superior court. The only remedy of an aggrieved party is by appeal. Marino v. Marino, 155 Me. 346, 155 A. (2d) 314.

Judicial Separation.

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

Proof required.—In a proceeding under this section the petitioner must prove that she is living apart from her spouse for just cause, and that such living apart has continued for at least one year next prior to the filing of the petition. Chivvis v. Chivvis, 158 Me. 354, 184 A. (2d) 773.

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

Sec. 45. Husband deserted by or living apart from wife; decree bars wife's rights in husband's property.

Petitioner must prove that he is living apart from his spouse for just cause, and that such living apart has continued for at least one year next prior to the filing of the petition. Chivvis v. Chivvis, 158 Me. 354, 184 A. (2d) 773.

"Just cause."—In order for the petitioner to prove that the separation from his spouse was for just cause, he must affirmatively show some failure of marital duty or some misconduct on the part of his spouse, not necessarily, however, such as to present a ground for divorce. Chivvis v. Chivvis, 158 Me. 354, 184 A. (2d) 773.

The fact that the wife obtained a separation decree from the husband was not "just cause," within the meaning of this section, for the husband's separation from the wife. Chivvis v. Chivvis, 158 Me. 354, 184 A. (2d) 773.

Sec. 50-A. Jurisdiction.—The district court shall possess original jurisdiction, concurrent with the probate court, of actions for judicial separation under sections 44 to 50. (1963, c. 402, § 270.)

Illegal Marriages and Annulment.

Sec. 52. Illegal marriages annulled.—When the validity of a marriage is doubted, either party may file a complaint as for divorce, and the court shall order it annulled or affirmed according to the proof; but no such order affects the rights of the defendant unless he was actually notified of the action or answered to the complaint. (R. S. c. 153, § 52. 1959, c. 317, § 296.)

Effect of amendment.—The 1959 amendment substituted "complaint" for "libel", a comma for a semicolon near the beginning of the section, "order" for "decree" twice, "defendant" for "libelee," "actually" for "personally" preceding "notified" and "of the action or answered to the complaint" for "to answer or did answer to the libel" at the end of the section.

Effective date of 1959 amendment.—See note to § 29.

Sec. 54-A. Jurisdiction.—The district court shall possess original jurisdiction, concurrent with the superior court, of actions for annulment of marriage under sections 51 to 54. (1963, c. 402, § 271.)

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.—A divorce from the bonds of matrimony may be decreed in the county where either party resides at the commencement of proceedings, for causes of adultery, impotence, extreme cruelty, utter desertion continued for 3 consecutive years next prior to the filing of the complaint, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium or other drugs, cruel and abusive treatment or, on the complaint of the wife, where the husband being of sufficient ability or being able to labor and provide for her, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her; provided the parties were married in this state or cohabited here after marriage, or if the plaintiff resided here when the cause of divorce accrued, or had resided here in good faith for 6 months prior to the commencement of proceedings, or if the defendant is a resident of this state. When both parties have been guilty of adultery, or there is collusion between them to procure a divorce, it shall not be granted. Either party may be a witness. The superior court has jurisdiction of actions for divorce in all counties. (R. S. c. 153, § 55. 1949, c. 311, § 1. 1953, c. 188. 1959, c. 317, § 297.)

I. GENERAL CONSIDERATION.

Effect of amendment.—The 1959 amendment substituted "complaint" for "libel" twice in the first sentence, deleted "that" following "provided," substituted "plaintiff" for "libelant" and "defendant" for "libelee" in the first sentence and deleted "or any justice thereof in vacation" following "court" and substituted "actions" for "libels" in the last sentence.

Effective date of 1959 amendment.—See note to § 29.

Purpose and intent of 1949 amendment.—The occasion for the 1949 amendments to what are now R. S. c. 166, §§ 55 and 61, was the misgivings of the court to hear divorce cases in vacation under what is now R. S. c. 113, § 39, and the paucity of court terms in most counties. The legislature intended to remedy those two mischiefs but in granting redress it expressed no purpose to nullify the raisons d'etre of the word, "vacation." Dumais v. Dumais, 153 Me. 24, 134 A. (2d) 371.

The legislature, in P. L. 1949, c. 311, amending this section, intended that the vacation jurisdiction of the superior court justice, of any given divorce libel (whether that jurisdiction devolved upon him as presiding justice of the court last adjourned or was assumed by him during vacation) must be culminated by him by a decree rendered in the same vacation or forfeited totally to the next succeeding term of court, to be availed of by him entirely de novo, if at all, following the latter term. Dumais v. Dumais, 153 Me. 24, 134 A. (2d) 371.

Effect of public policy.—Public policy should be and is one of the prime considerations in considering all procedures relating to divorce and is of extreme importance in its application to all aspects of actions of divorce. Deblois v. Deblois, 158 Me. 24, 177 A. (2d) 199.

Because of the involvement of public policy in divorce actions, they are distinguishable from other forms of litigation.

Deblois v. Deblois, 158 Me. 24, 177 A. (2d) 199.

The state is a party to every divorce action and has a well defined interest in the continuance of the marriage relationship on the grounds of public policy. Deblois v. Deblois, 158 Me. 24, 177 A. (2d) 199.

A libel for a divorce is regarded as a proceeding in a civil case. Such a suit is a civil suit. Deblois v. Deblois, 158 Me. 24, 177 A. (2d) 199.

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.

Courts must encourage rather than discourage the dismissal of divorce actions. Deblois v. Deblois, 158 Me. 24, 177 A. (2d) 199.

And it is improper to deny a party a hearing on a request for dismissal of a divorce action. Deblois v. Deblois, 158 Me. 24, 177 A. (2d) 199.

Motion to dismiss should be judged on basis of party's good faith motives.—A cross-complainant's motion to dismiss a divorce action should be judged on the basis of the party's good faith motives. If the motion is filed because of dissatisfaction with the outcome, then it should be denied. Deblois v. Deblois, 158 Me. 24, 177 A. (2d) 199.

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. 56. Attachment or trustee process used in commencement of action for divorce.—Attachment of real or personal property or on trustee process may be used in connection with the commencement of an action for divorce. (R. S. c. 153, § 56. 1947, c. 368, § 1. 1959, c. 317, § 298.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 29.

Sec. 57. Repealed by Public Laws 1959, c. 317, § 299.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 29.

Sec. 59. Pending divorce action, wife's expenses paid by husband.—Pending a divorce action, the court may order the husband to pay to the wife, or to her attorney for the wife, sufficient money for her defense or prosecution thereof, and to make reasonable provision for her separate support, on a motion for which costs and counsel fees may be ordered; enter such decree for the care, custody and support of the minor children as the court deems proper; and in all cases enforce obedience by appropriate processes on which costs and counsel fees shall be taxed as in other actions. (R. S. c. 153, § 59. 1947, c. 256. 1961, c. 317, § 553.)

Effect of amendment.—The 1961 amendment substituted "divorce action, the court may" for "libel, the court, or any justice thereof in vacation, may" near the beginning of this section and "a motion" for "petition" near the first semicolon.

Sec. 60. Court may free wife from restraint pending divorce action.—Pending a divorce action, the court, on motion of the wife, may prohibit the husband from imposing any restraint on her personal liberty; and enforce obedience by appropriate processes. (R. S. c. 153, § 60. 1961, c. 317, § 554.)

Effect of amendment.—The 1961 amendment substituted "divorce action, the court, on motion" for "libel, the court, or any justice thereof in vacation, on petition" in this section.

Sec. 61. Repealed by Public Laws 1959, c. 317, § 299.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 29.

Sec. 63. Alimony and other provisions for wife in case of divorce for husband's fault.

The court may decree to her reasonable alimony out of his estate, having regard to his ability, and sufficient money for her defense or prosecution of hearings affecting alimony; and, to effect the purposes aforesaid, may order so much of his real estate, or the rents and profits thereof, as is necessary, to be assigned and set out to her for life; or, instead of alimony, may decree a specific sum to be paid by him to her or payable in such manner and at such times as the court may direct; and the court may at any time alter, amend or suspend a decree for alimony or specific sum when it appears that justice requires; and use all necessary legal processes to carry its decrees into effect. (R. S. c. 153, § 62. 1945, c. 232. 1961, c. 317, § 555.)

Effect of amendment.—The 1961 amendment deleted "also" preceding "decree" near the beginning of the last paragraph of this section and deleted "or any justice in vacation" following "and the court" in such paragraph.

As the first paragraph was not affected by the amendment, it is not set out.

Decree not defective because it suggests method by which libelee may discharge liability.—A decree for the payment of a specific sum of money as alimony, under this section, is not defective because it suggests a method by which a libelee may discharge his liability thereunder (by conveying to libelant his right, title and interest to certain real estate). Whitehouse v. Whitehouse, 154 Me. 78, 143 A. (2d) 751.

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 the divorce action 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 action 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 the divorce action 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 chap-

ter 120. 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. 1959, c. 317, § 300.)

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.

The 1959 amendment divided the last sentence into two sentences, deleting "provided, however, that" which came between the sentences, substituted "the divorce action" for "libel" in the first and fifth sentences, substituted "action" for "libel" in the second sentence and deleted "the provisions of" preceding "chapter 120" at the end of the fifth sentence.

Effective date of 1959 amendment.—See note to § 29.

Jurisdiction encompasses all of the counties of the state. — This section confers jurisdiction on the superior court in divorce actions and authorizes issuance of a capias execution based on a judgment. This jurisdiction of the superior court encompasses the sixteen counties of the state and the process issued shall be obeyed and executed throughout the state. Jacques v. Lassiter, 154 Me. 84, 143 A. (2d) 747.

Accordingly, a capias execution issued by the superior court at Androscoggin county upon a support decree of that court is enforceable by commitment in any other county even though this section provides, "the county having jurisdiction of the process shall bear the expense of his support and commitment." Jacques v. Lassiter, 154 Me. 84, 143 A. (2d) 747.

Proceedings of habeas corpus. — The proceedings of habeas corpus are restricted and primarily concern the judgment of the court. If the court has jurisdiction of the cause and of the person habeas corpus does not lie. Jacques v. Lassiter, 154 Me. 84, 143 A. (2d) 747.

Sec. 65. Provisions for husband in case of divorce for fault of wife.— When a divorce is decreed to the husband for the fault of the wife, he shall be entitled to ⅓ in common and undivided of all her real estate, except wild lands, which shall descend to him as if she were dead. The court may allow him so much of her personal estate as seems reasonable. In all cases the right, title and interest of the defendant in the real estate of the plaintiff shall be barred by the decree. (R. S. c. 153, § 64. 1959, c. 317, § 301.)

Effect of amendment.—The 1959 amendment divided the former first sentence into two sentences, and substituted "defendant" for "libelee" and "plaintiff" for "libelant" in the present third sentence.

Effective date of 1959 amendment.—See note to § 29.

Sec. 65-A. Descent of real estate in divorce. — No rights acquired under sections 63 and 65 by a plaintiff in the real estate of the defendant are effectual against any person except the defendant, 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 plaintiff or his attorney, shall within 5 days of the receipt of said request make and send such an abstract, for recording, by registered mail, or deliver said abstract, to such registry or registries as so requested.

When a divorce has been granted out of the state, the plaintiff, or his attorney, shall cause a duly authenticated copy of such order 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 plaintiff or his attorney, said clerk, within 5 days thereof, shall make and send such abstract, for recording, by reg-

istered mail, or deliver said abstract, 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. Such abstract if received within 10 days of the date of the order of divorce shall have effect as if actually received on the date of the order of divorce.

The clerk of court 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 said sections 63 and 65, after September 1, 1955, shall be effectual against the defendant or any other person, unless said abstract of the order of divorce shall have been recorded, in the manner provided, within one year from the date of said order of divorce. (1955, c. 428. 1959, c. 12. 1961, c. 317, § 556.)

Effect of amendments.—The 1959 amendment added the words "or deliver said abstract" after the words "registered mail", near the end of the second and third paragraphs.

The 1961 amendment substituted "defendant" for "libelee", "plaintiff" for "libelant" and "order" for "decree" throughout this section, divided the fourth paragraph into two sentences and made other minor changes.

Sec. 66. Repealed by Public Laws 1961, c. 317, § 557.

Sec. 69. Investigation of cases in which custody of children involved. — Whenever in any divorce action the custody of a minor child is involved, the court may request the state department of health and welfare to investigate conditions and circumstances of the child and its parents. Upon completion of investigation the department shall submit a written report to the court at least 5 days before date of hearing and at the same time forward a copy thereof to all counsel of record. Upon request of any interested party the court shall require the person making the report to testify at time of hearing. (R. S. c. 153, § 68. 1963, c. 168.)

Effect of amendment.—The 1963 amendment rewrote this section.

Cited in Dione v. Dione, 155 Me. 377, 156 A. (2d) 393.

Sec. 70. Custody and support of minor children; amendment of order; change of wife's name; employment of compulsory process.—The court making an order of nullity or of divorce may make an order concerning the care, custody and support of the minor children of the parties and with which parents any of them shall live, or grant the care and custody of said children to a 3rd person or to some suitable society or institution for the care and protection of children or to the department of health and welfare. It may alter its order concerning the care, custody and support of the minor children from time to time as circumstances require, whether or not either parent be then living, upon motion of either party, such society or institution as aforesaid, the state department of health and welfare, any 3rd person to whom care or custody has been granted, any blood relative or any person standing in loco parentis to said minor children; change the name of the wife, at her request; and in execution of the powers given it under this chapter may employ any compulsory process which it deems proper, by execution, attachment or other effectual form, on which costs shall be taxed as in other actions. In all proceedings under this chapter where the husband is committed to jail on any execution issued upon order for alimony, or for payment of money instead thereof, or for the support of the minor children of the parties, the county having jurisdiction of the proceedings shall bear the expense of his commitment and support in jail.

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.

An original order made pursuant to this section granting the care and custody of a minor child to the department of health and welfare shall not extend beyond the time when the child shall reach the age of 18 years. But upon application by the department, the court, for sufficient cause, may extend such order to the time when the child shall reach the age of 21 years.

The order of the court for support of minor children may run against the father or the mother in whole or in part or against both as the court in its sound discretion shall determine, irrespective of the fault of the father or the mother in the divorce action. When the order is to run against both, the court shall specify the amount each shall pay. (R. S. c. 153, § 69. 1953, c. 155. 1955, c. 143. 1961, c. 41. 1963, c. 265, §§ 1, 2; c. 414, § 146.)

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

The 1961 amendment substituted "order" for "decree" throughout the first paragraph, deleted "or any justice thereof in vacation" following "divorce" near the beginning of that paragraph, inserted "upon motion of either party or the state department of health and welfare" near the middle of that paragraph, added "commitment and" near the end of the paragraph and made other minor changes therein.

The first 1963 amendment divided the first paragraph into two sentences and rewrote the present second sentence. It also added the present fourth paragraph. The second 1963 amendment substituted "order" for "decree" in the first and second sentences of the third paragraph.

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.

Grandparents were not indispensable parties to motion for modification of decree.—A court decree granting custody of a child to the father, and ordering that the child reside with her maternal grandparents, did not make the grandparents indispensable parties to a motion for the modification of the decree. Dec v. Dec, 158 Me. 379, 185 A. (2d) 131.

Sec. 70-A. Repealed by Public Laws 1963, c. 134.

Editor's note.—The repealed section, which related to mailing a copy of a decree imposing a duty of support to the defendant, derived from P. L. 1959, c. 75, § 6, and had been amended by P. L. 1961, c. 13.

Sec. 70-B. Jurisdiction.—The district court shall possess original jurisdiction, concurrent with the superior court, of actions for divorce under sections 55 to 70-A. (1963, c. 402, § 272.)

Support of Children.

Sec. 71. Failure to comply with court order relative to support of children, when felony.

Courts having jurisdiction in the places of residence of any of the dependents or the responsible parent shall have jurisdiction of the subject matter. (1947, c. 369, § 6. 1959, c. 75, § 7.)

Effect of amendment.—The 1959 amendment added a new paragraph at the end of the section.

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 72. Failure to comply with court order relative to support of children, when misdemeanor.

Courts having jurisdiction in the places of residence of any of the dependents or the responsible parent shall have jurisdiction of the subject matter. (1947, c. 369, § 6. 1959, c. 75, § 8.)

Effect of amendment.—The 1959 amendment added a new paragraph at the end of this section. As the rest of the section was not affected by the amendment, it is not set out.

Chapter 167.

Uniform Reciprocal Enforcement of Support Act.

General Provisions.

Sec. 1. Purposes.

Cross reference.—See c. 167-A, §§ 1-13, re Uniform Civil Liability for Support Act.

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.

Sec. 2. Definitions.

"Court" means the superior court or the district court of this state and when the context requires means the court of any other state as defined in a substantially similar reciprocal law.

(1963, c. 402, § 273.)

Effect of amendment.—The 1963 amendment added "or the district court" in the second paragraph. As the rest of the section was not affected by the amendment, it is not set out.

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.

Sec. 9. How duties of support enforced.—All duties of support are enforceable by petition irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the superior court or the district court. All proceedings may be commenced and acted upon by the superior court in vacation before a single justice as well as in term time or by the district court.

Residence of the obligee shall determine the jurisdiction of the court even though the petitioner may have been a party to a divorce granted in another jurisdiction in which support was allowed. (1949, c. 297. 1951, c. 186. 1953, c. 248. 1957, c. 280. 1963, c. 402, § 274.)

Effect of amendments. — The 1957 amendment substituted the word "obligee" for the word "petitioner", which formerly appeared as the fourth word of the last paragraph.

The 1963 amendment added "or the dis-