

# MAINE STATE LEGISLATURE

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## CHAPTER 5

## PARENTS AND CHILDREN

| Subch.                      | Sec. |
|-----------------------------|------|
| I. General Provisions ..... | 211  |
| II. Bastard Children .....  | 251  |

## SUBCHAPTER I

## GENERAL PROVISIONS

| Sec.                                                                       |
|----------------------------------------------------------------------------|
| 211. Parents joint natural guardians of children.                          |
| 212. Actions for loss of services.                                         |
| 213. Either parent dead or guilty of abandonment, rights devolve on other. |
| 214. Custody and support decreed when parents live apart.                  |
| 215. Vested jurisdiction of courts not affected.                           |
| 216. Funds paid to minor without guardian.                                 |
| 217. Liability of parents for damage by children.                          |
| 218. Cruelty to children.                                                  |
| 219. Children to care for parents according to ability.                    |

**§ 211. Parents joint natural guardians of children**

The father and mother are the joint natural guardians of their minor children and are jointly entitled to the care, custody, control, services and earnings of such children. Neither parent has any rights paramount to the rights of the other with reference to any matter affecting such children.

R.S.1954, c. 166, § 16.

**§ 212. Actions for loss of services**

The parents of a minor child jointly may maintain an action for loss of the services or earnings of such child when such loss is caused by the negligent or wrongful act of another, but where one parent refuses to sue, the other may sue alone. Nothing contained herein shall be deemed to limit, amend, supersede or affect the Workmen's Compensation Law or acts in amendment thereof.

R.S.1954, c. 166, § 17.

**§ 213. Either parent dead or guilty of abandonment, rights devolve on other**

If one of the parents of a minor child is dead or has abandoned such child, all parental rights respecting such child shall devolve upon the other parent.

R.S.1954, c. 166, § 18.

**§ 214. 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.1954, c. 166, § 19; 1961, c. 317, § 542.

**§ 215. Vested jurisdiction of courts not affected**

Nothing contained in sections 211 to 214 shall be deemed to abrogate any power or jurisdiction now vested in any court over the care and custody of minor children.

R.S.1954, c. 166, § 20.

**§ 216. Funds paid to minor without 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. Where the money is paid directly to said minor the person paying the same may, in his discretion, require on such receipt the countersignature 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 the receipt 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.1954, c. 166, § 21; 1955, c. 199; 1961, c. 317, § 543.

### § 217. 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.

### § 218. Cruelty to children

Any parent, guardian or other person having the care and custody of any child, who cruelly treats such child by abuse, neglect, overwork or extreme punishment, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 11 months.

R.S.1954, c. 138, § 6.

### § 219. Children to care for parents according to ability

Children shall, in proportion to their respective abilities, contribute to the care of or shall care for their parent or parents who

have not sufficient ability, income or property to support themselves jointly or individually.

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. 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.

Such assessment shall not be made to pay any expense of support afforded more than 6 months before the complaint was filed.

Such complaint may be filed with the clerk of court who shall issue a summons thereon, returnable and to be served as writs of summons are. Under such complaint, the court may assess and apportion for the future support of such parent or parents a sufficient sum, to be paid quarterly or as the court may otherwise order and until further order of court; and may direct with whom of such children consenting thereto and for what time he or they may dwell, having regard to his and their comfort and their convenience.

On application of any person to whom payment was ordered, the clerk may issue or renew a warrant of distress returnable to the next term of court to collect what may be due for any preceding quarter, or for such period as the court may have made a prior order which has not been complied with in accordance with the terms thereof.

The court may, from time to time, make any further order on complaint of a party interested, and after notice given, alter or amend any assessment or apportionment.

On failure to sustain a complaint the respondents recover costs.

R.S.1954, c. 166, § 22; 1955, c. 141.

## SUBCHAPTER II

## BASTARD CHILDREN

Sec.

- 251. Accusation and examination.
- 252. Warrant.
- 253. Bond or commitment; expense of support in jail.
- 254. Continuance; surrender of principal.
- 255. Declaration filed before trial; form.
- 256. Prosecution maintained by complainant.
- 257. Proceedings after verdict.
- 258. Complainant not to settle if town objects.
- 259. Town, failing in action, pays costs.
- 260. Discharge of father after 6 months; action to recover sums due.
- 261. Complainant dying before trial.
- 262. Blood grouping tests.

**§ 251. Accusation and examination**

When a woman pregnant with a child which, if born alive, may be a bastard, or who has been delivered of a bastard child, accuses any man of being the father thereof before any justice of the peace and requests a prosecution against him, such justice shall take her accusation and examination on oath respecting the accused, and the time and place when and where the child was begotten, as correctly as they can be described, and such other circumstances as he deems useful in the discovery of the truth.

R.S.1954, c. 166, § 23.

**§ 252. Warrant**

The justice may issue his warrant for the apprehension of the accused, directed to the sheriff of any county in which the accused is supposed to reside or to either of his deputies or to a constable of any town in such county, accompanied by such accusation and examination.

R.S.1954, c. 166, § 24.

**§ 253. Bond or commitment; expense of support in jail**

When the accused is brought before such or any other justice, he may be required to give bond to the complainant, with sufficient sureties, in such reasonable sum as the justice orders, conditioned for his appearance at the next term of the Superior

Court for the county in which she resides and for his abiding the order of the court thereon; and if he does not give it, he shall be committed to jail until he does. The cost of commitment and board of the accused while so in jail shall be paid by the county in which said jail is situated. If he gives the required bond after said commitment, he shall be liberated upon the payment of cost of commitment and board.

R.S.1954, c. 166, § 25.

#### § 254. Continuance; surrender of principal

If at such next or any subsequent term, the complainant is not delivered of her child, or is unable to attend court, or shows other good reason, the cause may be continued. The bond shall remain in force until final judgment, unless the sureties of the accused surrender him in court at any time before final judgment, which they may do, and thereupon they shall be discharged. He shall be committed until a new bond is given.

R.S.1954, c. 166, § 26.

#### § 255. Declaration filed before trial; form

Before proceeding to trial, the complainant must file a declaration, stating that she has been delivered of a bastard child begotten by the accused, and the time and place when and where it was begotten, with as much precision as the case admits; and that being put on the discovery of the truth during the time of her travail, she accused the respondent of being the father of her child and that she has been constant in such accusation.

In the event that a Caesarian operation, so called, is performed for the delivery of such bastard child, such accusation of the respondent shall be sufficient, if made within 5 days next prior to the performance of such Caesarian operation upon her, to a duly registered physician, a duly registered osteopathic practitioner or to a duly qualified registered nurse, and the allegations in the declaration shall be varied to accord therewith.

R.S.1954, c. 166, § 27.

#### § 256. Prosecution maintained by complainant

When the complainant has made said accusation; been examined on oath; been put upon the discovery of the truth of such accusation at the time of her travail and thereupon has accused the same man with being the father of the child of which she is

about to be delivered; has continued constant in such accusation and prosecutes him as the father of such child before such court; he shall be held to answer to such complaint; and she may be a witness in the trial.

R.S.1954, c. 166, § 28.

### § 257. 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.1954, c. 166, § 29; 1959, c. 39; c. 317, § 295; 1961, c. 317, § 544.

### § 258. Complainant not to settle if town objects

No woman, whose accusation and examination on oath have been taken by a justice of the peace at her request, shall make a settlement with the father or give him any discharge to bar or

affect such complaint, if objected to in writing by the overseers of the poor of the town interested in her support or the child's.

R.S.1954, c. 166, § 30.

**§ 259. 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.1954, c. 166, § 31; 1961, c. 317, § 545.

**§ 260. Discharge of father 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.1954, c. 166, § 32; 1961, c. 317, § 546.

**§ 261. Complainant dying before trial**

When the complainant dies before trial, her executor or administrator may prosecute her action to final judgment. In case of judgment against the respondent, the bond for performance of the order of court, required by section 257, shall run to such executor or administrator who, after payment of the costs of prosecution, shall appropriate to the support of the child the money recovered of the respondent.

R.S.1954, c. 166, § 33.

**§ 262. 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 direct that the testimony of the examining physicians may be taken by deposition.

R.S.1954, c. 166, § 34; 1961, c. 317, § 547.