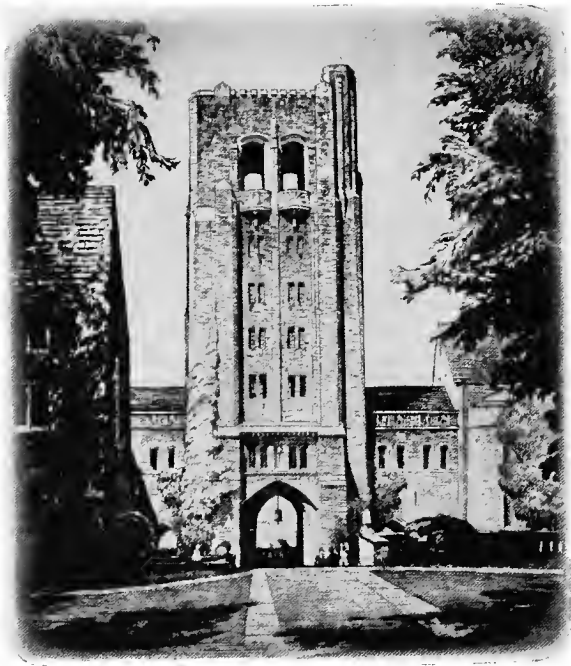


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A TREATISE
ON THE LAW OF
MARRIAGE,
DIVORCE, SEPARATION
AND
DOMESTIC RELATIONS

BY JAMES SCHOULER

Author of "Wills, Executors and Administrators";
"The Law of Personal Property"; Etc.

SIXTH EDITION

IN THREE VOLUMES

BY ARTHUR W. BLAKEMORE

Of the Boston Bar; Author of "Blakemore and Bancroft on Inheritance
Taxes"; The Article on Wills in "Cye"; Etc.

VOLUME III

DIVORCE STATUTES

OF ALL THE STATES IN THE UNITED STATES, ALASKA,
DISTRICT OF COLUMBIA, HAWAII AND PORTO RICO.

Includes Provisions Relative to Absolute Divorce, Annulment, Separation, Void and Voidable Marriages, Prohibited Marriages, Residence, Jurisdiction, Procedure, Service, Alimony and Support, Custody of Children and Remarriage.



ALBANY, N. Y.

MATTHEW BENDER & COMPANY

INCORPORATED

1921

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PREFACE

The publication of the full text of the statutes of the divorce laws of the different States and Territories and the District of Columbia, is the result of an insistent demand on the part of the courts and attorneys. Summaries of these statutes are available, but it is found that the full text only is satisfactory in actual practice.

In most cases, the statute is taken from the official edition issued by State or Territorial authorities. However, in some jurisdictions, no official edition exists, or is so old as to be no longer practicable to be used. In such cases private compilations have been made use of, credit being given in each instance to the particular publication used.

MATTHEW BENDER & COMPANY,
Incorporated.

ALBANY, N. Y., *January 3, 1921.*

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DIVORCE STATUTES

OF ALL THE STATES IN THE UNITED STATES,
ALASKA, DISTRICT OF COLUMBIA, HAWAII
AND PORTO RICO.

COMPLETE TEXT

AMENDED TO JANUARY 1, 1921.

COMPILED BY

THE PUBLISHERS' EDITORIAL STAFF.

ALABAMA.

Code, 1907.

CHAPTER 70.

DIVORCE AND ALIMONY.

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3795. To wife in case of cruelty or non-support by husband.
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3809. Cases of divorce from bed and board.
3810. Proceedings in such cases.
3811. Right of parties to remarry after divorce.

§ 3793. Divorce; by what court, and on what grounds granted.

The court of chancery has power to divorce persons from the bonds of matrimony, upon bill filed by the aggrieved party, for the causes following: (1) In favor of either party, when the other was, at the time of the marriage, physically and incurably incapacitated from entering into the marriage state. (2) For adultery. (3) For voluntary abandonment from bed and board for two years next preceding the filing of the bill. (4) Imprisonment

in the penitentiary of this or any other state, for two years, the sentence being for seven years or longer. (5) The commission of the crime against nature, whether with mankind or beast, either before or after marriage. (6) For becoming addicted after marriage to habitual drunkenness. (7) In favor of either party, when the other, after marriage, shall have been confined in an insane asylum for a period of twenty successive years, whether such confinement in an insane asylum for such period of time shall have been prior to or subsequent to the passage of this act, or partly prior to its passage and partly subsequent to its passage. Provided, however, that such party from whom a divorce is sought is hopelessly and incurably insane at the time of the filing of the bill. (Amended by L. 1911, p. 631; L. 1919, p. 839.)

§ 3794. To husband, when wife is pregnant at time of marriage.

In favor of the husband, when the wife was pregnant at the time of marriage, without his knowledge or agency.

§ 3795. To wife in case of cruelty or non-support by husband.

In favor of the wife when the husband has committed actual violence on her person, attended with danger to life or health, or when from his conduct there is reasonable apprehension of such violence, or when the wife has lived, or shall have lived separate and apart from the bed and board of the husband for five years and without support from him for two years next preceding the filing of the bill, and she has bona fide resided in this state during said period. (Amended by L. 1915, p. 370; L. 1919, p. 878.)

§ 3796. Mode of proceeding in divorce suits.

The proceeding must, in all respects, be conducted as other suits in chancery, except as herein otherwise directed. The cause for which the divorce is sought must be alleged in the bill, to which the other party must be made defendant; and if a nonresident, publication made as in other chancery suits. And in making his

decree in the cause, the chancellor shall, as the evidence and the nature of the case may warrant, direct whether the party against whom the decree of divorce is made be permitted to marry again, and where, in decrees now or hereafter rendered, no order is made allowing or disallowing the divorced party to marry again, it shall be competent for the chancellor, upon petition and proper proof, to allow or disallow the petitioner to marry again, as justice may seem to require.

§ 3797. Answer; effect of.

The defendant is not required to verify the answer by oath; and, whether sworn to or not, it is not evidence in the cause, and can have no other effect than to put in issue the allegations of the bill.

§ 3798. Husband or wife may sue in their own name.

The husband "if under twenty-one years of age" or wife may file a bill for any purpose under this chapter in their own name and without the intervention of a next friend. (Amended by L. 1911, p. 24.)

§ 3799. Cases in which divorces are to be refused.

No decree can be rendered on the confession of the parties, or either of them; or if it appear that adultery was committed by either, with the consent of the other, for the purpose of obtaining a divorce; or where both parties have committed adultery; or where there has been a condonation of adultery by the admission of the offending party to conjugal embraces, after knowledge of the commission of the crime; or when the husband knew of, or connived at the adultery of the wife.

§ 3800. For abandonment, three years' residence to be proved.

No bill can be filed for a divorce on the ground of voluntary abandonment, unless the party applying therefor, whether husband or wife, has bona fide been a resident of this state for three years

next before the filing of the bill which must be alleged in the bill and proved.

§ 3801. In what court bill must be filed.

Bills for divorce may be filed in the chancery district in which the defendant resides, or in the district in which the parties resided when the separation occurred; if the defendant is a non-resident, then in the district in which the other party to the marriage resides.

§ 3802. If defendant a nonresident, a year's residence by plaintiff must be proved.

When the defendant is a nonresident, the other party to the marriage must have been a bona fide resident of this state for one year next before the filing of the bill, which must be alleged in the bill and proved.

§ 3803. Allowance to wife pending suit.

Pending a suit for divorce, the court must make an allowance for the support of the wife out of the estate of the husband, suitable to his estate and the condition in life of the parties.

§ 3804. Allowance to wife on decree of divorce.

If the wife has no separate estate, or if it be insufficient for her maintenance, the chancellor, upon granting a divorce, must decree the wife an allowance out of the estate of the husband, taking into consideration the value thereof and the condition of the family.

§ 3805. Allowance when decree in favor of wife.

If the divorce is in favor of the wife for the misconduct of the husband, the allowance must be as liberal as the estate of the husband will permit, regard being had to the condition of his family and to all the circumstances of the case.

§ 3806. Allowance, when against wife.

If in favor of the husband for the misconduct of the wife, the allowance must be regulated by the ability of the husband and the nature of the misconduct of the wife.

§ 3807. Divorce for pregnancy bastardizes issue.

When a divorce is granted the husband for the pregnancy of the wife at the time of the marriage, the issue is thereby bastardized.

§ 3808. Custody of children on decree of divorce.

Upon granting a divorce, the court may give the custody and education of the children of the marriage to either father or mother, as may seem right and proper, having regard to the moral character and prudence of the parents, the age and sex of the children; and pending the suit may make such orders in respect to the custody of the children as their safety and well-being may require. But in cases of abandonment of the husband by the wife, he shall have the custody of the children after they are seven years old, if he is a suitable person to have such charge.

§ 3809. Cases of divorce from bed and board.

The chancellor may decree a divorce from bed and board for cruelty in either of the parties, or for any cause which would justify a decree from the bonds of matrimony, if the party applying therefor desires only a divorce from bed and board.

§ 3810. Proceedings in such cases.

The proceedings in such cases are the same in all respects, and the court has the same power to make an allowance to the wife out of the estate of the husband, and provide for the custody and education of the children of the marriage, as provided in this chapter for divorces from the bonds of matrimony.

§ 3811. Right of parties to remarry after divorce.

When a decree has been rendered granting a divorce in this state, the court shall decree that neither party shall again marry except to each other until sixty days after decree rendered, and that if an appeal is taken within sixty days, neither party shall again marry except to each other during the pendency of said appeal.

§ 2869. Appeals from decrees of divorce.

Appeals from decrees of divorce must be taken within sixty days from the date upon which such decree of divorce was rendered.

§ 3816. Divorce bars dower.

A divorce from the bonds of matrimony bars the wife of her dower, and of any distributive share in the personal estate of her husband.

L. 1915, p. 358.

An act to regulate divorce proceedings in any of the courts of Alabama.

§ 1. That in divorce proceedings in any of the courts of this state whenever a decree pro confesso in a suit for divorce has been taken and the case is ready for submission for final decree, and the complainant, or his solicitor of record, if no defense has been interposed, shall file a written request with the register, or clerk of the court, when the cause is pending, asking for the submission of said cause in vacation. The register shall immediately deliver all papers in the cause to the chancellor or judge, and he shall forthwith render a final decree in said cause, and return the same to the register or clerk for enrollment, and it shall not be necessary to serve any notice of said submission on the defendant in said cause when no defense has been interposed.

ALASKA.*Compiled Laws, 1913.*

CHAPTER 45.

ACTIONS TO DECLARE VOID OR DISSOLVE THE MARRIAGE CONTRACT.

- SECTION 1293. Husband or wife may maintain action.
1294. What marriages absolutely void.
1295. What marriages void when so declared.
1296. At whose action marriages declared void.
1297. At whose action marriages declared voidable.
1298. Action to declare marriage valid.
1299. For what causes marriages may be dissolved.
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1301. Same.
1302. Pleas in bar by defendant.
1303. Maintenance and custody of children pending action.
1304. Judgment for maintenance for the custody of children.
1305. Power of court to modify decree.
1306. Right to remarry.

§ 1293. Husband or wife may maintain action.

A husband or wife may maintain an action of an equitable nature against the other for the dissolution of the marriage contract, or to have the same declared void, as provided in this chapter.

§ 1294. What marriages absolutely void.

All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within the district, be absolutely void.

§ 1295. What marriages void when so declared.

When either of the parties to a marriage shall be incapable of making such contract or assenting thereto for want of legal age

or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage shall be void from the time it is so declared by the decree of a court having jurisdiction thereof.

§ 1296. At whose action marriages declared void.

A marriage may be declared void from the beginning, at the action of either party, for any of the causes specified in section twelve hundred and ninety-four, and whether so declared or not shall be deemed and held to be void in any action or proceeding whatever in which the same may come in question; but a marriage once declared to be valid by the judgment of a court having jurisdiction thereof, in an action for that purpose, can not afterwards be questioned for the same cause. directly or otherwise.

§ 1297. At whose action marriages declared voidable.

A marriage shall not be declared void for any of the causes specified in section twelve hundred and ninety-five, except at the action or claim of the party laboring under the disability, or upon whom the force or fraud was imposed or practiced; nor at the action or claim of such party if it appears that the parties freely cohabited together as husband and wife after the party had arrived at legal age, acquired sufficient understanding, been restored to reason, freed from the force, or discovered the fraud, as the case may be.

§ 1298. Action to declare marriage valid.

When either husband or wife shall claim or pretend that the marriage is void or voidable, as provided in sections twelve hundred and ninety-four and twelve hundred and ninety-five, the same may be declared valid and lawful at the action of the other; and in such action the court shall have power, if the pleadings and proof authorize it, to declare such marriage void from the beginning and from the time of the judgment, or that it is valid and lawful and binding on the parties thereto.

§ 1299. For what causes marriages may be dissolved.

The dissolution of the marriage contract may be declared at the action of the injured party for either of the following causes:

First. Impotency existing at the time of the marriage and continuing to the commencement of the action;

Second. Adultery;

Third. Conviction of felony;

Fourth. Willful desertion for the period of two years;

Fifth. Cruel and inhuman treatment calculated to impair health or endanger life;

Sixth. Habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the action.

§ 1300. Residence of parties.

When a marriage has been solemnized in the district an action may be maintained to declare it void if the plaintiff is an inhabitant of the district at the commencement of the action. If the marriage has not been solemnized in the district, such action can only be maintained when the plaintiff has been an inhabitant thereof for three years prior to the commencement of the action.

§ 1301. Same.

In an action for the dissolution of the marriage contract the plaintiff therein must be an inhabitant of the district at the commencement of the action and for two years prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose.

§ 1302. Pleas in bar by defendant.

In an action for the dissolution of the marriage contract on account of adultery the defendant may admit the adultery and show in bar of the action either —

First. That the act was committed by the procurement or with the connivance of the plaintiff; or,

Second. That the act has been expressly forgiven, or implied so, by the voluntary cohabitation of the parties after knowledge thereof; or,

Third. That the plaintiff has been guilty of adultery also without the procurement or connivance of the defendant and not forgiven as provided in subdivision second of this section; or,

Fourth. That the action has not been commenced within one year after the discovery of the act by the plaintiff.

When the action is for any of the causes specified in subdivisions third, fourth, fifth or sixth of section twelve hundred and ninety-nine, the defendant may admit the charge and show in bar of the action that the act was committed by the procurement of the plaintiff, or that it has been expressly forgiven; and in case the action is founded on subdivision third of section twelve hundred and ninety-nine, the defendant may also show in bar thereof that the action was not prosecuted within one year after the same occurred to the plaintiff.

§ 1303. Maintenance and custody of children, pending action.

After the commencement of an action and before a judgment therein, the court or judge thereof may, in its discretion, provide by order as follows:

First. That the husband pay, or secure to be paid, to the clerk of the court such an amount of money as may be necessary to enable the wife to prosecute or defend the action, as the case may be;

Second. For the care, custody, and maintenance of the minor children of the marriage during the pendency of the action;

Third. For the freedom of the wife from the control of her husband during the pendency of the action, and court may restrain either or both parties from disposing of the property of either party pending the action.

§ 1304. Judgment for maintenance and for the custody of children.

Whenever a marriage shall be declared void or dissolved the court shall have power to further decree as follows:

First. For the future care and custody of the minor children of the marriage as it may deem just and proper, having due regard to the age and sex of such children, and unless otherwise manifestly improper giving the preference to the party not in fault;

Second. For the recovery of the party in fault, and not allowed the care and custody of such children, such an amount of money, in gross or installments, as may be just and proper for such party to contribute toward the nurture and education thereof;

Third. For the recovery of the party in fault such an amount of money, in gross or in installments, as may be just and proper for such party to contribute to the maintenance of the other;

Fourth. For the delivery to the wife, when she is not the party in fault, of her personal property in the possession or control of the husband at the time of giving the judgment;

Fifth. For the appointment of one or more trustees to collect, receive, expend, manage, or invest, in such manner as the court shall direct, any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;

Sixth. To change the name of the wife when she is not the party in fault.

§ 1305. Power of court to modify decree.

At any time after a judgment is given the court or judge thereof, upon the motion of either party, on notice shall have power to set aside, alter, or modify so much of the judgment as may provide for alimony or for the appointment of trustees for the care and custody of the minor children, or the nurture and education thereof, or the maintenance of either party to the action.

§ 1306. Right to remarry.

A judgment declaring a marriage void or dissolved by the action or claim of either party shall have the effect to terminate such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, and if he or she does so contract, shall be liable therefor as if such judgment had not been given, until the action has been heard and determined on appeal, and if no appeal be taken, the expiration of the period allowed by law to take such appeal.

§ 1516. Confession of adultery in divorce cases.

In an action for the dissolution of the marriage contract on the ground of adultery, a confession of adultery, whether in or out of the pleadings, is not of itself sufficient to justify a decree of dissolution.

§ 432. Between what persons prohibited.

The following marriages are prohibited:

1. When either party thereto has a husband or wife living at the time of such marriage.
 2. When the parties thereto are related to each other within and not including the fourth degree of consanguinity, whether of the whole or half blood, computed according to the rules of the civil law.
-

§ 433. When voidable.

When either party to a marriage shall be incapable of consenting thereto for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party

laboring under the disability or upon whom the force or fraud is imposed.

§ 1198. Service of summons by publication.

. . . Service of the summons may be made by publication in the following cases:

* * * * *

Second. When the action is for divorce, as hereinafter provided.

ARIZONA.*Revised Statutes, 1913*

Title 32.

CHAPTER 4.

ABSOLUTE DIVORCE.

- SECTION 3858. Jurisdiction of superior court.
 3859. Grounds for absolute divorce.
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 3869. Permanent alimony.
 3870. Custody of children.
 3871. Costs.
 3872. Modification of judgment.
 3873. Changing name of wife.

§ 3858. Jurisdiction of superior court.

The superior court shall have power to hear and determine suits for the dissolution of marriage, where the causes alleged therefor shall be any impediment that renders such contract void, and shall have power and authority to decree the marriage to be null and void.

§ 3859. Grounds for absolute divorce.

A divorce from the bonds of matrimony may be granted by the superior court of the county where the parties, or one of them,

reside, on the application of the aggrieved party, by complaint, in any of the following cases:

(1) When adultery has been committed by either husband or wife.

(2) When one of the parties was physically incompetent at the time of marriage and the same has been continued to the time of the commencement of the suit.

(3) When one of the parties has been convicted of a felony and sentenced to imprisonment therefor in any prison. Provided that no suit shall be sustained because of the conviction of either party for a felony until one year after final judgment of conviction; and provided, further that the husband has not been convicted on the testimony of the wife, nor the wife on the testimony of the husband. And no pardon granted to either party shall take from the other the right to sue for and procure a decree of divorce for the causes mentioned in the subdivision.

(4) When either party has wilfully deserted the other for the term of one year next preceding the commencement of the suit, or for habitual intemperance of either party.

(5) Where the husband or wife is guilty of excesses, cruel treatment or outrages toward the other, whether by the use of personal violence or other means.

(6) When the husband has neglected for the period of one year to provide his wife with the common necessities of life, having the ability to provide the same, or failing to do so by reason of his idleness, profligacy or dissipation.

(7) When prior to the marriage either party shall have been convicted of a felony or infamous crime in any state, territory or country, without the knowledge on the part of the other party of such fact at the time of such marriage.

(8) In favor of the husband when the wife at the time of the marriage shall be pregnant by another man than the husband, and without his knowledge at the time of such marriage.

§ 3860. Term of residence of plaintiff.

No suit for divorce from the bonds of matrimony shall be maintained in any court unless the plaintiff shall, at the time of filing his or her complaint, have been an actual bona fide resident of the state for one year and shall have resided in the county where the suit is filed six months next preceding the filing of the suit.

§ 3861. Judgment must be rendered on full proof.

In a suit for divorce from the bonds of matrimony the defendant shall not be compelled to answer upon oath, nor shall the complaint be taken as confessed for want of an answer, but the judgment of the court shall be rendered upon full and satisfactory evidence sustaining all material matters alleged in the complaint. Either party may be a witness, but no divorce shall be granted upon the testimony or admissions of a party unless the same be corroborated by other evidence.

§ 3862. Division of community property.

Before pronouncing a decree of divorce from the bonds of matrimony, the court shall require evidence of the property and estate of the parties, and shall order such division of said property and estate as to the court shall seem just and right, having due regard for the rights of each party and their children, if any. Nothing herein contained shall be construed to compel either party to divest himself or herself of the title to separate property. The court may, however, fix a lien upon the separate property of either of the parties to secure the payment of any interest or equity that the other party may have in or to such separate property, or any equity that may arise in favor of either party out of property matters during the existence of the marriage relation, or to secure the payment of an allowance for the support and maintenance of the wife or minor children of the parties.

The decree of divorce shall specifically describe the real estate of the parties affected by the decree, situated in this state, and

any such decree affecting the title to real estate shall be recorded in the office of the county recorder of the county, of each county in which any such real estate is situated.

Any separate property of either of the parties of which no disposition is made in the decree shall remain the separate property of such party, free of all claims of the other party, and any community property concerning which no provision is made in the decree shall be from the date of such decree, owned and held by the parties as tenants in common, each owning and holding an undivided one-half interest therein. (Amended by L. 1919, ch. 65.)

§ 3863. Recrimination in suits based on adultery.

In any suit for divorce on the ground of adultery, if it shall be proved that the plaintiff has been guilty of the like crime, or had admitted the defendant into conjugal society or embraces after he or she knew the criminal fact, or that the complainant (if the husband) connived at his wife's prostitution, or exposed her to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defense and a perpetual bar against said suit; or, if it appears that the adultery complained of is occasioned by collusion of the parties, and done with the intention to procure a divorce, or where both parties shall be guilty of adultery, then no divorce shall be decreed.

§ 3864. Legitimacy of children; remarriage of parties.

A divorce from the bonds of matrimony shall not in any wise affect the legitimacy of the children thereof; and either party may, after the dissolution of the marriage, marry again only after one year shall have elapsed from the date of judgment of such divorce; provided, however, that if proceedings are begun prior to the expiration of the said one year to set aside the judgment of divorce, then and in that event said parties to the divorce, or either of them, may not marry again until the said proceedings shall have been determined. (Amended by L. 1917, ch. 54.)

§ 3865. Alienation of community property, after suit commenced.

On and after the day on which the action for divorce shall be brought it shall not be lawful for the husband to contract any debts on account of the community, nor to dispose of the property belonging to the same; and any alienation made by him after that time shall be null and void, if it be proved, to the satisfaction of the court that such alienation was made with a fraudulent view of injuring the rights of the wife.

§ 3866. Inventory and appraisalment of community property.

At any time during a suit for divorce, the wife may for the preservation of her rights, require an inventory and an appraisalment to be made of all community property, and all her separate property, which is in the possession of the husband, and may obtain an injunction restraining him from disposing of any part thereof in any manner.

§ 3867. Alimony and attorneys' fees pending suit.

During the pendency of such action the court may in its discretion require the husband to pay as alimony any money necessary for the prosecution of the action, or for attorney's fees, or for the support and maintenance of the wife, or minor children of the parties, and the court may in its discretion order that execution issue therefor.

§ 3868. Custody of children pending suit.

Pending any suit for divorce the court may make such temporary orders respecting the property of the parties, or either of them, or the custody of the children of the parties as may from time to time be deemed necessary.

§ 3869. Permanent alimony.

In the final judgment in any such action the court may, in addition to the division of the common property of the parties,

or in lieu thereof, direct the husband to pay the wife such amounts as may be necessary for the support and maintenance of the wife, and the minor children of the parties whose custody may be awarded to the wife, as may be deemed necessary or proper, and may direct that said amount may be paid in one sum, or installments, and may enforce the payment thereof by execution.

§ 3870. Custody of children.

In suits for divorce the court may make such orders concerning the care and custody of the minor children of the parties and their suitable maintenance during the pendency of the action as may be deemed proper and necessary for the well-being of the children, and in the final judgment rendered in any such suit or in any suit for annulment of the marriage, the court may make such disposition of, and provision for the minor children, as shall be deemed most expedient under all circumstances, and for the present comfort, and future well-being of such children.

§ 3871. Costs.

The court may award costs to the party in whose favor the decree shall be granted, or that each party shall pay his or her own costs, as to the court shall appear reasonable.

§ 3872. Modification of judgment.

The court may from time to time after the entry of final decree, on petition of either of the parties, amend, revise and alter such portions of the decree as relate to the payment of money for the support and maintenance of the wife or the expenses of the proceedings, as may be deemed just, and may at any time or from time to time after the entry of final decree amend, change or alter any provision therein respecting the care, custody or maintenance of the children of the parties as the circumstances of the parents and the welfare of the children may require.

§ 3873. Changing name of wife.

In suits for divorce the court may, in its discretion, on the final disposition of the case, enter a decree changing the name of the wife in said suit if such change of name is specially prayed for in the pleadings of such party.

CHAPTER 5.**LIMITED DIVORCE.**

SECTION 3874. When granted.

3875. Ground for limited divorce.

3876. Alimony and attorneys' fees pending actions.

3877. Judgment.

3878. Custody and support, wife and children.

3879. Revocation of decree.

3880. Not bar to action for absolute divorce.

§ 3874. When granted.

A separation from the bed and board forever, or for limited time, may be adjudged by the superior court, on the complaint of a married woman, in the following cases:

(1) Between any husband and wife, inhabitants of this state.

(2) When the marriage shall have taken place within this state, and the wife shall be an actual resident at the time of filing her complaint.

(3) When the marriage shall have taken place out of this state, and the parties have been inhabitants of this state at least one year, and the wife shall be an actual resident at the time of filing her complaint.

§ 3875. Ground for limited divorce.

Such separation may be adjudged for the following causes:

(1) Any cause which is made by law ground for the granting of absolute divorce.

(2) Such conduct on the part of the husband toward his wife as may render it unsafe and improper for her to cohabit with him.

§ 3876. Alimony and attorneys' fees pending actions.

Such proceedings shall be commenced and conducted in the same manner as actions for a divorce from the bonds of matrimony; and the court, upon motion, may award such sum for counsel fees and temporary alimony during the pendency of the action as the circumstances and situation of the parties appear to warrant.

§ 3877. Judgment.

Upon adjudging a separation in any suit, the court may make such order and decree for the suitable support of the wife and her children by the husband, or out of his property or earnings, as may appear just and proper, and may make such further decree as the nature and circumstances of the case require.

§ 3878. Custody and support, wife and children.

Although a decree for separation from bed and board be not made, the court may make such decree for the support of the wife and her children, or any of them, by the husband, or out of his property or earnings, as the nature of the case renders suitable and proper.

§ 3879. Revocation of decree.

Upon a joint application of the parties, and satisfactory proof of their reconciliation, the court granting any decree of separation may revoke the same, under such regulations and restrictions as it shall prescribe.

§ 3880. Not bar to action for absolute divorce.

The granting of a separation from bed and board shall not be a bar to an action for absolute divorce based upon the same ground.

§ 3885. Action for separate maintenance; effect.

No action for separate maintenance, nor any judgment rendered therein, shall bar the plaintiff from the right to maintain an action

for an absolute divorce upon the same grounds upon which the action for separate maintenance is based.

§ 3886. Same; appeal not to suspend order for alimony.

An appeal may be taken to the supreme court from any judgment of the superior court in any action for absolute or limited divorce or separate maintenance, and from any order directing the payment of alimony, temporary or permanent, subject to the provisions of law relating to appeals in civil actions; provided, that an order directing the payment of money for the support or maintenance of the wife, or the minor child or children, shall not be suspended or the execution thereof stayed pending any such appeal.



§ 1677. Who may not be witnesses.

The following persons cannot be witnesses in a civil action:

* * * * *

(3) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communications made by one to the other during the marriage; but this exception does not apply to an action for divorce or a civil action by one against the other, nor to a criminal action or proceeding as provided in the penal code; or in an action brought by husband or wife against another person for the alienation of the affections of either husband or wife; or in an action for damages against another person for adultery committed by either husband or wife.



§ 338. Superior courts.

The original jurisdiction of the superior courts shall extend . . . to divorce, and for annulment of marriage; . . .

§ 394. Venue.

* * * * *

(13) Suits for divorce must be brought in the county in which the plaintiff shall have resided for six months next preceding the filing of the complaint.

ARKANSAS.*Kirby's Digest of the Statutes, 1904.*

CHAPTER 54.

- SECTION 2672.** Circuit court has jurisdiction to grant divorces; grounds for.
 2673. Legitimacy of children not to be affected by.
 2674. Proceedings, where to be had; how process may be directed.
 2675. To be prosecuted by equitable proceedings.
 2676. Pleadings not to be verified; interrogatories may be filed.
 2677. Statement of complaint not to be taken as true.
 2678. What plaintiff must allege and prove.
 2679. Maintenance and attorneys' fees pendente lite.
 2680. Collusion of parties and condonation of offenses.
 2681. Alimony and care of children.
 2682. Power of court to enforce decree.
 2683. Court may order decree for alimony and maintenance.
 2684. Order in respect to the property of each party on final decree.
 2685. A woman may be restored to her maiden name.
 2686. Proceedings for annulling judgment of divorce.

§ 2672. Circuit court has jurisdiction to grant divorces; grounds for.

The circuit court shall have power to dissolve and set aside a marriage contract, not only from bed and board, but from the bonds of matrimony, for the following causes:

First. Where either party, at the time of the contract, was and still is impotent.

Second. Where either party willfully deserts and absents himself or herself from the other for the space of one year without reasonable cause.

Third. Where he or she had a former wife or husband living at the time of the marriage sought to be set aside.

Fourth. Where either party shall be convicted of felony or other infamous crime.

Fifth. Where either party shall be addicted to habitual drunkenness for the space of one year, or shall be guilty of such cruel and barbarous treatment as to endanger the life of the other, or shall offer such indignities to the person of the other as shall render his or her condition intolerable.

Sixth. Where either party shall have committed adultery subsequent to such marriage.

§ 2673. Legitimacy of children not to be affected by.

The injured party may apply for such decree of divorce, but no divorce shall affect the legitimacy of the children born previously to entering the decree in such case.

§ 2674. Proceedings, where to be had; how process may be directed.

The proceedings shall be in the county where the complainant resides, and the process may be directed in the first instance to any county in the state where the defendant may then reside.

§ 2675. To be prosecuted by equitable proceedings.

The action for alimony or divorce shall be by equitable proceedings.

§ 2676. Pleadings not to be verified; interrogatories may be filed.

The pleadings are not required to be verified by affidavit; but either party may file interrogatories to the other in regard to any matter of property involved in the action, which shall be answered on oath, as interrogatories in other actions and have the same effect.

§ 2677. Statement of complaint not to be taken as true.

The statements of the complaint for a divorce shall not be taken as true because of the defendant's failure to answer, or his or her admission of their truth.

§ 2678. What plaintiff must allege and prove.

The plaintiff, to obtain a divorce, must allege and prove, in addition to a legal cause of divorce:

First. A residence in the state for one year next before the commencement of the action.

Second. That the cause of divorce occurred or existed in this state, or, if out of the state, either that it was a legal cause of divorce in the state where it occurred or existed or that the plaintiff's residence was then in this state.

Third. That the cause of divorce occurred or existed within five years next before the commencement of the suit.

§ 2679. Maintenance and attorneys' fees pendente lite.

During the pendency of an action for divorce or alimony the court may allow the wife maintenance and a reasonable fee for her attorneys, and enforce the payment of the same by orders and executions and proceedings as in cases of contempt.

§ 2680. Collusion of parties and condonation of offenses.

If it shall appear to the court that the adultery, or other offense complained of, shall have been occasioned by the collusion of the parties, or done with an intent to procure a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of the adultery, or such other offense or injury complained of in the bill, then no divorce shall be granted or decreed.

§ 2681. Alimony and care of children.

When a decree shall be entered, the court shall make such order touching the alimony of the wife and care of the children, if there be any, as from the circumstances of the parties and the nature of the case shall be reasonable.

§ 2682. Power of court to enforce decree.

The court may enforce the performance of any decree or order for alimony and maintenance by sequestration of the defendant's

property, or that of his securities, or by such other lawful ways and means as are according to the rules and practice of the court.

§ 2683. Court may order decree for alimony and maintenance.

The court, upon application of either party, may make such alterations from time to time, as to the allowance of alimony and maintenance, as may be proper, and may order any reasonable sum to be paid for the support of the wife during the pending of her bill for a divorce.

§ 2684. Order in respect to the property of each party on final decree.

In every final judgment for divorce from the bonds of matrimony granted to the husband, an order shall be made that each party be restored to all property not disposed of at the commencement of the action, which either party obtained from or through the other during the marriage and in consideration or by reason thereof; and where the divorce is granted to the wife, the court shall make an order that each party be restored to all property not disposed of at the commencement of the action which either party obtained from or through the other during the marriage and in consideration or by reason thereof; and the wife so granted a divorce against the husband shall be entitled to one-third of the husband's personal property absolutely, and one-third of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage for her life, unless the same shall have been relinquished by her in legal form, and every such final order or judgment shall designate the specific property both real and personal, to which such wife is entitled; and when it appears from the evidence in the case, to the satisfaction of the court, that such real estate is not susceptible of the division herein provided for without great prejudice to the parties interested, the court shall order a sale of said real estate to be made by a commissioner to be appointed by the court for that purpose, at public auction to the highest bidder upon the terms and conditions, and at the time

and place fixed by the court; and the proceeds of every such sale after deducting the cost and expenses of the same, including the fee allowed said commissioner by said court for his services, shall be paid into said court and by the court divided among the parties in proportion to their respective rights in the premises. The proceedings for enforcing these orders may be by petition of either party specifying the property the other has failed to restore or deliver, upon which the court may proceed to hear and determine the same in a summary manner after ten days' notice to the opposite party. And such order, judgment or decree shall be a bar to all claim of dower in and to any of the lands or personalty of the husband then owned or thereafter acquired on the part of his said wife divorced by the decree of the court.

§ 2685. A woman may be restored to her maiden name.

When a divorce is granted to a married woman the court may restore her to the name she bore previous to the marriage from which she has been divorced when the complaint contains a prayer for that relief.

§ 2686. Proceedings for annulling judgment of divorce.

The proceedings for annulling a final judgment for a divorce from the bond of matrimony shall be a joint petition of the parties, verified by both parties in person, filed in the court rendering the judgment, upon which the court may forthwith annul the divorce.

§ 2694. In case of divorce for misconduct of wife, she shall not be endowed.

In case of divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

§ 5175. When marriage can be annulled, and how.

When either of the parties to a marriage shall be incapable, from want of age or understanding, of consenting to any mar-

riage, or shall be incapable from physical causes of entering into the marriage state, or where the consent of either party shall have been obtained by force or fraud, the marriage shall be void from the time its nullity shall be declared by a court of competent jurisdiction.

§ 5176. When subsequent marriage can be contracted.

No subsequent or second marriage shall be contracted by any person during the lifetime of any former husband or wife of such person, unless the marriage of the former husband or wife has been dissolved for some one of the causes set forth in the law concerning divorce, by a court of competent authority.

§ 5177. Marriages contracted out of this state, when to be valid.

All marriages contracted without this state which would be valid by the laws of the state or country in which the same are consummated, and the parties then actually resided, shall be valid in all the courts in this state.

§ 5178. When death presumed from abandonment.

In all cases where any husband shall abandon his wife, or wife her husband, and reside beyond the limits of this state for the term of five successive years, without being known to such person to be living during that time, their death shall be presumed, and any subsequent marriage entered into after the end of said five years shall be as valid as if such husband or wife were dead.

CALIFORNIA.*Civil Code.***CHAPTER II.****DIVORCE.**

- ARTICLE I.** Nullity.
 II. Dissolution.
 III. Causes for denying divorce.
 IV. General provisions.

ARTICLE I.**NULLITY.**

- SECTION 82.** Causes for annulling marriages.
 83. Actions therefor, when to be commenced.
 84. Children of annulled marriages.
 85. Custody of children.
 86. Effect of judgment of nullity.

§ 82. Causes for annulling marriages.

A marriage may be annulled for any of the following causes, existing at the time of the marriage:

One — That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

Two — That the former husband or wife of either party was living, and the marriage of such former husband or wife was then in force.

Three — That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband or wife.

Four — That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

Five — That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

Six — That either party was, at the time of marriage, physically incapable of entering into the marriage state, and such incapacity continues, and appears to be incurable.

§ 83. Actions therefor, when commenced.

An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

One — For causes mentioned in subdivision one: by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent.

Two — For causes mentioned in subdivision two: by either party during the life of the other, or by such former husband or wife.

Three — For causes mentioned in subdivision three: by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

Four — For causes mentioned in subdivision four: by the party injured, within four years after the discovery of the facts constituting the fraud.

Five — For causes mentioned in subdivision five: by the injured party, within four years after the marriage.

Six — For causes mentioned in subdivision six: by the injured party, within four years after the marriage.

§ 84. Children of annulled marriages.

A judgment of nullity of marriage does not affect the legitimacy of children begotten before the judgment.

§ 85. Custody of children.

The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

§ 86. Effect of judgment of nullity.

A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

- SECTION 90. Marriage, how dissolved.
91. Effect of divorce.
92. Causes for divorce.
93. Adultery defined.
94. Extreme cruelty, what.
95. Desertion, what.
96. Desertion, how manifested.
97. In cases of stratagem or fraud, who commits desertion.
98. In case of cruelty, where one party leaves the other, who commits desertion.
99. Separation by consent not desertion.
100. Absence becomes desertion, when.
101. Consent to separate revocable.
102. Desertion, how cured.
103. Wife must abide by husband's selection of home, or it is desertion on her part.
104. If place is unfit, and wife refuses to conform, it is desertion by the husband.

- SECTION 105. Wilful neglect, what.
 106. Habitual intemperance defined.
 107. Habitual intemperance for one year.

§ 90. Marriage, how dissolved.

Marriage is dissolved only:

One — By death of one of the parties; or,

Two — By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

§ 91. Effect of divorce.

The effect of a judgment decreeing a divorce, is to restore the parties to the state of unmarried persons.

§ 92. Causes for divorce.

Divorces may be granted for any of the following causes:

One — Adultery.

Two — Extreme cruelty.

Three — Willful desertion.

Four — Willful neglect.

Five — Habitual intemperance.

Six — Conviction of felony.

§ 93. Adultery defined.

Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

§ 94. Extreme cruelty, what.

Extreme cruelty is the wrongful infliction of grievous bodily injury, or grievous mental suffering, upon the other by one party to the marriage.

§ 95. Desertion, what.

Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

§ 96. Desertion, how manifested.

Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

§ 97. In case of stratagem or fraud, who commits desertion.

When one party is induced, by the stratagem or fraud of the other party, to leave the family dwelling-place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

§ 98. In case of cruelty, where one party leaves the other, who commits desertion.

Departure or absence of one party from the family dwelling-place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

§ 99. Separation by consent not desertion.

Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

§ 100. Absence becomes desertion, when.

Absence or separation, proper in itself, become desertion whenever the intent to desert is fixed during such absence or separation.

§ 101. Consent to separate revocable.

Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

§ 102. Desertion, how cured.

If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

§ 103. Wife must abide by husband's selection of home, or it is desertion on her part.

The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

§ 104. If the place is unfit, and wife refuses to conform, it is desertion by the husband.

If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

§ 105. Wilful neglect, what.

Wilful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

§ 106. Habitual intemperance defined.

Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party. (As amended by L. 1901, 157.)

§ 107. Habitual intemperance for one year.

Wilful desertion, wilful neglect, or habitual intemperance must continue for one year before either is a ground for divorce.

ARTICLE III.**CAUSES FOR DENYING DIVORCE.**

- SECTION** 111. Divorce denied, on showing what.
112. Connivance, what.
113. Corrupt consent, how manifested.
114. Collusion, what.
115. Condonation, what.
116. Requisites to condonation.
117. Condonation implies what.
118. Evidence of condonation.
119. Can only be made, when.
120. Concealment of facts in certain cases makes condonation void.
121. Condonation, how revoked.
122. Recrimination, what.
123. When condonation har to defense.
124. Divorce, when denied.
125. Lapse of time establishes certain presumptions.
126. Presumptions may be rebutted.
127. Limitation of time.
128. Residence of plaintiff and cross-complainant.
129. Proof of actual residence required. Presumptions do not apply.
130. Divorce by default, etc.
131. Interlocutory judgment.
132. Final judgment, after one year.

§ 111. Divorces denied, on showing what.

Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time.

§ 112. Connivance, what.

Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

§ 113. Corrupt consent, how manifested.

Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

§ 114. Collusion, what.

Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

§ 115. Condonation, what.

Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

§ 116. Requisites to condonation.

The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;
2. Reconciliation and remission of the offense by the injured party;
3. Restoration of the offending party to all marital rights.

§ 117. Condonation implies what.

Condonation implies a condition subsequent; that the forgiving party must be treated with conjugal kindness.

§ 118. Evidence of condonation.

Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from excessive acts of ill-treatment which may, aggregately, constitute the offense, cohabita-

tion, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone.

§ 119. Can only be made, when.

In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of.

§ 120. Concealment of facts in certain cases makes condonation void.

A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of the condonation, avoids such condonation.

§ 121. Condonation, how revoked.

Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,

2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

§ 122. Recrimination, what.

Recrimination is a showing by the defendant of any cause of divorce against the plaintiff. in bar of the plaintiff's cause of divorce.

§ 123. When condonation bar to defense.

Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense, unless the condonation be revoked, as provided in section one hundred and

twenty-one, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown.

§ 124. Divorce, when denied.

A divorce must be denied:

One — When the cause is adultery and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,

Two — When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence.

Three — In all other cases when there is an unreasonable lapse of time before the commencement of the action.

§ 125. Lapse of time establishes certain presumptions.

Unreasonable lapse of time in such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation notwithstanding the commission of such offense.

§ 126. Presumptions may be rebutted.

The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

§ 127. Limitation of time.

There are no limitations of time for commencing actions for divorce, except such as are contained in section 124.

§ 128. Residence of plaintiff and cross-complainant.

A divorce must not be granted unless the plaintiff has been a resident of the state for one year, and of the county in which the action is brought three months, next preceding the commence-

ment of the action; provided, that a cross-complainant in an action for divorce need not be or have been a resident of the state or of the county in which the action is brought or pending in order to entitle such cross-complainant to a divorce in said action; and provided, further, that in an action for divorce a cross-complaint must personally verify the cross-complaint. (As amended by L. 1911, ch. 376.)

§ 129. Proof of actual residence required. Presumptions do not apply.

In actions for divorce the presumption of law, that the domicile of the husband is the domicile of the wife, does not apply. After separation, each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

§ 130. Divorce by default, etc.

No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, or upon any statement or finding of fact made by referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers.

§ 131. Interlocutory judgment.

In actions for divorce, the court must file its decision and conclusions of law as in other cases, and if it determines that no divorce shall be granted, final judgment must thereupon be entered accordingly. If it determines that the divorce ought to be granted, an interlocutory judgment must be entered, declaring that the party in whose favor the court decides is entitled to a divorce. After the entry of the interlocutory judgment, neither party shall have the right to dismiss the action without the consent of the other. (As amended by L. 1915, ch. 115.)

§ 132. Final judgment, after one year.

When one year has expired after the entry of such interlocutory judgment, the court on motion of either party, or upon its own motion, may enter the final judgment granting the divorce, and such final judgment shall restore them to the status of single persons, and permit either to marry after the entry thereof; and such other and further relief as may be necessary to complete disposition of the action, but if any appeal is taken from the interlocutory judgment or motion for a new trial made, final judgment shall not be entered until such motion or appeal has been finally disposed of, nor then, if the motion has been granted or judgment reversed.

The death of either party after the entry of the interlocutory judgment does not impair the power of the court to enter final judgment as hereinbefore provided; but such entry shall not validate any marriage contracted by either party before the entry of such final judgment, nor constitute any defense of any criminal prosecution made against either. (As added by L. 1903, ch. 67.)

ARTICLE IV.**GENERAL PROVISIONS.**

- SECTION 136.** Maintenance by husband where judgment denied.
137. Action for permanent support of wife.
138. Custody and maintenance of minors during actions for divorce.
139. Support of wife and children on divorce or separation granted to wife.
140. Security for maintenance and alimony.
141. Court shall resort to what, in executing certain sections.
142. If wife has sufficient for her support, court may withhold allowance.
143. Community and separate property may be subjected to support and educate children.
144. Legitimacy of issue. [Repealed.]
145. Same.
146. Disposition of community property.
147. Same.
148. Same.

§ 136. Maintenance by husband where judgment denied.

Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance by the husband, of the wife and children of the marriage, or any of them.

§ 137. Action for permanent support of wife.

When an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself and her children, or to prosecute or defend the action. When the husband wilfully deserts the wife or when the husband wilfully fails to provide for the wife or when the wife has any cause of action for divorce as provided in section ninety-two of this code, she may, without applying for divorce, maintain in the superior court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court may, in its discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and execution may issue therefor in the discretion of the court. The court, in granting the wife permanent support and maintenance of herself, or of herself and children, in any such action, shall make the same disposition of the community property and of the homestead, if any, as would have been made if the marriage had been dissolved by the decree of a court of competent jurisdiction. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court. (Amended by L. 1917, ch. 36.)

§ 138. Custody and maintenance of minors during actions for divorce.

In actions for divorce the court may, during the pendency of the action, at the final hearing or at any time thereafter during the

minority of any of the children of the marriage, make such order for the custody, care, education, maintenance and support of such minor children as may seem necessary or proper, and may at any time modify or vacate the same.

§ 139. Support of wife and children on divorce or separation granted to wife.

Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

§ 140. Security for maintenance and alimony.

The court may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

§ 141. Court shall resort to what, in executing certain sections.

In executing the five preceding sections the court must resort:

1. To the community property; then,
2. To the separate property of the husband.

§ 142. If wife has sufficient for her support, court may withhold allowance.

When the wife has either a separate estate, or there is community property sufficient to give her alimony or a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband.

§ 143. Community and separate property may be subjected to support and educate children.

The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

§ 144. Legitimacy of issue.

(Repealed by L. 1901, ch. 157.)

§ 145. Same.

When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case.

§ 146. Disposition of community property.

In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property, and the homestead, shall be assigned as follows:

One — If the decree be rendered on the ground of adultery, or extreme cruelty, the community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, may deem just.

Two — If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties.

Three — If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely or for a limited period, subject, in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold and the proceeds divided.

Four — If a homestead has been selected from the separate property of either, it shall be assigned to the former owner of such

property, subject to the power of the court to assign it for a limited period to the innocent party.

§ 147. Same.

The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead, as in this chapter provided, and, whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds.

§ 148. Same.

The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

§ 159. Husband and wife, property relations.

A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

§ 160. Consideration for agreement of separation.

The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

§ 59. Incompetency of parties to.

Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the

half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

§ 60. Illegal marriages.

All marriages of white persons with negroes, mongolians, or mulattoes are illegal and void.

§ 61. Subsequent marriage, when illegal and void.

A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

1. The former marriage has been annulled or dissolved. In no case can a marriage of either of the parties during the life of the other, be valid in this state, if contracted within one year after the entry of an interlocutory decree in a proceeding for divorce.

2. Unless such former husband or wife is absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or is generally reputed or believed by such person to be dead at the time such subsequent marriage was contracted. In either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal. (As amended by L. 1903, ch. 158.)

§ 62. Release from marriage contracts.

Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.

§ 63. Marriages contracted without the state.

All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, are valid in this state.

§ 78. Either party may proceed to test validity of marriage.

If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the superior court, to have the validity of the marriage determined and declared. (As amended by L. 1883, ch. 6.)

§ 80. Void marriages.

Either party to an incestuous or void marriage may proceed, by action in the superior court, to have the same so declared. (As amended by L. 1880, ch. 41.)

*Fairall's Code of Civil Procedure.*¹

§ 2079. In action for divorce, admission not sufficient.

In an action for divorce on the ground of adultery, a confession of adultery, whether in or out of the pleadings, is not of itself sufficient to justify a judgment of divorce.

§ 76. Original jurisdiction.

The superior courts shall have original jurisdiction:

* * * * *

4. Of actions . . . of divorce and for annulment of marriage, . . .

§ 125. Sittings, when private.

In an action for divorce, criminal conversation, seduction or breach of promise of marriage, the court may direct the trial of

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any issue of fact joined therein to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel; provided, that in any cause the court may, in the exercise of a sound discretion, during the examination of a witness, exclude any or all other witnesses in the cause.

§ 1019. Service of pleadings in action for divorce for adultery.

When in an action for divorce adultery is charged against either party and the person with whom such adultery is alleged to have been committed by such party is named in any of the pleadings, a copy of such pleadings must be personally served on such named person; or, in case such named person cannot be found, such notice of the action and of the connection of such person therewith shall be given as shall be ordered by the court; the said person so served shall have the right to appear and plead and be heard in such action in the same manner and to the same extent as the parties to the action.

§ 426a. Statement of facts in divorce complaint.

In an action for divorce the complaint must set forth, for the statistics required to be collected by the state bureau of vital statistics, among other matters as near as can be ascertained the following facts:

- (1) The state or country in which the parties were married.
- (2) The date of marriage.
- (3) The date of separation.
- (4) The number of years from marriage to separation.

- (5) The number of children of the marriage, if any, and if none, a statement of that fact.
- (6) The ages of minor children.

§ 963. Cases in which an appeal may be taken from superior court.

An appeal may be taken from a superior court in the following cases:

- * * * * *
- 2. From . . . interlocutory decrees of divorce.

Penal Code.

§ 159a. Advertising to procure divorce.

Whoever advertises, prints, publishes, distributes, or circulates, or causes to be advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, hand-bill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure or obtain, or to aid in procuring or obtaining, any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage or appear or act as attorney, counsel, or referee in any suit for alimony or divorce, or the severance, dissolution, or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This section does not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state. (As amended by L. 1905, ch. 486.)

Political Code.

§ 1032. Inspection of records.

. . . In all actions for divorce, the pleadings, and the testimony taken and filed in said actions, shall not be by the clerk with whom

the same is filed, or the referee before whom the testimony is taken, made public, nor shall the same be allowed to be inspected by any person except the parties that may be interested, or the attorneys to the action, or by an order of the court in which the action is pending; a copy of said order must be filed with the clerk. . . .
(As amended by L. 1874, ch. 610.)

COLORADO.

Laws of 1917, ch. 65.

Concerning marriage and divorce and to repeal all acts and parts of acts in conflict with the provisions of this act.

- SECTION
1. Causes for divorce; legitimacy.
 2. Jurisdiction; practice.
 3. Personal service.
 4. Service by publication.
 5. Residence; venue.
 6. Cross-complaint.
 7. Alimony.
 8. Trial.
 9. Jury trial.
 10. Written findings; no decree for six months; subsequent marriage of parties.
 11. Collusion.
 12. Appeals.
 13. Repealing clause.

§ 1. Causes for divorce; legitimacy.

Any marriage may be dissolved and a divorce granted for any one or more of the following named reasons, and for no other cause, to-wit:

First: That the spouse from whom the divorce is sought was impotent at the time of the marriage, or became impotent through immoral conduct committed after the marriage.

Second: That the spouse from whom a divorce is sought had a husband or wife living, and not divorced, at the time of the marriage.

Third: That the spouse from whom a divorce is sought has committed adultery since the marriage.

Fourth: That the spouse from whom a divorce is sought has wilfully deserted the other spouse without reasonable cause for the

period of one year or more immediately preceding the beginning of the action for divorce.

Fifth: That the spouse from whom a divorce is sought has been extremely and repeatedly cruel toward the other spouse; and such cruelty may consist of the infliction of mental suffering or bodily violence.

Sixth: That the husband, being in good bodily health, has failed to make reasonable provision for the support of his family for a period of one year or more next prior to the beginning of the action for divorce.

Seventh: That the spouse from whom a divorce is sought has been a habitual drunkard or drug fiend for a period of one year or more next prior to the beginning of the action for divorce.

Eighth: That the spouse from whom a divorce is sought has been convicted of a felony in a court of record in any state since the marriage.

A divorce shall not in any wise affect the legitimacy of any child of a marriage, nor its right to inherit the property of its father or mother.

§ 2. Jurisdiction; practice.

The district court shall have jurisdiction of all actions for divorce and alimony, and shall have the power to decree a dissolution of the marriage, if any of the causes mentioned in this act shall be proven to exist; and the process, practice and proceedings shall be had in such cases as are usually had in other civil cases, and in accordance with the requirements of the code of civil procedure, except as expressly modified or otherwise provided in this act.

And the county court shall have jurisdiction of all actions for divorce and alimony wherein the bill of complaint shall aver that the plaintiff does not ask or seek alimony in excess of the sum of two thousand dollars, and in such cases the jurisdiction of the county court shall be as full and complete and extensive as the

jurisdiction of the district court in such cases. If such action is properly brought in the county court, the jurisdiction of that court shall not be ousted by the defendant filing an answer or cross-complaint asking alimony in excess of the sum of two thousand dollars. An action for divorce may be brought in the district court or in the county court by either a husband or wife, subject to the limitations on the jurisdiction of the county court as above prescribed.

In any action for separate maintenance the answer of the defendant shall contain:

1. A general or specific denial of each material allegation in the complaint intended to be controverted by the defendant.

2. A statement of any new matter constituting a defense or constituting an action for divorce, in ordinary and concise language, without unnecessary repetition.

§ 3. Personal service.

In every action for divorce, personal service of the summons and a copy of the complaint shall be made on the defendant, except as provided in section four hereof. If such service be made within the state of Colorado, then the defendant shall have thirty days thereafter within which to plead to said complaint; if the defendant is not within the state of Colorado, then personal service of the summons and a copy of the complaint may be made by the sheriff of the county in any state in which such defendant is found, or by a United States marshal if the defendant is found in a United States territory or district, or by a United States consul, or by some person of legal age appointed by such consul, if the defendant is found in a foreign country; and the return of such officer showing such personal service shall be held to be a sufficient service to give the court jurisdiction of such defendant; and in case of such service outside of the state of Colorado the defendant shall have fifty days from the date of such service within which

to plead to such complaint, and in all cases the time within which the defendant must appear and plead shall be stated in the summons. Service of summons by a sheriff may be made through an undersheriff, or a deputy sheriff in the name of the sheriff, and service by a United States marshal may be made through a deputy marshal in the name of the marshal.

§ 4. Service by publication.

In any case where the defendant is without the state of Colorado and his or her location is unknown to the plaintiff, or where the defendant conceals himself or herself in Colorado so that summons cannot be personally served upon him or her, or where the plaintiff has no knowledge or notice, direct or indirect, of where the defendant can be found, within or without the state of Colorado, the plaintiff may make an application to the court for an order to make service of the summons on the defendant by publication; such application shall be made under oath and shall state fully and in detail all of the efforts made by the plaintiff to procure personal service of the summons on the defendant, and all of the knowledge of the plaintiff concerning the location of the defendant and shall state all the facts within the knowledge of the plaintiff which might assist in learning the address of the defendant. The court of the judge thereof, in vacation, shall, upon the hearing of said application, carefully examine the plaintiff and such other witnesses as shall be produced, in order to determine what steps shall be taken to notify such absent defendant of the pendency of the action. The court or the judge thereof shall, if satisfied of the good faith of the plaintiff cause the summons to be published in the same manner and with like effect as is now provided by law for publication of summons in cases of attachment.

§ 5. Residence; venue.

No person shall be granted a divorce unless such person has been a bona fide resident and citizen of this state during the one year

next prior to the commencement of the action, which fact shall be proven by at least one credible witness other than the plaintiff. Provided, that this section shall not affect applications for divorce upon the grounds of adultery or extreme cruelty, where the offense was committed within this state. Provided, further, that such suit shall only be brought in the county in which such plaintiff or defendant reside or where such defendant last resided.

§ 6. Cross-complaint.

In any action for divorce the defendant may file a cross-complaint in which may be set forth any one or more causes for divorce or separate maintenance against the plaintiff; and if upon the trial of such action both parties shall be found guilty of any one or more of the causes for divorce, then a divorce shall not be granted to either of said parties.

§ 7. Alimony.

At all times after the filing of a complaint in an action for divorce, the court in term time, or the judge thereof in vacation, may make such order for the care and custody of a minor child or children of the parties as the circumstances of the case may warrant, and such court or judge may grant alimony and counsel fees pendente lite to the wife; and when a divorce has been granted the court may make such order and decree providing for the payment of alimony and maintenance of the wife and minor children or either of them as may be reasonable and just, and may require security to be given for the payment of such alimony, or enforce the payment thereof by execution or imprisonment, or may decree a division of property; provided, that the remarriage of the former wife shall relieve the former husband from the further payment of alimony to her, but such remarriage shall not relieve the former husband from the provisions of any judgment or decree or order providing for the support of any minor child.

§ 8. Trial.

A jury of three shall be sufficient for the trial of all divorce cases, unless a greater number not exceeding twelve shall be demanded by one of the parties thereto before the commencement of the trial; in which event the party making such demand shall pay the expenses of the additional number of jurors; provided, that whenever a case for divorce shall be called for trial, if no appearance shall be made for the defendant, or if appearance is entered and the case is not contested, the case may be tried by the court without a jury; and in that event it shall not be necessary for the court to appoint an attorney to represent said defendant. And provided further, that no trial of an action for divorce shall be had until after the expiration of thirty days from the filing of the complaint with the clerk of the court.

§ 9. Jury trial.

Every action for divorce that is contested shall be tried to a jury consisting of not less than three jurors, and when such case comes on for trial the court shall call a jury consisting of six jurors, unless the parties agree in open court to a jury of three jurors; and either party may have such additional jurors called as he may demand but not more than enough to make the jury consist of twelve jurors. If a party demands additional jurors he shall immediately, and before such additional jurors are called, pay the clerk of the court two dollars for each additional juror so demanded and any money so received by the clerk shall be used by him in the payment of the fees of such additional juror.

The court shall submit to the jury, if the case is tried to a jury, the question of the guilt or innocence of the defendant of each and every of the causes for divorce charged against the defendant in the complaint; and in case of a cross-complaint the court shall submit to the jury the question of the guilt or innocence of the plaintiff of each and every of the causes for divorce charged in the cross-complaint against the plaintiff.

§ 10. Written findings; no decree for six months; subsequent marriage of parties.

Within forty-eight hours after the return of a verdict of a jury in favor of either party, if the case is tried to a jury, or within forty-eight hours after the denial of a motion for a new trial where a motion for a new trial has been filed, or within forty-eight hours of the close of the trial of the case if tried to the court, the court shall make and sign written findings of fact and conclusions of law in the case, and shall cause the same to be filed with the clerk of the court. No decree of divorce shall be granted until the expiration of six months from the day on which such findings of fact and conclusions of law were filed by the clerk of the court and any divorce granted before the expiration of the said six months shall be null and void; provided, however, that the death of either party before the expiration of the said six months after the finding of facts shall operate automatically so as to grant immediate and absolute divorce to the party to whom the divorce might have been granted had the full period of six months expired.

At any time before the expiration of the said six months either party shall have the right to appear by a verified petition and apply to the court for an order to set aside the said findings of fact and conclusions of law, and for a new trial of the action, and if upon a hearing of said petition the same shall appear to the court to be sufficient, the court may set aside the said findings of fact and conclusions of law and grant a new trial of the action. If said petition is denied the filing thereof and the hearing thereon shall not delay or extend the time within which a decree of divorce might be granted, but the court shall not grant a decree of divorce while such petition is unheard and undecided.

If the findings of fact and conclusions of law have not been set aside within six months from the day on which they were filed, and no motion to set them aside remains unheard and undecided, the court shall grant a divorce to the party entitled thereto according to the said findings of fact and conclusions of law. Nothing in this act shall be construed so as to prevent either party to said

action from remarrying to any person at any time after the entry of a final decree of divorce as herein provided.

§ 11. Collusion.

If it shall appear to the court in any case that any collusion or agreement between the parties has been entered into, upon which agreement or collusion the injury or offense complained of shall have been committed for the purpose of obtaining a divorce, the court shall fully investigate the same and if the court finds that such agreement or collusion has been entered into, the action shall be immediately dismissed and the costs thereof shall be taxed against the husband.

§ 12. Appeals.

Appeals may be taken to the district court from any judgment or decree of a county court in any action for divorce in the manner provided by law for such appeal in civil actions. No appeal shall be taken or allowed to the supreme court from any judgment or decree of any court in an action for divorce. No writ of error shall be taken or allowed or prosecuted from the supreme court to review a judgment or decree of any court in an action for divorce, except at the time and in the manner hereinafter set forth, to-wit: If the party against whom a decree of divorce has been granted shall file, within five days from the day on which such decree was granted, with the clerk of the court a written notice that he or she will apply within sixty days from the date of said decree to the supreme court, for a writ of error to review the said decree then a writ of error may issue from the supreme court on proper application therefor within sixty days from the date of said decree but not thereafter, to review any and all of the proceedings and decree of the trial court.

§ 13. Repealing clause.

Any and all acts and parts of acts of any general assembly of the state of Colorado which are in conflict with this act are hereby

repealed; except, that all actions for divorce which have been commenced when this act takes effect may be conducted to final judgment under the law as it existed immediately before this act became effective.

CONNECTICUT.*General Statutes, 1918.*

- SECTION 5280.** Divorces, when granted.
5281. Mode of proceeding.
5282. Order of notice. When complaint may be continued.
5283. Procedure in actions of divorce on grounds of insanity.
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5285. Case to stand on docket ninety days if no defense made.
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5290. When sole custody of children given to mother.
5291. Court may assign custody of children to either party.
5292. Children; how supported.
5293. Orders relative to children and alimony; void marriages.

§ 5280. Divorces, when granted.

The superior court shall have exclusive jurisdiction of all complaints for divorce, and may grant divorces to any man or woman for the following offenses committed by the other party: Adultery; fraudulent contract; wilful desertion for three years with total neglect of duty; seven years' absence, during all which period the absent party has not been heard from; habitual intemperance; intolerable cruelty; sentence to imprisonment for life; or any infamous crime involving a violation of conjugal duty and punishable by imprisonment in the state prison. It may grant divorces in cases in which both the husband and the wife are residents of this state if either has become incurably insane and has been legally confined in a hospital or asylum for the insane for at least five years next preceding the date of the bringing of the complaint in such action.

§ 5281. Mode of proceeding.

The party aggrieved may make complaint to the superior court in the form prescribed for civil actions, which shall be duly served on the other party, and whenever alimony is claimed, attachments to secure the same may be made by direction in the writ, or by an order pending suit in the same manner as in other civil actions, and on proof of the allegations, said court may grant a divorce, and declare the complainant to be single and unmarried; and the parties divorced may then marry again.

§ 5282. Order of notice. When complaint may be continued.

On all such complaints where the adverse party resides out of or is absent from the state, or the whereabouts of the adverse party is unknown to the plaintiff, any judge or clerk of the supreme court of errors or of the superior court or any county commissioner, may make such order of notice as he may deem reasonable; and such notice having been given and duly proved to the court, it may hear such complaint if it finds that the defendant has actually received notice that the complaint is pending, and if it shall not appear that the defendant has had such notice, the court may hear such case, or, if it see cause, order such further notice to be given as it may deem reasonable, and continue the complaint until the order is complied with.

§ 5283. Procedure in actions of divorce on grounds of insanity.

A copy of the writ and complaint in an action for divorce on the ground of incurable insanity shall be served on the defendant and on the conservator, if any, of such defendant, provided, if such conservator, is resident outside of the state such service may be made by registered mail; and if such conservator does not appear in court, or if the defendant has no conservator, the court shall appoint a guardian ad litem for such defendant. The court shall, after the pleadings have been closed and on the motion of either party, appoint one or more alienists who shall investigate

the mental status of such person. Such alienists, within a reasonable time thereafter, shall report to the court the facts found by them, with their opinion thereon. The testimony of no alienists other than those appointed by the court shall be received upon the trial of such action. The fees and expenses of such alienist and of such guardian ad litem shall be fixed by the court and shall be paid by the plaintiff.

§ 5284. Order for support of insane defendant.

The court may, when a divorce is granted on the ground of incurable insanity, at the time of granting such divorce or at any time thereafter, on application of either party or of the guardian or conservator of the insane spouse or of any person, town or municipality charged with the support of the insane spouse, make such order requiring support of the wife, or security for such support, as may be proper, but no order shall be made providing for continued support of a sane wife from the estate of an insane husband after the remarriage of such wife, and any order relating to the support of the wife, at any time thereafter, on application of either party or of the guardian of the insane spouse or of any person, town or municipality charged with such support, may be set aside or altered by such court. Any order providing for the support of the insane party shall be enforceable in the same manner as orders relating to alimony.

§ 5285. Case to stand on docket ninety days if no defense made.

No complaint claiming a divorce shall be heard, or any decree granted thereon, until after the expiration of ninety days from the day on which such complaint is made returnable, except when the defendant shall appear in court to defend against such complaint, either in person or by counsel, in which case such complaint shall be treated as privileged, and shall be assigned for trial and tried as soon as may be.

§ 5286. What residence necessary to give jurisdiction.

If the plaintiff shall not have continuously resided in this state three years next before the date of the complaint, it shall be dismissed unless the cause of divorce shall have arisen subsequently to the removal into this state, or unless the defendant shall have continuously resided in this state three years next before the date of the complaint, and actual service shall have been made upon him, or unless the alleged cause is habitual intemperance or intolerable cruelty, and the plaintiff was domiciled in this state at the time of the marriage, and before bringing the complaint has returned to this state with the intention of permanently remaining.

§ 5287. Alimony and change of name.

The superior court may assign to any woman divorced by such court a part of the estate of her husband and, in addition thereto, or in lieu thereof, may order alimony to be paid from the husband's income, may change her name, and may order alimony pendente lite to be paid to the wife in any complaint or cross-bill for divorce pending in such court. In fixing the amount which is proper to be allowed, the court shall take into consideration the amount of the husband's income, whether the same is derived from property already acquired, or from his personal daily exertions or from both, and whenever an order is made for the payment, at stated periods, of alimony from the income of the husband, the court may, at the time of issuing such order, fix a definite amount which may, at any time, be paid by the husband in lieu of all periodical payments which would otherwise accrue after the payment of such amount. Any order for the payment of alimony from income may, at any time thereafter, be set aside or altered by such court.

§ 5288. When estate reverts to husband.

When any married woman shall have derived any estate from her husband in consideration of their marriage, or of love and

affection, and her husband shall thereafter be divorced from her on the ground of her misconduct, the court may decree that such personal estate remaining in her possession, and such real estate standing in her name shall thereafter belong to him.

§ 5289. Order as to custody of children.

On any complaint for a divorce, the court may at any time make any proper order as to the custody, care and education of the children, and may at any time thereafter annul or vary such order.

§ 5290. When sole custody of children given to mother.

In all cases in which a divorce is granted on the complaint of a woman, without any order being made at the time of granting such divorce, relative to the custody of the children, and in all cases in which any husband and wife having minor children, shall, by reason of the abandonment or cruelty of the husband, live separately, the superior court in the county where the parties, or one of them, reside, may, on the complaint of the mother, and due notice given to the husband, award the custody of the children to the mother, for such time and under such regulations, as it may deem proper.

§ 5291. Court may assign custody of children to either party.

In all controversies before the superior court between husband and wife as to the custody of minor children of the marriage, the court may assign the custody of such children to either parent according to its best judgment upon the facts of the case, and upon such conditions and limitations as it shall deem proper; and when such court is not actually in session, any judge thereof may, prior to any action in the premises by the superior court, make any order which he may deem reasonable as to the care, custody and maintenance of any such minor children during the pendency of the cause, and make any proper order in the cause, including orders of injunction, and any such orders may after-

wards be set aside or altered by such court, or by such judge when such court is not actually in session.

§ 5292. Children, how supported.

Upon the dissolution of any marriage by divorce, the parents of a minor child of such marriage, who is in need of maintenance, shall maintain it according to their respective abilities, and upon the complaint of either parent, then or thereafter made to the superior court, it shall inquire into their pecuniary ability, and may make and enforce such decree against either or both of them, for the maintenance of such child as it shall consider just, and may direct any proper security to be given therefor.

§ 5293. Orders relative to children and alimony; void marriages.

Whenever from any cause any marriage is void, the superior court may, upon complaint, pass a decree declaring such marriage void, and may thereupon make such order in relation to any children of such marriage, if such there be, and concerning alimony, as it might make it a proceeding for a divorce between such parties if married; and the provisions of this chapter shall apply to such complaint in the same manner as to complaints for divorce.

§ 5050. Widow's right of dower.

Every woman married prior to April 20, 1877, and living with her husband at the time of his death, or absent by his consent, or by his default, or by accident, or who has been divorced without alimony, where she is the innocent party, shall have the right of dower during her life in one-third part of the real estate of which her husband died possessed in his own right, unless a suitable provision for her support was made before the marriage by way of jointure, or such provision has been made by settlement as hereinafter provided, or unless she and her husband during their marriage entered into and caused to be recorded in the

records of the court of probate of the district, and of the town clerk's office of the town in which they then resided, a written contract with each other for the mutual abandonment of all rights of either in the property of the other at common law, or under the statutes in force at the time of their marriage, and until said April 20, 1877, and for the acceptance instead thereof of the rights given by the provisions of sections 5055, 5274, and 5275.

§ 5752. Jury docket and jury trials.

. . . All cases not entered in the docket as jury cases under the foregoing provisions, including . . . complaint for divorce . . . shall be entered on the docket as court cases, and shall, with all issues of law and issues of fact, other than those hereinbefore specified, which may be joined in actions entered on the docket as jury cases, be disposed of as court cases.

§ 2224. Court fees.

There shall be paid to the clerks of courts, . . . judgment fees in undefended divorce proceedings, ten dollars; . . .

§ 5262. What kindred cannot marry.

No man shall marry his mother, grandmother, daughter, granddaughter, sister, aunt, niece, stepmother or stepdaughter; no woman shall marry her father, grandfather, son, grandson, brother, uncle, nephew, stepfather or stepson; and if any man or woman shall marry within the degrees aforesaid, such marriage shall be void.

§ 5267. Who may join persons in marriage.

All judges, justice of the peace, and ordained and licensed clergymen belonging to this state or any other state so long as they

continue in the work of the ministry, may join persons in marriage; and all marriages attempted to be celebrated by any other person shall be void; but all marriages which shall be solemnized according to the forms and usages of any religious denomination in this state shall be valid. No public official legally authorized to issue marriage licenses shall join persons in marriage under authority of a license issued by himself, or his assistant or deputy; nor shall any such assistant or deputy join persons in marriage under authority of a license issued by such public official. Any person violating any provision of this section shall be fined not more than fifty dollars.

DELAWARE.*Revised Code, 1915.***CHAPTER 86****DIVORCE.**

- SECTION** 1. Annulment of marriage: for impotency; for consanguinity during life of both parties; for former marriage; for fraud, etc.; for insanity; proviso.
2. Divorce; kinds of.
 3. Causes for divorce *a vinculo matrimonii*.
 4. Causes for divorce *a mensa et thoro*.
 5. Bars to divorce.
 6. Jurisdiction of superior court.
 7. Proceedings; summons, service of; trial by court.
 8. Annulment of marriage; jurisdiction, how acquired.
 9. Divorce; jurisdiction, how acquired.
 10. Jurisdiction acquired by publication; when; how.
 11. Publication to be followed by notice to defendant without the state; conditions stated.
 12. Alimony and expenses to wife; compulsory process.
 13. Recrimination; condonation; connivance of husband; effect of.
 14. Upon adultery, the wife forfeits estate, etc., settled on her in lieu of dower.
 15. Property allowance to wife; when decree for aggression of husband; when for aggression of wife.
 16. How allowance made and effected.
 17. *Particeps criminis*; made a party, when; on what terms.
 18. Hearings public; unless otherwise ordered.
 19. Attorney assigned by court; when.
 20. Proof required; admissions.
 21. Record or evidence; not impounded.
 22. Decree nisi; when; costs; taxing how and when; attachment for non-payment.
 23. Decree absolute, when; how obtained.
 24. Decree from bed and board; form of; reconciliation; order of court.
 25. Resumption of name by wife.

- SECTION 26.** Children; legitimacy of; when action brought by wife.
27. Children; legitimacy of; when action brought by husband; presumption of, when.
28. Children; order for distribution; care and maintenance of.
29. Decrees of foreign courts; full faith and credit given to, when; divorce secured by inhabitant of this state in foreign court for cause arising while residents of this state or for cause not competent in this state; without force in this state.

§ 1. Annulment of marriage; for impotency; for consanguinity during life of both parties; for former marriage; for fraud, etc.; for insanity; proviso.

A marriage may be annulled for any of the following causes existing at the time of the marriage:

(a) Incurable physical impotency, or incapacity for copulation, at the suit of either party: provided, that the party making the application was ignorant of such impotency or incapacity at the time of the marriage.

(b) Consanguinity or affinity according to the table of degrees established by law, at the suit of either party; but when any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party.

(c) When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

(d) Fraud, force or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.

(e) Insanity of either party, at the suit of the other, or at the suit of the committee of the lunatic, or of the lunatic on regaining reason, unless such lunatic, after regaining reason, has confirmed the marriage: provided, that where the party *compos mentis* is the applicant, such party shall have been ignorant of the other's insanity at the time of the marriage, and shall not have confirmed it subsequent to the lunatic's regaining reason.

§ 2. Divorce; kinds of.

Divorce shall be of two kinds:

(a) Divorce from the bonds of matrimony, or divorce a vinculo matrimonii.

(b) Divorce from bed and board, or divorce a mensa et thoro.

§ 3. Causes for divorce a vinculo matrimonii.

The causes for divorce from the bonds of matrimony shall be:

(a) Adultery.

(b) Bigamy, at the suit of the innocent and injured party to the first marriage.

(c) Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, for at least one year: provided, that such conviction has been the result of trial in some one of the states of the United States, or in a federal court, or in some one of the territories, possessions or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

(d) Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe.

(e) Wilful desertion for two years.

(f) Habitual drunkenness for two years.

(g) At the suit of the wife when she was under the age of sixteen years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age.

(h) At the suit of the husband when he was under the age of eighteen at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.

§ 4. Causes for divorce a mensa et thoro.

The causes for divorce from bed and board shall be:

(a) Adultery.

(b) Bigamy, at the suit of the innocent and injured party to the first marriage.

(c) Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in case of indeterminate sentence, for at least one year: provided, that such conviction has been the result of trial in some one of the states of the United States, or in a federal court, or in some one of the territories, possessions or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

(d) Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or to render cohabitation unsafe.

(e) Wilful desertion for two years.

(f) Habitual drunkenness for two years.

(g) Hopeless insanity of the husband.

§ 5. Bars to divorce.

No decree for divorce shall be granted, if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offense charged, or has condoned it, or has been guilty of adultery not condoned.

§ 6. Jurisdiction of superior court.

The superior court of this state shall have and entertain jurisdiction of all actions for annulment of marriage, or for divorce.

§ 7. Proceedings; summons; service of; trial by court.

The proceedings for divorce, or to have a marriage annulled, shall be by petition filed with the prothonotary of the superior court in the county of the petitioner's residence, stating the true cause of the complaint and verified by the affidavit of the petitioner that the facts stated are true and that the complaint is not made

out of levity or by collusion; whereupon a summons shall issue, for the defendant's appearance, and, upon proof of the service of such summons more than twenty days before the time of its return or upon proof of substituted service by publication as hereinafter provided, the cause shall proceed to trial, and shall be heard, tried and determined by the court without the intervention of a jury, and the court shall pass judgment thereon as to the court shall seem meet and proper.

§ 8. Annulment of marriage; jurisdiction, how acquired.

For purposes of annulment of marriage, jurisdiction may be acquired by personal service upon the defendant within this state, when either party is a bona fide resident of this state at the time of the commencement of the action.

§ 9. Divorce; jurisdiction, how acquired.

For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by personal service upon the defendant within this state, under the following conditions:

(a) When, at the time the cause of action arose, either party was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for two years next preceding the commencement of the action a bona fide resident of this state.

(b) When, since the cause of action arose, either party has become, and for at least two years next preceding the commencement of the action has continued to be, a bona fide resident of this state: provided, that the cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

§ 10. Jurisdiction acquired by publication; when; how.

When the defendant cannot be served personally within this state, and when at the time of the commencement of the action the plaintiff is a bona fide resident of this state, an alias summons shall issue to the second term next after issuing the original writ, which the sheriff shall publish for one month in such newspapers of the country, one or more, as he may judge best for giving the defendant notice; and the case may then proceed to trial with or without the defendant's appearance, subject to the provisions in the next succeeding section.

§ 11. Publication to be followed by notice to defendant without the state; conditions stated.

When the defendant cannot be served personally within this state, and when at the time of the commencement of the action the plaintiff is a bona fide resident of this state, jurisdiction for the purpose of divorce, whether absolute or from bed and board, may be acquired by publication as hereinbefore provided, to be followed where practicable by service upon or notice to the defendant without this state, under the following conditions:

(a) When, at the time the cause of action arose, the plaintiff was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless the plaintiff has been for the two years next preceding the commencement of the action a bona fide resident of this state.

(b) When, since the cause of action arose, the plaintiff has become, and for at least two years next preceding the commencement of the action has continued to be, a bona fide resident of this state: provided that the cause of action alleged was recognized in the jurisdiction in which the plaintiff resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

§ 12. Alimony and expenses of suit to wife ; compulsory process.

The court may grant alimony to the wife for her sustenance pending her petition for divorce, and may order and direct the husband to pay such sum as may be deemed necessary to defray the expenses in conducting her case, whether the application be on the part of either the wife or husband, and shall protect her from personal restraint. The court, in the execution of the powers conferred by this chapter, may employ such compulsory process as it may deem proper.

§ 13. Recrimination ; condonation ; connivance of husband ; effect of.

On a petition for divorce for the cause of adultery, if the defendant shall recriminate and prove that the plaintiff has been guilty of the like crime, or has admitted the defendant into conjugal society or embrace after knowledge of the adultery, or that the complainant, if husband, allowed of his wife's prostitution, the petition shall be dismissed. When a defendant or particeps criminis, or one representing an absent or uncontestng defendant, pleads recrimination by way of defense, the court shall first hear the testimony relating to the charge of recrimination and if it shall be satisfied that said charge has been proven, the petition, without further testimony, shall be dismissed. (As amended by L. 1915, ch. 217.)

§ 14. Upon adultery, wife forfeits estate, etc., settled on her in lieu of dower.

When the cause of divorce is the adultery of the wife, she shall forfeit any estate, charge, or benefit, settled upon her, or in trust for her use, in lieu of dower.

§ 15. Property allowance to wife ; when decree for aggression of husband ; when for aggression of wife.

When a divorce shall be decreed for the aggression of the husband, the complainant shall be restored to all her real estate, and be

allowed, out of her husband's real and personal estate, such share as the court shall think reasonable; but if the divorce be for the wife's aggression, the court may restore the whole or a part of her real estate, and also such share of her husband's personal property as may seem reasonable.

§ 16. How allowance made and effected.

Any such allowance, or division of property, may be by a gross sum, or an annual allowance, or an assignment by metes and bounds; and the court may appoint commissioners to execute any order in the premises, and may issue writs of possession, as in case of land sold on execution process.

§ 17. Particeps criminis; made a party, when; on what terms.

Anyone charged as a particeps criminis shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

§ 18. Hearings public; unless otherwise ordered.

All hearings and trials shall be had before the court, and not before a master, referee, or any other delegated representative, and shall be public, provided that, for reasons appearing sufficient to the court, the hearings and trials may be had before the court privately in chambers.

§ 19. Attorney assigned by the court; when.

In all uncontested cases, and in any other case where the court may deem it necessary or proper, a disinterested attorney may be assigned by the court actively to defend the case.

A relative by blood or marriage of an absent or uncontestng defendant, may by attorney appear for said defendant and plead to the petition of the complainant. (As amended by L. 1915, ch. 218.)

§ 20. Proof required; admissions.

No decree for annulment of marriage, or for divorce, shall be granted unless the cause is shown by affirmative proof aside from any admissions on the part of the defendant.

§ 21. Record or evidence; not impounded.

No record or evidence in any case shall be impounded, or access thereto refused.

§ 22. Decree nisi; when; costs; taxing, how and when; attachment for non-payment.

If after the hearing of any cause, the court shall be of opinion that the plaintiff is entitled to a decree annulling the marriage, or to a decree for divorce from the bonds of matrimony, a decree nisi shall be entered. The costs in every case, including the fee for the services of an attorney when assigned by the court, shall be taxed by the court at the time of granting the decree nisi or dismissing the petition and made payable as the court shall adjudge; and the court shall have power to enforce the payment of said costs by attachment process.

§ 23. Decree absolute, when; how obtained.

A decree nisi shall become absolute after the expiration of one year from the entry thereof, unless appealed from or proceedings for review are pending, or the court before the expiration of said period for sufficient cause, upon its own motion, or upon the application of any party, whether interested or not, otherwise orders; and at the expiration of one year such final and absolute decree shall then be entered upon application to the court by the plaintiff, unless prior to that time cause be shown to the contrary.

§ 24. Decree from bed and board; forms of; reconciliation; order of court.

In all cases of divorce from bed and board for any of the causes specified in section 4 of this chapter, the court may decree a

separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree; and upon such application the court shall make such order as may be just and reasonable.

§ 25. Resumption of name by wife.

The court upon granting a divorce from the bonds of matrimony to a woman may allow her to resume her maiden name, or the name of a former deceased husband.

§ 26. Children; legitimacy of; when action brought by wife.

In an action brought by the wife, the legitimacy of any child born or begotten before the commencement of the action shall not be affected.

§ 27. Children; legitimacy of; when action brought by husband; presumption of, when.

In an action brought by the husband, the legitimacy of any child born or begotten before the commission of the offense charged shall not be affected; but the legitimacy of any other child of the wife may be determined as one of the issues of the action. All children begotten before the commencement of the action shall be presumed to be legitimate.

§ 23. Children; order for distribution; care and maintenance of.

The superior court within any of the counties of this state is authorized and empowered in its discretion, in any cause of annulment of marriage or divorce brought before said court, and in which a decree nisi for annulment of marriage or for divorce from the bonds of matrimony or a decree for a separation is entered by said court, to make such order for the distribution, care and maintenance of the children born during the continuance of the marriage sought to be affected by such proceeding, as is just

and reasonable; and said court may from time to time revise and change such order as occasion may require.

§ 29. Decrees of foreign courts; full faith and credit given to, when; divorce secured by inhabitant of this state in foreign court for cause arising while residents of this state or for cause not competent in this state; without force in this state.

Full faith and credit shall be given in all the courts of this state to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another state, territory, or possession of the United States when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 8, 9, 10 and 11 of this chapter. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce by a court of a foreign country as may be justified by the rules of international comity: provided, that if any inhabitant of this state shall go into another state, territory or country in order to obtain a decree of divorce for a cause which occurred while the parties resided in this state, or for a cause which is not ground for divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state.

DISTRICT OF COLUMBIA.*Code of Law, 1901.*

CHAPTER 22.

DIVORCE.

- SECTION 963. Petition.
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§ 963. Petitions.

All applications for divorce or for a decree annulling a marriage shall be made by a petition to the supreme court of the district, and the proceedings thereupon shall be the same as in equity causes, except so far as otherwise herein provided: Provided, however, that all petitions for divorce pending on the thirty-first day of December, nineteen hundred and one, may be proceeded with and

disposed of under the provisions of the statutes in force on said date. (As amended by L. 1902, ch. 1329.)

§ 964. Proof required.

No decree for a divorce, or decree annulling a marriage, shall be rendered on default, without proof; nor shall any admission contained in the answer of the defendant be taken as proof of the facts charged as the ground of the application, but the same shall, in all cases, be proved by other evidence.

§ 965. Decree annulling marriage.

A decree annulling the marriage as illegal and void may be rendered on any of the grounds mentioned in chapter forty-three as invalidating a marriage.

§ 966. Causes for divorce a vinculo and for divorce a mensa et thoro.

A divorce from the bond of marriage may be granted only where one of the parties have committed adultery during the marriage: Provided, that in such case the innocent party only may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other: and provided, that legal separation from bed and board may be granted for drunkenness, cruelty, or desertion: and provided, that marriage contracts may be declared void in the following cases:

First: Where such marriage was contracted while either of the parties thereto had a former wife or husband living, unless the former marriage had been lawfully dissolved.

Second. Where such marriage was contracted during the lunacy of either party (unless there has been voluntary cohabitation after the lunacy) or was procured by fraud or coercion.

Third. Where either party was matrimonially incapacitated at the time of marriage and has continued so.

Fourth. Where either of the parties had not arrived at the

age of legal consent to the contract of marriage (unless there has been voluntary cohabitation after the coming to legal age), but in such cases only at the suit of the party not capable of consenting.

§ 967. Foregoing section not retroactive.

The provisions of this act shall not invalidate any marriage heretofore solemnized according to law, or affect the validity of any decree or judgment heretofore pronounced.

§ 968. In suits for divorce a vinculo divorce a mensa et thoro may be decreed.

Where a divorce from the bond of marriage is prayed for the court shall have authority to decree a divorce from bed and board if the causes proved be sufficient to entitle the party to such relief only.

§ 969. Revocation of divorce a mensa et thoro.

In all cases where divorce from bed and board is decreed it may at any time thereafter be revoked by the court upon the joint application of the parties to be discharged from the operation of the decree.

§ 970. Causes arising after divorce a mensa et thoro.

Where a divorce from bed and board has been decreed the court may afterwards decree an absolute divorce between the parties for any cause arising since the first decree and sufficient to entitle the complaining party to such decree.

§ 971. Only residents divorced.

No decree of nullity of marriage or divorce shall be rendered in favor of any one not a resident of the District of Columbia, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of said district for at least three years

next before the application therefor for any cause which shall have occurred out of said district and prior to residence therein.

§ 972. Issue of marriage annulled.

In case any marriage shall be declared by decree to have been void on account of either party having a former wife or husband living, if it shall appear that said marriage was contracted in good faith by the other party and in ignorance of said obstacle to the marriage, that fact shall be found and declared by the decree, and in such case the issue of said marriage shall be deemed to be the legitimate issue of the parent who was capable of contracting.

§ 973. Issue of a lunatic's marriage.

Where a marriage is declared null and void on account of the idiocy or lunacy of either party at the time of the marriage the issue of the marriage shall be deemed legitimate.

§ 974. Legitimacy of issue of a marriage dissolved.

A divorce for any of the causes herein provided for shall not affect the legitimacy of the issue of the marriage dissolved by such divorce, but the legitimacy of such issue, if questioned, shall be tried and determined according to the course of the common law.

§ 975. Alimony pendente lite.

During the pendency of a suit for divorce, or a suit by the husband to declare the marriage null and void, where the nullity is denied by the wife, the court shall have power to require the husband to pay alimony to the wife for the maintenance of herself and their minor children committed to her care, and suit money, including counsel fees, to enable her to conduct her case, whether she be plaintiff or defendant, and to enforce obedience to any order in regard thereto by attachment and imprisonment for disobedience. The court may also enjoin any disposition of the husband's property to avoid the collection of said allowances, and

may, in case of the husband's failure or refusal to pay such alimony and suit money, sequester his property and apply the income thereof to such objects. The court may also determine who shall have the care and custody of infant children pending the proceedings. (As amended by L. 1902, ch. 1329.)

§ 976. Permanent alimony.

When a divorce is granted to the wife, the court shall have authority to decree her permanent alimony sufficient for her support and that of any minor children whom the court may assign to her care, and to secure and enforce the payment of said alimony in the manner before mentioned, and may, if it shall seem fit, retain to the wife, her right of dower in the husband's estate.

§ 977. Same.

If the divorce is granted on the application of the husband, the court may, nevertheless, require him to pay alimony to the wife, if it shall seem just and proper. (As amended by L. 1902, ch. 1329.)

§ 978. Future orders.

After a decree of divorce in any case granting alimony and providing for the care and custody of children, the case shall still be considered open for any future orders in those respects.

§ 979. Maiden name of wife restored.

In granting a divorce from the bond of marriage the court may restore to the wife her maiden or other previous name.

§ 980. Maintenance of wife.

Whenever any husband shall fail or refuse to maintain his wife and minor children, if any, although able to do so, the court, on application of the wife, may decree that he shall pay her, periodically, such sums as would be allowed to her as permanent alimony

in case of divorce for the maintenance of herself and the minor children committed to her care by the court, and the payment thereof may be enforced in the same manner as directed in regard to such permanent alimony.

§ 981. Suit to declare a marriage valid.

When the validity of any alleged marriage shall be denied by either of the parties thereto the other party may institute a suit for affirming the marriage, and upon due proof of the validity thereof it shall be decreed to be valid, and such decree shall be conclusive upon all parties concerned.

§ 982. Court to assign attorney in uncontested cases.

In all uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney shall be assigned by the court to enter his appearance for the defendant and actively defend the cause, and such attorney shall receive such compensation for his services as the court may determine to be proper, such compensation to be paid by the parties as the court may direct.

§ 983. Co-respondents.

In all divorce cases where adultery is charged the person or persons with whom the adultery is charged to have been committed shall be made defendant or defendants and brought in by personal service of process or by publication as in other cases.

§ 85. Equity court.

The equity court shall have jurisdiction . . . of all petitions for divorce. . . .

FLORIDA.*Compiled Laws, 1914.*¹**TITLE 3, CHAPTER 10, ARTICLE 13.****DIVORCE, ALIMONY AND CARE OF CHILDREN.**

- SECTION** 1925. To be sought by bill in chancery.
 1926. Residence required.
 1927. All divorces to be a vinculo.
 1928. Grounds for.
 1929. Effect of decree of divorce.
 1930. Proceedings against non-resident defendants.
 1931. Alimony pendente lite.
 1932. Alimony upon decree of divorce.
 1933. Alimony unconnected with divorce.
 1934. Alimony unconnected with causes of divorce.
 1935. Effect of decree of alimony.
 1936. Proceedings against absent defendants in suits for alimony.
 1937. Attachment or garnishment of amounts due public officers in suits for alimony and divorce.
 1938. Power of court in making orders.

§ 1925. To be sought by bill in chancery.

Suits for divorce shall in all cases be by bill in equity.

§ 1926. Residence required.

In order to obtain a divorce the complainant must have resided two years in the state of Florida before the filing of the bill, except where the defendant has been guilty of the act of adultery in this state, then any citizen of this state may obtain divorce at any time, and the two years' residence shall not be required of such complainant.

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§ 1927. All divorces to be a vinculo.

No divorce shall be from bed and board, but every divorce shall be from bonds of matrimony.

§ 1928. Grounds for.

No divorce shall be granted unless one of the following facts shall appear:

1. That the parties are within the degrees prohibited by law.
2. That the defendant is naturally impotent.
3. That the defendant has been guilty of adultery.

If it shall appear to the court that the adultery complained of was occasioned by collusion of the parties, and done with the intention to procure a divorce, or that both parties have been guilty of adultery, no divorce shall be decreed.

4. Extreme cruelty by defendant to complainant.
5. Habitual indulgence by defendant in violent and ungovernable temper.
6. Habitual intemperance of defendant.
7. Willful, obstinate and continued desertion of complainant by defendant for one year.
8. That the defendant has obtained a divorce from the complainant in any other state or country.
9. That either party had a husband or wife living at the time of the marriage sought to be annulled.

§ 1929. Effect of decree of divorce.

No decree of divorce shall render illegitimate the children born during the marriage, except when it is rendered upon the ground set forth in paragraph 9 of section 1928, in which case the marriage shall be invalid from the beginning and the issue illegitimate, and subject to all the legal disabilities of such issue.

§ 1930. Proceedings against nonresident defendants.

Bills for divorce, may be brought against defendants residing out of the state, and service shall be effected upon them as in other cases in chancery, except in cases of incurable insanity as stated.

§ 1931. Alimony pendente lite.

In every suit by a wife for a divorce founded upon any of the grounds mentioned in section 1928, she may in the bill for divorce, or by petition, claim alimony and suit money, and, if the bill seems well founded, the court shall allow a reasonable sum therefor. Or if a wife defendant in any suit for divorce shall in her answer, or by petition, claim alimony or suit money, and the answer or petition shall seem well founded, the court shall allow a reasonable sum therefor.

§ 1932. Alimony upon decree of divorce.

In every decree of divorce in a suit by the wife, the court shall make such orders touching the maintenance, alimony and suit money of the wife, or any allowance to be made to her, and if any, the security to be given for same, as from the circumstances of the parties and nature of the case may be fit, equitable and just; but no alimony shall be granted to an adulterous wife.

§ 1933. Alimony unconnected with divorce.

If any of the causes of divorce set forth in section 1928 shall exist in favor of the wife and she be living apart from her husband, she may obtain alimony without seeking a divorce upon bill filed and suit prosecuted as in other chancery causes; and the court shall have power to grant such temporary and permanent alimony and suit money as the circumstances of the parties may render just; but no alimony shall be granted to an adulterous wife.

§ 1934. Alimony unconnected with causes of divorce.

If any husband having ability to maintain or contribute to the maintenance of his wife or minor children shall fail to do so, the wife, living with him, or living apart from him through his fault, may obtain such maintenance or contribution upon bill filed and suit prosecuted as in other chancery causes; and the court shall make such orders as may be necessary to secure to her such maintenance or contribution.

§ 1935. Effect of decree of alimony.

A decree of alimony granted under sections 1932 and 1933 shall release the wife from the control of her husband, and she may use her alimony, and acquire, use and dispose of other property, uncontrolled by her husband; and when the husband is about to remove himself or his property out of the state, or fraudulently convey or conceal it, the court may award a ne exeat or injunction against him on his property, and make such order or decree as will secure the wife's alimony to her.

§ 1936. Proceedings against absent defendants in suits for alimony.

Proceedings against absent defendants in suits for alimony shall be the same as in other chancery causes.

§ 1937. Attachment or garnishment of amounts due public officers in suits for alimony and divorce.

All moneys or other things due to any person or public officer, state or county, whether the head of a family or not, residing in this state when the money or other thing is due for the personal labor or service of such person or otherwise, shall be subject to attachment or garnishment to enforce the orders or decrees of the courts of this state for alimony, suit money or support, or other orders or decrees made by the courts of this state in suits for divorce or alimony; and in such cases where the money or other

things sought to be attached or delayed is the salary of a public officer, state or county, the writ of attachment or garnishment may be served upon the public officer whose duty it is to pay such salary, who shall respect and obey the same as provided by law in other cases; and it shall be the duty of such officer immediately upon receipt of such writ, to notify the public officer whose duty it is to audit or issue a warrant for the salary sought to be attached or delayed, of the service of such writ, and such officer shall not issue a warrant for such salary until such case shall be settled or determined, and then in accordance therewith.

Care, Custody and Maintenance of the Children.

§ 1938. Power of court in making orders.

In any suit for divorce or alimony, the court shall have power at any stage of the cause to make such orders touching the care, custody and maintenance of the children of the marriage, and what, if any, security to be given for the same, as from the circumstances of the parties and the nature of the case may be fit, equitable and just, and such order touching their custody as their best spiritual as well as other interests may require.

GEORGIA.*Park's Civil Code, 1914.*¹

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§ 2932. Prohibited degrees.

Marriages between persons related by affinity in the following manner are prohibited, viz.: A man shall not marry his step-mother, or mother-in-law, or daughter-in-law, or stepdaughter, or granddaughter of his wife. A woman shall not marry her corresponding relatives. Marriages within the degrees prohibited by this section are incestuous.

§ 2933. Consent.

To constitute an actual contract of marriage, the parties must be consenting thereto voluntarily, and without any fraud practiced upon either. Drunkenness at the time of marriage, brought about by art or contrivance to induce consent, shall be held a fraud.

§ 2934. Marriage brokerage bonds.

The policy of the law being opposed equally to restrictions on marriage and to marriages not the result of free choice, all con-

tracts or bonds made with a view to trammel or to force marriage are deemed fraudulent and void.

§ 2935. Void marriages.

Marriages of persons unable to contract, or unwilling to contract, or fraudulently induced to contract, are void. The issue of such marriage, before they are annulled and declared void by a competent court are legitimate. In the latter two cases, however, a subsequent consent and ratification of the marriage, freely and voluntarily made, accompanied by cohabitation as husband and wife, shall render valid the marriage.

§ 2943. Marriage in another state.

All marriages solemnized in another state by parties intending at the time to reside in this state shall have the same legal consequences and effect as if solemnized in this state. Parties residing in this state cannot evade any of the provisions of its laws as to marriage by going into another state for the solemnization of the marriage ceremony.

Of Divorces, and How Obtained.

§ 2944. Total and partial, how granted.

Divorces may be granted by the superior court, and shall be of two kinds—total, or from bed and board. The concurrent verdict of two juries, at different terms of the court, shall be necessary to a total divorce. A divorce from bed and board may be granted on the verdict of one jury.

§ 2945. Grounds for total divorce.

The following grounds shall be sufficient to authorize the granting of a total divorce:

1. Intermarriage by persons within the prohibited degrees of consanguinity and affinity.

2. Mental incapacity at the time of the marriage.
3. Impotency at the time of the marriage.
4. Force, menaces, duress, or fraud, in obtaining the marriage.
5. Pregnancy of the wife, at the time of the marriage, unknown to the husband.
6. Adultery in either of the parties after marriage.
7. Willful and continued desertion by either of the parties for the term of three years.
8. The conviction of either party for an offense involving moral turpitude, and under which he or she is sentenced to imprisonment in the penitentiary for the term of two years or longer.

§ 2946. Discretionary grounds.

In case of cruel treatment or habitual intoxication by either party, the jury, in their discretion, may grant either a total or partial divorce.

§ 2947. Grounds for partial divorce.

Divorces from bed and board may be granted on any ground which was held sufficient in the English courts prior to May 4, 1784.

§ 2948. Condonation, collusion, etc.

If the adultery, desertion, cruel treatment, or intoxication complained of shall have been occasioned by the collusion of the parties, and with the intention of causing a divorce, or if the party complaining was consenting thereto, or if both parties have been guilty of like conduct, or if there has been a voluntary condonation and cohabitation subsequently to the acts complained of, and with notice thereof, then no divorce shall be granted; and in all cases, the party sued may plead in defense the conduct of the party suing, and the jury may, on examination of the whole case, refuse a divorce.

§ 2949. Confessions of party.

The confessions of a party to acts of adultery or cruel treatment should be received with great caution, and if unsupported by corroborating circumstances, and made with a view to be evidence in the cause, should not be deemed sufficient to grant a divorce.

§ 2950. Petitioner to be a resident.

No court in this state shall grant divorce of any character to any person who has not been a bona fide resident of the state twelve months before the filing of the application for divorce.

§ 2951. Proceedings.

The action for divorce shall be by petition and process, as in ordinary suits, filed and served as in other cases, unless the defendant be nonresident of this state, when service shall be perfected as prescribed in this code in causes in equity. The same rules of pleading shall obtain as in other causes at law.

§ 2952. Respondent may ask a divorce, when.

When a libel for divorce is instituted, the respondent may, in his or her plea and answer, recriminate, and ask a divorce in his or her favor; and if on the trial the jury believe such party is entitled to divorce instead of the libelant, they may so find upon legal proof, so as to avoid the necessity of a cross-action.

§ 2953. Libelant cannot dismiss, when.

If one verdict is found in favor of the respondent, the libelant cannot dismiss his or her suit without the consent of the opposite party.

§ 2954. Schedule.

In all suits for divorce, the party applying shall render a schedule, on oath, of the property owned or possessed by the parties at the time of the application — or at the time of the

separation, if the parties have separated — distinguishing the separate estate of the wife, if there be any, which shall be filed with the petition, or pending the suit, under the order of the court. The jury rendering the final verdict in the cause may provide permanent alimony for the wife, either from the corpus of the estate or otherwise, according to the condition of the husband and the source from which the property came into the coverture.

§ 2955. Transfer pending suit.

After a separation, no transfer by the husband of any of the property, except bona fide in payment of pre-existing debts, shall pass the title so as to avoid the vesting thereof according to the final verdict of the jury in the cause.

§ 2956. Verdict of jury.

The verdict of the jury shall specify the kind of divorce granted, and the disposition to be made of the scheduled property.

§ 2957. Verdict for total divorce.

The form of a verdict in case of a total divorce may be as follows, to wit: "We, the jury, find that sufficient proofs have been submitted to our consideration to authorize a total divorce — that is to say, a divorce a vinculo matrimonii, upon legal principles, between the parties in this case."

§ 2958. Verdict for partial divorce.

In cases of a partial divorce, the form of a verdict may be as follows, to wit: "We, the jury, find that sufficient proofs have been submitted to our consideration to authorize a partial divorce between the parties — that is to say, a divorce a mensa et thoro, upon legal principles. That the plaintiff shall pay — on the — day of —, to the defendant during her natural life, the sum of — dollars, for the support and maintenance of the issue of such marriage during their natural lives."

§ 2959. No verdict by default.

No verdict or judgment by default shall ever be taken in a suit for divorce, but the allegations in the petition must be established by evidence before the juries.

§ 2960. New trial.

New trials may be granted from verdicts on applications for divorce, as in other cases.

§ 2961. Judgment or decree.

The verdicts of juries disposing of the property in divorce cases shall be carried into effect by the courts, by entering up such judgment or decree, or taking such other steps usual in chancery courts, as will effectually and fully execute the same.

§ 2962. Conscientious scruples.

A juror having conscientious scruples as to granting divorces is incompetent to serve on such applications. At the request of the complainant, the court may inquire of the panel touching such scruples.

§ 2963. Effect of total divorce.

A total divorce annuls the marriage from the time of its rendition, except it be for a cause rendering the marriage void originally; but in no case of divorce shall the issue be rendered bastards, except in cases of pregnancy of the wife at the time of the marriage.

§ 2964. Disabilities, how determined.

When a divorce is granted, the jury rendering the final verdict shall determine the rights and disabilities, subject to the revision of the court.

§ 2965. Name changed in divorce cases, when.

In all divorce cases now pending, or hereafter brought, the wife may pray in her pleadings for the restoration of the name which she bore at the time of her last marriage; and in the event a total divorce shall be granted to her in said case, the judgment or decree therein rendered shall specify and restore to her the name so prayed for in her pleadings.

§ 2966. Disabilities, how relieved.

When any person, laboring under disabilities imposed by the granting of a divorce by the courts, shall desire to be relieved of the same, such person shall petition the superior court of the county wherein the divorce was granted, in which petition there shall be stated the date of the application for the divorce, the grounds for the divorce, and the substance of the last verdict, which petition shall be filed with the clerk of the superior court of said county, and notice of said application shall be published, for sixty days before the first day of the term of the court to which the same is returnable, in a newspaper wherein the legal advertisements of the ordinary or sheriff of such county are published, and where and when the same is to be heard; and if the divorced person is in life and resides in the county, such divorced person shall be served personally with a notice of such application twenty days before the first term of the court to which the same is returnable.

§ 2967. Application, by whom resisted.

It shall and may be lawful for the divorced person, or any citizen of said county, to resist the application; and should no person resist the same, then the solicitor-general shall represent the state, with full power to resist the same, as in ordinary divorce cases.

§ 2968. Application, when and how tried.

Said application shall be tried at the first term of the court by a jury, selected as juries are selected for the trial of common-

law cases, who shall hear all the facts, and if, in their judgment, the interest of the applicant or of society demands the removal of such disabilities, the jury shall so find, and the party relieved shall be allowed to contract a second marriage, as though no marriage had ever existed between the applicant and the divorced person.

§ 2969. Rules for continuances.

All the statutes and rules in reference to continuances in other cases in the superior court shall apply to the applications provided for in the three preceding sections.

§ 2970. Effect of partial divorce.

A divorce from bed and board authorizes neither party to marry; and if a sufficient provision for the maintenance of the wife has been made by the verdict of the jury, the husband shall not be liable for her future support. The wife shall be a feme sole as to her earnings and property, as well as liberty, after a divorce from bed and board.

§ 2971. Custody of children.

In all cases of divorce granted, the party not in default shall be entitled to the custody of the minor children of the marriage. The court, however, in the exercise of a sound discretion, may look into all the circumstances, and, after hearing both parties, make a different disposition of the children, withdrawing them from the custody of either or both parties, and placing them, if necessary, in possession of guardians appointed by the ordinary. The court may exercise a similar discretion pending the libel for divorce.

§ 2972. Habeas corpus for wife or child.

In all writs of habeas corpus sued out on account of the detention of a wife or child, the court, on hearing all the facts, may

exercise its discretion as to whom the custody of such wife or child shall be given, and shall have power to give such custody of a child to a third person.

§ 2973. Renewed cohabitation.

Parties divorced from bed and board, on subsequent reconciliation, may live together again as husband and wife, by first filing in the office of the ordinary of the county where the divorce was granted, their written agreement to that effect, attested by the ordinary.

§ 2974. Ex parte cases.

In divorce cases proceeding ex parte, it is the duty of the judge to see that the grounds are legal, and sustained by proof, or to appoint the solicitor-general, or some other attorney of the court, to discharge that duty for him.

Of Alimony.

§ 2975. Permanent and temporary.

Alimony is an allowance out of the husband's estate, made for the support of the wife when living separate from him. It is either temporary or permanent.

§ 2976. Proceedings to obtain.

Whenever an action for divorce, at the instance of either party, is pending, or a suit by the wife for permanent alimony, the wife may, at any regular term of the court in which the same is pending, apply to the presiding judge, by petition, for an order granting to her temporary alimony pending the cause; and after hearing both parties, and evidence as to all the circumstances of the parties and as to the fact of marriage, the court shall grant an order allowing such temporary alimony, including expenses of litigation, as the condition of the husband and the facts of the case may justify.

§ 2977. Discretion of judge.

In arriving at the proper provision, the judge shall consider the peculiar necessities of the wife, growing out of the pending litigation; he may also consider any evidence of a separate estate owned by the wife, and if such estate is ample, as compared with the husband's, temporary alimony may be refused.

§ 2978. Revision and enforcement.

The order allowing alimony shall be subject to revision by the court at any time, and may be enforced either by writ of fieri facias or by attachment for contempt against the person of the husband. A failure to comply with the order shall not deprive the husband of his right either to prosecute or defend his cause.

§ 2979. Merits not in issue.

On application for temporary alimony, the merits of the cause are not in issue, though the judge, in fixing the amount of alimony, may inquire into the cause and circumstances of the separation rendering the alimony necessary, and in his discretion may refuse it altogether.

§ 2980. Support and custody of children pending suits for divorce.

In suits for divorce, the judge presiding may, either in term or vacation, grant alimony, or decree a sum sufficient for the support of the family of the husband dependent upon him, and who have a legal claim upon his support, as well as for the support of his wife; and may also, on said motion, hear and determine who shall be entitled to the care and custody of the children pending the litigation, as if the same were before him on a writ of habeas corpus; and in case a sum is awarded for the support of said family, the husband shall not be liable to third persons for necessaries furnished them.

§ 2981. Alimony for children on final trial.

If the jury, on the second or final verdict, find in favor of the wife, they shall also, in providing permanent alimony for her, specify what amount the minor children shall be entitled to for their permanent support; and in what manner, how often, to whom, and until when it shall be paid; and this they may also do, if, from any legal cause, the wife may not be entitled to permanent alimony, and the said children are not in the same category; and when such support shall be thus granted, the husband shall likewise not be liable to third persons for necessaries furnished the children embraced in said verdict who shall be therein specified.

§ 2982. Judgments, how enforced.

Such orders, decrees, or verdicts, permanent or temporary, in favor of the children or family of the husband, may be enforced as those in favor of the wife exclusively.

§ 2983. Permanent alimony, when granted.

Permanent alimony is granted in the following cases: 1. Of divorce, as considered in the former section. 2. In cases of voluntary separation. 3. Where the wife, against her will, is either abandoned or driven off by her husband.

§ 2984. Husband's voluntary deed.

In either of the two latter cases the husband may voluntarily, by deed, make an adequate provision for the support and maintenance of his wife, consistent with his means and her former circumstances, which shall be a bar to her right to permanent alimony.

§ 2985. Decree in equity.

In the absence of such provision, on the application of the wife a court of equity may, by decree, compel the husband to such

provision for the support of the wife and such minor children as may be in her custody, as indicated in the foregoing paragraph.

§ 2986. Proceeding for alimony before the judge.

When husband and wife are living separately, or are bona fide in a state of separation, and there is no action for divorce pending, the wife may, in behalf of herself and her minor children, if any, or either, institute a proceeding by petition setting forth fully her case; and upon three days notice to the husband, the judge may hear the same in term or vacation, and grant such order as he might grant were it based on a pending libel for divorce, to be enforced in the same manner, together with any other remedy applicable in a court of equity, such as appointing a receiver and the like; and should such proceeding proceed to a hearing before a jury, they shall decree as provided by section 2985 of this code for such cases, but such proceeding shall be in abeyance when a libel for divorce shall be filed, bona fide, by either party, and the judge presiding shall have made his order on the motion for alimony, and when so made, such order shall be a substitute for the aforesaid decree in equity, as long as said libel shall be pending and not finally disposed of on the merits.

§ 2987. Bill of exceptions and proceedings thereon.

The judgments of the judges of the superior court in such cases, whether at law or in equity, in term or vacation, or in the progress of the cause, shall be the subject of writ of error, and on the same terms as are prescribed in cases of injunctions.

§ 2988. Liability to third person, before, etc.

Until such provision is made, voluntarily or by decree or order of the court, the husband shall be liable to third persons for the board and support of the wife, and for all necessaries furnished to her, or for the benefit of his children in her custody.

§ 2989. After alimony granted.

When permanent alimony is granted, the husband ceases to be liable for any debt or contract of the wife; on the other hand, he ceases to have any power to control her acquisitions by purchase, or descent, or gift, or otherwise; and the property of the husband set apart for the support of the wife is not subject to his debts or contracts as long as she lives.

§ 2990. Subsequent cohabitations.

The subsequent voluntary cohabitations of the husband and wife shall annul and set aside all provision made, either by deed or decree, for permanent alimony. The rights of children under any deed of separation or voluntary provision or decree for alimony shall not be affected thereby.

§ 2991. Interest of wife in husband's estate.

After permanent alimony granted, upon the death of the husband the wife is not entitled to any further interest in his estate in her right as wife, but such permanent provision shall be continued to her, or a portion of the estate equivalent thereto shall be set apart to her.

§ 5986. Deposit of costs required in divorce cases.

The clerks of the superior court shall not be required to file any divorce case or proceeding, until six dollars shall have been deposited with the clerk on account of costs, which shall be divided pro rata between the clerk and sheriff, according to the duties performed by each before the deposit is exhausted. If the proceeding be dismissed, after paying the clerk and sheriff, if any of the sum remains in the hands of the clerk, it shall be repaid.

§ 2183. Feme covert.

The domicile of a married woman shall be that of her husband, except in two cases: 1. Of voluntary separation and living apart.

2. Of a pending application for divorce. In which case her domicile shall be determined as if she were a feme sole.

§ 3394. When sale may be made upon application of beneficiaries.

. . . where a divorce has been granted the wife, and the homestead property sought to be sold for reinvestment has been awarded to the wife for the support of the wife and her children, the proceedings shall be in all respects as binding upon all parties as if the debtor or husband had joined with the beneficiaries in such application.

§ 5658. No judgment by default in divorce cases.

No verdict or judgment by default shall be taken in a suit for divorce, but the allegations in the petition must be established by evidence before both juries.

Public Excluded, When.

§ 5885. When evidence vulgar, etc.

During the trials in the superior courts, and all courts and trials occurring in this state, of any case of seduction or divorce, or other case where the evidence is vulgar and obscene, or relates to the improper acts of the sexes, and tends to debauch the morals of the young, the presiding judge shall have the right, in his discretion and on his own motion, or on motion of plaintiffs or defendants or their attorneys, to hear and try the said case after clearing the court room of all or any portion of the audience.

Constitution, Article 6.

§ 2, par. 5. Jurisdiction of supreme court.

The supreme court . . . shall be a court alone for the trial and correction of errors of law from the superior courts and

the city courts of Atlanta and Savannah, and such other like courts as have been or may hereafter be established in other cities . . . in all divorce and alimony cases. . . .

§ 4, par. 1. Jurisdiction of superior courts.

The superior courts shall have exclusive jurisdiction in cases of divorce. . . .

§ 15, par. 1 Divorce.

No total divorce shall be granted, except on the concurrent verdicts of two juries at different terms of the court.

Par. 2. Last jury determines disabilities.

When a divorce is granted, the jury rendering the final verdict shall determine the rights and disabilities of the parties.

§ 16, par. 1. Divorce cases, where brought.

Divorce cases shall be brought in the county where the defendant resides, if a resident of this state; if the defendant be not a resident of the state, then in the county in which the plaintiff resides.

HAWAII.*Revised Laws, 1915.***ANNULMENT, DIVORCE AND SEPARATION.****1. ANNULMENT.**

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ANNULMENT, DIVORCE AND SEPARATION.

1. ANNULMENT.

§ 2916. Ground for annulment.

Any circuit judge may, by a decree of nullity, declare void the marriage contract for any of the following causes, existing at the time of the marriage:

1. That the parties were related to each other nearer than the fourth degree of consanguinity;
2. That the parties, or either of them, had not attained the legal age of marriage;
3. That the husband had an undivorced wife living or the wife had an undivorced husband living;
4. That one of the parties was an idiot or lunatic;
5. That one of the parties was impotent or physically incapable of entering into the marriage state.

§ 2917. Nonage.

A suit to annul a marriage on the ground that one of the parties was under legal age, may be brought by the parent or guardian entitled to the custody of such minor, or by any person admitted by the judge to prosecute as the friend of such minor; but in no case shall such marriage be annulled on the application of a party who was of legal age at the time it was contracted, nor when it shall appear that the parties, after they attained the legal age, had for any time freely cohabited as man and wife.

§ 2918. Former husband or wife living.

A marriage may be declared null on the ground that one of the parties has an undivorced husband or wife living, on the application of either of the parties during the lifetime of the other, or on the application of such former husband or wife.

§ 2919. Allowance for woman and family.

Every woman who shall be deceived into contracting an illegal marriage with a man having another wife living, under the belief that he was an unmarried man, shall be entitled to a just allowance for the support of herself and family out of his property, which she may obtain at any time after action commenced upon application to any circuit judge having jurisdiction; provided, always, that such allowance shall not exceed one-third of his real and personal esate. In addition to such allowance, the judge may also compel the libelee or defendant to advance reasonable amounts for the compensation of witnesses and other reasonable expenses of trial to be incurred by the libellant or plaintiff. (Amended by L. 1919, act No. 43.)

§ 2920. Inheritance by children.

The children of such illegal marriage shall be entitled to succeed in the same manner as legitimate children, to all the real and personal estate of both parents in this territory.

§ 2921. Insanity.

The marriage of an idiot or insane person may be annulled on the application of the same party, or any relative of the idiot or lunatic, or on application of any person admitted by the judge to prosecute as the next friend of the said idiot or lunatic, or upon the application of the lunatic himself after restoration to reason; but in such case, no sentence of nullity shall be pronounced if it shall appear that the parties freely cohabited as husband and wife after the lunatic was restored to a sound mind.

§ 2922. Legitimacy in case of annulment for nonage or insanity.

Upon the annulment of a marriage on account of nonage, insanity, or idiocy of either party, the issue of the marriage shall be deemed to be in all respects the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

§ 2923. Children of marriage annulled for consanguinity illegitimate.

Upon the annulment of a marriage that is prohibited on account of consanguinity between the parties, the issue of the marriage shall be illegitimate.

§ 2924. Physical incapacity.

A suit to annul the marriage on the ground of the physical incapacity of one of the parties at the time of marriage, shall only be maintained by the injured party, against the party whose incapacity is alleged; and shall in all cases be brought within two years from the solemnization of the marriage.

§ 2925. No annulment solely on confessions.

No sentence of nullity of marriage shall be pronounced solely on the declarations or confessions of the parties, but the judge shall, in all cases, require other satisfactory evidence of the facts on which the allegation of nullity is founded.

2. DIVORCE.

§ 2926. Grounds for divorce.

Divorces from the bond of matrimony shall be granted for the causes hereinafter set forth and no other.

First. For adultery in either party; or for wilful and utter desertion for the term of six months; or when either party is sentenced to imprisonment of life, or for seven years or more, and no pardon granted to a party so sentenced, after divorce, for such a cause, shall restore such party to conjugal rights; for incurable insanity of either party, where the same has existed for three years or more; and when it is shown to the satisfaction of the judge that either party has contracted the disease known as leprosy.

Second. For extreme cruelty; habitual intemperance, or when the husband, being of sufficient ability to provide suitable maintenance for his wife, neglects or refuses to do so for a continuous period of not less than sixty days. But if the party applying for a divorce shall not insist upon a divorce from the bond of matrimony, a divorce only from bed and board shall be granted, and the relations of the parties after such divorce shall be regulated by the existing laws concerning separation. (As amended by L. 1915, acts 56, 192; L. 1919, act 10.)

§ 2927. Jurisdiction; public hearing; two years' residence.

Exclusive original jurisdiction in matters of divorce, subject to appeal according to law, is conferred upon the circuit judge or judges severally of the circuit in which the parties shall have last lived together as husband and wife, or, in case they shall not have so last lived together in this territory, upon the circuit judge or judges severally of the circuit in which the applicant resides. It is provided, however, that the judges of the circuit court of the first judicial circuit shall have concurrent jurisdiction with the judge of the circuit in which the parties last lived together as husband and wife, in all cases of divorce when the libellant bases his or her claim to a divorce upon the sole ground that the libellant

or libellee has contracted and is afflicted with leprosy. No such case shall be heard except openly in the public court-room. No divorce shall be granted for any cause unless the applicant therefor shall have resided in the territory for two years next preceding his application. (As amended by L. 1919, acts 33, 172.)

§ 2928. Libel; filing; summons; service; time of hearing.

All proceedings for divorce shall be commenced by libel to be signed by the libellant and sworn to; and the same shall set forth the marriage of the parties and the cause for divorce, with sufficient particularity to constitute a case for judicial action.

Such libel shall be filed in the office of the clerk of the circuit court, and upon the filing thereof a writ of summons with the libel annexed shall be issued under the seal of the court by the clerk, directing the high sheriff or his deputy, or a sheriff or his deputy, or any police officer to summon the libellee to appear thirty days after service before the circuit judge at chambers to answer the libel.

Such summons and libel shall be served by delivering certified copies thereof to the libellee personally.

The judge shall not entertain jurisdiction of the libel until at least thirty days after such personal service shall have been completed, except as provided in the following section. (As amended by L. 1919, act 168.)

§ 2929. Personal service by publication.

No person shall be entitled to an annulment, a divorce or a separation unless the libellee or defendant shall have been served personally with process if within the territory, or shall have entered an appearance in the case; provided, that, in any proceeding under chapter 167 of the Revised Laws of Hawaii, 1915, for an annulment, a divorce or a separation, if it shall appear by return of the summons or by affidavit or otherwise to the satisfaction of the judge that the libellee or defendant is without the territory, the judge

may authorize notice of the pendency of the libel and of the time and place of hearing to be given to the libellee or defendant personally by such person and in such manner as he shall designate, or, if it shall further appear to his satisfaction by affidavit or otherwise, that libellant does not know the address or residence of the libellee or defendant, and has not been able to ascertain either after reasonable and due inquiry and search for six months after the filing of the libel, the judge may authorize such notice to be given to the libellee or defendant by publication thereof at least once a week for six successive weeks in a newspaper or newspapers suitable for the advertisement of notices of judicial proceedings, published in the territory, and may hear and determine the case at or after the time specified in such notice, which shall not be less than thirty (30) days after the giving of such personal notice or the last publication of such published notice as the case may be. All property within the territory of Hawaii of the libellee or defendant may by order of the court, be subjected to the enforcement of any judgment or order of the court obtaining jurisdiction by the method of service herein provided with respect to any allowance provided for in section 2919. (As amended by L. 1919, act 43.)

§ 2930. Cross-libel.

A cross-libel may be filed in any action for divorce and affirmative relief granted thereon as fully and effectually as in original petition for divorce.

§ 2931. Proof; admission incompetent except to prove marriage.

Upon the hearing of every libel for divorce the judge shall require exact legal proof upon every point, notwithstanding the consent of parties; and the admission of the respondent shall not be competent evidence, except to prove the original marriage. But in all cases in which a decree of divorce is asked for on the ground

that one of the parties has contracted and is afflicted with leprosy, the proof of the fact that such a person has been declared by law to be a leper and, as such, is held in segregation by territorial authority, shall be taken to be prima facie showing that such person has contracted and is afflicted with leprosy. (As amended by L. 1915, acts 56, 192.)

§ 2932 Divorce for adultery, defenses to.

No divorce for the cause of adultery shall be granted: First. Where there is reasonable cause to believe that the offense has been committed by the procurement or with the connivance of the libellant. Second. Where the offense charged has been forgiven by the injured party. Such forgiveness may be shown by express proof, or by the voluntary cohabitation of the parties, with knowledge of the fact. Third. Where the libel was not filed within one year after discovery by the libellant of the offense charged. Fourth. Where there is reasonable cause to believe that the libellant has been guilty of any act which would entitle the defendant, if innocent, to a divorce.

The fourth ground for refusing a decree above mentioned shall not be applied to an application for a divorce for any other cause than that of adultery, nor shall any allegation with reference to such cause be necessary in the libel.

§ 2932a. Incurable insanity of libellee; guardian ad litem.

In every case under this chapter, where the ground for divorce alleged in the libel is the incurable insanity of the libellee, existing for more than three years, the court shall appoint a guardian ad litem for the libellee, who shall be a respectable and competent attorney of such court not interested in the said cause on the part of the libellant, who shall appear for the said libellee and diligently protect and care for the rights and interests of said libellee in such cause. (As added by L. 1919, act 10.)

§ 2932b. Incurable insanity or leprosy of libelee; modification of decree as to maintenance.

In every suit for divorce where a decree is granted to the libellant on the ground of the incurable insanity of the libellee, or on the ground that the libellee is afflicted with leprosy, the court may, at any time after entering such decree, revise and alter the same so far as the support and maintenance of said insane person or persons afflicted with leprosy is concerned, and may provide for such maintenance by said libellant out of any property or earnings acquired by said libellant subsequently, as well as previously, to said decree of divorce; and the court making such order for maintenance, may, in its discretion, require the libellant to give security to the satisfaction of the court for the faithful execution of the same. (As added by L. 1919, act 10.)

§ 2932c. On ground of insanity; proof.

No divorce shall be granted on the ground of insanity to any libellant unless it be satisfactorily proven that the husband or wife of the libellant is, and for more than three years prior to the filing of the libel, has been hopelessly insane. (As added by L. 1919, act 10.)

§ 2932d. Same; costs.

In every suit for divorce on the ground of incurable insanity of the libellee, all costs incurred, including a reasonable allowance for expenses and for a fee to the guardian of such libellee, shall, in the discretion of the court, be taxed either against the libellant or the libellee. (As added by L. 1919, act 10.)

§ 2933. Procedure when collusion suspected.

If there be any reason to suspect collusion, or that important testimony can be procured which has not been produced, it shall be the duty of the judge to continue the cause from time to time while such reason for suspicion continues, and the attorney general or other prosecuting officer and parties not of record shall be heard,

to establish the fact of collusion or of the existence of testimony not produced.

Decrees and Orders.

§ 2934. Decree.

If, after a full hearing, the court or judge shall be of opinion that a divorce ought to be granted, either from the bonds of matrimony or from bed and board, a decree shall be signed, filed and entered, which shall take effect from and after such time as may be fixed by the court or judge in such decree, but in case of a decree dissolving the bonds of matrimony, such time so fixed shall not be more than one month from and after the date of said decree.

§ 2935. Personal liberty of wife; temporary alimony, suit-money.

Whenever it shall be made to appear to the judge after the filing of any libel, that the wife is under restraint or in destitute circumstances, the judge may pass such orders to secure her personal liberty and reasonable support, pending the libel, as law and justice may require and may enforce such orders by summary process. The judge may also compel the husband to advance reasonable amounts for the compensation of witnesses and other reasonable expenses of trial to be incurred by the wife. The judge may revise and amend such orders from time to time.

§ 2936. Permanent alimony; maintenance of children.

Upon granting a divorce for the adultery or other offense amounting thereto, of the husband, the judge may make such further decree or order against the defendant, compelling him to provide for the maintenance of the children of the marriage, and to provide such suitable allowance for the wife, for her support, as the judge shall deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other circumstances of the case.

§ 2937. Care, custody, education and maintenance of children.

Upon annulling a marriage, or decreeing a divorce, the judge may make such further decree as he shall deem expedient, concerning the care, custody, education and maintenance of the minor children of the parties, and determine with which of the parents the children or any of them shall remain; and the judge may from time to time afterwards, on the petition of either of the parties, revise and alter such decree concerning the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require.

§ 2938. Security and enforcement of maintenance and alimony.

Whenever the judge shall make an order or decree requiring a husband to provide for the care, maintenance and education of his children, or for an allowance to his wife, the judge may require him to give reasonable security for such maintenance and allowance; and upon neglect or refusal to give such security, or upon default of him and his surety to provide such maintenance and allowance, the judge may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate to be applied toward such maintenance and allowance, as to the judge shall from time to time seem just and reasonable.

*Effect of Divorce.***§ 2939. Marriage after divorce.**

Whenever a marriage shall be dissolved for adultery or other offense amounting thereto, either party to the divorce may marry again at any time.

§ 2940. Issue legitimate in case of husband's adultery.

A divorce for the cause of adultery committed by the husband shall not affect the legitimacy of the issue of the marriage.

§ 2941. Prima facie legitimate in case of wife's adultery.

A divorce for the cause of adultery committed by the wife shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, shall be tried and determined by the judge. In every such case the legitimacy of such children shall be presumed until the contrary be shown.

§ 2942. Property of wife on divorce from husband.

When a divorce is decreed for the adultery, or other offense amounting thereto, of the husband, and the wife shall be the owner of real estate, or have in her possession any personal property given to her by her husband, acquired by her own industry, given her by devise or otherwise, or to which she may be entitled by the decease of any relative, all such real and personal property shall be her sole and absolute property.

§ 2943. Forfeiture of dower.

A wife divorced for adultery or other offense amounting thereto, shall not be entitled to dower in her husband's real estate, or any part thereof, nor to any share of his personal estate.

3. SEPARATION.**§ 2944. Grounds for separation.**

A separation from bed and board forever or for a limited time may be decreed by any circuit judge, for any of the following causes:

1. For excessive and habitual ill-treatment of the one party by the other.
2. For habitual drunkenness of either party.
3. For the refusal or neglect of the husband to provide his wife with the necessaries of life.

§ 2945. Defense of ill-conduct.

In any suit brought for a separation, the defendant shall be permitted to prove, in his justification, the ill-conduct of the com-

plainant, and on establishing such defense, to the satisfaction of the judge, the suit may be dismissed.

§ 2946. Support of wife and children.

Upon decreeing a separation, the judge may make such further decree for the support and maintenance of the wife and her children, by the husband, or out of his property, as may appear just and proper.

§ 2947. Status of wife during separation.

Whenever a decree of separation is granted, the decree shall have the effect, during such separation, to reinstate the wife, whether the wrongdoer or not, in the right to sue or be sued, to alienate and convey property, to make contracts, and to do all other acts as if she were a feme sole.

§ 2948. Revocation of separation decree.

Where a decree for a separation forever, or for a limited period, shall have been pronounced, it may be revoked at any time thereafter, under such regulations and restrictions as the judge may impose, upon the joint application of the parties, and upon their producing satisfactory evidence of their reconciliation.

§ 2949. Examination of parties to prevent collusion.

Upon the hearing of any petition for a divorce or separation, the judge shall have power, in his discretion, to examine either or both of the parties, upon oath, in order to prevent collusion.

§ 2272. Circuit judges at chambers.

The judges of the several circuit courts shall have power at chambers within their respective jurisdictions, but subject to appeal to the circuit and supreme courts, according to law, as follows: * * *

Second. To hear and determine all matters of divorce, separation and annulment of marriage. * * *

§ 2273. Limitations on.

Provided, however, that the power and jurisdiction of circuit courts and circuit judges in chambers relating to causes of a civil nature as hereinbefore defined, shall be limited as follows: * * *

Third. Causes of divorce, separation, and nullity of marriage, shall be triable only in the circuit where the parties last lived together as man and wife, or, if they have not last so lived together in this territory, in the circuit in which applicant resides; * * *

§ 2478. Sworn petition, in what cases.

All applications for . . . divorces and separations . . . shall be by sworn petition addressed to some judge having jurisdiction thereof.

Dower, How Barred.

§ 2985. Barred by divorce for misconduct.

In case of divorce, dissolving the marriage contract, for the misconduct of the wife, she shall not be endowed.

§ 3071. Names, how changed.

. . . Provided, however, that nothing in this chapter contained shall prevent any court or judge of competent jurisdiction . . . from embodying in a decree of divorce a provision that a married woman may upon such divorce resume the use of her maiden name. . . .

IDAHO.*Compiled Laws, 1919.*

Chapter 183.—Divorce.

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ARTICLE 1.

ANNULMENT OF MARRIAGE

§ 4620. Annulment of marriage; grounds.

A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabits with the other as husband or wife;

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife;

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;

5. That the consent of either party was obtained by force, unless

such party afterwards freely cohabited with the other as husband or wife;

6. That either party was at the time of the marriage, physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable.

§ 4621. Action to annul; parties and limitations.

An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one; by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of legal consent;

2. For causes mentioned in subdivision two; by either party during the life of the other, or by such former husband or wife;

3. For causes mentioned in subdivision three; by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

4. For causes mentioned in subdivision four; by the party injured, within four years after the discovery of the facts constituting the fraud;

5. For causes mentioned in subdivision five; by the injured party, within four years after the marriage;

6. For causes mentioned in subdivision six; by the injured party, within four years after the marriage.

§ 4622. Legitimacy of children.

When a marriage is annulled on the ground that a former husband or wife is living, or on the ground of insanity, children begotten before the judgment are legitimate and succeed to the estate of both parents.

§ 4623. Custody of children.

The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

§ 4624. Conclusiveness of judgment.

A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE 2.

GROUNDS FOR AND DEFENSES AGAINST DIVORCE.

§ 4625. Dissolution of marriage.

Marriage is dissolved only:

1. By the death of one of the parties; or
2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

§ 4626. Effect of decree.

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons.

§ 4627. Causes for divorce.

Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion.
4. Wilful neglect.
5. Habitual intemperance.
6. Conviction of felony.
7. When either the husband or wife has become permanently insane, as provided in sections 7037 to 7041, inclusive, of the code of civil procedure.

§ 4628. Adultery.

Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

§ 4629. Extreme cruelty.

Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.

§ 4630. Desertion.

Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

§ 4631. Wilful neglect.

Wilful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so, or it is the failure to do so by reason of idleness, profligacy or dissipation.

§ 4632. Habitual intemperance.

Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

§ 4633. Continuation of cause.

Wilful desertion, wilful neglect or habitual intemperance must continue for one year before either is a ground for divorce.

§ 4634. Denial of divorce.

Divorces must be denied upon showing:

1. Collusion.
2. Condonation.
3. Recrimination, or
4. Limitation and lapse of time.

§ 4635. Collusion.

Collusion is the agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce for the purpose of enabling the other to obtain a divorce, and is a bar to an action for such acts.

§ 4636. Recrimination.

Recrimination is the showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause for divorce.

§ 4637. Condonation.

Condonation of a cause of divorce shown in the answer as a recriminatory defense, is a bar to such defense when the condonee has fully performed the marital duties, and is without reproach since the condonation, or if two years or more have elapsed after the condonation.

§ 4638. Limitations.

A divorce must be denied:

1. When the cause is adultery and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party.

2. When the cause is conviction of felony, and the action is not commenced before the expiration of one year after a pardon or the termination of the period of sentence.

3. In all other cases when there is an unreasonable lapse of time before the commencement of the action.

Action for Divorce, Custody of Children and Disposition of Property.

§ 4639. Residence required by plaintiff when cause arises outside of state.

A divorce must not be granted unless the plaintiff has been a resident of the state for 12 months next preceding the commence-

ment of the action and of the county in which the action is instituted for six months where the cause for action arises outside of this state.

§ 4640. Domicile of parties.

In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife, does not apply. After separation each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

§ 4641. Not granted by default or confession.

No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers.

§ 4642. Allowance of support and suit money.

While an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action.

§ 4643. Custody of children.

In an action for divorce the court may, before or after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

§ 4644. Alimony for fault of husband.

Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the

wife for her support as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

§ 4645. Same: security.

The court may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

§ 4646. Same: what property liable.

In executing the four preceding sections the court must resort, first, to the community property, then to the separate property of the husband.

§ 4647. Allowance from separate property withheld.

When the wife has a sufficient separate estate, or there is community property sufficient to give her alimony or a proper support, the court must withhold any allowance to her out of the separate property of the husband.

§ 4648. Allowance for support of children.

The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

§ 4649. Legitimacy of issue.

When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court upon the evidence in the case.

§ 4650. Disposition of community property and homestead.

In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property and the homestead must be assigned as follows:

1. If the decree be rendered on the ground of adultery or extreme cruelty, the community property must be assigned to the respective parties in such proportions as the court, from all the facts of the case and the condition of the parties, deems just.

2. If the decree be rendered, on any other ground than that of adultery or extreme cruelty, the community property must be equally divided between the parties.

3. If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely or for a limited period, subject in the latter case to the future disposition of the court; or it may be divided or be sold and the proceeds divided.

4. If a homestead has been selected from the separate property of either, it must be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party.

§ 4651. Same: order for disposition.

The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead as in this chapter provided, and, whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds.

§ 4652. Same: revision on appeal.

The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

§ 4653. Jurisdiction of actions.

Exclusive original jurisdiction of all actions and proceedings under this chapter is in the district court, and the judge thereof at chambers may make all necessary orders for temporary alimony and support, and the expenses of the action and the custody of children and property during the pendency of the action.

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ARTICLE 8.

DIVORCES FOR INSANITY.

§ 7037. Insanity a ground for divorce.

A divorce may be granted when either husband or wife has become permanently insane: Provided, That no divorce shall be granted under the provisions of this chapter unless such insane person shall have been duly and regularly confined, in an insane asylum of this state, or of a sister state or territory, for at least six years next preceding the commencement of the action for divorce, nor unless it shall appear to the court that such insanity is permanent and incurable: Provided, further, That no action shall be maintained under the provisions of this chapter unless the plaintiff shall be an actual resident of this state, and shall have resided therein for one year next preceding the commencement of such action.

§ 7038. Appointment of guardian: service of process.

The district courts of the several judicial districts of this state shall have the jurisdiction of actions for divorce under the provisions of this chapter; and such action shall be brought in the county of this state in which the plaintiff resides. And the court in which such action is about to be commenced shall, upon the filing by the plaintiff of a petition, duly verified, showing that a cause

of action exists under this chapter, appoint some person to act as guardian of such insane person in such action, and the summons and complaint in such action shall be served upon the defendant by delivering a copy of such summons and complaint to such guardian, and by delivering a copy thereof to the county attorney of the county in which such action is brought.

§ 7039. Prosecuting attorney to defend action.

It shall be the duty of the county attorney upon whom the summons and complaint in such action shall be served to appear for such defendant in such action and defend the same, and no divorce shall be granted under the provisions of this chapter except in the presence of the county attorney.

§ 7040. Alimony, distribution of property, custody of children.

In any action brought under the provisions of this chapter the said courts and the judges thereof shall possess all the powers relative to the payment of alimony, the distribution of property and the care and custody of children of the parties, that such courts now have, or may hereafter have, in other actions for divorce.

§ 7041. Costs and expenses to be paid by plaintiff.

All the costs of the court in such action, as well as the actual expenses of the county attorney therein, together with the expenses and fees of the guardian therein, shall be paid by the plaintiff; such expenses of the county attorney and expenses and fees of the guardian shall be fixed and allowed by the court, and the court or the judge thereof may make such order as to the payment of such fees and expenses as to said court or judge may seem proper.

§ 6476. Exclusion of persons in certain cases.

In an action for divorce, criminal conversation, seduction, or breach of promise of marriage, the court may direct the trial of any

issue of fact joined therein to be private, and may exclude all persons except the officers of the court, the parties, their witnesses and counsel: Provided, That in any cause the court may, in the exercise of a sound discretion during the examination of a witness, exclude any and all witnesses in the cause.

ILLINOIS.*Revised Statutes, 1917 (Hurd).¹***CHAPTER 40****DIVORCE.**

- SECTION** 1. Causes.
- 1a. Remarriage within one year forbidden.
 2. Residence.
 3. Legitimacy of children.
 4. Jurisdiction.
 5. Venue.
 6. Process — practice, etc.
 7. Trial by jury.
 8. Hearing on bill confessed — additional notice.
 9. Confessions of defendant.
 10. Collusion — both parties guilty, etc.
 11. Proof of foreign marriage.
 12. Restraint of wife.
 13. Custody, etc., of children.
 14. Wife may sue as a poor person.
 15. Alimony pending the suit.
 16. Name.
 17. Property.
 18. Alimony — children.
 19. Alimony in case of bigamy.
 20. Lien of decree — sales.
 21. To punish advertising for divorces.

§ 1. Causes.

That in every case in which a marriage has been, or hereafter may be contracted and solemnized between any two persons, and it shall be adjudged, in the manner hereinafter provided, that either

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party at the time of such marriage was, and continues to be naturally impotent; or that he or she had a wife or husband living at the time of such marriage; or that either party has committed adultery subsequently to the marriage; or has wilfully deserted or absented himself or herself from the husband or wife, without any reasonable cause, for the space of two years; or has been guilty of habitual drunkenness for the space of two years; or has attempted the life of the other by poison or other means showing malice, or has been guilty of extreme and repeated cruelty; or has been convicted of felony or other infamous crime, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract.

§ 1a. Remarriage within one year forbidden.

That in every case in which a divorce has been granted for any of the several causes contained in section 1 of said act, neither party shall marry again within one year from the time the decree was granted: Provided, when the cause for such divorce is adultery, the person decreed guilty of adultery shall not marry for a term of two years from the time the decree was granted: Provided, however, that nothing in this section shall prevent the persons divorced from remarrying each other; and every person marrying contrary to the provisions of this section shall be punished by imprisonment in the penitentiary for not less than one year, nor more than three years, and said marriage shall be held absolutely void.

§ 2. Residence.

No person shall be entitled to a divorce in pursuance of the provisions of this act, who has not resided in the state one whole year next before filing his or her bill or petition, unless the offense or injury complained of was committed within this state, or whilst one or both of the parties resided in this state.

§ 3. Legitimacy of children.

No divorce shall, in anywise, affect the legitimacy of the children of such marriage, except in cases where the marriage shall be declared void on the grounds of a prior marriage.

§ 4. Jurisdiction.

The circuit courts of the respective counties and the superior court of Cook county shall have jurisdiction in all cases of divorce and alimony allowed by this act.

§ 5. Venue.

The proceedings shall be had in the county where the complainant resides, but process may be directed to any county in the state.

§ 6. Process; source; practice.

The process, practice and proceedings under this act shall be the same as in other cases in chancery, except as herein otherwise provided, and except that the answer of the defendant need not be on oath.

§ 7. Trial by jury.

When the defendant appears and denies the charges in the complainant's bill for a divorce, either party shall have the right to have the cause tried by a jury.

§ 8. Hearing on bill confessed — notice.

If the bill is taken as confessed the court shall proceed to hear the cause by examination of witnesses in open court, and in no case of default shall the court grant a divorce, unless the judge is satisfied that all proper means have been taken to notify the defendant of the pendency of the suit, and that the cause of divorce has been fully proven by reliable witnesses. Whenever the judge is satis-

fied that the interests of the defendant require it, the court may order such additional notice as equity may seem to require.

§ 9. Confession of defendant.

No confession of the defendant shall be taken as evidence unless the court or jury shall be satisfied that such confession was made in sincerity and without fraud or collusion to enable the complainant to obtain a divorce.

§ 10. Collusion — both parties guilty, etc.

If it shall appear, to the satisfaction of the court, that the injury complained of was occasioned by collusion of the parties, or done with the assent of the complainant for the purpose of obtaining a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of adultery, when adultery is the ground of complaint, then no divorce shall be decreed.

§ 11. Proof of foreign marriage.

A marriage which may have been celebrated or had in any foreign state or country, may be proved by the acknowledgment of the parties, their cohabitation, and other circumstantial testimony.

§ 12. Restraint of wife.

The court may prohibit the husband from interposing any restraint on the personal liberty of the wife during the pendency of the suit.

§ 13. Custody of children pending suit.

The court may, on the application of either party, make such order concerning the custody and care of the minor children of the parties during the pendency of the suit as may be deemed expedient, and for the benefit of the children.

§ 14. Wife may sue as a poor person.

Any woman suing for a divorce, who shall make it appear satisfactorily to the court that she is poor, and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her complaint without costs; and in such cases no fees shall be charged by the officers of the court.

§ 15. Alimony pending suit.

In all cases of divorce the court may require the husband to pay to the wife, or pay into court for her use during the pendency of the suit, such sum or sums of money as may enable her to maintain or defend the suit; and in every suit for a divorce, the wife, when it is just and equitable, shall be entitled to alimony during the pendency of the suit. And in case of appeal or writ of error by the husband, the court in which the decree or order is rendered, may grant and enforce the payment of such money for her defense, and such equitable alimony during the pendency of the appeal or writ of error, as to such court shall seem reasonable and proper.

§ 16. Name.

The court, upon granting to a woman a divorce from the bonds of matrimony, may allow her to resume her maiden name or the name of any former husband.

§ 17. Property.

Whenever a divorce is granted, if it shall appear to the court that either party holds the title to property equitably belonging to the other, the court may compel conveyance thereof to be made to the party entitled to the same, upon such terms as it shall deem equitable.

§ 18. Alimony — custody and support of children.

When a divorce shall be decreed the court may make such order touching the alimony and maintenance of the wife, the care,

custody and support of the children, or any of them, as, from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just; and in case the wife be complainant, to order the defendant to give reasonable security for such alimony and maintenance, or may enforce the payment of such alimony and maintenance in any other manner consistent with the rules and practice of the court. And the court may, on application, from time to time, make such alterations in the allowance of alimony and maintenance, and the care, custody and support of the children, as shall appear reasonable and proper.

§ 19. Alimony in case of bigamy.

When a divorce is granted to a woman who shall, in good faith, have intermarried with a man having at the time of such marriage another wife or wives living, the court may, nevertheless, allow the complainant alimony and maintenance the same as in other cases of divorce; but no such allowance shall be made as will be inconsistent with the rights of such wife or wives, which shall first be ascertained by the court before the granting of such alimony or maintenance.

§ 20. Lien of decree — sales.

Whenever, in any case of divorce, a decree for alimony or maintenance is made a lien on any real estate to secure the payment of any money to become due by installments, and a sale of such real estate shall become necessary to satisfy any of such installments, the property shall be sold subject to the lien of the installments not then due, unless the court shall at the time direct otherwise, and subsequent sales may, from time to time, be made to enforce such lien as the installments may become due, until all installments are paid.

§ 21. To punish advertising for divorces.

That whoever advertises, prints, publishes, distributes or circulates, or causes to be advertised, printed, published, distributed, or

circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, with intent to procure, or to aid in procuring any divorce, either in this state or elsewhere, shall be fined not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000), for each offense, or imprisoned in the county jail not less than three months nor more than one year, or both in the discretion of the court. This act shall not apply to the printing or publishing of any notice, or advertisement required or authorized by any statute of the state of Illinois.

CHAPTER 41.

§ 14. Effect of divorce.

If any husband or wife is divorced for the fault or misconduct of the other, except where the marriage is void from the beginning, he or she shall not thereby lose dower nor the benefit of any such jointure, but if such divorce shall be for his or her own fault or misconduct, such dower or jointure, and any estate granted by the laws of this state, in the real or personal estate of the other shall be forfeited.

CHAPTER 52.

§ 5. In case of divorce.

In case of a divorce, the court granting the divorce may dispose of the homestead estate according to the equities of the case.

INDIANA.*Burns Annotated Statutes, 1914.*¹

ARTICLE 37.

DIVORCE.

- SECTION 1059.** Marriages void.
1060. Marriages voidable — issue legitimate.
1061. Issue of certain marriages legitimate.
1062. When issue legitimate, though former marriage exists.
1063. Proceedings to determine legitimacy.
1064. Decree conclusive — review by infant.
1065. Judgment, how opened — purchasers protected.
1066. Petition for divorce — residence — affidavit.
1067. Causes for divorce.
1068. When not granted for adultery.
1069. Causes, how specified.
1070. Summons and service.
1071. Notice by publication — copy, when mailed.
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1073. When prosecutor to resist.
1074. Notice to prosecutor, defense.
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1081. Misconduct of husband — rights as to realty.
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1085. Children sent to orphans' home.
1086. Decree to specify.
1087. Copy of decree authority.
- 1087a. Name of female, change, notice.

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- SECTION 1087b.** Changes legalized.
- 1088. Decree for alimony, how payable.
 - 1089. Effect of divorce.
 - 1090. Divorce granted in another state.
 - 1091. Separation from bed and board.
 - 1092. Alimony, sale of property, children.
 - 1093. No repeal, divorce, adultery.
 - 1094. Residence, proof, practice.
 - 1095. Cohabitation, penalty.

§ 1059. Marriages void.

All marriages prohibited by law on account of consanguinity, affinity, difference of color, or where either party thereto has a former wife or husband living, if solemnized within this state, shall be absolutely void without any legal proceedings.

§ 1060. Marriages voidable — issue legitimate.

When either of the parties to a marriage shall be incapable, from want of age or understanding, of contracting such marriage, the same may be declared void, on application of the incapable party, by any court having jurisdiction to decree divorces; but the children of such marriage, begotten before the same is annulled, shall be legitimate; and in such cases the same proceedings shall be had as provided in applications for divorce.

§ 1061. Issue of certain marriages legitimate.

The issue of a marriage, void on account of consanguinity, affinity, or difference of color, shall be deemed to be legitimate.

§ 1062. When issue legitimate, though former marriage exists.

When either of the parties to a marriage, void because a former marriage exists undissolved, shall have contracted such void marriage in the reasonable belief that such disability did not exist, the issue of such marriage, begotten before the discovery of such disability by such innocent party, shall be deemed legitimate.

§ 1063. Proceedings to determine legitimacy.

For the purpose of evidence, any person or persons interested in the question of such legitimacy may file his petition in the circuit court or superior court of any county in this state where either of the parties to said marriage may reside, setting forth the facts, and making defendants thereto all persons interested in such questions, and give such notice to said defendants as is by this act required to be given to the defendant on a petition for divorce; and the court, on hearing such petition, shall decree such issue to be legitimate or illegitimate, as the facts may be. And from such decree an appeal may be taken to the supreme court, and when taken, the case shall be governed by the same rules and disposed of as other civil actions are in case of appeal.

§ 1064. Decree conclusive—review by infant.

Such decree as shall be finally rendered in cases provided for in the next preceding section shall be conclusive between the parties thereto and those claiming under them; but any minor defendant may have the same reviewed, at any time within one year after arriving at the age of twenty-one years.

§ 1065. Judgment, how opened—purchasers protected.

Parties against whom a judgment of divorce has been or shall be rendered, without other notice than publication in a newspaper, may have the same opened at any time, so far as relates to the care, support, and custody of the children. Parties against whom a judgment of divorce shall hereafter be rendered, without other notice than publication in a newspaper, may, at any time within two years after the rendition of such judgment, have the same opened, and be allowed to defend as well on the granting of the divorce as in relation to the allowance of alimony and the disposition of property; and until the expiration of said two years, it shall not be lawful for the party obtaining such divorce to marry

again; which shall be stated in the decree of the court. Before any judgment shall be opened, as above, for any cause, the applicant shall file a statement of the causes relied upon, and give such notice thereof as the court in term time, or the judge thereof in vacation, shall require. And when the causes specified by such applicant relate to the granting of the divorce, alimony, and disposition of property, or either of them, the applicant shall file an affidavit stating that, during the pendency of the action, he or she received no actual notice thereof, in time to appear in court at the time of the trial of such action, and object to said judgment, and shall also pay such costs as the court may direct. Any property which may have been sold under any such judgment so sought to be opened, and which shall have passed into the hands of a purchaser or purchasers in good faith, shall not be affected by any proceeding consequent upon the opening of such judgment.

§ 1066. Petition for divorce — residence — affidavit.

Divorce may be decreed by the superior and circuit courts of this state, on petition filed by any person who, at the time of the filing of such petition, is and shall have been a bona fide resident of the state for the last two years previous to the filing of the same, and a bona fide resident of the county at the time of and for at least six months immediately preceding the filing of such petition; which bona fide residence shall be duly proven by such petitioner, to the satisfaction of the court trying the same, by at least two witnesses who are resident freeholders and householders of the state. And the plaintiff shall, with his petition, file with the clerk of the court an affidavit subscribed and sworn to by himself, in which he shall state the length of time he has been a resident of the state, and stating particularly the place, town, city, or township in which he has resided for the last two years past, and stating his occupation, which shall be sworn to before the clerk of the court in which said complaint is filed.

§ 1067. Causes for divorce.

Divorces may be decreed upon the application of the injured party, for the following causes and no other:

First. Adultery, except as hereinafter provided.

Second. Impotency, existing at the time of the marriage.

Third. Abandonment for two years.

Fourth. Cruel and inhuman treatment of either party by the other.

Fifth. Habitual drunkenness of either party.

Sixth. The failure of the husband to make reasonable provisions for his family for a period of two years.

Seventh. The conviction, subsequent to the marriage, in any country, of either party, of an infamous crime.

§ 1068. When not granted for adultery.

Divorces shall not be granted for adultery in any of the following cases:

First. When the offense has been committed with the connivance or consent of the party seeking the divorce.

Second. When the party seeking the divorce has voluntarily cohabited with the other, with knowledge of the fact; or has failed to file his or her petition for two years after he or she had discovered the same.

Third. When the party seeking the divorce has also been guilty of adultery under such circumstances as would have entitled the opposite party, if innocent, to a decree.

§ 1069. Causes, how specified.

A petition for divorce shall specify the causes therefor with certainty to a common intent.

§ 1070. Summons and service.

The clerk of the court in which such petition is filed shall issue a summons for the defendant to appear and answer said petition; which summons shall be personally served on said defendant; if a

resident of the state, either by reading or leaving a copy thereof at his or her usual place of residence, such usual place to be the residence of such defendant at the time the copy is so left.

§ 1071. Notice by publication — copy, when mailed.

If it shall appear by the affidavit of a disinterested person that the defendant is not a resident of this state, the clerk shall give notice of the pendency of such petition, by publication for three successive weeks in some weekly newspaper of general circulation, published in such county, or if there be no such paper, then in one published in this state nearest to the county seat of such county; provided, That the plaintiff shall, in case such notice is to be given by publication as aforesaid, before the same is given, file his or her affidavit with the clerk, stating therein the residence of the defendant, if such residence be known to the plaintiff; and if such residence be unknown to the plaintiff, such affidavit shall so state; and in case such affidavit state the residence of the defendant, the clerk shall forward, by mail, to such defendant the number of the paper containing such notice, with the notice marked.

§ 1072. Issue and trial.

The cause shall stand for issue and trial at the first term of court after the summons has been personally served upon the defendant at least ten days or publication has been made thirty days before the first day of such term, but in no case shall such trial be had within sixty days of the filing of the suit.

§ 1073. When prosecutor to resist.

Whenever a petition for divorce remains undefended, it shall be the duty of the prosecuting attorney to appear and resist such petition.

§ 1074. Notice to prosecutor, defense.

That whenever a petition for granting of a divorce shall be filed in any of the circuit or superior courts of this state, and the

time fixed in the summons issued on said petition for the return thereof has expired, and there is no bona fide appearance of counsel for defendant entered in the appearance docket of said courts for the purpose of making a good faith defense, in the opinion of said courts, it shall be the duty of the judges of said courts to notify the prosecuting attorney of the judicial district where said courts are situated to enter his name upon the appearance docket where said cause is docketed, and he shall resist and defend said petition on behalf of and in the name of the state of Indiana.

§ 1075. Fee of prosecutor.

Whenever any petition for the granting of a divorce shall be filed in any of the circuit or superior courts of this state, and the name of the prosecuting attorney as hereinbefore provided shall be entered upon the appearance docket as provided in section one of this act, the court, upon motion of said prosecuting attorney, shall make an order requiring the person filing such petition to pay the clerk of said court, before any further action shall be taken in said cause, the sum of five dollars, which sum shall be paid by said clerk of said court to said prosecuting attorney, and shall be in full payment of his attorney's fees for the defense of said petition. If said order is not complied with within twenty days, the said petition shall, upon motion of said prosecuting attorney, be dismissed.

§ 1076. Authority of attorneys, defense by prosecutor.

Every attorney appearing for the defendant in a divorce suit, other than said prosecuting attorney as provided in section one of this act, shall, if ordered by the court file a written authority executed by the defendant, and no appearance shall be recognized until such written authority shall be filed. And it shall be made the duty of said prosecuting attorney, at any time, to appear and defend any such petition at the request of the judge of the court before whom said petition is pending, if it shall appear to said

judge that an attempt is being made to secure the granting of said divorce by collusion of the parties, and the same order shall be entered against the plaintiff as provided in section two of this act.

§ 1077. Answer — proofs required.

The defendant shall answer said petition under oath, if required so to do by the petitioner; but no decree shall be rendered on default without proof, nor shall any admissions made in said answer be used as evidence in any other case against said defendant; nor shall the denial under oath, by the defendant, of the facts alleged in the petition render necessary any other or further proof by the complainant than would have been necessary if such denial had not been under oath.

§ 1078. Cross-petition and proceedings thereon.

In addition to an answer, the defendant may file a cross-petition for divorce; and when filed, the court shall decree the divorce to the party legally entitled thereto. If the original petition be dismissed after the filing of the cross-petition the defendant may proceed to the trial of the cross-petition without further notice to the adverse party; and the case upon such cross-petition shall in all things be governed by the same rules applicable to a case on an original petition.

§ 1079. Witnesses — depositions.

Witnesses may be examined in court, or depositions taken and used as in other civil actions, at the option of the party offering the testimony; but this section shall not be construed to authorize the taking of depositions where the witnesses can be compelled to attend and testify as provided by law in other cases, unless the judge, for good cause shown, shall otherwise direct.

§ 1080. Interlocutory orders, how enforced.

Pending a petition for divorce, the court, or the judge thereof in vacation, may make, and by attachment enforce, such orders for

the disposition of the persons, property, and children of the parties as may be deemed right and proper, and such orders relative to the expenses of such suit as will insure to the wife an efficient preparation of her case and a fair and impartial trial thereof. And on decreeing a divorce in favor of the wife or refusing one on the application of the husband, the court shall, by order to be enforced by attachment, require the husband to pay all reasonable expenses of the wife in the prosecution or defense of the petition when such divorce has been granted or refused: provided, That such orders shall be made under the same rules and regulations, and upon such notice as restraining orders and injunctions are granted in other civil actions, except that no bond shall be required of either party.

§ 1081. Misconduct of husband — rights as to realty.

A divorce granted for misconduct of the husband shall entitle the wife to the same rights, so far as her real estate is concerned, that she would have been entitled to by his death.

§ 1082. Misconduct of wife — rights as to realty.

A divorce decreed on account of the misconduct of the wife shall entitle the husband to the same rights, so far as his real estate is concerned, as he would have been entitled to by her death.

§ 1083. Alimony.

The court shall make such decree for alimony, in all cases contemplated by this act, as the circumstances of the case shall render just and proper; and such decree for alimony, heretofore made or hereafter made, shall be valid against the husband, whether asked for in the petition or given by the judge on default.

§ 1084. Custody of children.

The court, in decreeing a divorce shall make provision for the guardianship, custody, support, and education of the minor children of such marriage.

§ 1085. Children sent to orphans' home.

That all judges of the circuit and superior courts of the state of Indiana shall have the power and authority in any and all divorce cases to take minor children, under the age of sixteen years, from the parents of such children, and place them in the Orphans' Home of the county where such divorce suit originated, when in the judgment of the judge trying said cause the parents of any such child or children are unable financially or are for any reason unfit persons to have their care, custody and education.

§ 1086. Decree to specify.

The disposition of any such children shall be specified and recited in the decree of the court trying any such cause.

§ 1087. Copy of decree authority.

A certified copy of any such decree shall be sufficient warranty and authority to admit any such child or children into such Orphans' Home, as provided in this act, and upon presentation of any such child or children with a certified copy of said decree, the matron, or person or persons in charge of any such home, shall admit any such child or children and provide and care for them in the same manner as provided by law for other inmates of such home.

§ 1087a. Name of female, change, notice.

That whenever any petition for a divorce may be filed by any female in any superior or circuit court of this state, the plaintiff as a part of the relief in said action may, if successful in said action, have her maiden or previous married name restored to her. Any female desiring relief under this section shall, in her petition for divorce, set out the name that she desires restored to her, and such relief shall be prayed for in said petition. No other notice of such application shall be required than the notice now or hereafter required by law in divorce proceedings. Upon decreeing a

divorce in any such proceeding, the court shall decree that the name of the plaintiff be changed as prayed for in said petition.

§ 1087b. Changes legalized.

All proceedings of any court of record in this state wherein and whereby the name of any party to any divorce proceedings were changed, be, and the same are hereby legalized.

§ 1088. Decree for alimony, how payable.

The decree for alimony to the wife shall be for a sum in gross, and not for annual payments; but the court, in its discretion, may give a reasonable time for the payment thereof, by installments, on sufficient surety being given. And in all cases where alimony has been thus given by installments, or may hereafter be given, and the security required shall not be given within thirty days from the date of such decree, then the whole amount of such alimony shall become due and payable the same as if no such installments had been mentioned in the decree.

§ 1089. Effect of divorce.

The divorce of one party shall fully dissolve the marriage contract as to both.

§ 1090. Divorce granted in another state.

A divorce decreed in any other state, by the court having jurisdiction thereof, shall have full effect in this state.

§ 1091. Separation from bed and board.

That a separation from bed and board for a limited time may be decreed by the superior and circuit courts of this state for the following reasons:

(a) Adultery, if it is not the result of connivance or consent of the parties, and plaintiff is not guilty of the same offense.

(b) Desertion, or where the wife is plaintiff, neglect or refusal to suitably provide for her, covering a period of six months.

(c) Habitual cruelty of one party toward the other, or such constant strifes of both parties as render their living together intolerable.

(d) Habitual drunkenness of either party, or the confirmed excessive use of morphine, cocaine or any other drug.

(e) Gross and wanton neglect of conjugal duty of either party, covering a period of six months.

§ 1092. Alimony, sale of property, children.

Upon decreeing a temporary separation, the court may grant alimony and make such further decrees, as it shall deem just and expedient, concerning the estate, and maintenance of the parties, or either of them. The court may decree that the guilty party shall temporarily forfeit all right to participate in the property, and income of the other, and it may authorize the sale of property belonging to either party, without the other party joining in the conveyance: provided, That the rights of either party in the property so sold shall not be less than the rights now provided by law where sales are made on execution. As regards the custody, care and maintenance of the children in such family, the court can make provisions as justice and expediency require. From time to time afterwards, on the petition of either party, the court may revise and alter such decrees regarding property, and income, and concerning the care, custody and maintenance of the children, as the altered circumstances of the parents and the benefit of the children may require.

§ 1093. No repeal, divorce, adultery.

This act is not intended to and shall not repeal or affect any existing law as to the granting absolute divorces, and the obtaining of a temporary separation under this law shall not be bar to the entering of a suit for absolute divorce by either party. Where the party obtaining the temporary separation commits adultery he or she shall at once forfeit all benefits and rights given to him or

her and still enjoyed by him or her under the obtained decree of separation.

§ 1094. Residence, proof, practice.

In granting a separation from bed and board for a limited time, the same length of residence and proof thereof, and the practice and proceedings of the court shall be the same as in cases of absolute divorce.

§ 1095. Cohabitation, penalty.

If any parties who have been granted a separation from bed and board for a limited time, shall cohabit together during the time for which they are so separated, they or either of them shall be guilty of a misdemeanor and may be fined in any sum not exceeding fifty dollars, to which may be added imprisonment in the county jail for a period not exceeding six months.

§ 2631. Promoting divorces.

Whoever advertises, prints, publishes, distributes, or circulates, or causes to be advertised, printed, published, distributed or circulated, any pamphlet, circular, card, hand bill, advertisement, printed paper, book, newspaper or notice of any kind, advertising or calling attention to the procuring of divorces, either in this state or elsewhere, shall, on conviction, be fined not less than ten dollars nor more than one hundred dollars.

§ 540. Action — when for issue and trial.

Every action shall stand for issue and trial at the first term after it is commenced, when the summons have [has] been served on the defendants ten days, or publication has been made for thirty

days before the first day of the term: provided, however, That when a complaint is filed, whether before or during any term of court, the plaintiff may fix the day during such term by endorsement thereof upon the complaint at the time of filing the same, on which the defendant shall appear, which day, when so fixed, shall be stated in the summons when issued. And the action shall be docketed in its order; and if summons shall be personally served ten days before such day, or publication shall be made three weeks, thirty days before such day, such action shall thereupon stand for issue and trial at such term, and the court shall have jurisdiction to hear and determine such action as if summons had been served or publication made before the first day of the term as herein provided; and if at any time after the filing of the complaint it shall be found that any party to the action has not been properly notified, the plaintiff may file with the clerk or indorse on the complaint a written request for such notice to be given, naming therein the day of the pending or subsequent term on which such party is required to appear to the action, and summons shall be issued or publication made accordingly, in the proper case as above provided; and if summons be personally served ten days before such day, or publication made three weeks successively, thirty days before such day, such case shall thereupon stand for issue and trial at such term, and the court shall have jurisdiction to hear and determine such action as if summons had been served or publication made before the first day of the term, as herein provided; and it is also provided, that the provisions of this act shall apply to all suits and proceedings for divorce, the same as all other actions.

§ 627. Except divorce, when opened.

Parties against whom a judgment has been rendered without other notice than the publication in the newspaper herein required, except in cases of divorce, may, at any time within five years after

the rendition of the judgment, have the same opened, and be allowed to defend.

§ 582. What may be referred.

All or any of the issues in the action, except in action for divorce and for the nullification of marriages, whether those issues be of fact or of law, or both, may be referred upon the written consent of both parties.

IOWA.*Code, 1897.*

CHAPTER 3.

OF DIVORCE, ANNULING MARRIAGES, AND ALIMONY.

SECTION 3171. Jurisdiction.

3172. Petition.

3173. Verification — evidence — hearing.

3174. Causes.

3175. Husband from wife.

3176. Cross-petition.

3177. Maintenance during litigation.

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3182. Annuling illegal marriages — causes.

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3187a. Decrees annulling marriages when service by publication — legalized.

OF DIVORCE, ANNULING MARRIAGES, AND ALIMONY.

§ 3171. Jurisdiction.

The district court in the county where either party resides has jurisdiction of the subject-matter of this chapter.

§ 3172. Petition.

Except where the defendant is a resident of this state, served by personal service, the petition for divorce, in addition to the facts on account of which the plaintiff claims the relief sought, must

state that the plaintiff has been for the last year a resident of the state, specifying the township and county in which he or she has resided, and the length of such residence therein after deducting all absences from the state; that it has been in good faith and not for the purpose of obtaining a divorce only; and in all cases it must be alleged that the application is made in good faith and for the purpose set forth in the petition.

§ 3173. Verification — evidence — hearing.

The petition must be verified by the plaintiff, and its allegations established by competent evidence. If the averments as to residence are not fully proved, the hearing shall proceed no further, and the action be dismissed by the court; and no divorce shall be granted on the testimony of the plaintiff alone. All such actions shall be heard in open court upon the oral testimony of witnesses, or depositions taken as in other equitable actions or by a commissioner appointed by the court.

§ 3174. Causes.

Divorces from the bonds of matrimony may be decreed against the husband for the following causes:

1. When he has committed adultery subsequent to the marriage;
2. When he wilfully deserts his wife and absents himself without a reasonable cause for the space of two years;
3. When he is convicted of a felony after the marriage;
4. When after marriage he becomes addicted to habitual drunkenness;
5. When he is guilty of such inhuman treatment as to endanger the life of his wife.

§ 3175. Husband from wife.

The husband may obtain a divorce from the wife for like cause, and also when the wife at the time of the marriage was pregnant by another than the husband, of which he had no knowledge, unless

such husband had an illegitimate child or children then living, which at the time of the marriage was unknown to the wife.

§ 3176. Cross-petition.

The defendant upon a cross-petition may obtain a divorce for either of the causes stated in the second preceding section, and if the husband is defendant he may, in addition to those causes, have a like decree for the cause stated in the last section.

§ 3177. Maintenance during litigation.

The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action.

§ 3178. Attachment.

The petition may be presented to the court or judge for the allowance of an order of attachment, who, by indorsement thereon, may direct such attachment and fix the amount for which it may issue, and the amount of the bond, if any, that shall be given. Any property taken by virtue thereof shall be held to satisfy the judgment or decree of the court, but may be discharged or released as in other cases.

§ 3179. Showing.

In making such orders, the court or judge shall take into consideration the age and sex of the plaintiff, the physical and pecuniary condition of the parties, and such other matters as are pertinent, which may be shown by affidavits, in addition to the pleadings or otherwise, as the court or judge may direct.

§ 3180. Alimony — custody of children — changes.

When a divorce is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of

the parties as shall be right. Subsequent changes may be made by it in these respects, when the circumstances render them expedient.

§ 3181. Forfeiture of rights.

When a divorce is decreed the guilty party forfeits all rights acquired by the marriage. In every case in which a divorce is decreed, neither party shall marry again within a year from the date of the filing of said decree unless permission to do so is granted by the court in such decree; provided, however, that nothing herein contained shall prevent the persons divorced from remarrying each other. Any person marrying contrary to the provisions of this act shall be deemed guilty of a misdemeanor and punished accordingly. (As amended by L. 1907, ch. 161.)

§ 3182. Annuling illegal marriages—causes.

Marriage may be annulled for the following causes:

1. Where the marriage between the parties is prohibited by law;
2. Where either party was impotent at the time of the marriage;
3. Where either party had a husband or wife living at the time of the marriage, provided they have not, with a knowledge of such fact, lived and cohabited together after the death of the former spouse of such party;
4. Where either party was insane or idiotic at the time of the marriage.

§ 3183. Petition.

A petition shall be filed in such cases as in actions for divorce, and all the provisions of this chapter in relation thereto shall apply to such cases, except as otherwise provided.

§ 3184. Validity determined.

When the validity of a marriage is doubted, either party may file a petition, and the court shall decree it annulled or affirmed according to the proof.

§ 3185. Children — legitimacy.

When a marriage is annulled on account of the consanguinity or affinity of the parties, the issue shall be illegitimate; if because of the impotency of the husband, any issue of the wife shall be illegitimate; but when on account of non-age, insanity or idiocy, the issue will be legitimate as to the party capable of contracting the marriage.

§ 3186. Prior marriage.

When a marriage is annulled on account of a prior marriage and the parties contracted the second marriage in good faith, believing the prior husband or wife to be dead, that fact shall be stated in the decree of nullity, and the issue of the second marriage begotten before the decree of the court will be the legitimate issue of the parent capable of contracting.

§ 3187. Alimony.

In case either party entered into the contract of marriage in good faith, supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be entered in the decree, and the court may decree such innocent party compensation as in cases of divorce.

§ 3187a. Decrees annulling marriages when service by publication — legalized.

That all decrees of the courts of this state made and entered of record in actions brought to annul a marriage and in which cases the service of the original notice was made by publication in the manner provided by law for actions for divorce, be and the same are hereby legalized and validated as fully and to the same extent as if the statute at the time such suit was instituted had pro-

vided for service of the original notice by publication in the time and manner aforesaid. (Added by L. 1913, ch. 270.)

§ 3430. Divorce.

An action for divorce shall be by equitable proceedings, and no cause of action, save for alimony, shall be joined there with.

§ 3656. In equitable actions.

The appearance term shall not be the trial term for equitable actions, except those brought for mandamus or divorce, to foreclose mortgages and other instruments of writing whereby a lien or charge on property is created, or to enforce mechanics' liens, or appeal cases in contested elections. (As amended by L. 1903, ch. 122; L. 1907, ch. 165.)

§ 2973. Family defined.

A widow or widower, though without children, shall be deemed a family within the meaning of this chapter, while continuing to occupy the real estate used as a homestead at the death of the husband or wife, and such right shall continue to the party to whom it is adjudged in a decree of divorce, during continued personal occupancy.

§ 254-a45. Court to give aid — divorced parents.

In every cause in the juvenile court the court shall investigate whether every person responsible for the care, custody, maintenance, education, medical treatment and discipline of the child or children involved is doing his full duty by such child or children and, in case the court finds that the parents or other persons in loco parentis are not doing their duties, the court shall try all lawful and proper means under this act to make them do so, giving

them aid and assistance in case it be deemed necessary. The court may declare a child abandoned by one parent while it may not be by the other. In case the parents are divorced and the one having the custody is adjudged to have abandoned the child, then the ability and propriety of the other parent shall be considered. (As added by L. 1909, ch. 14.)

§ 3140. **Age.**

A marriage between a male of sixteen and a female of fourteen years of age is valid; but if either party has not attained the age thus fixed the marriage will be a nullity or not, at the option of such party, made known at any time before he or she is six months older than the age thus fixed.

§ 3151. **Void marriages.**

A marriage between persons prohibited by law, or between persons either of whom has a husband or wife living, is void; but, if the parties live and cohabit together after the death or divorce of the former husband or wife, such marriage shall be valid.

§ 3534. **By publication.**

Service may be made by publication, when an affidavit is filed that personal service cannot be made on the defendant within this state, in either of the following cases:

* * * * *

8. Where the action is for a divorce, if the defendant is a non-resident of the state, or his residence is unknown;

* * * * *

10. Where the action is for the annulment of an illegal marriage, if the defendant is a nonresident of the state, or his residence is unknown. (As amended by L. 1913, chs. 284, 285.)

KANSAS.*General Statutes, 1915.***ARTICLE 28.****OF DIVORCE AND ALIMONY.**

- SECTION 7571.** Causes for which divorce may be granted.
- 7572.** Residence of plaintiff in action for divorce.
- 7573.** Wife deemed resident, though husband resides elsewhere.
- 7574.** Petition must be verified; summons or publication; copy of petition and notice mailed to defendant; affidavit that residence of defendant unknown.
- 7575.** Defendant may allege cause for divorce in answer; affirmative relief; answer to be verified as to new matter.
- 7576.** Divorce may be refused where parties in equal wrong; orders concerning custody, etc., of children and division of property of parties when divorce refused; effect of division of property.
- 7577.** Order restraining disposition of property; control of children and support of wife and children during pendency of action; expenses of suit; expenses upon granting divorce to wife or refusing application of husband; probate judge may make order restraining disposition of property.
- 7578.** Evidence; admissibility of admissions of parties; proof of cohabitation; divorce not granted without proof.
- 7579.** Parties competent witnesses; divorce not granted upon uncorroborated testimony of husband or wife or both.
- 7580.** Provision for guardianship, custody, etc., of minor children on granting divorce; order may be modified or changed.
- 7581.** Restoration of maiden name to wife; division of property upon granting divorce; provision for payment of alimony; property set apart for support of children.
- 7582.** Effect of decree of divorce; judgment final and conclusive unless appealed from as herein provided; time for taking appeal; notice; unlawful to marry within six months or until thirty days after final judgment on appeal; bigamy; marriage contrary hereto absolutely void.
- 7583.** Punishment for bigamy as defined in preceding section.

- SECTION 7584.** Decree to recite day judgment rendered and that decree not absolute until expiration of six months.
7585. Marriage by persons incapable for want of age or understanding of contracting such marriage may be annulled; children legitimate; cohabitation after incapacity ceases a defense.
7586. Wife may maintain action for alimony alone; defense of husband; affirmative relief to husband.
7590. Hearing not had in divorce case until sixty days after filing of petition, unless emergency declared; record of emergency; names of witnesses.
7594. Judgment or decree of divorce of another state, rendered upon service by publication, given full faith and credit; treated and given force as judgment of this state.

§ 7571. Causes for which divorce may be granted.

The district court may grant a divorce for any of the following causes: First, when either of the parties had a former husband or wife living at the time of the subsequent marriage. Second, abandonment for one year. Third, adultery. Fourth, impotency. Fifth, when the wife at the time of the marriage was pregnant by another than her husband. Sixth, extreme cruelty. Seventh, fraudulent contract. Eighth, habitual drunkenness. Ninth, gross neglect of duty. Tenth, the conviction of a felony and imprisonment in the penitentiary therefor subsequent to the marriage.

§ 7572. Residence of plaintiff in action for divorce.

The plaintiff in an action for divorce must have been an actual resident in good faith of the state for one year next preceding the filing of the petition, and a resident of the county in which the action is brought at the time the petition is filed, unless the action is brought in the county where the defendant resides or may be summoned.

§ 7573. Wife deemed resident, though husband resides elsewhere.

A wife who resides in this state at the time of applying for a divorce shall be deemed a resident of this state, though her husband resides elsewhere.

§ 7574. Petition must be verified; summons or publication; copy of petition and notice mailed to defendant; affidavit that residence of defendant unknown.

The petition must be verified as true, by the affidavit of the plaintiff. A summons may issue thereon, and shall be served, or publication made, as in other cases. When service by publication is proper, a copy of the petition, with a copy of the publication notice attached thereto, shall within three days after the first publication is made be inclosed in an envelope addressed to the defendant at his or her place of residence, postage paid, and deposited in the nearest postoffice, unless the plaintiff shall make and file an affidavit that such residence is unknown to the plaintiff and cannot be ascertained by any means within the control of the plaintiff.

§ 7575. Defendant may allege cause for divorce in answer; affirmative relief; answer to be verified as to new matter.

The defendant in his or her answer may allege a cause for a divorce against the plaintiff, and may have the same relief thereupon as he or she would be entitled to for a like cause if he or she were plaintiff. When new matter is set up in the answer, it shall be verified as to such new matter by the affidavit of the defendant.

§ 7576. Divorce may be refused where parties in equal wrong; orders concerning custody, etc., of children and division of property of parties when divorce refused; effect of division of property.

When the parties appear to be in equal wrong, the court may in its discretion refuse to grant a divorce, and in any such case or in any other case where a divorce is refused, the court may for good cause shown make such order as may be proper for the custody, maintenance and education of the children, and for the control and equitable division and disposition of the property of the parties, or of either of them, as may be proper, equitable and just, having

due regard to the time and manner of acquiring such property, whether the title thereto be in either or both of said parties, and in such case the order of the court shall vest in the parties a fee-simple title to the property so set apart or decreed to them, and each party shall have the right to convey, devise and dispose of the same without the consent of the other.

§ 7577. Order restraining disposition of property; control of children and support of wife and children during pendency of action; expenses of suit; expenses upon granting divorce to wife or refusing application of husband; probate judge may make order restraining disposition of property.

After a petition has been filed in an action for divorce and alimony, or for alimony alone, the court, or the judge thereof in vacation, may make without bond, and enforce by attachment such order to restrain the disposition of the property of the parties or either of them, and for the use, management and control thereof, or for the control of the children and support of the wife or the wife and children, during the pendency of the action, as may be right and proper, and may make such order relative to the expenses of the suit as will insure to the wife an efficient preparation of her case; and on granting a divorce in favor of the wife or refusing of the application of her husband, the court may require the husband to pay such reasonable expenses of the wife in the prosecution or defense of the action as may be just and proper, considering the respective parties and the means and property of each. And in the absence of the judge of the district court from the county, or in case the judge of the district court is disqualified by interest or prevented by sickness, the probate judge may make without bond such order to restrain the disposition of the property of the parties, or either of them, and for the use, management and control thereof, or for the control of the children and support of the wife or the wife and children during the pendency of the action, and may in case the judge of the district court is disqualified by

interest, prevented by sickness or absent from the county, modify or vacate such order from time to time as may be proper: provided, however, that nothing in this act shall be construed to authorize the probate judge to vacate or modify any order issued as in this action provided by the district court or the judge thereof.

Any order issued by the probate judge as provided for in this act shall be of the same effect as a like order made by the judge of the district court. (As amended by L. 1919, ch. 236.)

§ 7578. Evidence; admissibility of admissions of parties; proof of cohabitation; divorce not granted without proof.

Upon the trial of an action for a divorce, or for alimony, the court may admit proof of the admissions of the parties to be received in evidence, carefully excluding such as shall appear to have been obtained by connivance, fraud, coercion, or other improper means. Proof of cohabitation, and reputation of the marriage of the parties, may be received as evidence of the marriage. But no divorce shall be granted without proof.

§ 7579. Parties competent witnesses; divorce not granted upon uncorroborated testimony of husband or wife or both.

In all actions for divorce or alimony, or for both divorce and alimony, hereafter to be tried, the parties thereto, or either of them, shall be competent to testify upon all material matters involved in the controversy to the same extent as other witnesses might do: Provided, however, That nothing in this act shall be construed as authorizing the granting of a decree of divorce upon the uncorroborated testimony of either husband or wife, or both of them.

§ 7580. Provision for guardianship, custody, etc., of minor children on granting divorce; order may be modified or changed.

When a divorce is granted the court shall make provision for the guardianship, custody, support and education of the minor

children of the marriage, and may modify or change any order in this respect whenever circumstances render such change proper.

§ 7581. Restoration of maiden name to wife; division of property upon granting divorce; provision for payment of alimony; property set apart for support of children.

When a divorce shall be granted by reason of the fault or aggression of the husband, the wife shall be restored to her maiden name if she so desires, and also to all the property, lands, tenements, hereditaments owned by her before her marriage or acquired by her in her own right after such marriage, and not previously disposed of, and shall be allowed such alimony out of the husband's real and personal property as the court shall think reasonable, having due regard to the property which came to him by marriage and the value of his real and personal estate at the time of said divorce; which alimony may be allowed to her in real or personal property, or both, or by decreeing to her such sum of money, payable either in gross or in installments, as the court may deem just and equitable. If the divorce shall be granted by reason of the fault or aggression of the wife, the court shall order restoration to her of the whole of her property, lands, tenements, and hereditaments owned by her before, or by her separately acquired after such marriage, and not previously disposed of, and also such share of her husband's real and personal property, or both, as to the court may appear just and reasonable; and she shall be barred of all right in all the remaining lands of which her husband may at any time have been seized. And to such property, whether real or personal, as shall have been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the court shall make such division between the parties respectively as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to pay such sum as may be just and proper to effect a fair and just division thereof. But in case of a finding by the court, that

such divorce should be granted on account of the fault or aggression of the wife, the court may in its discretion set apart such a portion of the wife's separate estate as may seem proper for the support of the children, issue of the marriage.

§ 7582. Effect of decree of divorce; judgment final and conclusive unless appealed from as herein provided; time for taking appeal; notice; unlawful to marry within six months or until thirty days after final judgment on appeal; bigamy; marriage contrary hereto absolutely void.

A divorce granted at the instance of one party shall operate as a dissolution of the marriage contract as to both, and shall be a bar to any claim of the party for whose fault it was granted in or to the property of the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party. Every judgment of divorcement granted by a district court shall be final and conclusive, unless appealed from within the time and in the manner herein provided. A party desiring to appeal from a judgment granting a divorce must within ten days after such judgment is rendered file a written notice in the office of the clerk of such court, duly entitled in such action, stating that it is the intention of such party to appeal from such judgment; and unless such notice be filed no appeal shall be had or taken in such cause. If notice be filed as aforesaid, the party filing the same may commence proceedings in error for the reversal or modification of such judgment at any time within four months from the date of the decree appealed from, and not thereafter; but whether a notice be filed as herein provided, or not, or whether the proceedings in error be commenced as herein provided, or not, it shall be unlawful for either party to such divorce suit to marry any other person within six months from the date of the decree of divorcement; and if notice be filed and proceedings in error be commenced as hereinbefore provided, then it shall be unlawful for either party to such cause to marry any other person until the ex-

piration of thirty days from the day on which final judgment shall be rendered by the appellate court on such appeal; and every person marrying contrary to the provisions of this section shall be deemed guilty of bigamy, and such marriage be absolutely void.

§ 7583. Punishment for bigamy as defined in preceding section.

Every person convicted of bigamy as such offense as is defined in the foregoing section shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than three years.

§ 7584. Decree to recite day judgment rendered and that decree not absolute until expiration of six months.

Every decree of divorce shall recite the day and date when the judgment was rendered in the cause, and that the decree does not become absolute and take effect until the expiration of six months from said time.

§ 7585. Marriage by persons incapable for want of age or understanding of contracting such marriage may be annulled; children legitimate; cohabitation after incapacity ceases a defense.

When either of the parties to a marriage shall be incapable, from want of age or understanding, of contracting such marriage, the same may be declared void by the district court, in an action brought by the incapable party; but the children of such a marriage, begotten before the same is annulled, shall be legitimate. Cohabitation after such incapacity ceases shall be sufficient defense to any such action.

§ 7586. Wife may maintain action for alimony alone; defense of husband; affirmative relief to husband.

The wife may obtain alimony from the husband without a divorce, in an action brought for that purpose in the district court, for any of the causes for which a divorce may be granted. The

husband may make the same defense to such action as he might to an action for divorce, and may, for sufficient cause, obtain a divorce from the wife in such action.

§ 7590. Hearing not had in divorce case until sixty days after filing of petition, unless emergency declared; record of emergency; names of witnesses.

No hearing shall be had in a divorce suit until, at least, sixty days after the filing of the petition, unless the court shall enter upon the records an order declaring an emergency, the precise nature of which shall be specifically stated in such order, together with the substance of the evidence upon which it was based, and the names of the witnesses who gave such evidence.

§ 7594. Judgment or decree of divorce of another state, rendered upon service by publication, given full faith and credit; treated and given force as judgment of this state.

Any judgment or decree of divorce rendered upon service by publication in any state of the United States in conformity with the law thereof shall be given in full faith and credit in this state, and shall have the same force with regard to persons now or heretofore resident or hereafter to become a resident of this state as if said judgment had been rendered by a court of this state, and shall, as to the status of all persons, be treated and considered and given force the same as a judgment of the courts of this state of the date which said judgment bears.

§ 158. Divorce.

All power to grant divorces is vested in the district court, subject to regulation by law.

KENTUCKY.*Statutes (Carroll), 1915.*¹

CHAPTER 66.

HUSBAND AND WIFE.

- SECTION 2097. Marriage — between what persons prohibited and void.
2100. Marriage — when the courts may declare void.
2101. Marriage valid where contracted valid here.
2102. Marriage solemnized by unauthorized person — when valid.
2115. Marriage — validity of may be determined by court.
2117. Equity jurisdiction — cause for divorce.
2118. Divorced persons may marry — only one divorce granted, exception.
2119. Petition for not to be taken as confessed — character of witnesses — duty of county attorney.
2120. Venue — allegations necessary — condoning offense — annulment of divorce.
2121. Divorce from bed and board — causes for — effect of — maintenance pending action for divorce.
2122. Allowance to wife out of husband's estate — maiden name restored.
2123. Children — provision for pending divorce or when granted — fee-simple title not to be divested.
2124. Alimony — maintenance — remedies of wife.
2125. Minor children or persons joining Shakers — provision for.
2126. Sales to defraud wife or children, void.

ARTICLE 1.

MARRIAGE, HOW SOLEMNIZED — WHO MAY CONTRACT.

- § 2097. **Marriage — between what persons prohibited and void.**
 Marriage is prohibited and declared void;
 1. With an idiot or lunatic.

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2. Between a white person and a negro or mulatto.
 3. Where there is a husband or wife living, from whom the person marrying has not been divorced.
 4. When not solemnized or contracted in the presence of an authorized person or society.
 5. When, at the time of the marriage, the male is under fourteen, or the female is under twelve years of age.
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§ 2100. Marriage — when the courts may declare void.

Courts having general equity jurisdiction may declare void a marriage obtained by force or fraud, or at the instance of any next friend, where the male was under sixteen or the female under fourteen years of age at the time of the marriage, and the marriage was without the consent of the father, mother, guardian, or other person having the proper charge of his or her person, and has not been ratified by cohabitation after that age.

§ 2101. Marriage valid where contracted valid here.

Where persons, resident in this commonwealth, shall marry in another state, such marriage shall be valid if valid here if valid in the state where solemnized.

§ 2102. Marriages solemnized by unauthorized person — when valid.

No marriage solemnized before any person professing to have authority therefor shall be invalid for the want of such authority, if it is consummated with the belief of the parties, or either of them, that he had authority and that they have been lawfully married.

§ 2115. Marriage — validity of may be determined by court.

Where doubt is felt as to the validity of a marriage, either party may, by petition in equity, demand its avoidance or affirm-

ance; but where one of the parties was within the age of consent at the time of the marriage, the other party being of proper age, shall have no such proceeding, for that cause, against the party under age.

ARTICLE 2.

DIVORCE — ALIMONY — CHILDREN.

§ 2117. Equity jurisdiction — cause for divorce.

A jury shall not be impaneled in any action for divorce, alimony or maintenance, but courts having general equity jurisdiction may grant a divorce for any of the following causes, to both husband and wife:

1. To both parties. Such impotency or malformation as prevents sexual intercourse.
2. Living apart without any cohabitation for five consecutive years next before the application.

To party not in fault. Also to the party not in fault, for the following causes:

1. Abandonment by one party or the other for one year.
2. Living in adultery with another man or woman.
3. Condemnation for felony in or out of this state.
4. Concealment from the other party of any loathsome disease existing at the time of the marriage, or contracting such afterward.
5. Force, duress or fraud in obtaining the marriage.
6. Uniting with any religious society whose creed and rules require a renunciation of the marriage covenant, or forbid husband and wife from cohabiting.

To the wife. Also to the wife, when not in like fault, for the following causes:

1. Confirmed habit of drunkenness on the part of the husband

of not less than one year's duration, accompanied with a wasting of his estate, and without any suitable provision for the maintenance of his wife or children.

2. Habitually behaving toward her by the husband, for not less than six months, in such cruel and inhuman manner as to indicate a settled aversion to her, or to destroy permanently her peace or happiness.

3. Such cruel beating or injury, or attempt at injury, of the wife by the husband as indicates an outrageous temper in him, or probable danger to her life, or great bodily injury from her remaining with him.

To the husband. Also to the husband for the following causes:

1. Where the wife is pregnant by another man without the husband's knowledge at the time of the marriage.

2. When not in like fault, habitual drunkenness on the part of the wife of not less than one year's duration.

3. Adultery by the wife, or such lewd, lascivious behavior on her part as proves her to be unchaste, without actual proof of an act of adultery.

§ 2118. Divorced persons may marry—only one divorce granted, exception.

A judgment of divorce authorizes either party to marry again, but there shall be not granted to any person more than one divorce, except for living in adultery, to the party not in fault, and for the causes for which a divorce may be granted to both husband and wife.

§ 2119. Petition for not to be taken as confessed—character of witnesses—duty of county attorney.

No petition for divorce shall be taken for confessed, or be sustained by the admission of the defendant alone, but must be supported by other proof. Two witnesses, or one and strong corroborating circumstances, shall be necessary to sustain the charge of adultery or lewdness. The credibility or good character

of such witnesses must be personally known to the judge, or to the officer taking the deposition, who shall so certify, or it must be proved. It shall be the duty of the attorney for the county to resist every application for divorce, and if successful in defeating it, he shall be allowed a fee of not exceeding twenty dollars, to be paid by the husband, which he may be compelled to pay by attachment.

§ 2120. Venue — allegations necessary — condoning offense — annulment of divorce.

Action for divorce must be brought in the county where the wife usually resides, if she has an actual residence in the state; if not, then in the county of the husband's residence. And no such action shall be brought by one who has not been a continuous resident of this state for a year next before its institution. Nor, unless the party complaining had an actual residence here at the time of the doing of the act complained of, shall a divorce be granted for anything done out of this state, unless it was also a cause for divorce by the law of the country where the act was done. An action for divorce must be brought within five years next after the doing of the act complained of. Cohabitation as man and wife, after a knowledge of adultery or lewdness complained of, shall take away the right of divorce therefor. Every judgment for divorce may, at any time, be annulled by the court rendering it on the joint application of the parties, and they restored to the condition of husband and wife; but no divorce shall thereafter be granted between them for the same or a like cause.

§ 2121. Divorce from bed and board — causes for — effect of — maintenance pending action for divorce.

Judgment for separation or divorce from bed and board may also be rendered for any of the causes which allow divorce, or for such other cause as the court in its discretion may deem sufficient. Pending an action for any divorce the court may allow the wife

maintenance. A divorce from bed and board shall operate as to property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a divorce from the bond of matrimony, except that neither shall marry again during the life of the other, and except that it shall not bar curtesy, dower or distributive right. Such may be revised or set aside at any time by the court rendering it. Upon final judgment of divorce from the bond of matrimony the parties shall be restored such property, not disposed of at the commencement of the action, as either obtained from or through the other before or during the marriage in consideration thereof.

§ 2122. Allowance to wife out of husband's estate — maiden name restored.

If the wife have not sufficient estate of her own she may, on a divorce obtained by her, have such allowance out of that of her husband as shall be deemed equitable, and be restored to the name she bore before marriage, if she desires it.

§ 2123. Children — provision for pending divorce or when granted — fee-simple title not to be divested.

Pending an application for divorce, or on final judgment, the court may make orders for the care, custody and maintenance of the minor children of the parties, or children of unsound mind, or any of them, at any time afterward, upon the petition of either parent, revise and alter the same, having in all such cases of care and custody the interest and welfare of the children principally in view; but no such order for maintenance of children or allotment in favor of the wife shall divest either party of the fee-simple title to real estate.

§ 2124. Alimony — maintenance — remedies of wife.

When the husband is about to remove himself or property, or a material part of it, out of the state, or where there is a reason to suspect that he will fraudulently sell, convey or conceal his

property, the wife may obtain the necessary orders for securing alimony for herself and maintenance for their children without giving surety.

§ 2125. Minor children or persons joining Shakers — provisions for.

When a father or widow, or unmarried woman having a child, joins the religious society called Shakers, or any religious society holding similar faith, without having made adequate provisions for his or her child or children, the circuit court of the county where he or she resides, or of the county in which any part of his or her property may be, if not residing in this state, may, upon petition of any next friend appoint a committee to any infant child, or child of unsound mind, of such father or mother, and make out of his or her estate a provision for the maintenance of such child or children, and take it or them from such parent or society, and provide for the custody thereof.

§ 2126. Sales to defraud wife or children, void.

Sales and conveyances made to a purchaser with notice, or for the benefit of any religious society, in fraud or hindrance of the right of the wife or child to maintenance, shall be void as against them.

§ 2144. Divorce bars claim of husband or wife.

Divorce from the bond of matrimony shall bar all claims of either husband or wife to the property, real and personal, of the other after his or her decease.

§ 900. Divorce and alimony.

In actions for alimony and divorce, the husband shall pay the costs, of each party, unless it shall be made to appear in the action the wife is in fault and has ample estate to pay the same.

LOUISIANA.

*Merrick's Revised Civil Code of Louisiana, 1912.*¹

TITLE V.

OF SEPARATION FROM BED AND BOARD, AND OF DIVORCE.

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OF HUSBAND AND WIFE.

CHAPTER I.
ON MARRIAGE.

- ARTICLE 86. Marriage civil contract.
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TITLE V.
OF SEPARATION FROM BED AND BOARD, AND OF DIVORCE.

CHAPTER I.

OF THE CAUSES OF SEPARATION FROM BED AND BOARD, AND OF DIVORCE.

Art. 138. Separation from bed and board, causes for.

Separation from bed and board may be claimed reciprocally for the following causes:

1. In case of adultery on the part of the other spouse.
2. When the other spouse has been condemned to an infamous punishment.
3. On account of the habitual intemperance of one of the married persons, or excesses, cruel treatment, or outrages of one of them toward the other, if such habitual intemperance, or such ill treatment is of such a nature as to render their living together insupportable.
4. Of a public defamation on the part of one of the married persons toward the other.
5. Of the abandonment of the husband by his wife, or the wife by her husband.

6. Of an attempt of one of the married persons against the life of the other.

7. When the husband or wife has been charged with an infamous offense and shall actually have fled from justice, the wife or husband of such fugitive may claim a separation from bed and board, on producing proofs to the judge before whom the action for separation is brought that such husband or wife has actually been guilty of such infamous offense, and has fled from justice.

Spouse against whom judgment for separation from bed and board was rendered may obtain final divorce at expiration of two years if no reconciliation has taken place.

Art. 139. Divorce, causes for.

Married persons may also reciprocally claim a divorce for the several causes enumerated in article one hundred and thirty-eight; but, except in the granted, unless a judgment of separation from bed and board shall have been rendered between the parties, and on year shall have expired from the date of the judgment of separation from bed and board, and no reconciliation shall have taken place. In the cases excepted above, a judgment of divorce may be granted in the same decree which pronounces the separation from bed and board.

CHAPTER II.

OF THE PROCEEDINGS OF SEPARATION FROM BED AND BOARD.

Art. 140. Separation, how claimed.

Separation is to be claimed, sued for and pronounced in the competent courts of justice; it can not be made the subject of arbitration.

Art. 141. Id.

When the defendant is absent or incapable of acting from any cause, an attorney shall be appointed to represent him, against whom, contradicitorily, the suit shall be prosecuted.

Art. 142. Id. Cause occurring in foreign country, but marriage contracted in Louisiana.

Whenever a marriage shall have been contracted in this state, and the husband after such marriage, shall remove or shall have removed to a foreign country with his said wife, if said husband shall behave or have behaved toward his wife in said foreign country in such a manner as would entitle her, under our laws, to demand a separation from bed and board, it shall be lawful for her, on returning to the domicile where her marriage was contracted, to institute a suit there against her said husband for the purposes above mentioned, in the same manner as if they were still domiciliated in said place, any law to the contrary notwithstanding. In such cases an attorney shall be appointed by the court to represent the absent defendant; the plaintiff shall be entitled to all the remedies and conservatory measures granted by law to married women, and the judgment shall have force and effect in the same manner as if the parties had never left the state.

Art. 143. Id. For abandonment.

Separation grounded on abandonment by one of the married persons can be admitted only in the case when he or she has withdrawn himself or herself from the common dwelling without a lawful cause, has constantly refused to return to live with the other, and when such refusal is made to appear in the manner hereafter directed.

Art. 144. Absence for lawful cause.

The absence of the husband or wife, which has had a lawful cause, although it shall appear that the absentee has not been heard of, cannot authorize a demand of separation, except so far as is provided in the title: Of Absentees.

Art. 145. Abandonment; how proved; proceedings.

The abandonment with which the husband or wife is charged must be made appear by the three reiterated summons made to him

or her from month to month, directing him or her to return to the place of the matrimonial domicile, and followed by a judgment which has sentenced him or her to comply with such request, together with a notification of the said judgment, given to him or her from month to month for three times successively.

The summons and notification shall be made to him or her at the place of his or her usual residence, if he or she lives in this state, and, if absent, at the place of the residence of the attorney who shall be appointed to him or her by the judge for that purpose, at the suit of the husband or wife praying for separation from ben and board.

CHAPTER III.

OF THE PROVISIONAL PROCEEDINGS TO WHICH A SUIT FOR SEPARATION OR DIVORCE MAY GIVE OCCASION.

Art. 146. Custody of children.

If there are children of the marriage, whose provisional keeping is claimed by both husband and wife, the suit being yet pending and undecided, it shall be granted to the wife, whether plaintiff or defendant, unless there should be strong reasons to deprive her of it, either in whole or in part, the decision whereof is left to the discretion of the judge.

Art. 147. Assignment of domicile to wife suing.

If the wife who sues for a separation has left or declared her intention to leave the dwelling of her husband, the judge shall assign the house wherein she shall be obliged to dwell until the determination of the suit.

'The wife shall be subject to prove her said residence as often as she may be required to do so, and in case she fails so to do, every proceeding on the separation shall be suspended.

Art. 148. Alimony allowed wife.

If the wife has not a sufficient income for her maintenance during the suit for separation, the judge shall allow her a sum

for her support, proportioned to the means of her husband. The husband cannot be compelled to pay this allowance, unless the wife proves that she has constantly resided in the house appointed by the judge.

Art. 149. Inventory and injunction to protect wife's rights.

During the suit for separation, the wife may, for the preservation of her rights, require an inventory and appraisal to be made of the movables and immovables which are in possession of her husband, and an injunction restraining him from disposing of any part thereof in any manner.

Art. 150. Nullity of fraudulent alienations and debts made by husband.

From the day on which the action of separation shall be brought, it shall not be lawful for the husband to contract any debt on account of the community, nor to dispose of the immovables belonging to the same, and any alienation by him made after that time shall be null, if it be proved that such alienation was made with the fraudulent view of injuring the rights of the wife.

Art. 151. Divorce, same provisional proceedings in action for.

The action for divorce shall be accompanied with the same provisional proceedings to which a suit for separation from bed and board may give rise.

CHAPTER IV.

OF OBJECTIONS TO THE ACTION OF SEPARATION FROM BED AND BOARD, AND OF DIVORCE.

Art. 152. Reconciliation, effects of.

The action of separation shall be extinguished by the reconciliation of the parties, either after the facts which might have given ground to such action, or after the action had been commenced.

Art. 153. Fresh cause after reconciliation.

In either case the plaintiff shall be precluded from bringing his action; but he shall be at liberty to bring a new suit for causes arising since the reconciliation, and therein make use of the former motives to corroborate his new action.

Art. 154. Same exceptions in action for divorce.

The exceptions to an action of divorce shall be the same as those to the action of separation from bed and board, established by articles 152 and 153 of the civil code.

CHAPTER V.

OF THE EFFECTS OF SEPARATION FROM BED AND BOARD, AND OF DIVORCE.

Art. 155. Separation of property ensues.

Separation from bed and board carries with it separation of goods and effects.

Art. 156. Donations and advantages, effect on.

In case of separation from bed and board, the party against whom it shall have been pronounced shall lose all the advantages or donations the other party may have conferred by the marriage contract or since, and the party at whose instance the separation has been obtained shall preserve all those to which such party would have been entitled; and these dispositions are to take place even in case the advantages and donations were reciprocally made.

Art. 157. Children, custody of.

In all cases of separation, the children shall be placed under the care of the party who shall have obtained the separation, unless the judge shall, for the greater advantage of the children, and with the advice of the family meeting, order that some or all of them shall be entrusted to the care of the other party.

In all cases of divorce, the minor children shall be placed under the tutorship of that party who shall have obtained the divorce.

Art. 158. Children, rights of.

This separation or divorce shall not in any case deprive the children born of the marriage of any of the advantages which were secured to them by law, or by the marriage contract of their father and mother; but there is no right to any claim on the part of such children, except in the manner and under the circumstances where such claim would have taken place if there had been no separation.

Art. 159. Divorce, effect of.

The effects of a divorce shall not only be the same as are determined in the case of a separation from bed and board, but it shall also dissolve forever the bonds of matrimony between the parties, and place them in the same situation with respect to each other as if no marriage had ever been contracted between them.

Art. 160. Alimony to.

If the wife who has obtained the divorce has not sufficient means for her maintenance, the court may allow her in its discretion, out of the property and earnings of her husband, alimony which shall not exceed one-third of his income.

This alimony shall be revocable in case it should become unnecessary, and in case the wife should contract a second marriage. (As amended by L. 1916, No. 247.)

Art. 161. Adultery, accomplice in, marriage with forbidden.

In case of divorce on account of adultery, the guilty party can never contract matrimony with his or her accomplice in adultery, under the penalty of being considered and prosecuted as guilty of the crime of bigamy, and under the penalty of nullity of the new marriage.

TITLE IV.

CHAPTER IV.

OF THE NULLITY OF MARRIAGES.

Art. 110. Want of free consent.

Marriages celebrated without the free consent of the married persons, or of one of them, can only be annulled upon application of both the parties, or of that one of them whose consent was not free.

Mistake. When there has been a mistake in the person, the party laboring under the mistake can alone impeach the marriage.

Art. 111. Condoning of violence or mistake.

In the cases embraced by the preceding article, the application to obtain a sentence annulling the marriage is inadmissible if the married persons have, freely and without constraint, cohabited together after recovering their liberty or discovering the mistake.

Art. 112. Minor's marriage valid; disinherison.

The marriage of minors, contracted without the consent of the father and mother, cannot for that cause be annulled, if it is otherwise contracted with the formalities prescribed by law; but such want of consent shall be a good cause for the father and mother to disinherit their children thus married, if they think proper.

Art. 113. Annulment of bigamous or incestuous marriages.

Every marriage contracted under the other incapacities or nullities enumerated in the second chapter of this title may be impeached either by the married persons themselves, or by the person interested, or by the attorney-general; however, first, that marriages heretofore contracted between persons related within the prohibited degrees either or both of whom were then and afterwards domiciled in this state, and were prohibited from inter-

marrying here, shall nevertheless be deemed valid in this state, where such marriages were celebrated in other states or countries under the laws of which they were not prohibited; second, that marriages hereafter contracted between persons, either or both of whom were domiciled in this state and are forbidden to intermarry shall not be deemed valid in this state, because contracted in another state or country where such marriages are not prohibited, if the parties after such marriage return to reside permanently in this state. (As amended by act 54 of 1912.)

Art. 114. Id. By parties having interest.

But in all cases where, conformably to the preceding article, the action of nullity may be instituted by any person having a pecuniary interest, it can not be brought during the life of the two married persons by the collateral relations or by the children born of a previous marriage, until they have acquired an actual interest.

Art. 115. The other causes for nullity.

The other causes of nullity which existed by the ancient laws are abolished.

Art. 116. Annulment of bigamous marriage.

A married persons to whose prejudice a second marriage has been contracted can sue for the nullity of such marriage, even during the life of the other party with whom he or she had contracted the first marriage. In case the second marriage has been contracted in this state, and the defendant has left the state, an attorney shall be appointed by the court to represent the absent defendant.

Art. 117. Putative marriages.

The marriage which has been declared null produces nevertheless its civil effects as it relates to the parties and their children, if it has been contracted in good faith.

Art. 118. Id.

If only one of the parties acted in good faith, the marriage produces its civil effects only in his or her favor and in favor of the children born from the marriage.

Art. 136. The bond of matrimony is dissolved.

1. By the death of the husband or wife;
2. By a divorce legally obtained;
3. Whenever the marriage is declared null and void, for one of the causes mentioned in the fourth chapter of this title; or when another marriage is contracted, on account of absence, when authorized by law.

Separation from bed and board does not dissolve the bond of matrimony, since the separated husband and wife are not at liberty to marry again; but it puts an end to their conjugal cohabitation and to the common concerns which existed between them.

Art. 137. Second marriage of wife.

The wife shall not be at liberty to contract another marriage until ten months after the dissolution of her preceding marriage.

TITLE IV.

OF HUSBAND AND WIFE.

CHAPTER I.

ON MARRIAGE.

Art. 86. Marriage civil contract.

The law considers marriage in no other view than as a civil contract.

Art. 87. The laws prescribe :

1. The manner of contracting and celebrating marriages ;
2. The legal effects and consequences of marriage ;
3. The manner in which marriages may be dissolved.

Art. 88. What marriages legal.

Such marriages only are recognized by law as are contracted and solemnized according to the rules which it prescribes.

Art. 89. Marriages dissoluble.

Marriage is a contract intended in its origin to endure until the death of one of the contracting parties ; yet this contract may be dissolved before the death of either of the married persons, for causes determined by law.

Art. 91. Consent.

No marriage is valid to which the parties have not freely consented.

Consent is not free :

1. When given to a ravisher, unless it has been given by the party ravished, after she has been restored to the enjoyment of liberty ;
2. When it is extorted by violence ;
3. When there is a mistake respecting the person whom one of the parties intended to marry.

Art. 93. Bigamy.

Persons legally married are, until a dissolution of marriage, incapable of contracting another, under the penalties established by the laws of this state.

Art. 94. Prohibited degrees.

Marriage between persons related to each other in the direct ascending or descending line is prohibited. This prohibition is

not confined to legitimate children, it extends also to children born out of marriage. Marriage between white persons and persons of color is prohibited, and the celebration of all such marriages is forbidden and such celebration carries with it no effect, and is null and void.

Art. 95. Id.

Among collateral relations marriage is prohibited between brother and sister, whether of the whole or of the half blood, whether legitimate or illegitimate; between uncle and niece, between aunt and nephew, and also between first cousins. That no marriage contracted in contravention of the above provisions in another state by citizens of this state, without first having acquired a domicile out of this state, shall have any legal effect in this state.

No officer whose duty it is to issue a marriage license shall do so until he shall have received an affidavit from one of the parties to be married to the effect that he or she is not related to the other party within the degree prohibited hereinbefore.

Art. 96. Id.

All other impediments on account of relationship or affinity are abolished.

*Marr's Annotated Revised Statutes, 1915.*¹

§ 4458. Resident cannot go out of state and contract marriage void here.

If any person residing and intending to continue to reside in this state who is disabled or prohibited from contracting marriage under the laws of this state shall go into another state, territory, district, possession, or country and there contract a marriage prohibited

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and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state, with the same effect as though such prohibited marriage had been entered into in this state.

§ 4459. Resident of another state cannot contract marriage here void in such other state.

No marriage shall be contracted in this state by a party residing and intending to continue to reside in another state or jurisdiction, if such marriage would be void if contracted in such other state or jurisdiction, and every marriage celebrated in this state in violation of the provision shall be null and void.

§ 4466.

§ 4472. Curators ad hoc for absentees in suits for separation and divorce.

In any action for separation from bed and board or divorce, where the defendant is absent from the state, or in case of reconvention, when the plaintiff is absent from the state; and in actions for divorce based on a judgment of separation from bed and board, when the adverse party is absent from the state, the court having jurisdiction over the cause shall, upon application by any party in interest, appoint a curator ad hoc to represent such absent party, and all proceedings shall be had contradictorily with said curator ad hoc, and any judgment or divorce may be rendered against same curator ad hoc as might be rendered against his principal as if he were present in person in open court.

§ 4474. Competent witnesses.

No witness in a suit for divorce shall be declared incompetent, on account of his being allied or related to either the plaintiff or defendant.

§ 4475. How long after judgment of separation divorce may be sued for.

Whenever a judgment of separation from bed and board shall have been rendered and no no reconciliation between the spouses shall have taken place the married person in whose favor the judgment of separation from bed and board shall have been rendered, may, at the expiration of one year from the date that the said judgment shall become final, apply to and obtain from the court that rendered the judgment of separation from bed and board, a judgment of final divorce from the other spouse; and the married person against whom the judgment of separation from bed and board shall have been rendered may, at the expiration of two years from the date that the said judgment shall have become final, apply to and obtain from the court that rendered the judgment of separation from bed and board a judgment of final divorce from the spouse; provided, that whenever a judgment of final divorce shall be obtained under the provisions of this act, by the husband against whom the judgment of separation from bed and board shall have been rendered the wife shall have the same rights for recovering alimony from the said husband as are now provided by law for cases in which the wife is plaintiff, and provided, further, that the provisions of this act shall in no way interfere with the rights of the spouse, who shall have obtained the judgment of separation from bed and board to retain the custody and care of the children as now provided by law.

Appeal.

§ 1121. Delay for appealing in divorce case.

Whoever intends to appeal may do so either by petition or by motion in open court, at the same term at which the judgment was rendered, upon offering to give such surety as the court may direct, as hereafter provided. But in cases where the judgment

decrees a divorce, such petition or motion of appeal must be filed within thirty days, not including Sundays, after the signing of such judgment, instead of ten days, and shall operate as a suspensive appeal therefrom, and there shall be no devolutive appeal allowed thereafter.

MAINE.*Revised Statutes, 1916.***CHAPTER 65.****DIVORCE AND ANNULING ILLEGAL MARRIAGES.**

- SECTION**
1. Certain marriages void, without process.
 2. Causes for which divorce may be granted.
 3. Commencement of proceedings; service.
 4. Libelee's residence to be named in libel, when known.
 5. Perjury, penalty for.
 6. Pending libel, wife's expenses to be paid by husband.
 7. Court may free wife from restraint pending libel.
 8. Libel in order for hearing at first or return term; proviso.
 9. Alimony, and other provisions for wife in case of divorce for husband's fault.
 10. Provisions for husband in case of divorce for fault of wife.
 11. New trial within three years, when granted.
 12. Divorces decreed out of state.
 13. Issue inherit.
 14. Custody may be granted to third person or to suitable society.
 15. Illegal marriages, how annulled.
 16. Issue, when legitimate, and when not.
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CHAPTER 66.

- SECTION**
10. Proceedings in probate court for protection of wife deserted by, or living apart from, her husband.
 11. Proceedings by husband deserted by or living apart from wife; decree bars wife's rights in husband's property.
 12. Deserted wife obtaining decree may convey her property as if sole; decree bars husband's rights.
 13. Petition, where brought; notice.
 14. Rights of issue, marriage settlement or contract not affected.
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 16. Certified copy of any decree shall be filed in office of register of deeds.

CHAPTER 65.

DIVORCE AND ANNULLING ILLEGAL MARRIAGES.

§ 1. Certain marriages void, without process.

Marriages prohibited in sections one, two and three, of chapter sixty-four, if solemnized in this state, are absolutely void; and the sentence of either party to imprisonment for life and confinement under it, dissolves the bonds of matrimony, without legal process in either case.

*Divorce from Bonds of Matrimony.***§ 2. Causes for which divorce may be granted.**

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 three consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium or other drugs, cruel and abusive treatment, or on the libel 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, that the parties were married in this state or cohabited here after marriage, or if the libelant resided here when the cause of divorce accrued, or had resided here in good faith for one year prior to the commencement of proceedings, or if the libelee is a resident of this state. But 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 supreme judicial court has jurisdiction of libels for divorce in all counties except the county of Cumberland.

§ 3. Commencement of proceedings; service.

The libelant may file in the clerk's office a libel, signed by him, or insert it in a writ of attachment with power to attach real and

personal property, to respond to the decrees of the court as in other suits; and service thereon shall be made by summons and copy, fourteen days before it is returnable; the court in any county or a justice thereof in vacation, may order notice as in other suits.

§ 4. Libelee's residence to be named in libel, when known.

When the residence of the libelee can be ascertained, it shall be named in the libel and actual notice shall be obtained; if the libelee is out of the state, notice shall be given in such manner and by such means as the court may order. When the residence of the libelee is not known to the libelant, and cannot be ascertained by reasonable diligence, the libelant shall so allege under oath in the libel.

§ 5. Perjury, penalty for.

Whoever falsely and corruptly swears or affirms to any facts required as aforesaid, is guilty of perjury, and shall be punished by imprisonment not less than two, nor more than ten years.

§ 6. Pending libel, wife's expenses to be paid by husband.

Pending a libel, the court, or any justice thereof in vacation, may order the husband to pay to the clerk, for the wife, sufficient money for her defense or prosecution thereof, and to make reasonable provision for her separate support; enter such decree for the care and custody of the minor children as they think right; and enforce obedience by appropriate processes.

§ 7. Court may free wife from restraint pending libel.

After a libel is so filed in any county, the court, on the petition of the wife, may prohibit the husband from imposing any restraint on her personal liberty during its pendency.

§ 8. Libel in order for hearing at first or return term; proviso.

If either party requests in writing filed with the clerk on or before the return day of the libel, or the court orders it, the case shall be submitted to a jury; and if they find the allegations are true, and that a divorce ought to be granted according to section two, the court shall so decree. In all libels for divorce returnable to the supreme judicial court the libel shall be in order for hearing at the first or return term, provided service of said libel has been made in accordance with this chapter not less than sixty days before said return term. (As amended by L. 1917, ch. 181.)

§ 9. Alimony, and other provisions for wife in case of divorce for husband's fault.

When a divorce is decreed for impotence, the wife's real estate shall be restored to her, and the court may enter judgment for her against her husband for so much of her personal property as came to him by the marriage, or its value in money, as it thinks reasonable; and may compel him to disclose, on oath, what personal estate he so received, how it has been disposed of, and what then remains. When a divorce is decreed to the wife for the fault of the husband for any other cause, she shall be entitled to one-third, in common and undivided of all his real estate, except wild lands, which shall descend to her as if he were dead; and the same right to a restoration of her real and personal estate, as in case of divorce for impotence. The court may also decree to her reasonable alimony out of his estate, having regard to his ability; 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; and use all necessary legal processes to carry its decrees into effect.

§ 10. 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 one-third, in common and undivided

of all her real estate, except wild lands, which shall descend to him as if she were dead; and the court may allow him so much of her personal estate as seems reasonable. In all cases the right, title and interest of the libelee in the real estate of the libelant shall be barred by the decree.

§ 11. New trial within three years, when granted.

Within three years after judgment on a libel for divorce, a new trial may be granted as to the divorce when the parties have not cohabited, nor either contracted a new marriage since the former trial; and when either of the parties has contracted a new marriage since the former trial, a new trial may be granted as to alimony or specific sum decreed, on such terms as the court may impose and justice require, when it appears that justice has not been done through fraud, accident, mistake or misfortune.

§ 12. Divorces decreed out of the state.

When residents of the state go out of it for the purpose of obtaining a divorce for causes which occurred here while the parties lived here, or which do not authorize a divorce here, and a divorce is thus obtained, it shall be void in this state; but in all other cases, a divorce decreed out of the state according to the law of the place, by a court having jurisdiction of the cause and of both parties, shall be valid here.

§ 13. Issue inherit.

A divorce does not bar the issue of the marriage from inheriting, or affect their rights.

§ 14. Custody may be granted to third person or to suitable society.

The court making a decree of nullity, or of divorce, or any justice thereof in vacation, may also decree 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 third person or to some suitable society or institution for the care and protection of children, alter its decree from time to time as circumstances require; change the name of the wife, at her request; and in execution of the powers given it in this chapter may employ any compulsory process which it deems proper, by execution, attachment or other effectual form. (As amended by L. 1917, ch. 175.)

Annuling Illegal Marriages.

§ 15. Illegal marriages, how annulled.

When the validity of a marriage is doubted, either party may file a libel as for divorce; and the court shall decree it annulled or affirmed, according to the proof; but no such decree affects the rights of the libelee, unless he was personally notified to answer, or did answer to the libel.

§ 16. Issue, when legitimate, and when not.

When a marriage is annulled on account of the consanguinity or affinity of the parties, the issue is illegitimate; but when on account of nonage, insanity or idiocy, the issue is the legitimate issue of the parent capable of contracting marriage.

§ 17. Issue of second marriage, when legitimate.

When a marriage is annulled on account of a prior marriage, and the parties contracted the second marriage in good faith, believing that a prior husband or wife was dead, that fact shall be stated in the decree of nullity; and the issue of such second marriage, begotten before the commencement of the suit, is the legitimate issue of the parent capable of contracting.

CHAPTER 66.

JUDICIAL SEPARATION OF HUSBAND AND WIFE.

§ 10. Proceedings in probate court for protection of wife deserted by, or living apart from her husband.

If a husband, without just cause, deserts his wife, or if his wife, for just cause, is actually living apart from him, and if such desertion or living apart has continued for a period of at least one year next prior to the filing of the petition hereinafter referred to, the probate court may, upon her petition, or if she is insane, upon the petition of her guardian or next friend, enter a decree that such wife is so deserted or is so living apart and may prohibit the husband from imposing any restraint on her personal liberty during such time as such court shall by order direct; and upon the petition of either the husband or wife, or of the guardian or next friend of either who may be insane, may make further orders relative to the care, custody and maintenance of the minor children of the parties, may determine with which of their parents such children, or any of them, shall remain, may order the husband to pay to such court for the wife sufficient money for the prosecution of such petition and may from time to time, upon a similar petition, revise or alter any such order and make a new order in lieu thereof, as the circumstances of the parties or such minor children, or any of them, may require, and may enforce obedience by appropriate process.

§ 11. Proceedings by husband deserted by or living apart from wife; decree bars wife's rights in husband's property.

If a wife, without just cause, deserts her husband, or if he is living apart from her for just cause, and if such desertion or living apart has continued for the period set out in the preceding section, the probate court, may upon petition of the husband, or if he is insane, upon the petition of his guardian or next friend, enter a decree that such husband is so deserted or is so living apart,

and such husband may thereafter convey his real property in the same manner as if he were sole, and no portion of his estate shall descend to his said wife at his decease, neither shall she be entitled to receive any distributive share thereof or to waive any will made by him in her favor.

§ 12. Deserted wife obtaining decree may convey her property as if sole; decree bars husband's rights.

If the probate court has entered a decree that a wife has been deserted by her husband, without just cause, or has lived apart from him for just cause, for the period set out in section ten, she may convey her real property in the same manner and with the same effect as if she were sole, and no portion of her estate shall descend to her said husband at her decease, neither shall he be entitled to receive any distributive share thereof or to waive the provisions of any will made by her in his favor.

§ 13. Petition, where brought; notice.

The petition under the provisions of the three preceding sections may be brought and determined in the county in which either of the parties lives; except that if the petitioner has left the county in which the parties lived together and the respondent still lives therein, the petition shall be brought in that county, and such notice shall be given thereon as the judge of said court shall direct.

§ 14. Rights of issue, marriage settlement or contract not affected.

The provisions of the foregoing sections shall not bar the issue of the marriage from inheriting or affect their rights, neither shall it invalidate any marriage settlement or contract between the parties.

§ 15. Appeal.

Any party aggrieved by any order or decree hereinbefore provided for may appeal to the supreme judicial court in the same manner as provided for probate appeals.

§ 16. Certified copy of any decree shall be filed in office of register of deeds.

Whenever any decree provided for in sections ten and eleven hereof shall become effective either by reason of expiration of the time within which an appeal might have been taken or of final judgment on appeal, the register of probate, shall forthwith file in the office of the register of deeds in the same county, under seal of the probate court, a certified copy thereof which the register of deeds shall record without fee.

CHAPTER 112.**DEPOSITIONS.****§ 1. In what cases depositions may be used.**

Depositions taken for the causes and in the manner hereinafter mentioned, may be used in all civil suits or causes, . . . libels for divorce, . . .

MARYLAND.*Annotated Code.*¹

ARTICLE 16.

DIVORCE.

- SECTION 36. Jurisdiction to grant.
37. Grounds for divorce a vinculo matrimonii.
38. A mensa et thoro.
39. Who not entitled to file bill.
40. Divorce a mensa et thoro not to interfere with bill for divorce a vinculo matrimonii.
41. Admission by respondent, effect of.

§ 36. Jurisdiction to grant.

The courts of equity of this state shall have jurisdiction of all applications for divorce; and any person desiring a divorce shall file his or her bill in the court, either where the party plaintiff or defendant resides; or if the party against whom the bill is filed be a nonresident, then such bill may be filed in the court where the plaintiff resides; and upon such bill the same process by summons, notice or otherwise, shall be had to procure the answer and appearance of a defendant, as is had in other cases in chancery; and in all cases where, from the default of the defendant, a bill for divorce may be taken pro confesso, the court shall order testimony to be taken, and shall decide the case upon the testimony so taken.

§ 37. Grounds for divorce a vinculo matrimonii.

Upon a hearing of any bill for a divorce, the court may decree a divorce a vinculo matrimonii for the following causes, to wit:

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first, the impotence of either party at the time of the marriage; secondly, for any cause which, by the laws of this state, render a marriage null and void ab initio; thirdly, for adultery; fourthly, when the court shall be satisfied by competent testimony that the party complained against has abandoned the party complaining, and that such abandonment has continued uninterruptedly for at least three years, and is deliberate and final, and the separation of the parties beyond any reasonable expectation of reconciliation; fifthly, when the woman before marriage has been guilty of illicit carnal intercourse with another man, the same being unknown to the husband at the time of the marriage, and when such carnal connection shall be proved to the satisfaction of the court.

§ 38. A mensa et thoro.

Divorces a mensa et thoro may be decreed for the following causes, to wit: first, cruelty of treatment; secondly, excessively vicious conduct; thirdly, abandonment and desertion; and the court may decree such divorces forever, or for a limited time; and in all cases where divorce a mensa et thoro is decreed, it may be revoked at any time thereafter by the court granting the same, upon the joint application of the parties to be discharged from the operation of the decree; and the court may decree a divorce a mensa et thoro in cases where a divorce a vinculo matrimonii is prayed, if the causes proved be sufficient to entitle the party to the same; and in all cases where a divorce is decreed, the court passing the same shall have full power to award to the wife such property or estate as she had when married, or the value of the same, or of such part thereof as may have been sold or converted by the husband, having regard to the circumstances of the husband at the time of the divorce, or such part of any such property as the court may deem reasonable; and shall also have power in all cases in which the care and custody of the children of parties forms part of the relief prayed whether a divorce is decreed or denied to order and direct who shall have the guardianship and

custody of the children, and be charged with their support and maintenance and may at any time thereafter annul, vary or modify such order in relation to the children. (As amended by L. 1920, ch. 574.)

§ 39. Who not entitled to file bill.

No person shall be entitled to make application for a divorce, where the causes for divorce occurred out of this state, unless the party plaintiff or defendant shall have resided within this state for two years next preceding such application.

§ 40. Divorce a mensa et thoro not to interfere with bill for divorce a vinculo matrimonii.

When a bill prays for a divorce a vinculo matrimonii, the fact that the parties have been divorced a mensa et thoro shall not be taken to interfere with the jurisdiction of the court over the subject, and a party who has obtained a divorce a mensa et thoro on the ground of abandonment, which at the time of obtaining said divorce was not of the character and duration specified in section 37 of this article, shall not be estopped thereby from subsequently obtaining a divorce a vinculo matrimonii on the ground of abandonment proved to be of the character and duration specified in said section 37.

§ 41. Admission by respondent, effect of.

The admission of a respondent, of the facts charged in a bill for divorce, who consents to the application, shall not be taken of itself as conclusive proof of the facts charged, as the ground of the application.

ALIMONY.

SECTION 14. Court may hear causes for.

15. May award when divorce is decreed.
16. Against non-resident.

§ 14. Court may hear causes for.

The courts of equity of this state shall and may hear and determine all causes for alimony, in as full and ample manner as such causes could be heard and determined by the laws of England in the ecclesiastical courts there.

§ 15. May award when divorce is decreed.

In cases where a divorce is decreed, alimony may be awarded.

§ 16. Against non-resident.

In any decree for divorce against a non-resident, where alimony is prayed in the bill of complaint, and the same sets forth that the non-resident defendant is possessed of property in the state, the court shall have full authority to award alimony, and any property in the state of any person against whom alimony may be so awarded shall be liable for the same and subject to such decree as the court may pass in the premises. Any order of the court awarding alimony pendente lite shall have the same force and effect as in decree for divorce.

ARTICLE 17.

§ 24. Record of decrees for divorce.

The clerks of the several circuit courts for the counties, and of the circuit court of Baltimore city, and of the circuit court No. 2 of Baltimore city shall each keep a well-bound book in which they shall cause to be recorded all final decrees passed in all proceedings for divorce. Each of said clerks shall be entitled to

charge and receive a fee of one dollar for each and every decree therein recorded, to be part of the costs in the case, and to be taxed and collected as other costs are now taxed and collected. If any such clerk shall neglect or refuse to make such record, he shall be deemed guilty of a misdemeanor and shall forfeit the sum of one hundred dollars for the use of the state; provided, that said clerks shall not be required to record said decree until the costs thereof shall have been first paid.

ARTICLE 35.

§ 4. **Witnesses; testimony.**

. . . but in no case, civil or criminal, shall any husband or wife be competent to disclose any confidential communication made by one to the other during the marriage; and in suits, actions, bills or other proceedings instituted in consequence of adultery, or for the purpose of obtaining a divorce, . . . no verdict shall be permitted to be recovered, nor shall any judgment or decree be entered upon the testimony of the plaintiff alone; but in all such cases testimony in corroboration of that of the plaintiff shall be necessary.

ARTICLE 62.

§ 1. **Within what degrees of kindred or affinity marriages to be void.**

If any person within this state shall marry within any of the degrees of kindred or affinity expressed in the following table, the marriage shall be void.

§ 2. **A man shall not marry:**

His grandmother,
His grandfather's wife,

His wife's grandmother,
His father's sister,
His mother's sister,
His mother,
His stepmother,
His wife's mother,
His daughter,
His wife's daughter,
His son's wife,
His sister,
His son's daughter,
His daughter's daughter,
His son's son's wife,
His daughter's son's wife,
His wife's son's daughter,
His wife's daughter's daughter,
His brother's daughter,
His sister's daughter.

A woman shall not marry :
Her grandfather,
Her grandmother's husband.
Her husband's grandfather,
Her father's brother,
Her mother's brother,
Her father,
Her stepfather,
Her husband's father,
Her son,
Her daughter's son,
Her husband's son,
Her daughter's husband,
Her brother,
Her son's son,
Her son's daughter's husband,

Her daughter's daughter's husband,
Her husband's son's son,
Her husband's daughter's son,
Her brother's son,
Her sister's son.

§ 14. Inquiry into validity of marriage; appeal.

The circuit court for the several counties and the superior court of Baltimore city may, upon petition of either of the parties, inquire into, hear and determine and the circuit court for the several counties and the criminal court of Baltimore, on indictment, may inquire into, hear and determine the validity of any marriage and may declare any marriage contrary to the table in this article, or any second marriage, the first subsisting, null and void; and on appeal the depositions and evidence given in the cause shall be transmitted with the record to the court of appeals and thereupon such cause shall be heard, determined and adjudged de novo.

MASSACHUSETTS.*Revised Laws, 1902.*

CHAPTER 152.

OF DIVORCE.

| | | |
|---------|---------|--|
| SECTION | 1-5. | Causes for divorce. |
| | 6-19. | Libel for divorce. |
| | 20. | Resumption of former name by wife. |
| | 21. | Right to marry again. |
| | 22. | Effect of divorce on legitimacy of children. |
| | 23, 24. | Effect of divorce on rights to property. |
| | 25-28. | Care and support of children. |
| | 29-34. | General powers of court. |
| | 35. | Foreign divorces. |
| | 36-41. | Criminal provisions. |
| | 42, 43. | Statistics of divorce. |

*Causes for Divorce.***§ 1. Causes for divorce.**

A divorce from the bond of matrimony may be decreed for adultery, impotency, utter desertion continued for three consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication caused by the voluntary and excessive use of intoxicating liquor, opium or other drugs, cruel and abusive treatment or, on the libel of the wife, if the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her.

§ 2. Same.

A divorce may also be decreed if either party has been sentenced to confinement at hard labor for life or for five years or more in the state prison or in a jail or house of correction; and, after

a divorce for such cause, no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights.

§ 3. Divorce after absence raising a presumption of death.

A divorce may be decreed for any of the causes allowed by the provisions of the two preceding sections although the libellee has been continuously absent for such time and under such circumstances as would raise a presumption of death.

§ 4. Only if parties have lived together in commonwealth.

A divorce shall not, except as provided in the following section, be decreed if the parties have never lived together as husband and wife in this commonwealth; nor for a cause which occurred in another state or country, unless before such cause occurred, the parties had lived together as husband and wife in this commonwealth, and one of them lived in this commonwealth at the time when the cause occurred.

§ 5. Exception.

If the libellant has lived in the commonwealth for five years last preceding the filing of the libel, or if the parties were inhabitants of this commonwealth at the time of their marriage and the libellant has lived in this commonwealth for three years last preceding such filing, a divorce may be decreed for any cause allowed by law, whether it occurred in this commonwealth or elsewhere, unless it appears that the libellant has removed into this commonwealth for the purpose of obtaining a divorce.

Libels for Divorce.

§ 6. Venue of libel.

Libels for divorce shall be filed, heard and determined in the superior court held for the county in which one of the parties lives, except that, if the libellant has left the county in which the

parties lived together and the libellee still lives therein, the libel shall be heard and determined in the court held for that county.

§ 7. Libel to be signed.

The libel shall be signed by the libellant, if of sound mind and of legal age to consent to marriage; otherwise, it may be signed by the guardian of the libellant or by a person admitted by the court to prosecute the libel as his or her next friend.

§ 8. Notice to libellee.

The court or clerk may order the libellee to be summoned to appear and answer at the court having jurisdiction of the cause, by the publication of the libel or of the substance thereof, with the order thereon, in one or more newspapers which shall be designated in the order, or by delivering to the libellee an attested copy of the libel and a summons, or in such other manner as it or he may require. If such order is made by the clerk, the court may order an additional notice. If the libellee does not appear and the court considers the notice defective or insufficient, it may order further notice.

§ 9. Who may contest.

A person with whom the libellee is alleged in a libel for divorce for adultery to have committed adultery may appear and contest the libel.

§ 10. Attachment of husband's property.

Upon a libel by a wife for a divorce for a cause which accrued after marriage, the real and personal property of the husband may be attached to secure a suitable support and maintenance to her and to such children as may be committed to her care and custody.

§ 11. How made.

The attachment may be made upon the summons issued upon the libel, in the same manner as attachments are made upon writs in actions at law, for an amount which shall be expressed in the summons or order of notice. The attachment may be made by trustee process, in which case there shall be inserted in the summons or order of notice a direction to attach the goods, effects and credits of the libellee in the hands of the alleged trustee, and service shall be made upon the trustee by copy. If attachment is made by the trustee process, the libel shall be filed as provided in section six notwithstanding the provisions of section two of chapter one hundred and eighty-nine. The court may in such cases make all necessary orders to secure to the trustee his costs.

§ 12. Same.

The laws relative to attachments of real or personal property shall apply to attachments herein provided for, so far as such laws are not inconsistent with the provisions of the two preceding sections.

§ 13. Guardian for insane libellee.

If during the pendency of a libel the libellee is insane, the court shall appoint a suitable guardian to appear and answer in like manner as a guardian for an infant defendant in an action at law may be appointed. The compensation of such guardian shall be determined by the court and, together with his necessary expenses, shall be paid by the libellant if the court so orders. (As amended by L. 1914, ch. 385.)

§ 14. Costs or alimony during pendency of libel.

The court may require the husband to pay into court for the use of the wife during the pendency of the libel an amount which may enable her to maintain or defend the libel, although exceed-

ing the taxable costs; and may require him to pay to the wife alimony during the pendency of the libel.

§ 15. Protection of personal liberty of wife during pendency.

The court sitting in any county may, upon the petition of the wife, prohibit the husband from imposing any restraint upon her personal liberty during the pendency of the libel.

§ 16. Custody of children during pendency.

The court may in like manner, upon the application of either party, make such order relative to the care and custody of the minor children of the parties during the pendency of the libel as it may consider expedient and for the benefit of the children.

§ 17. Continuance of libel, and orders for temporary separation, etc.

The court may, without entering a decree of divorce, cause the libel to be continued upon the docket from time to time, and during such continuance may make orders and decrees relative to a temporary separation of the parties, the separate maintenance of the wife and the custody and support of minor children. Such orders and decrees may be changed or annulled as the court may determine, and shall, while they are in force, supersede any order or decree of the probate court under the provisions of section thirty-three of chapter one hundred and fifty-three, and may suspend the right of said court to act under the provisions of said section.

§ 18. Decrees of divorce to be entered nisi.

Decrees of divorce shall in the first instance be decrees nisi, and shall become absolute after the expiration of six months from the entry thereof, unless the court before the expiration of said period, for sufficient cause, upon application of any party interested, otherwise orders.

§ 19. Libel for desertion not to be defeated by temporary return.

A libel for divorce for desertion shall not be defeated by a temporary return or other act of the libellee if the court finds that such return or other act was not made or done in good faith, but with the intent to defeat such libel.

*Resumption of Former Name by Wife.***§ 20. Resumption of former name by wife.**

The court upon granting a divorce to a woman may allow her to resume her maiden name or the name of a former husband.

*Right to Marry Again.***§ 21. Remarriage of divorced parties.**

After a decree of divorce has become absolute, either party may marry again as if the other were dead, except that the party from whom the divorce is granted shall not marry within two years after the decree has become absolute.

*Effect of Divorce on Legitimacy of Children.***§ 22. Divorce for adultery by wife not to affect legitimacy of issue.**

A divorce for adultery committed by the wife shall not affect the legitimacy of the issue of the marriage, but such legitimacy, if questioned, shall be tried and determined according to the course of the common law.

*Effect of Divorce on Rights to Property.***§ 23. Effect of divorce for adultery of wife upon her separate property.**

Upon a divorce for adultery committed by the wife, her title to her separate real and personal property during her life shall not be affected, except that the court may decree to the husband so much of such property as it considers necessary for the support

of the minor children of the marriage who may have been decreed to the husband's custody; and if the wife afterward contracts a lawful marriage, the interest of the divorced husband in the wife's separate real and personal property, after her death, shall cease, except in so much thereof as may have been decreed to him as herein provided.

§ 24. No dower to wife after divorce, except, etc.

After a divorce, a wife shall not be entitled to dower in the land of her husband, unless, after a decree of divorce nisi granted upon the libel of the wife, the husband dies before such decree is made absolute, except that, if the divorce was for the cause of adultery committed by the husband or because of his sentence to confinement at hard labor, she shall be entitled to her dower in the same manner as if he were dead.

Care and Support of Children.

§ 25. Care and maintenance of minor children, upon a decree of divorce, etc.

Upon a decree of divorce, or upon petition of either parent, or of a next friend in behalf of the children, after notice to both parents, at any time after such decree, the court may make such decree as it considers expedient relative to the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children or any of them shall remain; and afterward may from time to time, upon the petition of either parent, or of a next friend, revise and alter such decree or make a new decree, as the circumstances of the parents and the benefit of the children may require. (As amended by L. 1918, ch. 257.)

§ 26. When divorce obtained out of commonwealth.

If, after a divorce has been decreed in another state or country, minor children of the marriage are inhabitants of this common-

wealth, the superior court, upon the petition of either parent or of a next friend in behalf of the children, after notice to both parents, may make like decrees relative to their care, custody, education and maintenance as if the divorce had been decreed in this commonwealth.

§ 27. Children, not to be removed from commonwealth.

A minor child of divorced parents who is a native of or has resided five years within this commonwealth and over whose custody and maintenance the superior court has jurisdiction shall not, if of suitable age to signify his consent, be removed out of this commonwealth without such consent, or, if under that age, without the consent of both parents, unless the court upon cause shown otherwise orders. The court, upon application of any person in behalf of such child, may require security and may issue writs and processes to effect the purposes of this and the two preceding sections.

§ 28. Custody of children.

In making an order or decree relative to the custody of children pending a controversy between their parents, or relative to their final possession, the right of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine their custody or possession.

General Powers of Court.

§ 29. Proceedings under this chapter.

The superior court may, if the course of proceeding is not specially prescribed, hear and determine all matters coming within the purview of this chapter according to the course of proceeding in ecclesiastical courts or in courts of equity, and may issue process of attachment and of execution and all other proper and necessary processes.

§ 30. Alimony.

Upon a divorce, or upon petition at any time after a divorce, the superior court may decree alimony to the wife, or a part of her estate, in the nature of the alimony, to the husband.

§ 31. Enforcement of decrees for.

The court may enforce decrees made for allowance, for alimony or for allowance in the nature of alimony, in the same manner as it may enforce decrees in equity.

§ 32. Security for.

When alimony or an annual allowance is decreed for the wife or children, the court may require sufficient security to be given for its payment according to the terms of the decree.

§ 33. Revision of decree for, etc.

After a decree for alimony or an annual allowance for the wife or children, and also after a decree for the appointment of trustees to receive and hold property in trust for the use of the wife or children as before provided, the court may, from time to time, upon the petition of either party, revise and alter its decree relative to the amount of such alimony or annual allowance and the payment thereof and also relative to the appropriation and payment of the principal income of the property so held in trust, and may make any decree relative to said matters which it might have made in the original suit.

§ 34. Costs on petitions, for, etc.

In all proceedings under the provisions of this chapter, the court may award costs in its discretion.

*Foreign Divorces.***§ 35. Validity of foreign divorces.**

A divorce decreed in another state or country according to the laws thereof by a court having jurisdiction of the cause and of

both the parties, shall be valid and effectual in this commonwealth; but if an inhabitant of this commonwealth goes into another state or country to obtain a divorce for a cause which occurred here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth.

Criminal Provisions.

§ 36. Cohabitation after divorce to be adultery.

If persons who have been divorced from each other cohabit as husband and wife or live together in the same house, they shall be held to be guilty of adultery.

§ 37. Penalty for personation, etc., in divorce suits.

Whoever falsely personates another or wilfully and fraudulently procures a person to personate another, or fraudulently procures false testimony to be given, or makes a false or fraudulent return of service of process upon a libel for divorce or in any proceeding connected therewith, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than two years.

§ 38. Penalty for procuring unlawful divorce.

Whoever knowingly procures or obtains or assists another to procure or obtain any false, counterfeit or fraudulent divorce or decree of divorce, or any divorce or decree of divorce from a court of another state for or in favor of a person who at the time of making application therefor was a resident of this commonwealth, such court not having jurisdiction to grant such decree, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months.

§ 39. Penalty for advertising for divorce business.

Whoever writes, prints or publishes, or solicits another to write, print or publish, any notice, circular or advertisement soliciting

employment in the business of procuring divorces or offering inducements for the purpose of procuring such employment shall be punished as provided in the preceding section. (As amended by L. 1911, ch. 85.)

§ 40. For unlawfully issuing certificates of divorce.

Whoever, except in compliance with an order of a court of competent jurisdiction, gives, signs or issues any writing which purports to grant a divorce to persons who are husband and wife according to the laws of this commonwealth or which purports to be a certificate that a divorce has been granted to such persons shall be punished by a fine of not more than one thousand dollars or by imprisonment in the jail for not more than three years, or by both such fine and imprisonment.

§ 41. Notice to district attorney of criminal offenses, etc.

If a divorce is granted for a cause which constitutes a crime, other than adultery, committed within this commonwealth and within the time provided by law for making complaints and finding indictments therefor, the court which grants the divorce may in its discretion cause notice of such facts to be given by the clerk of the court to the district attorney for the county in which such crime was committed, with a list of the witnesses proving such crime and any other information which the court may consider proper, but if the divorce is granted because of adultery the court shall cause notice of such facts, information and list of witnesses to be given to the district attorney, and thereupon the district attorney may cause complaint therefor to be made before a magistrate having jurisdiction thereof, or may present the evidence thereof to the grand jury. (As amended by L. 1911, ch. 127.)

Statistics of Divorce.

§ 42. Returns of statistics of divorce.

The clerks of the courts and the clerk of the superior court for civil business in the county of Suffolk shall annually, in

February, make returns for the last preceding calendar year to the secretary of the commonwealth, upon suitable blank forms which shall be provided by him, of the number of libels pending at the beginning of the year, the number of libels filed within the year, the number of divorces granted, the number of divorces refused, the number of libels contested, the number of libels uncontested, the alleged cause for divorce in each case, the sex of the libellant and the length of time the parties have been married, and the number of cases in which notice has been given to the district attorney for prosecution under the provisions of the preceding section and the crime for which divorce has been granted in such cases.

§ 43. Publication of abstracts of returns.

The secretary shall annually prepare from said returns abstracts and tabular statements of the facts relative to divorces for each county, and embody them, with necessary analyses, in his annual report to the general court relative to the registry of births, marriages and deaths.

CHAPTER 144.

§ 9. Allowance to widow and children, etc.

The court may order said property or its proceeds acquired by mortgage, lease or sale to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's wife and minor children, and to the discharge of such debts and claims for alimony as may be proved against said absentee. (As amended by L. 1906, ch. 175.)

L. 1902, ch. 324.

An act relative to the writ of habeas corpus.

§ 1. Writ of habeas corpus may issue in certain proceedings when custody, etc., of children is in question.

Any court which has jurisdiction of libels for divorce or for nullity of marriage, of petitions for separate support or maintenance, or of any other proceeding in which the care and custody of any child or children is drawn in question, may issue a writ of habeas corpus when necessary in order to bring before it such child or children. The writ may be made returnable forthwith before the court by which it is issued, and, upon its return, said court may make any appropriate order or decree relative to the child or children who may thus be brought before it.

L. 1907, ch. 390.

An act relative to proceedings in divorce.

§ 1. Investigation and report relative to suit for divorce, etc.; compensation of attorney.

Any justice of the superior court may, if he deems it advisable, appoint an attorney to investigate and report to the court in relation to any suit for divorce or any suit to have a marriage declared void, and may direct such attorney, or any other attorney, to defend the suit. The attorney may be appointed either before or after a decree of divorce nisi has been granted, and may enter objections to such decree nisi becoming absolute in the same manner as the libellee. The compensation for his services shall be fixed by the court, and shall be paid by the county in which the suit is pending, together with any expenses approved by the court,

upon certificate by a justice thereof to the county treasurer. The district police, local police and probation officers shall assist the attorney so appointed, if he requests their assistance.

L. 1911, ch. 121.

An act relative to naming co-respondents in libels for divorce for adultery.

§ 1. In an action for divorce persons not to be named as co-respondents, etc.

In an action for divorce, wherein the commission of adultery by either party is alleged as ground for the divorce or as ground for contesting the divorce, no libel, cross-libel or answer at the time of filing shall name any person as co-respondent. The party alleging such adultery, may by motion, after the libel has been entered, upon an ex parte hearing before a justice of the superior court, obtain permission to amend his libel, cross-libel or answer by inserting the name of the co-respondent if the justice finds probable cause has been shown to believe that such accused person has committed adultery with the libellee or libellant, and thereupon notice shall be sent to said co-respondent and to the other party to the action.

§ 2. Evidence not to be made a part of the record, etc.

The evidence produced at such ex parte hearing shall not be reported or made a part of the record in the case and the motion for said amendment shall not be read to the court during the divorce proceedings, but the clerk of the court shall make an entry in the docket of "Motion to insert name of co-respondent allowed," or "Motion to insert name of co-respondent denied," as the case may be.

L. 1913, ch. 360.

An act to make uniform the law relating to marriages in another state or country in evasion or violation of the laws of the state of domicile.

§ 1. Certain marriages declared void.

If any person residing and intending to continue to reside in this state who is disabled or prohibited from contracting marriage under the laws of this state shall go into another state or country and there contract a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state with the same effect as though such prohibited marriage had been entered into in this state.

§ 2. Marriage in this state of certain nonresidents prohibited, etc.

No marriage shall be contracted in this state by a party residing and intending to continue to reside in another state or jurisdiction if such marriage would be void if contracted in such other state or jurisdiction, and every marriage celebrated in this state in violation of this provision shall be null and void.

§ 3. Affidavits required.

Before issuing a license to marry to a person who resides and intends to continue to reside in another state, the officer having authority to issue the license shall satisfy himself, by requiring affidavits or otherwise, that such person is not prohibited from intermarrying by the laws of the jurisdiction where he or she resides.

§ 4. Penalties.

Any official issuing a license with knowledge that the parties are thus prohibited from intermarrying, and any person authorized to celebrate marriage who shall knowingly celebrate such a mar-

riage shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

§ 5. Purpose of act.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

MICHIGAN.*Howell's Statutes, 1912.*¹

CHAPTER 309.

Divorce.

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§ 11453. Marriages void without divorce — legitimacy of issue.

All marriages which are prohibited by law on account of consanguinity or affinity between the parties, or on account of either of them having a former wife or husband then living, and all marriage solemnized when either of the parties was insane or an idiot, shall, if solemnized within this state, be absolutely void,

without any decree of divorce or other legal process: provided, that the issue of such marriage, except that contracted while either of the parties thereto had a former husband or wife living, shall be deemed legitimate.

§ 11454. Same.

In case of a marriage solemnized when either of the parties was under the age of legal consent, if they shall separate during such non-age, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed void without any decree of divorce or other legal process.

§ 11455. Suit may be brought to annul void marriage.

When a marriage is supposed to be void, or the validity thereof is doubted, for any of the causes mentioned in the two preceding sections, either party, excepting in cases where a contrary provision is hereinafter made, may file a petition or bill in the circuit court of the county where the parties, or one of them, reside, or in the court of chancery for annulling the same, and such petition or bill shall be filed and proceedings shall be had thereon, as in the case of a petition or bill filed in said court for a divorce; and upon due proof of the nullity of the marriage, it shall be declared void by a decree or sentence of nullity.

§ 11456. Suit to affirm marriage.

When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a bill or petition in the manner aforesaid, for affirming the marriage; and upon due proof of the validity thereof, it shall be declared valid by a decree or sentence of the court; and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned.

§ 11457. Sentence to imprisonment for life dissolves marriage.

When either party shall be sentenced to imprisonment for life in any prison, jail or house of correction, the marriage shall be thereby absolutely dissolved, without any decree of divorce or other legal process, and no pardon granted to the parties so sentenced, shall restore such party to his or her conjugal rights.

§ 11458. Divorce from bonds of matrimony, for what cause may be decreed.

A divorce from the bonds of matrimony may be decreed by the circuit court of the county where the parties, or one of them, reside, or by the court of chancery, on the application by petition or bill of the aggrieved party, in either of the following cases:

First. Whenever adultery has been committed by any husband or wife.

Second. When one of the parties was physically incompetent at the time of the marriage;

Third. When one of the parties has been sentenced to imprisonment in any prison, jail or house of correction, for three years or more; and no pardon granted to the party so sentenced, after a divorce for that cause, shall restore such party to his or her conjugal rights;

Fourth. When either party shall desert the other for a term of two years;

Fifth. When the husband or wife shall have become an habitual drunkard;

Sixth. And the circuit courts may, in their discretion, upon application, as in other cases, divorce from the bonds of matrimony any party who is a resident of this state, and whose husband or wife shall have obtained a divorce in any other state.

§ 11459. Divorce from bed and board, when may be decreed.

A divorce from bed and board forever, or for a limited time, may be decreed for the ground of extreme cruelty, whether practiced by using personal violence, or by any other means; or for

utter desertion by either of the parties for the term of two years; and a like divorce may be decreed on the complaint of the wife, when the husband, being of sufficient ability to provide a suitable maintenance for her, shall grossly or wantonly and cruelly refuse or neglect so to do.

§ 11460. Same — when absolute divorce may be granted.

A divorce from the bonds of matrimony may be decreed for either of the causes mentioned in the preceding section whenever, in the opinion of the court, the circumstances of the case shall be such that it will be discreet and proper so to do; but no divorce from the bonds of matrimony for either of the causes mentioned in the preceding sections shall be entered in any case where the same is not asked for by the complainant in the bill of complaint filed therein, or by the defendant on a cross-bill unless the court hearing the evidence shall deem it for the best interests of the parties to grant a divorce from the bonds of matrimony and in that event the court may grant such divorce.

§ 11461. Divorce, how obtained — plaintiff to be a resident — marriage solemnized in state — cases in which granted — defendant to be a resident — service of notice within state — without this state — when desertion deemed to have occurred in state — taking of proofs, etc. — proof necessary when defendant outside of state.

No decree of divorce shall be granted by any court in this state in any case unless:

First. The party applying therefor shall have resided in this state for one year immediately preceding the time of filing the bill or petition therefor; or

Second. The marriage which it is sought to dissolve was solemnized in this state, and the party applying for such divorce shall have resided in this state from the time of such marriage until the time of bringing such suit for divorce.

No decree of divorce shall be granted in any case except when one of the following facts exist:

First. When the defendant is domiciled in this state at the time the bill or petition for divorce is filed; or

Second. When the defendant shall have been domiciled in this state when the cause for divorce alleged in the bill or petition arose; or

Third. When the defendant shall have been brought in by publication, or shall have been personally served with process in this state, or shall have been personally served with a copy of the order for appearance and publication within this state or elsewhere, or has voluntarily appeared in such action or proceeding. Whenever any such order shall be served outside this state, proof of such service shall be made by the affidavit of the person who shall serve the same, made before a justice of the peace or notary public, and when such affidavit shall be made outside this state, it shall have attached thereto the certificate of the clerk of a court of record, certifying to the official character of the justice or notary, and the genuineness of his signature to the jurat of the affidavit.

In all cases where divorce is asked on the ground of desertion, such desertion shall be deemed to have occurred and taken place in this state, for the purpose of this act, when the parties, complainant and defendant, shall have been actually and in good faith domiciled in this state at the time the defendant actually abandoned the complainant, without the proof of his or her actual intent at the time of such abandonment. Whenever the cause or causes for divorce charged in the bill or petition shall have occurred out of this state, no decree of divorce shall be granted unless the complainant or defendant, one or both of them, shall have resided in this state for two years immediately preceding the filing of the bill or petition for such divorce. No proofs or testimony shall be taken in any case for divorce until the expiration of two months from the time of filing the bill or petition therefor, except where the cause for divorce is desertion, or when the testimony is taken conditionally for the purpose of perpetuating such testimony. When

the defendant in any case for divorce shall not be domiciled in this state at the time of commencing such suit, or shall not have been domiciled therein at the time the cause for divorce arose, before any decree of divorce shall be granted the complainant must prove that the parties have actually lived and cohabited together as husband and wife within this state, or that the complainant has in good faith resided in this state for two years immediately preceding the filing of the bill or petition for divorce.

§ 11462. Same — oath of complainants.

No divorce shall be decreed in any case when it shall appear that the petition or bill therefor was founded in or exhibited by collusion between the parties; and the oath or affirmation administered to the complainant in swearing to such petition or bill shall, in addition to all other legal requirements, recite the following: "And you do solemnly swear (or affirm), that there is no collusion, understanding or agreement whatever between yourself and the defendant herein in relation to your application for divorce." And no divorce shall be decreed in any case where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.

§ 11463. Bill or petition by wife in her own name; answer without oath.

A petition or bill for a divorce may be exhibited by a wife in her own name, as well as a husband; and in all cases the respondent may answer such bill without oath or affirmation.

§ 11464. Suits, how conducted.

Suits to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as other suits in courts of equity; and the court shall have power to award issues, to decree costs, and to enforce its decrees, as in other cases.

§ 11465. Court may require husband to pay expenses — costs.

In every suit brought, either for a divorce, or for a separation, the court may, in its discretion, require the husband to pay any sums necessary to enable the wife to carry on or defend the suit during its pendency, and it may decree costs against either party, and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

§ 11466. Court may prohibit restraint of liberty of wife.

After the exhibiting of a petition or bill in a suit to annul a marriage or for a divorce, whether from the bond of matrimony or from bed and board, the court may at any time, either in term of vacation, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the suit.

§ 11467. Care and maintenance of children during pendency of suit.

The court may, in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance, during the pendency of such suit, as shall be deemed proper and necessary, and for the benefit of the children.

§ 11468. Order in relation to care, etc., of children on final decree.

Upon pronouncing a sentence or decree of nullity of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from bed and board, the court may make such further decree as it shall deem just and proper, concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them, shall remain.

§ 11469. Decree may be revised, and new decree made.

The court may, from time to time afterwards, on the petition of either of the parents, revise and alter such decree concerning the care, custody and maintenance of the children, or any of them, and make a new decree concerning the same, as the circumstances of the parents, and the benefit of the children, shall require.

§ 11470. When wife entitled to her real estate.

Whenever the nullity of a marriage, or a divorce from the bond of matrimony for any cause excepting that of adultery committed by the wife, shall be decreed, and when the husband shall be sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate, in like manner as if her husband were dead.

§ 11471. Restoration of personal estate to wife, etc.

Upon every such dissolution of a marriage as is specified in the preceding section, and also upon every divorce from bed and board, the court may make a further decree for restoring to the wife the whole, or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof, to be paid by her husband in money.

§ 11472. Trustees, when may be appointed.

Upon every divorce for adultery committed by the husband, and upon every divorce from bed and board for any cause, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section, the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid into the hands of a trustee or trustees, to be appointed by the court, upon trust to invest the same and to apply the income thereof to the support

and maintenance of the wife, and of the minor children of the marriage, or any of them, in such manner as the court shall direct.

§ 11473. Duties of trustees, their bonds.

Such trustees shall also pay over the principal sum to the wife and children of the marriage, when ordered by the court, in such proportions, and at such times as the court shall direct, regard being had, in the disposition of the said income, as well as of the principal sum, to the situation and circumstances of the wife and children; and the said trustees shall give such bonds as the court shall require for the faithful performance of their trust.

§ 11474. Husband may be required to disclose an oath.

Whenever the court shall think proper to award to the wife any of her personal estate, or any money in lieu thereof, in pursuance of the foregoing provisions, such court may require the husband to disclose on oath what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

§ 11475. Court may further decree alimony, etc.

Upon every divorce from the bond of matrimony for any cause except that of adultery committed by the wife, and also upon every divorce from bed and board for any cause, if the estate and effects awarded to the wife shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, the court may further decree to her such part of the personal estate of the husband and such alimony out of his estate real and personal, to be paid to her in gross or otherwise as it shall deem just and reasonable, having regard to the ability of the husband and the character and situation of the parties, and all the other circumstances of the case.

§ 11476. When wife entitled to dower.

When the marriage shall be dissolved by the husband being sentenced to imprisonment for life, and when a divorce shall be decreed for the cause of adultery committed by the husband, or for the misconduct or habitual drunkenness of the husband, or on account of his being sentenced to imprisonment for a term of three years or more, the wife shall be entitled to her dower in his lands in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

§ 11477. Alimony to constitute lien on real estate — court may decree sale of property — court may decree division of real estate.

In all cases where alimony or allowance for the support and education of minor children shall be decreed to the wife, the amount thereof shall constitute a lien upon such of the real and personal estate of the husband as the court by its decree shall direct, and in default of payment of the amount so decreed the court may decree the sale of the property against which such lien is decreed in the same manner and upon like notice as in suits for the foreclosure of mortgage liens; or the court may award execution for the collection of the same, or the court may sequester the real and personal estate of the husband and may appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate to be applied to the payment thereof or the court in lieu of a money allowance may decree such a division between the husband and wife of the real and personal estate of the husband or of the husband and wife by joint ownership or right as he shall deem to be equitable and just.

§ 11478. Court may alter decree for alimony, etc., on petition.

After a decree for alimony or other allowance, for the wife and children, or either of them, and also after a decree for the appointment of trustees, to receive and hold any property for the use of the wife or children as before provided, the court may, from time

to time, on the petition of either of the parties, revise and alter such decree, respecting the amount of such alimony or allowance and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of the said matters which such court might have made in the original suit.

§ 11479. Legitimacy of children in case of adultery.

A divorce for the cause of adultery committed by the wife, shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, may be determined by the court upon the proofs in the cause; and in every case, the legitimacy of all children begotten before the commencement of the suit shall be presumed until the contrary be shown.

§ 11480. Legitimacy in cases of non-age, etc.

Upon the dissolution of a marriage on account of the non-age, insanity or idiocy of either party, the issue of the marriage shall be deemed to be in all respects the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

§ 11481. Legitimacy in case of former husband or wife living.

When a marriage is dissolved on account of a prior marriage of either party, and it shall appear that the second marriage was contracted in good faith, and with the full belief of the parties that the former wife or husband was dead, that fact shall be stated in the decree of divorce or nullity; and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

§ 11482. Cohabitation after divorce, how punished.

If any persons, after being divorced from the bond of matrimony for any cause whatever, shall cohabit together, they shall be liable to all the penalties provided by law against adultery.

§ 11483. Who may exhibit bill to annul marriage, in case of non-age.

A bill to annul a marriage on the ground that one of the parties was under the age of legal consent, may be exhibited by the parent or guardian entitled to the custody of such minor; or by the next friend of such minor; but in no case shall such marriage be annulled on the application of a party who was of the age of legal consent at the time of the marriage, nor when it shall appear that the parties, after they had attained the age of consent, had freely cohabited as man and wife.

§ 11484. In case of idiot, or lunatic, who may exhibit bill.

A bill to annul a marriage on the ground of insanity or idiocy, may be exhibited by any person admitted by the court to prosecute as the next friend of such idiot or lunatic.

§ 11485. When lunatic may exhibit bill, and when nullity not to be decreed.

The marriage of a lunatic may also be declared void, upon the application of the lunatic, after the restoration of reason; but, in such case, no sentence of nullity shall be pronounced, if it shall appear that the parties freely cohabited together as husband and wife, after the lunatic was restored to a sound mind.

§ 11486. When nullity not to be decreed in case of force or fraud.

No marriage shall be annulled on the ground of force or fraud, if it shall appear that, at any time before the commencement of the suit, there was a voluntary cohabitation of the parties as husband and wife.

§ 11487. Issue of marriage annulled on account of force or fraud.

If there shall be any issue of a marriage, annulled on the ground of force or fraud, the court shall decree their custody to the

innocent parent, and may also decree a provision for their education and maintenance out of the estate and property of the guilty party.

§ 11488. For physical incapacity, suit to be brought within two years.

A suit to annul a marriage, on the ground of the physical incapacity of one of the parties shall only be maintained by the injured party, against the party whose incapacity is alleged; and shall, in all cases, be brought within two years from the solemnization of the marriage.

§ 11489. Decree not to be made on confession — parties may testify.

No decree of divorce shall be made solely on the declarations, confessions, or admissions of the parties, but the court shall require other evidence of the facts alleged in the bill for that purpose, but either party may, if he or she elect, testify in relation to such facts: provided, however, that the testimony of either party to the action shall be taken only in open court, and that such testimony shall not be received in support or in defense of a charge of adultery.

§ 11490. In case of adultery, court may deny divorce in certain cases.

In any suit brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

First. When the offense shall appear to have been committed by the procurement, or with the connivance of the complainant;

Second. When the offense charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties, with the knowledge of the offense;

Third. When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have been brought within five years after the discovery by the complainant of the offense charged.

§ 11491. Court may decree support, though divorce from bed and board be not decreed.

In case of an application for a divorce from bed and board, although a decree for such divorce be not made, the court may make such order or decree for the support and maintenance of the wife and children, or any of them, by the husband, or out of his property, as the nature of the case may render suitable and proper.

§ 11492. Decrees for divorce from bed and board may be revoked.

When a decree of divorce from bed and board, forever, or for a limited time, shall have been pronounced, may be revoked at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and their producing satisfactory evidence of their reconciliation.

§ 11493. When certain questions shall be asked in taking testimony.

In all suits for divorce, if any of the testimony in the case is taken before a circuit court commissioner, or by stipulation before any other officer, it shall be the duty of such commissioner, or other officer, to ask of each and every witness sworn by and before him in such cause the following questions [questions] which shall be reduced to writing in the testimony: "Do you know of any fact, matter or circumstance, which will in any way tend to weaken complainant's case for divorce? If so, state the same particularly and fully;" and the answer of the witness to such question shall be reduced to writing by the said commissioner, or other officer, verbatim as far as possible, and the question and answer shall be returned to the court with the other testimony in the case.

§ 11494. Bill to enumerate children of certain age.

Every bill of complaint filed shall set forth the names and ages of all children of the marriage, and when there are children under sixteen years of age a copy of the summons issued in the cause shall be served upon the prosecuting attorney of the county where suit is commenced, and it shall be the duty of said prosecuting attorney to enter his appearance in said cause, and when, in his judgment, the interest of said children or the public good so requires, he shall introduce evidence and appear at the hearing and oppose the granting of a decree of divorce. And in any case wherein there are no children the issue of such marriage under the age of sixteen years, when it shall appear to the court that the public good so requires, an order may be entered requiring the prosecuting attorney to appear and oppose the granting of a decree of divorce. For every case which the prosecuting attorney investigates, and in which he appears by and with the consent of the court, he shall receive the sum of five dollars, to be paid by the county treasurer upon the certificate of the circuit judge that such services have been performed: provided, that nothing in this act contained shall be construed as preventing prosecuting attorneys or their partners from acting as solicitors or counsel for either party to the suit. And in case a prosecuting attorney shall be in any way interested as solicitor or counsel for either of said parties it shall be the duty of the court to appoint some reputable attorney to perform the services of prosecuting attorney, as provided in this act, who shall receive the compensation provided for such service. (As amended by L. 1919, No. 397.)

§ 11495. Court may fix the time in which remarriage shall not take place — proviso as to limit of time and penalty for violation.

The court granting a decree of divorce may provide in such decree that the party against whom any divorce is granted shall not marry again within such time as shall be fixed by the court, which time shall be set out in the decree: provided, that such time

shall not exceed the period of two years from the time such decree is granted. And in case any person shall marry contrary to the time set out in such decree said party shall be deemed to have committed the crime of bigamy and shall be subject to the pains and penalties therefor.

Property Settlements.

§ 11496. Decree to include provision in lieu of dower.

When any decree of divorce is hereafter granted in any of the courts of this state, it shall be the duty of the court granting such decree to include in it a provision in lieu of the dower of the wife in the property of the husband, and such provision shall be in full satisfaction of all claims that the wife may have in any property which the husband owns or may thereafter own, or in which he may have any interest.

§ 11497. Tenants in common.

Every husband and wife owning real estate as joint tenants or as tenants by entireties shall, upon being divorced, become tenants in common of such real estate, unless the ownership thereof is otherwise determined by the decree of divorce.

§ 11498. Bill of complaint, etc., what may ask — court may award lands,

The bill of complaint or amendment thereto, or the answer or cross bill or amendment thereto, filed in any divorce proceeding may ask that the ownership of the lands described therein and owned by the parties to such suit as joint tenants or as tenants by entireties shall be determined by the decree of divorce, if granted, and in such case the court granting the divorce may award such lands to one or the other of said parties, or any part of it to either of them, or may order such lands to be sold under the direction of a circuit court commissioner, and the proceeds thereof divided between the parties in such proportion as the court shall order;

or may appoint commissioners to partition such lands between said parties in the proportion fixed by the decree. The proceedings following the appointment of such commissioner shall conform to the law governing the partition of lands between tenants in common.

§ 11499. Record of decree.

A certified copy of any decree granted in a suit for divorce may be recorded in the office of the register of deeds of any county in this state.

Actions for Alimony.

§ 11500. Alimony, decree for, when rendered in another state.

In all cases where a decree for alimony has been rendered in another state in a case where the party against whom the decree was rendered was present in court or was personally served with process within the jurisdiction of the court, the alimony decreed upon the final hearing may be recovered in an action at law in this state, regardless of whether the same is decreed to be paid in one payment or in installments from time to time.

§ 11501. Proceedings, when court may stay.

If the defendant in this state shows that he has made proper application in the court of the other state for a reduction of any further order in relation to the alimony in the courts of the other state, the court in this state may stay the proceedings in this state on such terms as it desires to impose.

§ 11502. Judgments, stay of.

All judgments in such cases shall be stayed sixty days, and if during said term the defendant in this state presents satisfactory evidence of a change in the decree of the courts of the other state, the court may alter or amend its judgment as to it may seem proper and just.

*Changing Names.***§ 11503. Maiden name may be restored to women — where there are minor children.**

The several circuit courts of this state, whenever a decree of divorce is granted, may, at the instance of the woman, whether complainant or defendant, decree to restore to her her maiden name, or the name she legally bore prior to her marriage to the husband in the divorce suit, or allow her to adopt another name: provided, that when there is a minor child or children, issue of the marriage, this act shall not apply.

§ 11425. Prohibited degrees of relationship as affecting men.

No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, nor his sister, brother's daughter, sister's daughter, father's sister, or mother's sister, or cousin of the first degree.

§ 11426. Prohibited degrees of relationship as affecting women.

No woman shall marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, nor her brother, brother's son, sister's son, father's brother, mother's brother, or cousin of the first degree.

§ 11427. Legal impediments to marriage — spouse living.

No marriage shall be contracted whilst either of the parties has a former wife or husband living, unless the marriage with such former wife or husband shall have been dissolved.

§ 11428. Competency of parties — insane — feeble minded — persons affected with venereal diseases — miscegenation — violation a felony — physicians, competency as witnesses.

No insane person, idiot, or person who has been afflicted with syphilis or gonorrhoea and has not been cured of the same, shall be capable of contracting marriage. All marriages heretofore contracted between white persons and those wholly or in part of African descent are hereby declared valid and effectual in law for all purposes; and the issues of such marriages shall be deemed and taken as legitimate as to such issue and as to both of the parents. Any person who has been afflicted of syphilis or gonorrhoea and has not been cured of the same, who shall marry shall be deemed guilty of a felony and upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the State Prison at Jackson not more than five years or by both such fine and imprisonment in the discretion of the court: provided, that in all prosecutions under this act a husband shall be examined as a witness against his wife and a wife shall be examined as a witness against her husband whether such husband or wife consent or not: and provided further, that in all cases arising under this act any physician who has attended or prescribed for any husband or wife for either of the diseases above mentioned shall be compelled to testify to any facts found by him from such attendance. No person who has been confined in any public institution or asylum as an epileptic, feeble-minded, imbecile or insane patient shall be capable of contracting marriage without, before the issuance by the county clerk of the license to marry, filing in the office of the said county clerk a verified certificate from two regularly licensed physicians of this state that such person has been completely cured of such insanity, epilepsy, imbecility, or feeble-mindedness and that there is no probability that such person will transmit any of such defects or disabilities to the issue of such marriage. Any person of sound mind who shall

intermarry with such insane person or idiot or person who has been so confined as an epileptic, feeble-minded, imbecile or insane patient in any public institution or asylum, except upon the filing of certificate as herein provided, with knowledge of the disability of such person, or who shall advise, aid, abet, cause, procure or assist in procuring any such marriage contrary to the provisions of this section shall be deemed guilty of a felony and on conviction thereof in any court of competent jurisdiction shall be punished by fine of not more than one thousand dollars or by imprisonment in the State Prison at Jackson not less than one year nor more than five years, or by both such fine and imprisonment in the discretion of the court.

§ 11527. Powers of wife on divorce from bed and board.

Upon a divorce from bed and board, the wife shall have the same powers and rights in respect to her real and personal estate, and to such as she may afterwards acquire, and shall be subject to the same liabilities in all respects as an unmarried woman, and may sue and be sued in her own name in like manner.

§ 11961. Issues on legality of marriage, when to be tried by a jury.

All issues upon the legality of a marriage (except where a marriage is sought to be annulled on the ground of the physical incapacity of one of the parties), shall be tried by a jury of the country.

L. 1913, No. 239.

§ 1. Failure to pay alimony.

In all divorce and separate maintenance cases where by order or decree of the court a party has been required to pay money to the

opposite party as either temporary or permanent alimony, and, being of sufficient ability, has failed or refused to obey such order, and upon proceedings duly had for that purpose, has been found guilty of contempt of court for such failure or refusal, the court, on the making of such order holding such party in contempt, in addition to the other remedies provided by law, may make an order placing such delinquent on probation or may order him confined in the Detroit House of Correction where his earnings, or a portion thereof, shall be applied to the support of his wife or children or both, as in other cases provided by law, until the order or decree of such court has been complied with, or until the further order of the court, but for a period not exceeding one year. (Amended by L. 1919, No. 415.)

§ 2. Issuance of commitment.

This act shall not prevent the issuance of the usual commitment for contempt should the probationer fail to comply with the terms and conditions of his probation.

L. 1913, No. 379.

§ 1. Alimony; court may punish neglect, etc.

In all suits for divorce and separate maintenance where an order or decree for the payment of temporary or permanent alimony has been made, and where the party, whether complainant or defendant, has appeared in person or by solicitor or has been personally served with process within the jurisdiction of the court making such order or decree for the payment of alimony, the court making such order or decree shall have power to punish by fine and imprisonment or both, any neglect or violation of said order, upon the petition of the party whose rights thereunder may have been impaired, impeded or prejudiced by such neglect or violation of said order.

§ 2. May bring party before court.

When any decree or order shall have been made for the payment of temporary or permanent alimony to be paid in certain stipulated payments directed to be made in said order to the register of the court, and any of such payments shall be in default, the party prejudiced thereby may make a motion before the court making such order showing by the records in the register's office that such default has been made, and thereupon the court shall forthwith issue an attachment to arrest such party in default and bring him immediately before the court to answer for such neglect.

§ 3. Notice not required.

No demand of any kind or notice of the making of the order for the payment of such alimony shall be necessary in the cases enumerated in the first section of this act.

§ 4. Execution of attachment.

When said attachment shall be issued it shall be executed by the sheriff of the county, or by any officer authorized to make such arrest, who shall arrest the party named therein and keep him in actual custody and bring him forthwith before the court issuing such attachment, and shall keep and detain him until the court shall make some further order in the premises.

§ 5. Bond.

The party arrested on such attachment shall be discharged therefrom upon executing and delivering to the register of the court issuing such attachment, a bond with two sufficient sureties in a penal sum to be fixed by the register, conditioned for the immediate and faithful performance of the terms of said order for the payment of alimony, or said party may be discharged from arrest by such other order in the premises as the court may enter therein after a full hearing thereon.

MINNESOTA.*General Statutes, 1913.*¹

CHAPTER 71.

DIVORCE.

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- SECTION 7134. Separation.
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§ 7106. What marriages void.

All marriages which are prohibited by law on account of consanguinity, or on account of either party having a former husband or wife then living, if solemnized within this state, shall be absolutely void, without any decree of divorce or other legal proceedings: Provided, that if any person whose husband or wife has been absent for five successive years, without being known to such person to be living during that time, marries during the lifetime of such absent husband or wife, the marriage shall be void only from the time that its nullity is duly adjudged.

§ 7107. What voidable.

When either party to a marriage is incapable of assenting thereto for want of age or understanding, or when the consent of either has been obtained by force or fraud, and there is no subsequent voluntary cohabitation of the parties, the marriage may be annulled at the suit of the injured party, and shall be void from the time its nullity is adjudged.

§ 7108. Action to annul.

When the validity of a marriage is disputed for any of the causes mentioned in §§ 7106, 7107, either party may begin an action in the district court of the county where either resides, to annul the same. In such action the complaint shall be filed and proceedings had thereon as in actions for divorce, and, upon due proof of the nullity of the marriage, it shall be adjudged null and void.

§ 7109. When not annulled.

No marriage shall be adjudged a nullity on ground that one of the parties was under the age of legal consent if it appears that the parties had voluntarily cohabited together as husband and wife after having attained such age; nor shall the marriage of any insane person be adjudged void after his restoration to reason, if it appears that the parties freely cohabited together as husband and wife after such restoration.

§ 7110. Not at suit of party capable.

No marriage shall be adjudged a nullity at the suit of the party capable of contracting, on the ground that the other party was under the age of legal consent, or was idiotic or insane, if such idiocy or insanity was known to the party capable of contracting at the time of such marriage.

§ 7111. Grounds for divorce.

A divorce from the bonds of matrimony may be adjudged by the district court for any of the following causes:

1. Adultery.
2. Impotency.
3. Cruel and inhuman treatment.
4. Sentence to imprisonment in any state prison or state reformatory subsequent to the marriage; and in such a case a pardon shall not restore the conjugal rights.
5. Wilful desertion for one year next preceding the filing of the complaint.
6. Habitual drunkenness for one year immediately preceding the filing of the complaint.

§ 7112. Residence of complainant.

No divorce shall be granted unless the plaintiff has resided in this state one year immediately preceding the filing of the complaint, except for adultery committed while the plaintiff was a resident of this state.

§ 7113. Denial, though adultery proved.

In any action brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

1. When it appears that the offence was committed by the procurement or with the connivance of the plaintiff.

2. When there has been an express forgiveness of the adultery charged, or a voluntary cohabitation of the parties, with knowledge thereof.

3. When the action has not been brought within three years after the discovery of the offence charged.

4. When it is proved that the plaintiff has also been guilty of adultery under such circumstances as would have entitled the defendant, if innocent, to a divorce.

§ 7114. Action, how and where brought — venue.

An action for divorce may be brought by a wife in her own name, and all actions for divorce shall be commenced by summons and complaint in the county where the plaintiff resides, as hereinafter provided, subject to the power of the court to change the place of trial by consent of parties, or when it shall appear that an impartial trial cannot be had in the county where the action is pending, or that the convenience of witnesses and ends of justice would be promoted by the change.

§ 7115. Requisites of complaint.

The complaint shall state the names and ages of the parties, the name of the court in which the action is brought, and the facts constituting the cause or grounds of action, in ordinary and concise language, without repetition.

§ 7116. Service — publication.

Copies of the summons and complaint shall be served on the defendant personally, and, when such service is made out of this state and within the United States, it may be proved by the affi-

davit of the person making the same, with the certificate of the clerk of the court of the county to the identity of the officer taking the affidavit, and when made without the United States it may be proved by the affidavit of the person making the same, taken before and certified by any United States minister, charge d'affaires, commissioner, consul or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officer authorized to perform their duties; or before an officer authorized to administer an oath with the certificate of an officer of a court of record of the country wherein such affidavit is taken as to the identity and authority of the officer taking the same, but, if personal service cannot well be made, the court may order service of the summons by publication, which publication shall be made as in other actions.

§ 7117. Time for answering.

The defendant shall have thirty days in which to answer the complaint. In case of service by publication, said thirty days shall not begin to run until the expiration of the period allowed for publication; and, in case of personal service out of the state, the court shall not permit the action to be heard and determined, as upon default, until the lapse of such reasonable time as will allow the defendant to appear and answer, which time shall be fixed, by order, after proof of such service is made and filed in the action.

§ 7118. Failure to answer — reference.

If the defendant does not appear after service duly made and proved, the court may hear and determine the action at a general or special term, or in vacation: provided, that the court or judge, upon application, may refer said action to a referee to take and report the evidence therein. When issue is joined, like proceedings shall be had as in civil actions.

§ 7119. Alimony pending suit — costs.

In every action brought either for a divorce or separation, the court, in its discretion, may require the husband to pay any sum necessary to enable the wife to carry on or defend the action, or for her support during its pendency; and it may adjudge costs against either party, and award execution therefor, or it may direct such costs to be paid out of any property sequestered or in the power of the court.

§ 7120. Protection of wife.

When an action is commenced, or about to be commenced to annul a marriage, or for a divorce or separation, the court may at any time, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the action.

§ 7121. Custody of children, etc.

The court, on the application of either party, may make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance, during the pendency of such action, and such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper.

§ 7122. Same — on judgments.

Upon adjudging the nullity of a marriage or a divorce or separation, the court may make such further order as it deems just and proper concerning the care, custody, and maintenance of the minor children of the parties, and may determine with which of the parents they, or any of them, shall remain, having due regard to the age and sex of such children.

§ 7123. Order may be revised.

The court may afterward, from time to time, on the petition of either parent, revise and alter such order concerning the care, custody, and maintenance of the children, or any of them, and

make such new order concerning them, as the circumstances of the parents and the benefit of the children shall require.

§ 7124. Possession of wife's real estate — what may be decreed to husband.

Whenever a divorce is granted from the bonds of matrimony for any cause, except adultery committed by the wife, or from bed and board, or the husband is sentenced to imprisonment for life, or the marriage is adjudged null, the wife shall be entitled to the immediate possession of all her real estate. But in case of a divorce obtained by a husband any real or personal property to which she procures title through her husband, not exceeding one-half thereof, may be decreed to be and belong to the husband; the court having regard to the ability, character and situation of the parties and other circumstances of the case.

§ 7125. Same — pending proceedings.

The provisions of this act shall apply to all proceedings that are now pending as well as those hereafter commenced.

§ 7126. Order as to wife's property.

Upon every such dissolution of marriage as is specified in § 7124, the court may make a further order for restoring to the wife the whole or such part as it deems just and reasonable of the personal estate that has come to the husband by reason of the marriage, or for awarding to her the value thereof, and also the value of any real estate of the wife disposed of by the husband and wife during the coverture, to be paid by her husband in money; and such court may require the husband to disclose on oath what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof remains in his hands.

§ 7127. Trustee of alimony.

The court may appoint trustees, whenever it is deemed expedient, to receive any money ordered to be paid to the wife, upon

trust to invest the same, and pay over the income for the support of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct, or to pay over to the wife the principal sum in such proportions and at such times as the court shall order, regard being had in all such cases to the situation and circumstances of such wife, and the children if there are any, provided for in the order; and such trustees shall give such bond, as the court shall require, for the faithful performance of their trust.

§ 7128. Property of husband — permanent alimony.

Upon a divorce for any cause except that of adultery committed by the wife, if the estate and property restored or awarded to her is insufficient for the suitable support of herself and such children of the marriage as shall be committed to her care and custody, or if there is no such estate and property, the court may further order and decree to her such part of the personal and real estate of the husband, not exceeding in value one-third thereof, as it deems just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other circumstances of the case.

The court may also, in the cases provided for in this section, decree to the wife such alimony out of the estate, earnings, and income of the husband as it may deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and other circumstances of the case, and may by its decree make the same a specific lien upon any specified parcels of his real estate, or authorize its enforcement by execution against his property, real and personal; but the aggregate award and allowance made to the wife from the estate of the husband under this section shall not in any case exceed in present value one-third of the personal estate, earnings, and income of the husband, and one-third in value of his real estate.

§ 7129. Order for alimony, etc., revised.

After an order or decree for alimony, or other allowance for the wife and children, or either of them, or for the appointment of trustees to receive and hold any property for the use of the wife or children, the court, from time to time, on petition of either of the parties, may revise and alter such order or decree respecting the amount of such alimony or allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting any of the said matters which it might have made in the original action.

§ 7130. Security — sequestration — contempt.

In all cases when alimony or other allowance is ordered or decreed to the wife or children, the court may require sufficient security to be given by the husband for the payment thereof, according to the terms of the order or decree; and upon his neglect or refusal to give such security, or upon his failure to pay such alimony or allowance, the court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate, and the rents and profits of such real estate to be applied according to the terms of such order or decree. If the husband has an income from any source sufficient to enable him to pay such alimony or other allowance, and fails and refuses to pay the same, the court may order him to pay such alimony or allowance for the use of the wife or the children, or both. And if any person or party shall disobey such order, he may be punished by the court as for contempt.

§ 7131. Remarriage — revocation.

When a divorce has been granted, and the parties afterward intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all decrees and orders of divorce, alimony, and subsistence which will not affect the rights of third persons.

§ 7132. Cohabiting after divorce.

Persons who shall cohabit together before intermarriage, after having been divorced from the bonds of matrimony, shall be liable to all the penalties provided by law against adultery.

§ 7133. Effect of divorce — name of wife.

Whenever a decree of divorce from the bonds of matrimony is granted in this state, such decree shall completely dissolve the marriage contract as to both parties. And in all actions for a divorce brought by a woman, if a divorce is granted, the court may change the name of such woman, who shall thereafter be known by such name as the court designates in its decree.

*Limited Divorces.***§ 7134. Separation — limited divorces.**

A separation from bed and board forever, or for a limited time, may be adjudged by the district court, on the complaint of a married woman, in the following cases:

1. Between any husband and wife, inhabitants of this state.
2. When the marriage shall have taken place within this state, and the wife shall be an actual resident at the time of filing her complaint.
3. When the marriage shall have taken place out of this state, and the parties have been inhabitants of this state at least one year, and the wife shall be an actual resident at the time of filing her complaint.

§ 7135. For what causes.

Such separation may be adjudged for the following causes:

1. Cruel and inhuman treatment by the husband.
2. Such conduct on the part of the husband toward his wife as may render it unsafe and improper for her to cohabit with him.
3. The abandonment of the wife by the husband, and his refusal or neglect to provide for her.

§ 7136. Complaint.

The complaint in every such case shall specify particularly the facts and circumstances on which the plaintiff relies, and shall set forth times and places with reasonable certainty.

§ 7137. Defences.

The defendant may prove in his justification the ill conduct of the plaintiff, and, on establishing such defence to the satisfaction of the court, the complaint shall be dismissed.

§ 7138. Alimony, etc.

Such proceedings shall be commenced and conducted in the same manner as actions for a divorce from the bonds of matrimony; and the court, upon motion, may award such sum for counsel fees and temporary alimony during the pendency of the action as the circumstances and situation of the parties appear to warrant.

§ 7139. As to alimony and wife's property.

Upon adjudging a separation in any such suit, the court may make such order and decree for the suitable support of the wife and her children by the husband, or out of his property or earnings, as may appear just and proper, and by such decree may give the wife absolute control of her separate property, with power of alienation, and may make such further decree as the nature and circumstances of the case require.

§ 7140. When separation not granted.

Although a decree for separation from bed and board be not made, the court may make such decree, for the support of the wife and her children, or any of them, by the husband, or out of his property or earnings, as the nature of the case renders suitable and proper.

§ 7141. Revocation.

Upon a joint application of the parties, and satisfactory proof of their reconciliation, the court granting any decree of separation

may revoke the same, under such regulations and restrictions as it shall prescribe.

§ 7090. Marriages prohibited.

No marriage shall be contracted while either of the parties has a husband or wife living; nor within six months after either has been divorced from a former spouse; nor between parties, who are nearer of kin than second cousins, whether the half or the whole blood, computed by the rules of the civil law; nor between persons either one of whom is epileptic, imbecile, feeble minded or insane.

§ 8971. Advertisement soliciting divorce business.

Every person who shall advertise, print, publish, distribute, or circulate, or cause to be advertised, printed, published, distributed, or circulated, any pamphlet, card, handbill, circular, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure or obtain, or to aid in procuring or obtaining, any divorce, or the severance, dissolution, or nullity of any marriage, or offering to engage, appear, or act as attorney, counsel, or referee in any suit for divorce, alimony, or the severance, dissolution, or nullity of any marriage, either in this state or elsewhere, shall be guilty of a gross misdemeanor, and punished by imprisonment in the county jail for not more than six months, or by fine of not less than one hundred dollars nor more than five hundred dollars.

§ 8698. Bigamy defined — bigamy, adultery, etc — how punished — exceptions.

Every person who, having a husband or wife living, marries another person, or continues to cohabit with such second husband

or wife in this state, shall be guilty of bigamy, and be punished by imprisonment in the state prison for not more than five years, provided that this section shall not extend —

1. To a person whose former husband or wife has been absent for five years successively then last past, without being known to him or her to be living, and believed to be dead; or

2. To a person whose former marriage has been pronounced void, or annulled or dissolved, by a court of competent jurisdiction.

§ 8465. Divorce — testimony of parties.

Divorces shall not be granted on the sole confessions, admissions, or testimony of the parties, either in or out of court.

§ 7738. Same — in what cases.

Such service shall be sufficient to confer jurisdiction:

1. When the defendant is a foreign corporation, having property within the state.

* * * *

4. When the action is for a divorce, or a separation from bed and board, and the court shall have ordered that service be made by published notice.

* * * *

§ 7739. When defendant may defend — restitution.

If the summons be not personally served, the defendant, on application to the court before judgment and for sufficient cause, shall be permitted to defend; and, except in an action for a divorce, the defendant, in like manner, may be permitted to defend at any time within one year after judgment, on such terms as may be just. If the defence be sustained, and any part of the judg-

ment has been enforced, such restitution shall be made as the court may direct.

§ 7786. Extensions of time — relief against mistakes, etc.

The court, in its discretion, may likewise permit an answer or reply to be made, or other act to be done, after the time limited therefor by this chapter, or by its order may enlarge such time; or at any time within one year after notice thereof, in its discretion, may relieve a party from any judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; or may, for good cause shown, modify or set aside its judgments, orders, or proceedings, whether made in or out of term and may supply any omission in any proceeding, or in the record, or by amendment conform any proceeding to the statute under which it was taken: provided, that this section shall not apply to a final judgment in an action for a divorce, nor shall any relief granted thereunder affect the title to real estate as determined by any final judgment which shall have been of record in the office of the proper register of deeds for three years next prior to the date of application for such relief, as against any bona fide purchaser or incumbrancer thereof; but this shall not prevent the granting of just and equitable relief against any party to any such action affecting real estate, his heirs or devisees.

§ 7792. Issues, how tried — right to jury trial.

Issues of law, unless referred as provided by the statutes relating to referees, shall be tried by the court. In actions for the recovery of money only, or of specific real or personal property, or for a divorce on the ground of adultery, the issues of fact shall be tried by a jury, unless a jury trial be waived or a reference be ordered. All other issues of fact shall be tried by the court, sub-

ject to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury or referred.

§ 7257. Will revoked by marriage or divorce.

If, after making a will, the testator marries the will is thereby revoked, and if the testator after making the will is divorced from the bonds of matrimony, all provisions in such will in favor of the testator's spouse, so divorced, are thereby revoked.

MISSISSIPPI.*Hemingway's Annotated Code, 1917.*¹

CHAPTER 20.

DIVORCE AND ALIMONY.

- SECTION** 1411. Causes for divorce.
1412. Effect of decree.
1413. Race to be specified.
1414. Decree may be revoked.
1415. Custody of children and alimony.
1416. Divorced persons not to cohabit.
1417. Jurisdiction limited.
1418. Proceedings to obtain a divorce.
1419. Where to file bill.
1420. Guardian ad litem.
1421. Witnesses examined in open court on trial.

§ 1411. Causes for divorce.

Divorces from the bonds of matrimony may be decreed to the injured party for the following causes, viz.:

First.— Natural impotency.

Second.— Adultery, unless it should appear that it was committed by collusion of the parties for the purpose of procuring a divorce, or unless the parties cohabited after a knowledge by complaint of the adultery.

Third.— Being sentenced to the penitentiary, and not pardoned before being sent there.

Fourth.— Wilful, continued, and obstinate desertion for a space of two years.

Fifth.— Habitual drunkenness.

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Sixth.— Habitual and excessive use of opium, morphine, or other like drug.

Seventh.— Habitually cruel and inhuman treatment.

Eighth.— Insanity or idiocy at the time of the marriage, if the party complaining did not know of such infirmity.

Ninth.— Marriage to some other person at the time of the pretended marriage between the parties.

Tenth.— Pregnancy of the wife by another person at the time of the marriage, if the husband did not know of such pregnancy.

Eleventh.— Either party may have a divorce if they be related to each other within the degrees of kindred between whom marriage is prohibited by law.

§ 1412. Effect of decree.

The decree of divorce shall not render illegitimate the children begotten between the parties during a lawful marriage; but if the decree be rendered because one of the parties was married to another at the time of the marriage or pretended marriage between the parties, it shall adjudge the marriage between the parties to have been invalid and void from the beginning, and the issue thereof shall be illegitimate and subject to the disabilities of illegitimate children. And the decree may provide [in the discretion of the court], that a party against whom a divorce is granted because of adultery, shall not be at liberty to marry again; in which case, such party shall remain in law as a married person. In all cases of divorce from the bonds of matrimony, the marital rights shall cease with the decree.

§ 1413. Race to be specified.

All decrees allowing divorces shall specify the race of the parties to the suit.

§ 1414. Decree may be revoked.

The decree of divorce from the bonds of matrimony may be revoked at any time by the court which granted it, under such

regulations and restrictions as it may deem proper to impose, upon the joint application of the parties, and upon the production of satisfactory evidence of their reconciliation.

§ 1415. Custody of children and alimony.

When a divorce shall be decreed from the bonds of matrimony, the court may, in its discretion, having regard to the circumstances of the parties and the nature of the case, as may seem equitable and just, make all orders touching the care, custody, and maintenance of the children of the marriage, and also touching the maintenance and alimony of the wife, or any allowance to be made to her, and may, if need be, require sureties for the payment of the sum so allowed; and the court may afterward, on petition, change the decree, and make from time such new decrees as the case may require.

§ 1416. Divorced persons not to cohabit.

If any person who shall be divorced on account of their being within the degrees prohibited by law, shall afterward cohabit, they shall be liable to the pains and penalties provided by law against incest; and if any persons who shall be divorced on account of a prior marriage, adultery, or other cause, shall afterwards cohabit, they shall be liable to all the pains provided by law against adultery.

§ 1417. Jurisdiction limited.

The jurisdiction of the chancery court in suits for divorce shall be confined to the following classes of cases:

(a) Where both parties were domiciled within this state when the suit commenced; or

(b) Where the complainant was domiciled within this state when the suit was commenced, and the defendant was personally served with process within this state; or

(c) Where one of the parties was domiciled within this state when the action was commenced, and one or other of them actually

resided within this state for one year next preceding the commencement of the suit.

(d) In any case where the proof shows that a residence or domicile was acquired in this state with a purpose of securing a divorce, the court shall not take jurisdiction thereof, but dismiss the bill at the cost of complainant.

§ 1418. Proceedings to obtain a divorce.

The proceedings to obtain a divorce shall be by bill in chancery, which shall be conducted as other suits in chancery, except that the defendant shall not be required to answer on oath, and the bill is not to be taken as confessed, nor shall admissions made in the answer be taken as evidence; and in all cases the bill must be accompanied with an affidavit of complainant that it is not filed by collusion with the defendant, for the purpose of obtaining a divorce, but that the causes for a divorce stated in the bill are true as stated.

§ 1419. Where to file bill.

The bill must be filed in the county in which the complainant resides, if the defendant be a nonresident of this state, or be absent, so that process cannot be served; and the manner of making such parties defendants so as to authorize a decree against them in other chancery cases, shall be observed. If the defendant be a resident of this state, the bill shall be filed in the county in which such defendant resides or may be found at the time, or in the county of the residence of the parties at the time of separation, if the complainant be still a resident of such county when the suit is instituted.

§ 1420. Guardian ad litem.

If the defendant be an infant or insane, the court may appoint a guardian ad litem for such defendant.

§ 1421. **Witnesses examined in open court on trial.**

In the trial of suits for divorce, witnesses may be summoned, and examined in open court, as in the trial of issues of fact in the circuit court, or depositions may be taken and read as in other cases in chancery courts, and the parties shall be competent witnesses for or against each other. The court may, in its discretion, exclude all persons from the court room during the trial except the officers of the court, attorneys engaged in the case, parties to the suit and the witness being examined.

§ 289. **Jurisdiction — general statement.**

The chancery court shall have full jurisdiction in the following matters and cases:

| | | | | | | | | |
|--------------------------|---|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * | * | * |
| (b) Divorce and alimony; | | | | | | | | |
| * | * | * | * | * | * | * | * | * |

§ 976. **Incest — marriage between kindred within.**

If any person shall marry within the degrees prohibited by law, he shall be guilty of incest, and on conviction thereof he shall be fined five hundred dollars or imprisoned in the penitentiary not longer than ten years, or punished by both such fine and imprisonment, and such marriage shall be void.

§ 758. **Adultery and fornication — going out of this state to marry.**

If any person, citizens or residents of this state, who are prohibited by the laws thereof from marrying, because of kindred or

race, shall go out of this state for the purpose of marrying, and shall marry in any other state or country and return to this state and live together and cohabit as man and wife, or be guilty of a single act of copulation, they shall, on conviction, be punished, notwithstanding their marriage out of this state, by imprisonment in the penitentiary not longer than ten years, or be fined five hundred dollars, or both.

CHAPTER 49.

MARRIAGE.

SECTION 2549. Unlawful marriages.

2550. Unlawful marriages — what marriages are incestuous.

2551. Unlawful marriages — between white person and negro or Mongolian prohibited.

2556. License essential.

§ 2549. Unlawful marriages.

Persons shall not marry within the following degrees: The son shall not marry his grandmother, his mother, or his step-mother; the brother his sister; the father his daughter, or his granddaughter; the son shall not marry the daughter of his father begotten of his step-mother, or his aunt, being his father's or mother's sister.

§ 2550. Unlawful marriages — what marriages are incestuous.

The father shall not marry his son's widow; a man shall not marry his wife's daughter, or his wife's daughter's daughter, or his wife's son's daughter, or the daughter of his brother or sister; and the like prohibition shall extend to females in the same degree; and all marriages prohibited by this and the preceding section are incestuous and void.

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§ 2551. Unlawful marriages — between white person and negro or Mongolian prohibited.

The marriage of a white person and a negro or mulatto or person who shall have one-eighth or more of negro blood, or with a Mongolian or a person who shall have one-eighth or more of Mongolian blood, shall be unlawful, and such marriage shall be unlawful and void; and any party thereto, on conviction, shall be punished as for marriage within the degrees prohibited by the last two sections; and any attempt to evade this and the two preceding sections by marrying out of this state and returning to it shall be within them.

§ 2556. License essential.

A marriage shall not be contracted or solemnized unless a license therefor shall first have been duly issued, and such license shall be essential to the validity of a marriage. But no irregularity in the issuance of or omission in the license shall invalidate any marriage, nor shall this section be construed so as to invalidate any marriage that is good at common law.

§ 779. Bigamy — defined and punishment prescribed.

Every person having a husband or wife living, who shall marry again, and every unmarried person who shall knowingly marry the husband or wife of another living, except in the cases hereinafter named, shall be guilty of bigamy, and imprisoned in the penitentiary not longer than ten years.

§ 780. Bigamy — exceptions.

The last section shall not extend to any person whose husband or wife shall have been absent for seven successive years, without being known to such person, within the time, to be living; nor to

any person whose husband or wife shall have absented himself or herself from his or her husband or wife, and remained without the United States continually for seven years; nor to any person, by reason of any former marriage which shall have been dissolved by the decree of a competent court, unless the said decree provide that such person shall not be at liberty to marry again; nor to any person, by reason of any former marriage which shall have been pronounced void by the sentence or decree of a competent court, for the nullity of the marriage-contract; nor to any person by reason of any former marriage, contracted by such person within the age of legal consent, and which shall have been annulled by the decree of a competent court.

§ 889. False pretenses and cheats—representing or personating another and thereby marrying, becoming bail or surety, confessing judgment, acknowledging deed, or doing act in suit.

Every person who shall falsely represent or personate another, and in such assumed character shall marry another. . . . shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding ten years. An indictment under this section for marrying shall not be found unless on the complaint of the injured party, before cohabitation, after knowledge of the fraud.

MISSOURI.*Revised Statutes, 1909.*

ARTICLE 3.

DIVORCE AND ALIMONY.

- SECTION 2370.** Causes of divorce.
2371. Jurisdiction.
2372. Defence may set forth what.
2373. What residence necessary.
2374. Jurisdiction of court maintained, when.
2375. Alimony and maintenance.
2376. Alimony, how decreed and when a lien.
2377. Collusion a bar to divorce.
2378. Divorce affects guilty party, how.
2379. When wife's property reverts.
2380. Appeals and writs of error.
2381. Decree of divorce not subject to review — otherwise as to alimony.

§ 2370. Causes of divorce.

When a marriage has been or shall be solemnized between two persons, and either party at the time of the contract of marriage was and still is impotent; or had a wife or a husband living at the time of the marriage; or has committed adultery since the marriage; or has absented himself or herself without a reasonable cause for the space of one year; or, during said marriage, shall have been convicted of felony or infamous crime; or shall have been addicted to habitual drunkenness for the space of one year; or shall be guilty of such cruel or barbarous treatment as to endanger the life of the other; or shall offer such indignities to the other as shall render his or her condition intolerable; or when the husband shall be guilty of such conduct as to constitute him a vagrant within the meaning of the law respecting vagrants; or

where, prior to the contract of marriage, or the solemnization thereof, either party shall have been convicted of a felony or infamous crime in any state, territory or country without knowledge on the part of the other party of such fact at the time of such marriage; or where the intended wife, at the time of contracting marriage, or at the time of the solemnization thereof, shall have been pregnant by any other man than her intended husband, and without his knowledge at the time of such solemnization — the injured party, for any of the causes above enumerated, may obtain a divorce from the bonds of matrimony; but no such divorce shall affect the legitimacy of the children of such marriage.

§ 2371. Jurisdiction.

The circuit court shall have jurisdiction in all cases of divorce and alimony or maintenance; and all such cases shall be tried by the court, and the like process and proceedings shall be had in such causes as are had in other civil suits, except the answer of the defendant shall not be under oath. The petition shall be accompanied by an affidavit annexed thereto, that the facts stated therein are true according to the best knowledge and belief of the plaintiff, and that the complaint is not made out of levity, or by collusion, fear or restraint between the plaintiff and defendant, for the mere purpose of being separated from each other, but in sincerity and truth, for the causes mentioned in the petition. The proceedings shall be had in the county where the plaintiff resides, and the process may be directed, in the first instance, into any other county in the state where the defendant resides.

§ 2372. Defence may set forth, what.

In all suits for divorce from the bonds of matrimony, it shall be lawful for the defendant, in his or her defense thereto, to set forth and charge, in his or her answer to the plaintiff's petition, any of the facts specified in this article which, if proved, would entitle such defendant to a divorce; and the defendant may, in his or

her answer, pray the court, for the causes stated in the answer, that he or she be divorced from the bonds of matrimony entered into with the plaintiff; and such answer shall be sworn to in the same manner as the original petition; and upon the hearing of the cause, if the court shall be satisfied that the defendant is the injured party, it shall enter judgment divorcing the defendant from the said plaintiff, as prayed in the answer.

§ 2373. What residence necessary.

No person shall be entitled to a divorce from the bonds of matrimony who has not resided within the state one whole year next before filing of the petition, unless the offense or injury complained of was committed within this state, or whilst one or both of the parties resided within this state.

§ 2374. Jurisdiction of court maintained, when.

Where the cause of divorce commences beyond the limits of this state, and has been or shall be continued or completed within this state, the court shall have the same jurisdiction as if the cause had commenced and been completed within this state.

§ 2375. Alimony and maintenance.

When a divorce shall be adjudged, the court shall make such order touching the alimony and maintenance of the wife, and the care, custody and maintenance of the children, or any of them, as, from the circumstances of the parties and the nature of the case, shall be reasonable, and when the wife is plaintiff, may order the defendant to give security for such alimony and maintenance; and upon his neglect to give the security required of him, or upon default of himself and his sureties, if any there be, to pay or provide such alimony and maintenance, may award an execution for the collection thereof, or enforce the performance of the judgment or order by sequestration of property, or by such other lawful ways

and means as is according to the practice of the court. The court, on the application of either party, may make such alteration, from time to time, as to the allowance of alimony and maintenance, as may be proper, and the court may decree alimony pending the suit for divorce in all cases where the same would be just, whether the wife be plaintiff, or defendant, and enforce such order in the manner provided by law in other cases.

§ 2376. Alimony, how decreed and when a lien.

Upon a decree of divorce in favor of the wife, the court may, in its discretion, decree alimony in gross or from year to year. When alimony is decreed in gross, such decree shall be a general lien on the realty of the party against whom the decree may be rendered, as in the case of other judgments. When such decree is for alimony from year to year, such decree shall not be a lien on the realty as aforesaid, but an execution in the hands of the proper officer, issued for the purpose of enforcing such decree, shall constitute a lien on the real and personal property of the defendant in such execution, so long as the same shall lawfully remain in the possession of such officer unsatisfied. In lieu of the lien of such decree for alimony from year to year, it is hereby provided that the party against whom such decree may be rendered shall be required to give security ample and sufficient for such alimony; but where default has been made in giving such security, the decree for alimony from year to year shall be a lien as in case of general judgments.

§ 2377. Collusion a bar to divorce.

If it shall appear to the court that the adultery, or other injury or offense complained of, shall have been occasioned by the collusion of the parties, or done with an intention to procure a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of adultery, then no divorce shall be granted.

§ 2378. Divorce affects guilty party, how.

In all cases of divorce from the bonds of matrimony, the guilty party shall forfeit all rights and claims under and by virtue of the marriage. In all cases where the proceedings shall be *ex parte*, the court shall, before it grants the divorce, require proof of the good conduct of the petitioner, and be satisfied that he or she is an innocent and injured party.

§ 2379. When wife's property reverts.

When the wife shall obtain a divorce from the bonds of matrimony, all property which came to the husband by means of the marriage, that remains undisposed of at the time of filing the petition, shall revert to the wife and children, and the court, upon her request, shall make an order changing her name to that of any former husband, or to her maiden name, as she may elect.

§ 2380. Appeals and writs of error.

No final judgment or order rendered in cases arising under this article shall be reversed, annulled or modified, in the supreme or any other court, by appeal or writ of error, unless such appeal shall have been granted during the term of court at which the judgment or order appealed from was rendered, or unless such writ of error shall have been issued within sixty days after the order was made or judgment was rendered.

§ 2381. Decree of divorce not subject to review—otherwise as to alimony.

No petition for review of any judgment for divorce, rendered in any case arising under this article, shall be allowed, any law or statute to the contrary notwithstanding; but there may be a review of any order or judgment touching the alimony and maintenance of the wife, and the care, custody and maintenance of the children, or any of them, as in other cases.

§ 4731. Advertising to procure divorces.

Whoever prints, publishes, distributes or circulates, or causes to be printed, published, distributed or circulated, any circular, pamphlet, card, hand-bill, advertisement, printed paper, book, notes, paper or notice of any kind offering to procure any divorce or severance, dissolution or annulment of any marriage, or offers to engage, appear or act as attorney or counsel in any suit for alimony or divorce, or the severance, dissolution or annulment of any marriage, either in this state or elsewhere, shall be deemed guilty of a misdemeanor. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state.

§ 8280. Certain marriages prohibited.

All marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, first cousins, white persons and negroes, white persons and Mongolians, are prohibited and declared absolutely void, and this prohibition shall apply to illegitimate as well as legitimate children and relatives.

§ 8281. What marriages shall be void, unless, etc.

All marriages, where either of the parties has a former wife or husband living, shall be void, unless the former marriage shall have been dissolved.

§ 8296. No property exempt from attachment or execution, when.

No property shall be exempt from attachment or execution in a proceeding instituted by a married woman for maintenance, nor

from attachment or execution upon a judgment or order issued to enforce a decree for alimony. And all wages due to the defendant shall be subject to garnishment on attachment or execution in any proceedings mentioned in this section, whether said wages are due from the garnishee to the defendant for the last thirty days' service or not.

§ 359. Divorce, when and when not a bar.

If any woman be divorced from her husband, for the fault of misconduct of said husband, she shall not thereby lose her dower; but if the husband be divorced from the wife, for her fault or misconduct, she shall not be endowed.

§ 479. Husband or wife may be appointed guardian.

Nothing in this article or elsewhere shall be so construed as to prevent the appointment of the husband or wife of such insane person as guardian of his or her person and estate, but should such husband or wife, after such appointment, for any cause, be divorced from said insane person, the divorce shall operate as a revocation of his or her appointment; upon cessation of the authority of such guardian for said cause, or for any other cause, he or she shall proceed to make final settlement in the estate of such insane person, as is provided in the case of the resignation of a guardian and curator of the estate of a minor.

§ 1770. Orders of publication.

In suits in partition, divorce, attachment, suits for the foreclosure of mortgages and deeds of trust, and for the enforcement of mechanics' liens and all other liens against either real or personal

property, and in all actions at law or in equity, which have for their immediate object the enforcement or establishment of any lawful right, claim or demand to or against any real or personal property within the jurisdiction of the court, if the plaintiff or other person for him shall allege in his petition, or at the time of filing same, or at any time thereafter shall file an affidavit stating, that part or all of the defendants are non-residents of the state, or is a corporation of another state, kingdom or country, and cannot be served in this state in the manner prescribed in this chapter, or have absconded or absented themselves from their usual place of abode in this state, or that they have concealed themselves so that the ordinary process of law cannot be served upon them, the court in which said suit is brought, or in vacation the clerk thereof, shall make an order directed to the non-residents or absentees, notifying them of the commencement of the suit, and stating briefly the object and general nature of the petition, and, in suits in partition, describing the property sought to be partitioned, and requiring such defendant or defendants to appear on a day to be named therein and answer the petition, or that the petition will be taken as confessed. If in any case there shall not be sufficient time to make publication to the first term, the order shall be made returnable to the next term thereafter, that will allow sufficient time for such publication.

§ 1778. Personal service against non-resident defendants.

In any of the cases mentioned in section 1770, the plaintiff may cause a copy of the petition, with a copy of the summons, to be delivered to each defendant residing or being without this state, and at any place within the United States, or their territories, twenty days before the commencement of the term at which such defendant or defendants are required to appear; and if the defendant shall refuse to receive such copy of the petition and summons, the offer of the officer to deliver to him the same, and such

refusal, shall be as effectual service as though such copies were actually delivered to such defendant. Such service may be made by any officer authorized by law to serve process within the state or territory where such service is made, and shall be proved by the affidavit of such officer, stating the time and manner of such service, made before the clerk or judge of the court of which affiant is an officer. Such clerk or judge shall certify to the official character of the affiant, and to his authority to serve process within the state or territory where such service was made. When such certificate is made by a clerk or judge of a court of record, the same shall be attested by the seal of such court, and when the same is made by a judge of a court not of record, the official character of such judge shall also be certified by the proper officer of the state, under his official seal. And any return of service, made and certified as above provided, shall be prima facie evidence of the facts stated in such return. If the plaintiff, or his attorney of record, in any of the causes mentioned in section 1770, shall allege in his petition or at the time of filing same, or at any time thereafter shall make the affidavit required by said section, and shall file in said cause proof of service of process on any defendant or defendants, in conformity with the provisions of this section, it shall not be necessary for such plaintiff or plaintiffs to obtain the order provided in section 1770 or to procure the publication provided in section 1777. Service of process in conformity with this section shall be as effectual within the limits of this state as personal service within this state, and judgments rendered against defendants thus served shall have the same effect and force within the limits of this state as judgments rendered against defendants personally served with summons in this state.

§ 342. Issue of certain marriages legitimate.

The issue of all marriages decreed null in law, or dissolved by divorce shall be legitimate.

MONTANA.*Revised Codes, 1907.*

CHAPTER 2.

DIVORCE.

- ARTICLE** I. Annulling marriage.
 II. Dissolution of marriage.
 III. Causes for denying divorce.
 IV. General provisions.

ARTICLE I.

ANNULLING MARRIAGE.

- SECTION** 3636. Cases where marriage may be annulled.
 3637. Action to obtain decree of nullity in certain cases, when and by whom commenced.
 3638. Children of annulled marriage.
 3639. Custody of children.
 3640. Effect of judgment of nullity.

§ 3636. Cases where marriage may be annulled.

A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband and wife.

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues and appears to be incurable.

§ 3637. Action to obtain decree of nullity in certain cases, when and by whom commenced.

An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision 1, by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent.

2. For causes mentioned in subdivision 2: By either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision 3: By the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

4. For causes mentioned in subdivision 4: By the party injured within two years after the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivision 5: By the injured party within two years after the marriage.

6. For causes mentioned in subdivision 6: By the injured party within four years after the marriage.

§ 3638. Children of annulled marriage.

Where marriage is annulled, on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties or either of them, that the former husband or wife was dead, or where a marriage is annulled on the ground of insanity, children begotten before the judgment must be specified in the judgment, and are legitimate and entitled to succeed in the same manner as legitimate children to the estate of both parents.

§ 3639. Custody of children.

The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

§ 3640. Effect of judgment of nullity.

A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

- SECTION 3641. Marriage, how dissolved.
 3642. Divorce, what.
 3643. Causes for divorce.
 3644. Adultery defined.
 3645. Extreme cruelty defined.
 3646. Desertion, what.
 3647. Who commits desertion.
 3648. Separation by consent not desertion.
 3649. Separation and intent.
 3650. Consent to separation revocable.

- SECTION 3651.** Desertion, how cured.
3652. Husband may select home.
3653. If place unfit, desertion.
3654. Willful neglect, what.
3655. Habitual intemperance, what.
3656. Intemperance, desertion, neglect, three years.
3657. Remarriage regulated.

§ 3641. Marriage, how dissolved.

Marriage is dissolved only :

1. By the death of one of the parties ; or,
2. By a judgment of a court of competent jurisdiction.

§ 3642. Divorce, what.

The effect of a judgment of divorce is to restore the parties to the state of unmarried persons.

§ 3643. Causes for divorce.

Absolute divorces, or separations from bed and board, or decrees for separate maintenance may be granted for any of the following causes :

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. Habitual intemperance.
6. Conviction of felony.

§ 3644. Adultery defined.

Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

§ 3645. Extreme cruelty defined.

Extreme cruelty is the infliction, or threat of grievous bodily injury, or of bodily injury dangerous to life, or the repeated infliction, or threat of bodily injury or personal violence, upon the

other party, by one party to the marriage, or the repeated publication or utterance of false charges against the chastity of the wife by the husband, or the infliction of grievous mental suffering upon the other by one party to the marriage by a course of conduct towards, or treatment of one party to the marriage, by the other existing and persisted in for a period of one year immediately before the commencement of the action for divorce, which justly and reasonably is of such a nature and character as so to destroy the peace of mind and happiness of the injured party, or entirely to defeat the proper and legitimate objects of marriage or to render the continuance of the married relation between the parties perpetually unreasonable or intolerable to the injured party.

§ 3646. Desertion, what.

Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

§ 3647. Who commits desertion.

Departure or absence of one party from the family dwelling place, caused by cruelty or threats of bodily harm, from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

§ 3648. Separation by consent not desertion.

Separation by consent with or without the understanding that one of the parties will apply for a divorce, is not desertion.

§ 3649. Separation and intent.

Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

§ 3650. Consent to separation revocable.

Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration but the other refuses it, such refusal is desertion.

§ 3651. Desertion, how cured.

If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

§ 3652. Husband may select home.

The husband may choose any reasonable place or mode of living and if the wife does not conform thereto it is desertion.

§ 3653. If place unfit, desertion.

If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

§ 3654. Willful neglect, what.

Willful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so, or it is the failure to do so by reason of idleness, profligacy or dissipation.

§ 3655. Habitual intemperance, what.

Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business.

§ 3656. Intemperance, desertion, neglect, three years.

Willful desertion, willful neglect or habitual intemperance must continue for the space of one year before there is a ground for divorce.

§ 3657. Remarriage regulated.

When a divorce is granted for any of the causes mentioned in § 3643, the innocent party can not marry until after the expiration of two years, and the guilty party can not marry until after the expiration of three years from the entry of the judgment of divorce; but this section shall not prevent the parties to the action for a divorce from re-marrying each other at any time.

ARTICLE III.

CAUSES FOR DENYING DIVORCE.

- SECTION 3658.** Divorces denied, on showing what.
3659. Connivance, what.
3660. Collusions, what.
3661. Condonation, what.
3662. Requisites to condonation.
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3671. Lapse of time establishes certain presumptions.
3672. Presumptions may be rebutted.
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3674. Divorces granted, when.
3675. Divorce not to be granted by default, etc.

§ 3658. Divorces denied, on showing what.

Divorces must be denied upon showing:

1. Connivance.
2. Collusion.
3. Condonation.
4. Recrimination.

§ 3659. Connivance, what.

Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

§ 3660. Collusion, what.

Collusion, is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be falsely represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

§ 3661. Condonation, what.

Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

§ 3662. Requisites to condonation.

The following requirements are necessary to condonation :

1. A knowledge on the part of the injured party of the facts constituting the cause of divorce.
2. Reconciliation and remission of the offense by the injured party.
3. Restoration of the offending party to all marital rights.

§ 3663. Condonation implies what.

Condonation implies a condition subsequent, that the forgiving party must be treated with conjugal kindness.

§ 3664. Evidence of condonation.

Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from successive acts of ill-treatment, which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone.

§ 3665. Condonation, when operates to bar divorce.

In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of.

§ 3666. Concealment of facts in certain cases makes condonation void.

A fraudulent concealment by the offending party of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

§ 3667. Condonation, how revoked.

Condonation is revoked, and the original cause of divorce revived:

1. When the offending party commits acts constituting a like or other cause of divorce; or,
2. When the offending party is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

§ 3668. Recrimination, what.

Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

§ 3669. Condonation in a recriminatory defense a bar to such defence, when.

When a cause of divorce is set up in the answer as a recriminatory defense, the condonation thereof is a bar to such defense unless:

1. The condonation be revoked as provided in § 3667; or,
2. Two years have elapsed after the condonation and before the accruing or completion of the cause of action alleged in the complaint.

§ 3670. Divorce denied, when.

A divorce must be denied:

1. When the cause is adultery, and the action is not commenced within two years after its discovery by the injured party; or,

2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after final judgment and sentence.

3. In all other cases where there is an unreasonable lapse of time before the commencement of the action.

§ 3671. Lapse of time establishes certain presumptions.

Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of such offense.

§ 3672. Presumptions may be rebutted.

The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

§ 3673. Limitation of time.

There are no limitations of time for commencing actions for divorce, except such as are contained in § 3670.

§ 3674. Divorces granted, when.

A divorce must not be granted unless the plaintiff has been a resident of the state for one year next preceding the commencement of the action.

§ 3675. Divorce not to be granted by default, etc.

No divorce can be granted upon the default of the defendant alone, but the cause must be heard in open court, and the court must require proof of all the facts alleged.

ARTICLE IV.

GENERAL PROVISIONS.

- SECTION 3676. Relief may be adjudged, where separation is denied.
3677. Expense of action, alimony.
3678. Orders respecting custody of children.
3679. Support of wife and children on divorce or separation granted to wife.
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3687. Such an action subject to revision on appeal.
3688. Poor woman may sue without costs.
3689. Notice of application for alimony.

§ 3676. Relief may be adjudged, when separation is denied.

Though judgment of divorce is denied, the court may, in its discretion, in an action for divorce, provide for the maintenance of the wife and her children, or any of them, by the husband.

§ 3677. Expense of action, alimony.

While an action for divorce is pending the court or judge may, in its or his discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action. When the husband willfully deserts the wife, she may, without applying for a divorce, maintain in the district court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court, or judge, may, in its or his discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and executions may issue therefor in the discretion of the court or judge. The final judgment in such

action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court.

§ 3678. Orders respecting custody of children.

In an action for divorce the court or judge may, before or after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

§ 3679. Support of wife and children on divorce or separation granted to wife.

Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

§ 3680. Security for maintenance and alimony.

The court, or judge, may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

§ 3681. If wife has sufficient support, court may withhold allowance.

When the wife has a separate estate sufficient to give her proper support, the court, or judge, in its or his discretion, may withhold any allowance to her out of the property of the husband.

§ 3682. Property may be subjected to support and education of children.

The property of the husband and wife may be subjected to the support and education of the children in such proportions as the court deems just, or the property of the guilty party only, may be subjected to such support and education.

§ 3683. Legitimacy of issue.

When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

§ 3684. Same.

When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. In every such case all children, begotten before the commencement of the action, are to be presumed legitimate until the contrary is shown.

§ 3685. Disposition of homestead on divorce.

In case of the dissolution of the marriage by the judgment of a court of competent jurisdiction, the homestead, if selected from the separate property of either husband or wife shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party.

§ 3686. How disposed of when divorce rendered on adultery.

The court, in rendering a judgment of divorce, must make such order for the disposition of the homestead as in this chapter provided.

§ 3687. Such an action subject to revision on appeal.

The disposition of the homestead, as above provided, is subject to revision on appeal.

§ 3688. Poor woman may sue without costs.

Any woman suing for a divorce who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs.

§ 3689. Notice of application for alimony.

No order for alimony shall be made until notice of the time and place of the hearing shall be served upon the opposite party in cases when such party has appeared, and in all other cases the notice shall be served upon the clerk of the court in which the action is pending.

§ 3610. Certain marriages voidable.

If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable.

§ 3611. Incestuous and void marriages.

Marrages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between nieces and uncles, and between aunts and nephews, and between first cousins, and between persons, either one of whom is feeble minded, are incestuous and void from the beginning whether the relationship is legitimate or illegitimate. (As amended by L. 1919, ch. 6.)

§ 3612. Polygamy forbidden.

A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any other person than such former husband or wife, is illegal and void from the beginning, unless:

1. The former marriage has been annulled or dissolved.
2. Unless such former husband or wife was absent, and not

known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

§ 3613. Released from marriage contract, when.

Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.

§ 3614. Marriages contracted without the state.

All marriages contracted without the state, which would be valid by the laws of the country in which the same were contracted, are valid in this state.

§ 3615. Certain parts of code not applicable.

The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them, have no application to the contract of marriage.

§ 3615a. Marriages between Caucasian and other races.

(1) Every marriage hereafter contracted or solemnized between a white person and a negro or a person of negro blood or in part negro, shall be utterly null and void.

(2) Every marriage hereafter contracted or solemnized between any white person and a Chinese person shall be utterly null and void.

(3) Every marriage hereafter contracted or solemnized between a white person and a Japanese person shall be utterly null and void.

(4) Every such marriage mentioned in either of the foregoing sections which may be hereafter contracted or solemnized without

the state of Montana by any person, who has, prior to the time of contracting or solemnizing said marriage been a resident of the state of Montana shall be null and void within the state of Montana.

(5) Any person or officer who shall solemnize any such marriage within the state of Montana, shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of five hundred dollars or imprisonment in the county jail for one month, or both. (As added by L. 1909, ch. 49.)

§ 3626. Want of authority in person officiating, effect of.

No marriage solemnized before any person professing to have authority shall be deemed or regarded void; nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

§ 3635. Judicial determination of void marriages.

Either party to an incestuous or void marriage may proceed by action in the district court, to have the same so declared.

§ 8878. Advertising to procure divorce forbidden.

Any person who advertises, prints, publishes, distributes or circulates, or causes to be advertised, printed, published, distributed or circulated, any circular, pamphlet, card, hand-bill, advertisement, printed paper, book, newspaper, or notice of any kind, with intent to procure, or to aid in procuring any divorce, either in this state or elsewhere, shall be fined not less than twenty-five

dollars (\$25.00), nor more than one hundred dollars (\$100.00), for such offense, or imprisoned in the county jail not less than ten days nor more than thirty days, or both such fine and imprisonment. This act shall not be deemed to apply to the publication of summons in actions for divorce.

§ 8041. In an action for divorce, admission not sufficient.

In an action for divorce on the ground of adultery, a confession of adultery, whether in or out of the pleadings, is not of itself sufficient to justify a judgment of divorce.

§ 6291. Sittings, when private.

In an action for divorce, criminal conversation, seduction, or breach of promise of marriage, the court may direct the trial of any issue of fact joined therein to be private, and exclude all persons except the officers of the court, the parties, their witnesses, and counsel; provided, that in any cause the court may, in the exercise of a sound discretion, during the examination of a witness, exclude any or all witnesses in the cause.

NEBRASKA.*Revised Statutes, 1913.*

ARTICLE 3.

DIVORCE AND ALIMONY.

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§ 1567. Divorce — grounds of.

A divorce from the bonds of matrimony may be decreed by the district court of the county where the parties, or one of them, reside, on application by the petition of the aggrieved party in either of the following cases:

First. When adultery has been committed by any husband or wife;

Second. When one of the parties was physically incompetent at the time of the marriage;

Third. When one of the parties has been sentenced to imprisonment in any prison, jail or house of correction for three years or more; and no pardon granted, after a divorce for that cause, shall restore such party to his or her conjugal rights;

Fourth. When either party shall wilfully abandon the other without just cause, for the term of two years;

Fifth. When the husband or wife shall have become an habitual drunkard;

Sixth. When either party shall be sentenced to imprisonment for life; and no pardon shall effect a decree of divorce for that cause rendered.

§ 1568. Same — extreme cruelty.

A divorce from the bonds of matrimony or from bed and board may be decreed for the cause of extreme cruelty, whether practised by using personal violence, or by other means; or for utter desertion of either party for the term of two years; and a like divorce may be decreed, on complaint of the wife, when the husband, being

of sufficient ability to provide suitable maintenance for her, shall grossly or wantonly and cruelly refuse or neglect so to do.

§ 1569. Residence of parties.

No person shall be entitled to a divorce for any cause arising in this state who has not had actual residence in this state for at least one year next before bringing suit for divorce with a bona fide intention of making this state his or her permanent home, unless the marriage was solemnized in this state and the applicant shall have resided therein from the time of the marriage to filing the petition. No person shall be entitled to a divorce for any cause arising out of this state unless the petitioner or defendant shall have resided within this state for at least two years next before bringing suit for divorce, with a bona fide intention of making this state his or her permanent home.

§ 1570. Collusive application, etc.

No divorce shall be decreed in any case when it shall appear that the petition or bill therefor was founded in or exhibited by collusion between the parties, nor where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.

§ 1571. Petition.

A petition or bill of divorce, alimony and maintenance may be exhibited by a wife in her own name, as well as by a husband, and in all cases the respondent may answer such petition or bill without oath. No person shall be entitled to a divorce unless the defendant shall have been personally served with process if within this state, or with personal notice duly proved and appearing of record, if out of this state, or unless the defendant shall have entered an appearance in the case; but if it shall appear to the satisfaction of the court by the affidavit of the petitioner or of

his or her attorney that the petitioner does not know the address or residence of the defendant, and has not been able to ascertain either, after reasonable and due inquiry and search continued for three months after the filing of the petition, the court or judge in vacation shall authorize notice by publication of the pendency of the suit for divorce, to be given in a manner as provided in other cases under the code of civil procedure.

§ 1572. Either party competent as witness.

Either party may be a witness as in other civil cases.

§ 1573. Suit — how conducted.

Suits to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as other suits in courts of equity; and the court shall have the power to award issues, to decree costs, and enforce its decrees as in other cases.

§ 1574. Costs of suit — how paid.

In every suit brought, either for a divorce or for a separation, the court may, in its discretion, require the husband to pay any sum necessary to enable the wife to carry on or defend the suit during its pendency; and it may decree costs against either party, and award execution for the same; or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

§ 1575. Liberty of wife pending suit.

After the exhibition of the petition or bill in a suit to annul a marriage, or for a divorce, whether from the bonds of matrimony or from bed and board, the court may at any time, either in term or vacation, on the petition of the wife prohibit the husband from imposing any restraint upon her personal liberty during the pendency of the cause.

§ 1576. Maintenance and custody of minor children during pendency of suit.

The court may in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance during the pendency of such suit, as shall be deemed proper and necessary, and for the benefit of the children.

§ 1577. Divorce — custody of children.

Upon pronouncing a sentence or decree of nullity of a marriage and also upon decreeing a divorce, whether from the bonds of matrimony or from bed and board, the court may make such further decree as it shall deem just and proper concerning the care, custody, and maintenance of the minor children of the parties, and may determine with which of the parents the children or any of them shall remain. In case no decree of divorce or nullity is granted, the court may award the custody, care and maintenance of minor children in such manner as shall seem advisable. (As amended by L. 1917, ch. 28.)

§ 1578. Revising original decree.

If the circumstances of the parents shall change, or it shall be to the best interests of the children, the court may afterwards, from time to time, on its own motion, or on the petition of either parent, revise or alter to any extent, the decree so far as it concerns the care, custody and maintenance of the children or any of them. (As amended by L. 1919, ch. 206.)

§ 1579. Wife's real property — possession of.

Whenever nullity of a marriage or a divorce from the bonds of matrimony for any cause shall be decreed, or when the husband shall be sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband were dead.

§ 1580. Same — further decree.

Upon every such dissolution of a marriage, as is specified in the preceding section, and also upon every divorce from bed and board, the court may make a further decree for restoring to the wife the whole, or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof, to be paid by her husband in money.

§ 1581. Court may appoint trustees — when.

Upon every divorce for adultery committed by the husband, and upon every divorce from bed and board for any cause, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section, the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid into the hands of a trustee or trustees, to be appointed by the court, upon trust, to invest the same, and to apply the income thereof to the support and maintenance of the wife, and of the minor children of the marriage, or any of them, in such manner as the court shall direct.

§ 1582. Trustees — duties — bond.

Such trustees shall also pay over the principal sum to the wife and children of the marriage, when ordered by the court, in such proportions and at such times as the court shall direct, regard being had in the disposition of the said income, as well as of the principal sum, to the situation and circumstances of the wife and children; and the said trustee shall give such bonds as the court shall require for the faithful performance of their trust.

§ 1583. Husband may be examined on oath.

Whenever the court shall think proper to award to the wife any of her personal estate, or any money in lieu thereof, in pursuance of the foregoing provisions, such court may require the husband to disclose, on oath, what personal estate has come to him

by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

§ 1584. Decree for support of wife.

Upon every divorce from the bonds of matrimony for any cause excepting that of adultery committed by the wife, and also upon every divorce from bed and board, from any cause, if the estate and effects restored or awarded to the wife shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, the court may further decree to her such part of the personal estate of the husband and such alimony out of his estate as it shall deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other circumstances of the case.

§ 1585. Lien of judgment.

All judgments and orders for payment of alimony or of maintenance in actions of divorce or maintenance shall be liens upon property in like manner as in other actions, and may in the same manner be enforced and collected by executions and proceedings in aid thereof, or other action or process as other judgments.

§ 1586. Remedy to be cumulative.

The remedy given by the next preceding section shall be held to be cumulative and in no respect to take away or abridge any subsisting remedy or power of the court for the enforcement of such judgments and orders: Provided, nothing in this article shall affect the title of any bona fide purchaser for value.

§ 1587. Decree of divorce — effect on property.

When the marriage is dissolved by a decree of divorce from the bonds of matrimony, the innocent party shall not be entitled to a distributive share or any other interest in the real estate of the

party adjudged guilty of a cause for divorce, unless the decree of divorce awards such share or interest in express terms.

§ 1588. Husband to hold wife's personal estate — when.

When a divorce shall be decreed for the cause of adultery committed by the wife, the husband may hold such of her personal estate as the court shall deem just and reasonable under all the circumstances in the case, and the same shall be determined and decreed by the court at the time of the granting of such divorce.

§ 1589. Security for payment of alimony.

In all cases where alimony or other allowance shall be decreed for the wife or for the children, the court may require sufficient security to be given by the husband for the payment thereof, according to the terms of the decree. And upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, his real or personal estate may be sold as upon execution for the payment of any sums due upon such decree. And in default of security for payment of installments in future to fall due, the court may also appoint a receiver to take charge of his real or personal estate, or both, and hold the same, and the rents, issues, interests and profits thereof for security for the payment of installments in future falling due. And judgments and decrees for alimony or maintenance shall be liens upon the property of the husband, and may be enforced and collected in the same manner as other judgments of the court wherein they are rendered.

§ 1590. Court may alter and revise decree.

After a decree for alimony or other allowance for the wife and children, or either of them, and also after a decree for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may, from time to time, on the petition of either of the parties, revise and alter such

decree respecting the amount of such alimony or allowance, or the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of the said matters which such court might have made in the original suit.

§ 1591. Legitimacy of children.

A divorce for the cause of adultery committed by the wife shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, may be determined by the court upon the proofs in the case; and in every case the legitimacy of all children begotten before the commencement of the suit shall be presumed until the contrary be shown.

§ 1592. Issue of marriage legitimate.

Upon the dissolution of a marriage on account of the nonage, insanity, or idiocy of either party, the issue of the marriage shall be deemed to be, in all respects, the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

§ 1593. Same — when marriage dissolved on account of prior marriage.

When a marriage is dissolved on account of a prior marriage of either, and it shall appear that the second marriage was contracted in good faith and with the full belief of the parties that the former wife or husband was dead, the fact shall be stated in the decree of divorce or nullity, and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be legitimate issue of the parent who, at the time of marriage, was capable of contracting.

§ 1594. When issue deemed illegitimate.

Upon the dissolution by decree or sentence of nullity of any marriage that is prohibited on account of consanguinity between

the parties, or of any marriage between a white person and a negro, the issue of the marriage shall be deemed to be illegitimate.

§ 1595. Cohabitation after divorce — penalty.

If any persons, after being divorced from the bonds of matrimony, for any cause whatever, shall cohabit together, they shall be liable to all the penalties provided by law against adultery.

§ 1596. Marriage — how annulled.

A bill to annul a marriage on the ground that one of the parties was under the age of legal consent, may be exhibited by the parent or guardian entitled to the custody of such minor, but in no case shall such marriage be annulled on the application of a party who was of the age of legal consent at the time of the marriage, nor when it shall appear that the parties, after they had obtained the age of consent had freely cohabited as man and wife.

§ 1597. By whom bill exhibited.

A bill to annul a marriage on the ground of insanity or idiocy may be exhibited by any person admitted by the court to prosecute as the next friend to such idiot or lunatic.

§ 1598. Marriage of lunatic may be vacated after restoration.

The marriage of a lunatic may also be declared void upon the application of the lunatic, after the restoration of reason, but in such case no sentence of nullity shall be pronounced if it shall appear that the parties freely cohabited as husband and wife after the lunatic was restored to a sound mind.

§ 1599. Provision for issue of marriage by force or fraud.

If there shall be any issue of a marriage, annulled on the ground of force or fraud, the court shall decree their custody to the innocent person and may also decree a provision for their education and maintenance out of the estate and property of the guilty party.

§ 1600. When annulled for physical incapacity.

A suit to annul the marriage on the ground of the physical incapacity of one of the parties shall only be maintained by the injured party against the party whose incapacity is alleged, and shall, in all cases, be brought within two years from the solemnization of the marriage.

§ 1601. No decree upon uncorroborated confession.

No decree of divorce and of the nullity of a marriage shall be made solely on the declarations, confessions, or admissions of the parties, but the court shall, in all cases, require other satisfactory evidence of the facts alleged in the petition for that purpose.

§ 1602. Court may deny divorce — when.

In any suit brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

First — When the offense shall appear to have been committed by the procurement or with the connivance of the complainant.

Second — When the offense charged shall have been by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties with the knowledge of the offense.

Third — When there shall have been no express forgiveness and no voluntary cohabitation of the parties, but the suit shall not have been brought within five years after the discovery by the complainant of the offense charged.

§ 1603. Order for maintenance.

In case of an application for a divorce from bed and board, although a decree for such divorce be not made, the court may make such order or decree for the support and maintenance of the wife and children, or any of them, by the husband, or out of his property, as the nature of the case may render suitable and proper.

§ 1604. Revocation of decree.

When a decree of divorce from bed and board forever, or for a limited time, shall have been pronounced, it may be revoked at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and their producing satisfactory evidence of their reconciliation.

§ 1605. When married woman deemed inhabitant of state.

If any married woman, at the time of exhibiting a bill against her husband, under the provisions of either of the last two sections, shall reside in this state, she shall be deemed an inhabitant thereof, although her husband may reside elsewhere.

§ 1606. When decree becomes final.

A decree of divorce shall not become final or operative until six months after trial and decision except for the purpose of review by proceedings in error or by appeal and for such purposes only, the decree shall be treated as a final order as soon as rendered: provided, if proceedings in error or by appeal shall have been instituted within said six months, such decree shall not become final until such proceedings are finally determined. If no such proceedings have been instituted, the district court may, at any time within said six months, vacate or modify its decree, but if such decree shall not have been vacated or modified, unless proceedings are then pending with that end in view, the original decree shall at the expiration of six months become final without any further action of the court.

ARTICLE 4.**MARRIAGE AND DIVORCE OF INDIANS.****§ 1607. Marriage and divorce by Indian custom — when valid.**

All persons in whole or in part of Indian blood, residing in and having their homes in the state of Nebraska and who are living

together in the relation of husband and wife, and who have heretofore been married according to Indian custom, or otherwise, are hereby declared to be lawfully married; and all divorces or recognized separations between such persons heretofore consummated according to Indian custom, or otherwise, shall be and the same are hereby declared to be legal.

§ 1609. Marriage and divorce by Indian custom hereafter void.

Marriages and divorces among such Indians, or among their descendants, according to Indian custom, shall hereafter be unlawful and shall be punished as hereinafter provided.

§ 1611. Indian divorces.

Such Indians and their descendants may hereafter obtain divorces in the manner and for the causes provided in the statutes of this state and not otherwise.

§ 1614. Construction.

Nothing in this article shall be construed to constitute a legal separation of a prior legal marriage according to the laws of this state wherein a license was secured and a ceremony performed by some person empowered by law to perform such marriage ceremony of any Indian of whole or mixed blood residing in the state.

§ 1673. Wife may petition for custody of children — when.

When, from any cause, a husband and wife shall separate, and the wife shall claim possession of any child or children who may be

the fruit of such marriage, not exceeding twelve years of age, such wife shall apply to the county judge of the county wherein the husband and wife resided at the time of their separation, or in which the mother may reside at the time of the application for the custody of said child or children, the county judge shall give the husband notice of the application, together with the time set for hearing the cause, which time shall not be less than three days from the service of the notice; and the notice may be served by leaving a copy at the usual place of residence of the husband.

§ 1674. Same — hearing and order.

If it shall appear that the mother is able to provide for the maintenance of such child or children, and should, under the proof presented be awarded the custody of such child or children, the county judge shall order that said child or children shall remain in the custody of the mother until the custody of such child or children shall be otherwise ordered by the district court: Provided, such order shall never be made when it shall appear by the proof that the wife is the offending party.

§ 1542. When marriages void.

Marriages are void:

First — When one party is a white person and the other is possessed of one-eighth or more negro, Japanese or Chinese blood;

Second — When either party has a husband or wife living at the time of marriage;

Third — When either party is insane or an idiot at the time of marriage. The term "idiot" shall include all persons who from whatever cause are mentally incompetent to enter into the marriage relation.

Fourth — When the parties stand in relation to each other of parents and children, grandparents and grandchildren, brother and

sister of half as well as whole blood, first cousins when of whole blood, uncle and niece, aunt and nephew; and this subdivision extends to illegitimate as well as legitimate children and relatives.

§ 1553. Marriage not void for want of jurisdiction.

No marriage solemnized before any person professing to be a justice of the peace, or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority in such supposed justice or minister: Provided, the marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

§ 1556. Marriage contracted out of state — when valid.

All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state.

§ 1557. Consent by force or fraud.

In case of a marriage solemnized when either of the parties are under the age of legal consent, if they shall separate during such nonage, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed voidable.

§ 1558. Petition to annul void marriage.

When a marriage is supposed to be void, or the validity thereof is doubted, either party, excepting in the cases where a contrary provision is hereinafter made, may file a petition or bill in the

district court of the county where the parties, or one of them reside, for annulling the same, and such petition or bill shall be filed, and proceedings shall be had thereon, as in the case of a petition or bill filed in said court for a divorce; and upon due proof thereof, it shall be declared void by a decree or sentence of nullity.

§ 1559. Marriage — when declared valid.

When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a bill or petition in the manner aforesaid, for affirming the marriage, and upon due proof of the validity thereof it shall be declared valid by a decree or sentence of the court, and such decree, unless reversed on appeal shall be conclusive upon all persons concerned.

§ 8769. Incestuous marriages.

Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, are declared to be incestuous and absolutely void. This section shall extend to illegitimate as well as legitimate children and relations.

L. 1919, ch. 206.

§ 1. Juvenile court — when have jurisdiction in divorce cases.

The juvenile court shall have jurisdiction to hear and determine all cases for divorce or alimony or involving the custody of children, and the court, or in vacation any judge thereof, may, through any probation officers of the county or otherwise inquire into the same.

L. 1915, ch. 186.

Whenever any husband, against whom a decree for divorce and alimony for the support of his children shall have been rendered by any court in this state, shall, without good cause, refuse or neglect to pay to the persons noted the amounts and manner provided by such decree, he shall be guilty of a misdemeanor and shall, on conviction, be imprisoned in the county jail not less than three nor more than six months for each offence, provided the refusal or neglect to so pay each separate installment or payment of such money as provided by the decree shall be held to be separate offense and punishable as such.

NEVADA.*Revised Laws, 1912.*

- SECTION 5838. Divorce from bonds of matrimony, how obtained — grounds for divorce.
5839. Nonresident defendants to be notified — court may make order — publication — service of summons — compulsory process may issue, when.
5840. Disposition of children pending proceedings and upon divorce — judge may order production of child — orders, how enforced.
5841. Disposition of property — what considerations determine — effect of decree on matters not specifically mentioned — preliminary restraining orders.
5842. Testimony, pleadings, and orders.
5843. Disposition of property rights — rule where wife obtains decree on ground of imprisonment or adultery of husband — alimony pendente lite — procedure — orders.
5844. Effect of divorce — contract dissolved as to both parties — female's name may be changed.
5845. Jury trial.

§ 5838. Divorce from bonds of matrimony, how obtained — grounds for divorce.

Divorce from the bonds of matrimony may be obtained, by complaint under oath, to the district court of the county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided six months before suit be brought, for the following causes:

First — Impotency at the time of the marriage continuing to the time of the divorce.

Second — Adultery, since the marriage, remaining unforgiven.

Third — Wilful desertion, at any time, of either party by the other, for the period of one year.

Fourth — Conviction of felony or infamous crime.

Fifth — Habitual gross drunkenness, contracted since marriage of either party, which shall incapacitate such party from contributing his or her share to the support of the family.

Sixth — Extreme cruelty in either party.

Seventh — Neglect of the husband, for the period of one year, to provide the common necessities of life, when such neglect is not the result of poverty on the part of the husband, which he could not avoid by ordinary industry. (As amended by L. 1913, ch. 10; L. 1915, ch. 28.)

§ 5839. Nonresident defendants to be notified — court may make order — publication — service of summons — compulsory process may issue, when.

If the defendant is not a resident of the territory, or cannot, for any cause, be personally summoned, the court, or judge, in vacation, may order notice of the pendency of the suit to be given in such manner, and during such time, as shall appear most likely to convey a knowledge thereof to the defendant, without undue expense or delay; and if no such order be made, it shall be sufficient to publish such notice in a weekly newspaper, printed in, or nearest to, the county in which the suit is pending, three months in succession; and if the defendant fail to appear and make defense, at the first term after such notice, or after thirty days' personal service of summons, the evidence may be heard, and the cause decided, at that term; or compulsory process may be had to obtain an appearance, or answer, if it be necessary to the disposition of property, or of children.

§ 5840. Disposition of children pending proceedings and upon divorce — judge may order production of child — orders, how enforced.

The court, in granting a divorce, shall make such disposition of, and provision for, the children, as shall appear most expedient under all the circumstances, and most for the present comfort

and future well-being of such children; and when, at the commencement, or during the pendency, of the suit, it shall be made to appear to the court, or to the judge, in vacation, that any child of the wife, whether she be plaintiff or defendant, which is too young to dispense with the care of its mother, or other female, has been or is likely to be, taken or detained from her, or that any child of either party, has been, or is likely to be taken, or removed, by, or at the instance of, the other party, out of the country, or concealed within the same, it shall be the duty of the court, or of such judge in vacation, forthwith to order such child to be produced before him, and then to make such disposition of the same, during the pendency of the suit, as shall appear most advantageous to such child, and most likely to secure to it the benefit of the final order to be made in its behalf; and all such orders may be enforced, and made effectual, by attachment, commitment, and requiring security for obedience thereto, or by other means, according to the usages of courts, and to the circumstances of the case; provided, the court, upon good cause shown, may change the custody of such minor children, if they should be satisfied that such change will be for the welfare of such children.

§ 5841. Disposition of property, what considerations determine — effect of decree on matters not specifically mentioned — preliminary restraining orders.

In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of the children. And all property and pecuniary rights and interests, and all rights touching the children, their custody and guardianship, not otherwise disposed of or regulated by the order of the court, shall, by such divorce, be divested out of the guilty party, and vested in the party at whose instance the divorce was granted. And if after the filing

of the petition, it shall be made to appear probable to the court or the judge, in vacation, that either party is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, to be enforced as such preliminary orders are enforced respecting children.

§ 5842. Testimony, pleadings, and orders.

The testimony of witnesses in suits for divorce, shall be given orally in court, with the right to either party to take and use depositions, on the same terms and in the same manner as in actions at law; and the proceedings, pleadings, and practice, shall conform to those at law, as nearly as conveniently may be, but all preliminary and final orders may be in such form as will best effect the object of this act, and produce substantial justice.

§ 5843. Disposition of property rights — rule when wife obtains decree on ground of imprisonment or adultery of husband — alimony pendente lite — procedure — orders.

When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead; but in other cases the court may set apart such portion for her support, and the support of their children, as shall be deemed just and equitable. In the event of the remarriage of the wife, and there being issue of the former marriage, the court in which the divorce was granted may, on proper showing for cause, enter an order that the alimony previously awarded, or part thereof, be paid as ordered by the court for the benefit of the minor children. In any suit for divorce now pending, or which may hereafter be commenced, the court or judge may, in its discretion, upon application, of which due notice shall have been

given to the husband or his attorney, at any time after the filing of the complaint, require the husband to pay such sums as may be necessary to enable the wife to carry on or defend such suit, and for her support and for the support of the children of the parties during the pendency of such suit; and the court or judge may direct the application of specific property of the husband to such object, and may also direct the payment to the wife for such purpose of any sum or sums that may be due and owing the husband from any quarter, and may enforce all orders made in this behalf, as provided in section 24 of this act. (As amended by L. 1915, ch. 211.)

§ 5844. Effect of divorce — contract dissolved as to both parties — female's name may be changed.

Whenever an order of divorce from the bonds of matrimony is granted in this territory by the court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties; and in all suits for a divorce brought by a female, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, and shall, in its order, decree and appoint.

§ 5845. Jury trial.

Either party, on application to the court, may be entitled, at such trial, to have the issue of fact involved in such case and presented by the pleadings, tried by a jury, in accordance with the general rules governing the trial of civil actions in the district court.

§ 2349. Want of power unknown — marriage valid.

No marriage solemnized before any person professing to be a judge, justice, or minister, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of

any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

§ 2354. When void without decree of divorce.

All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this territory, be absolutely void without any decree of divorce or other legal proceedings.

§ 2355. Marriage of parties incapable of assenting or when fraud practiced — when void.

When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or when fraud shall have been proved, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.

§ 2356. When not to be judged a nullity — insanity — cohabitation after disability removed.

In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under the age of legal consent, if it shall appear that the parties, after they attained such age, had, for any time, freely cohabited together as husband and wife, nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife after such insane person was restored to a sound mind.

§ 2357. Actions for annulment.

When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the probate court of the county where the parties or one of them, resided, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said court for a divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

§ 6514. Marriage between Caucasian and other races prohibited.

It shall be unlawful for any person of the Caucasian or white race to intermarry with any person of the Ethiopian or black race, Malay or brown race, Mongolian or yellow race, or the American Indian or red race, within the state of Nevada.

§ 6515. Penalty for contracting parties.

All persons marrying contrary to the provisions of the last preceding section shall be guilty of a gross misdemeanor.

§ 6462. Advertising for divorce business.

Every person who shall cause to be published in any newspaper, magazine or other publication, or who shall cause or allow to be posted or distributed in any place frequented by the public any card or notice offering to procure or obtain, or to aid in procuring or obtaining any divorce or the dissolution or nullification of any marriage, or offering to appear or act as attorney or counsel in any suit for divorce, alimony, or the dissolution or nullification of any

marriage, either in this state or elsewhere, shall be guilty of a misdemeanor.

§ 6444. Forcing woman to marry.

Every person who shall take any woman unlawfully, against her will, and by force, menace, or duress, compel her to marry him, or to marry any other person, or to be defiled, and shall be thereof convicted, shall be punished by imprisonment in the state prison for a term not less than two nor more than fourteen years; and the record of such conviction shall operate as a divorce to the party so married.

§ 2166. Division in case of divorce.

In case of the dissolution of the marriage by decree of any court of competent jurisdiction, the community property must be equally divided between the parties, and the court granting the decree must make such order for the division of the community property, or the sale and equal distribution of the proceeds thereof, as the nature of the case may require; provided, that when the decree of divorce is rendered on the ground of adultery or extreme cruelty, the party found guilty thereof is only entitled to such portion of the community property as the court granting the decree may, in its discretion, from the facts in the case, deem just and allow; and such allowance shall be subject to revision on appeal in all respects, including the exercise of discretion, by the court below.

§ 2174. Contract of separation.

A husband and wife cannot by any contract with each other alter their legal relations except as to property, and except that they may agree to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

§ 2175. Idem — consideration of.

The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

§ 4863. Idem — divorce proceedings — public may be excluded.

In an action for divorce the court may direct the trial of any issue of fact joined therein to be private, and upon such directions all persons may be excluded, except the officers of the court, the parties, their witnesses, and counsel.

L. 1913, ch. 97.

An act providing, in certain cases, for actions for separate maintenance by the wife against her husband, permitting suitable allowances for the prosecution of the action and for the support and custody of the children and establishing the remedies, procedure and venue in such actions.

§ 1. Wife may recover from husband for support of herself and children.

When the wife has any cause of action for divorce against her husband, or when she has been deserted by him and such desertion has continued for the space of ninety days, she may, without applying for a divorce, maintain in the district court, an action against her husband for permanent support and maintenance of herself or of herself and of her child or children.

§ 2. Court may require husband to pay expense of litigation.

During the pendency of such action, the court may, in its discretion, require the husband to pay any money necessary for the prosecution of the action and for the support and maintenance of the wife or of the wife and of her child or children.

§ 3. Court may assign property to wife and decree fixed sum from husband for support of family.

In any such action the court may assign and decree to the wife the possession of any real or personal property of the husband and may order or decree the payment of a fixed sum of money for the support of the wife or for the support of the wife and of her child or children and provide that the payment of the same be secured upon real estate, or other security may be required, or any other suitable provision may be made; payments to be made at such times and in such manner as to the court may seem proper. And the court shall have power to change, modify or revoke its orders and decrees from time to time. No order or decree shall be effective beyond the joint lives of the husband and wife.

§ 4. Husband may be enjoined from selling property.

At any time after the filing of the complaint the wife may file a notice of pendency of the action in the office of the county recorder of any county in which the husband may have real property which shall have the same effect as such notice in actions directly affecting real property. The court may also enjoin the husband from disposing of any property during the pendency of the action.

§ 5. Preliminary and final orders.

The court in such actions may make such preliminary and final orders as it may deem proper for the custody, control and support of any minor child or children of the parties.

§ 6. Such orders may be enforced.

The final judgment and any order or orders made before or after judgment may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary; a receiver may be appointed, security may be required, execution may issue, under which real or personal property of

the husband may be sold as under execution in other cases, and disobedience of any order or orders may be punished as a contempt.

§ 7. Procedure same as in actions for divorce.

In all cases commenced hereunder, the proceedings and practice shall be the same, as nearly as may be, as is now or hereafter may be provided in actions for divorce; and suit may be brought, at the option of the wife, either in the county in which the wife shall reside, at the time the suit is commenced, or in the county in which the husband may be found.

NEW HAMPSHIRE.*Public Statutes, 1901.*¹

CHAPTER 175.

DIVORCES.

- SECTION**
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 19. Clerks of court to report divorces.

§ 1. Marriages, when void ab initio.

All marriages prohibited by law on account of the consanguinity or affinity of the parties, or where either has a former wife or husband living, knowing such wife or husband to be alive, if solemnized in this state, shall be absolutely void without any decree of divorce or other legal process.

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§ 2. Divorce or decree of nullity, when obtained.

If any doubt exists whether any marriage is void, or as to the effect of any former decree of divorce or nullity between the parties, a libel may be filed as in other cases, and a decree of divorce or nullity may be made.

§ 3. Jurisdiction of court in divorce suits limited.

The jurisdiction of the court in actions for divorce shall be confined to the following classes of cases:

I. Where both parties were domiciled within this state when the action was commenced.

II. Where the plaintiff was domiciled within this state when the action was commenced, and the defendant was personally served with process within this state.

III. Where one of the parties was domiciled within this state when the action was commenced and one or the other of them actually resided within this state for one year next preceding the beginning of the action.

§ 4. Time of residence required to give court jurisdiction of existing cause not diminished.

The preceding section shall not have the effect to diminish the time of residence or domicile within this state required to give the court jurisdiction of an existing cause of divorce.

§ 5. Causes of divorce, what are.

A divorce from the bonds of matrimony shall be decreed in favor of the innocent party for either of the following causes:

I. Impotency of either party.

II. Adultery of either party.

III. Extreme cruelty of either party to the other.

IV. Conviction of either party of crime punishable in this state with imprisonment for more than a year, and actual imprisonment under such conviction.

V. When either party has so treated the other as seriously to injure health.

VI. When either party has so treated the other as seriously to endanger reason.

VII. When either party has been absent three years together, and has not been heard of.

VIII. When either party is an habitual drunkard, and has been such for three years together.

IX. When either party has joined any religious sect or society which professes to believe the relation of husband and wife unlawful, and has refused to cohabit with the other for six months together.

X. When either party, without sufficient cause, and without the consent of the other, has abandoned and refused, for three years together, to cohabit with the other.

XI. When the husband has willingly absented himself from the wife for three years together, without making suitable provision for her support and maintenance.

XII. When the wife of any citizen has willingly absented herself from her husband without his consent for three years together.

XIII. When the wife of any citizen has gone to reside beyond the limits of this state, and has remained absent and separate from her husband ten years together, without his consent and without returning to claim her marriage rights.

XIV. When the wife of any alien or citizen of another state, living separate, has resided in this state for three years together, her husband having left the United States with the intention of becoming a citizen of some foreign country, and not having during that period come into this state and claimed his marital rights, and not having made suitable provision for his wife's support and maintenance.

§ 6. Except for adultery, cause must exist when libel filed.

No divorce shall be granted for any cause except adultery, unless the cause shall be in existence at the time of filing of the petition therefor.

§ 7. Legitimacy of children not affected by divorce.

No decree of divorce shall affect the legitimacy of a child born or begotten in lawful matrimony, unless it shall be so expressed in the decree.

§ 8. Libels, where brought.

All libels for divorce shall be brought in the county in which the parties, or one of them, live, and before the supreme court holden in or for the county; and the notice of the pendency thereof shall be given to the libelee, personal or otherwise, as court shall order.

§ 9. What to contain, how signed.

Every libel shall state the cause or causes of divorce, and shall be signed by the libelant, if of sound mind and of the age of legal consent; otherwise by the parent, guardian, or next friend of the libelant.

§ 10. If libelee insane, court to appoint guardian.

If the libelee is insane, the court may appoint a guardian to appear and answer for the libelee, as is done for an infant defendant at common law.

§ 11. Evidence of marriage.

Upon a hearing for divorce, the admission of the marriage by the party against whom the process is instituted, general repute, the fact of cohabitation, or any other circumstantial or presumptive evidence from which the marriage may be inferred, shall be competent evidence for the consideration of the court.

§ 12. Injunction, by whom and for what issued.

After the filing of a libel for divorce, the supreme court sitting in any county, or any judge thereof, may, on petition of the wife, prohibit the husband from imposing any restraint upon her per-

sonal liberty, or from entering the tenement where she resides during the pendency of the libel, and, during such pendency, may order a temporary allowance to be paid to the wife by the husband for her support, and may also, on the petition of either party, make such order respecting the custody and maintenance of the minor children of the parties as shall be deemed expedient and for the benefit of the children. (As amended by L. 1919, ch. 39.)

§ 13. Support and custody of children.

In all cases where there shall be a decree of divorce or nullity, the court shall make such further decree in relation to the maintenance, education, and custody of the children as shall be most conducive to their benefit, and may order a reasonable provision for their support to be made by the guilty party, or out of his estate.

§ 14. Alimony to wife, how decreed and protected.

Upon a decree of nullity or divorce, the court may restore to the wife all or any part of her estate, and may assign to her such part of the estate of her husband, or order him to pay a sum of money, as may be deemed just; and may compel the husband to disclose, under oath, the situation of his property; and, before or after the decree, may make such orders and use such process as may be necessary.

§ 15. Trustee may be appointed to invest alimony, etc.

In a case arising under the two preceding sections, the court may order the property to be conveyed or the money to be paid to a trustee, to invest, and to apply the income thereof to the support of the wife, or the maintenance and education of the minor children, and to pay over the principal sum, or any part thereof, as the court may from time to time order.

§ 16. Security for its payment may be required.

In all cases where alimony or an allowance shall be decreed for the wife or children, the court may require security to be given for the payment thereof.

§ 17. Part of wife's estate may be decreed to husband.

Upon a decree of nullity or divorce the court may decree that the husband shall have a part of the estate of the wife in the nature of alimony, as justice may require.

§ 18. Decree for alimony may be revised and modified.

The court, upon proper application and notice to the adverse party, may revise and modify any order made by it, may make such new orders as may be necessary, and may award costs as justice may require.

§ 19. Clerks of court to report divorces.

The clerks of the supreme court shall, at the close of each term in their respective counties at which divorces are granted, make return to the registrar of vital statistics of the number of divorces decreed at that term, the causes thereof, the sex of the libellant, and the date of the decree.

L. 1905, ch. 7.

§ 1. Superior court may change name.

In proceedings for divorce, when the libellant shall have asked in the libel to have her name changed, the court may, when a divorce is decreed, decree the change of the libellant's name to a name which she bore before her last marriage.

§ 2. Clerks of court to return lists.

The clerk of the superior court for each county shall at the end of each term of court holden therein transmit to the register

of probate for the county a full and correct list of all changes of names that have been decreed by the superior court under this act; and the register of probate shall return said list of changes of names to the secretary of state who shall cause such list to be published as the lists of names changed by the judges of probate are now published, except that names changed under the provisions of this act shall be designated when published as names changed by the superior court in divorce proceedings.

L. 1909, ch. 68.

§ 1. Decree of separation authorized; effect.

In any case in which a divorce might be decreed, the superior court, on petition of the party who would be entitled to a divorce, may decree a legal separation of the parties, which separation shall have in all respects the effect of a divorce, except that the parties shall not thereby be made free to marry any third person, and except as hereinafter expressly provided.

§ 2. Procedure.

Upon such petition the procedure shall be in all respects the same as upon libels for divorce, and the court shall have the same power in all matters relating to restraining orders, and decrees, allowances, alimony, custody of children, and division or apportioning of the property of the parties, as in cases of divorce. But the name of the wife shall not be changed.

§ 3. Resumption of marital relations.

The parties to such a petition may at any time resume marital relations upon filing with the clerk of the superior court for the county in which the separation was decreed their declaration in writing, by them signed, acknowledged before a justice of the peace or notary public, and witnessed, of their intention so to

resume such relation. Such declaration shall be duly entered upon the docket of said court, under the entries to such petition.

§ 4. Effect of resumption.

Such resumption of marital relations shall terminate and annul all restraining orders and decrees, and all decrees relating to alimony or the custody of children, but shall not affect any decree relating to the division or apportionment of property.

§ 5. Return of decrees, etc.

The clerk of the superior court shall make return of all such decrees of separation and declarations of the resumption of marital relations to the registrar of vital statistics in the manner by law provided for the return of divorces decreed in said court.

Public Statutes, 1901.

CHAPTER 176.

§ 4. Court may make decrees in favor of wife as to custody of children, etc.

Whenever the husband is insane, or whenever a cause is in existence which is, or if continued will be, a cause for a divorce in favor of the wife, the supreme court, upon petition of the wife and such procedure thereon as in divorce cases, may restrain the husband from interfering with the personal liberty of the wife, may grant to her temporarily or permanently the custody, care, education, and maintenance of their minor children, and may make to her reasonable allowances out of the estate of the husband for the support of herself and children, all subject to such limitations and conditions as the court shall deem just, and upon motion and notice to the adverse party in the proceeding, or upon a new petition by either party and like procedure thereon, the court may modify or revise its orders and decrees. [At any time after the

filing of a petition for an allowance, and before final hearing, the court may, on satisfactory affidavits or other proofs, order a temporary allowance to be paid to the wife by the husband, pending the final hearing on the petition.] (As amended by L. 1907, ch. 31.)

§ 5. Attachments may be made upon petitions, etc.

Upon a petition filed under the preceding section, an attachment of the husband's property may be made as in case of a libel for divorce; and the court may make interlocutory orders therein as in divorce cases, and its orders and decrees shall be enforced in like manner.

§ 9. Consequence if husband becomes citizen, etc.

If the husband of such woman becomes a citizen of this state, and they cohabit together, the fact of his becoming such citizen, and such cohabitation, shall have the same effect upon any contract or business of the wife as if the marriage between them had then first been solemnized.

§ 10. Rights of such wife if husband obtains foreign divorce, etc.

If the husband of such woman obtains a divorce from his wife in a court or tribunal of any other state or country, or if a divorce be decreed upon application of the wife during such separate residence, she shall retain the exclusive custody and guardianship and receive the earnings of her minor children living with her.

CHAPTER 204.

§ 4. Jurisdiction of supreme court at trial terms.

The court, at the trial terms, shall take cognizance . . . of petitions for divorce, nullity of marriage, alimony, custody of children, and allowance to wife from husband's property for support of herself and children; . . .

CHAPTER 205.

§ 11. The plaintiff or libelant may have writ of attachment or trustee process.

The plaintiff in a bill in equity, or the libelant in a libel for divorce, shall have a writ of attachment or a trustee process as of right, for the attachment of the goods, estate, money, rights, or credits of the defendant or libelee to secure the performance of any decree or order that may be made in the suit.

§ 12. Form of writ.

In such writ, the following may be substituted for a declaration: "Said attachment is to be made to secure the performance of any decree or order that may be made in the bill in equity (or libel for divorce) of which a copy is hereto annexed," and a copy of the bill or libel may be annexed to the writ.

CHAPTER 83.**§ 1. Subd. 13. Settlement of minors in case of divorce; when emancipated.**

In case of a divorce, the minor children shall follow the after-acquired settlement of the parent entitled to their legal custody, so long as such right continues, unless otherwise provided by law; and when neither parent has a right to the control and services of such children, they shall be considered emancipated.

NEW JERSEY.*Compiled Statutes, 1910.*¹

DIVORCE.

- ARTICLE**
- I. Decrees of nullity
 - II. Causes for divorce.
 - III. Jurisdiction.
 - IV. Procedure and practice.
 - V. Alimony and maintenance.
 - VI. Miscellaneous provisions.
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- SECTION 1.** Causes for decrees of nullity.
- Other wife or husband living.
 - Relation within prohibited degrees.
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 - Adultery.
 - Desertion.
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 - Separation limited or permanent.

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28. Collusion.
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SECTION 33. Effect of decrees of other states and countries; exception.

34. Time of taking effect of act; pending causes.

Schedule.

Acts repealed.

I. DECREES OF NULLITY.

§ 1. Causes for decrees of nullity.

Decrees of nullity of marriage may be rendered in all cases when —

Other wife or husband living.— I. Either of the parties has another wife or husband living at the time of a second or other marriage;

Relation within prohibited degrees.— II. The parties are within the degrees prohibited by law, but when any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party;

Impotence.— III. The parties or either of them was at the time of marriage physically and incurably impotent; provided, the party making the application was ignorant of such impotency or incapability at the time of the marriage, or has not subsequently ratified the marriage.

Incapacity to consent.— IV. The parties or either of them, was, at the time of the marriage, incapable of consenting thereto and the marriage has not been subsequently ratified; provided, that where the party capable of consent is the applicant such party shall have been ignorant of the other's incapacity at the time of the marriage, and shall not have confirmed the marriage subsequently to the other party regaining capacity;

Wife under age.— V. At the suit of the wife, when she was under age of sixteen years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age;

Husband under age.— VI. At the suit of the husband when he was under the age of eighteen at the time of the marriage, unless such marriage be confirmed by him after arriving at such age;

Effect of decree on legitimacy of issue.— The decree of nullity of marriage shall not render illegitimate the issue of any marriage so dissolved, except where the marriage is dissolved because either of the parties had another wife or husband living at the time of a second or other marriage. Such marriage shall be deemed void from the beginning, and the issue thereof shall be illegitimate.

II. CAUSES FOR DIVORCE

§ 2. Divorce from bond of matrimony.

Divorces from the bond of matrimony may be decreed for the following causes:

Adultery.— I. Adultery by either of the parties;

Desertion.— II. Willful, continued and obstinate desertion for the term of two years.

§ 3. Divorce from bed and board.

Divorces from bed and board may be decreed for —

Adultery.— I. Adultery by either of the parties;

Desertion.— II. Willful, continued and obstinate desertion for the term of two years;

Cruelty.— III. Extreme cruelty in either of the parties.

Separation limited or permanent. In all cases of divorce from bed and board, the court may decree a separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter the parties may apply for a revocation or suspension of the decree, and upon such application the court shall make such order as may seem just and reasonable.

III. JURISDICTION.

§ 4. Jurisdiction of court of chancery.

The court of chancery shall have jurisdiction of all causes of divorce or nullity and of alimony and maintenance by this act directed and allowed.

§ 5. Service of process in annulment proceedings.

For the purposes of annulment of marriage jurisdiction may be acquired —

Personal service.— I. By personal service of process upon the defendant within this state when either party is a bona fide resident of this state at the time of the commencement of the action;

Service by publication, etc.— II. When the defendant cannot be served personally with process within this state, and when at the time of the commencement of the action the petitioner is a bona fide resident of this state, jurisdiction for the purpose of annulment of marriage may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this state, or by additional substituted service upon the defendant within this state, as prescribed by law or by rules of court.

§ 6. Service of process in divorce proceedings.

For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by personal service of process upon the defendant within this state, under the following conditions:

(a) When, at the time the cause of action arose, either party was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action, except that no action for absolute divorce shall be commenced for any cause other than adultery, unless one of the parties has been for the two years next preceding the commencement of the action a bona fide resident of this state.

(b) When, since the cause of action arose, either party has be-

come, and for at least two years next preceding the commencement of the action has continued to be, a bona fide resident of this state; provided the cause of action was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

§ 7. Service of process by publication.

When the defendant cannot be served personally with process within this state, and when at the time of the commencement of the action the plaintiff is a bona fide resident of this state, jurisdiction for the purpose of divorce, whether absolute or from bed and board, may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this state, or by additional substituted service upon the defendant within this state, as prescribed by law or rules of court, under the following conditions:

(a) When at the time the cause of action arose, the petitioner was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action, except that no action for absolute divorce shall be commenced for any cause other than adultery, unless the petitioner has been for the two years next preceding the commencement of the action a bona fide resident of this state.

(b) When, since the cause of action arose, the petitioner has become, and for at least two years next preceding the commencement of the action has continued to be, a bona fide resident of this state; provided, the cause of action alleged was recognized in the jurisdiction in which the petitioner resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

§ 8. Affidavit of good faith.

The court of chancery shall not have jurisdiction of any cause for divorce, or nullity of marriage under this act, unless the peti-

tioner shall make his or her oath or affirmation, which shall be annexed to the petition, that his or her petition is not made by any collusion between him or her and the defendant, but in truth and good faith, for the causes set forth in the petition.

IV. PROCEDURE AND PRACTICE.

§ 9. Procedure before court.

The like process and procedure shall be had and pursued in all such causes as are usually had and pursued in other causes in the court of chancery, except so far as other process and procedure is prescribed by or under the authority of this act.

§ 10. Petition.

All suits in the court of chancery for divorce, or nullity under this act, shall be commenced by filing a petition with the clerk of the court, which petition shall plainly and fully state the cause or causes of the application for such divorce or nullity and the relief prayed.

§ 11. Clerk to issue citation.

Upon filing the said petition the clerk shall make out a certified copy thereof to be served on the defendant together with a citation for the defendant to answer, which shall be under the seal of the court and shall be tested in the name of the chancellor. The citation shall be substantially in the form hereto annexed. (As amended by L. 1916, ch. 64.)

§ 12. Service and return of citation.

It shall be the duty of the sheriff or coroner, as the case may require, of any county, to whom any such citation and certified copy of the petition shall be delivered, to serve the same and to make return of the said citation into court on or before the return day thereof, which shall be filed with the clerk. (As amended by L. 1916, ch. 64.)

§ 13. Defendant served personally.

Every such citation shall be served by delivering to the defendant personally a copy thereof, together with a certified copy of the petition, at least five days before its return. (As amended by L. 1916, ch. 64.)

§ 14. Service by publication; service substituted for personal service.

If it shall be made to appear, by affidavit or otherwise, to the satisfaction of the chancellor, that such defendant is out of this state, or cannot upon due inquiry be found therein, or that he or she conceals himself or herself within this state, the chancellor may thereupon by order direct such defendant to answer the petition, at a certain day therein named, not less than two or more than six months from the date of such order, which order or notice thereof shall, within twenty days thereafter, be published in one of the newspapers published in this state, and designated in such order, and contained therein for four weeks successively, at least once in every week, and shall be published in such other manner as the particular circumstances of the case may require, if, in the opinion of the chancellor, any further or other publication shall be necessary.

Service upon the defendant within or without this state of the petition and of such order or notice thereof as service substituted for personal service of process within this state, shall also be made within the same time, and in such manner as the chancellor may by general rules prescribe.

L. 1913, ch. 26.

PREAMBLE.—WHEREAS, Doubts have arisen as to the meaning of the fourteenth section of the act to which this act is a supplement, governing the number and duration of the publications of the order, or notice thereof, against a defendant not served with citation and petition under the provisions of the thirteenth section of the said act; and

WHEREAS, Due publication is made necessary by said act to the acquiring of jurisdiction; for remedy whereof,

§ 1. The publication in the designated newspaper of the order, or notice thereof, under the provisions of the fourteenth section of an act entitled "An act providing for divorces and for decrees of nullity of marriage, and for alimony and the maintenance of children (Revision of 1907)," approved May seventeenth, one thousand nine hundred and seven, shall be held and construed to require the first publication to be made within twenty days from the date of the order, and three publications thereafter, at least one in each of the three next succeeding calendar weeks, making four publications, one in each of four successive calendar weeks, as aforesaid; and every order for publication heretofore or hereafter ordered in the language of the said section shall be held and construed to have been properly complied with by due publication, if the same has been published as directed in accordance with the said section as the same is hereby declared and construed; provided, that nothing herein shall be held to prevent the chancellor from expressly directing additional or other publications of said order or notice.

§ 15. Time for defendant's reply.

The defendant shall file his answer to the petition within twenty days from the return day of the citation, if it be returned "served" or "cited" by the sheriff or coroner, or within the time limited by the order for publication and substituted service, unless in either case the court grants further time for that purpose. The answer shall plainly and fully set forth the cause or causes of defense, and shall not be sworn to. No replication shall be necessary to put the cause at issue. (As amended by L. 1916, ch. 64.)

L. 1916, ch. 64, subd. 5.

FORM OF CITATION.

New Jersey, to wit: The State of New Jersey to _____,
 Greeting: You are hereby cited to answer the petition of _____,
 a copy of which petition is herewith served upon you, by filing your answer
 in writing in the office of the Clerk of the Court of Chancery at Trenton,
 within twenty days after the _____ day of _____, 19____ (return
 day); and in default of your so doing such order or decree will be made
 against you as the Court shall think equitable and just.

WITNESS, His Honor, Edwin Robert Walker, Chancellor of our said State,
 at Trenton, the _____ day of _____, 19____ .
 Solicitor. Clerk.

§ 16. Failure to answer; proceeding ex parte.

If the defendant shall not file his or her answer within the time limited by this act or granted by the court, the court may make an order that the petitioner proceed to take depositions and other evidence and bring on the hearing of the cause *ex parte*.

§ 17. Parties; particeps criminis.

Anyone charged as a *particeps criminis* shall be made a party, upon his or her due application to the court, subject to such terms and conditions as the court may prescribe.

§ 18. Solicitor in uncontested cases.

In all uncontested cases, where the court may deem it necessary or proper, a disinterested solicitor may be assigned by the court actively to defend the case.

§ 19. Amendments.

No proceedings in any suit commenced under this act shall be set aside or otherwise annulled or made void for any defect in matter of form, or for any mistake or omission not affecting the real merits of the cause, and the chancellor may permit either party to amend his or her proceedings in the cause, either in matters of form or substance, and proceed to give judgment according to the merits of the case.

§ 20. Decree nisi.

If after the hearing of any cause, or after a jury trial resulting in a verdict for the plaintiff, the court shall be of opinion that the plaintiff is entitled to a decree annulling the marriage, or a decree for divorce from the bonds of matrimony, a decree nisi shall be entered.

§ 21. Decree absolute; appeal.

A decree nisi shall become absolute after the expiration of six months from the entry thereof, unless appealed from or proceedings

for review are pending, or the court before the expiration of said period for sufficient cause, upon its own motion, or upon the application of any party, whether interested or not, otherwise orders; and at the expiration of six months such final and absolute decree shall then be entered upon application to the court by the petitioner, unless prior to that time cause be shown to the contrary. Appeals shall be taken only from the decrees nisi and not from the final decrees, and shall be taken within six months from the filing of the decree nisi.

§ 22. Enrollment of proceedings.

When any cause shall be finally determined, the clerk of the court of chancery shall enter or enroll together, in order, the proceedings, decretal orders, reports and final decree in such cause, in his book of decrees, which enrollment shall be signed as in other cases.

§ 23. Fees.

There shall be allowed in the taxation of costs, for the petition, the sum of one dollar; for the answer, the sum of one dollar; to the clerk, for the citation and certified copy of the petition, seventy-five cents; to the sheriff, for serving and returning the citation, one dollar and fifty cents, and to the examiner, for taking the examination of every witness, for each sheet, twenty cents, and for certifying every exhibit shown to a witness, ten cents; and no other or greater fee shall be allowed for the said services.

§ 24. Jury trial.

If, in the opinion of the chancellor, any matter of fact shall render the intervention of a jury necessary in any suit or proceeding for divorce or nullity, then the court of chancery is hereby authorized to direct an issue for the trial of the same in the supreme court, or in one of the circuit courts.

V. ALIMONY AND MAINTENANCE.

§ 25. Alimony; custody and maintenance of children; security; enforcement of orders.

Pending a suit for divorce or nullity, or after decree of divorce, it shall be lawful for the court of chancery to make such order touching the alimony of the wife, and also touching the care, custody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall be rendered fit, reasonable and just, and to require reasonable security for the due observance of such orders, and upon neglect or refusal to give such reasonable security as shall be required, or upon default in complying with the order, to award and issue process for the immediate sequestration of the personal estate, and the rents and profits of the real estate of the party so charged, and to appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied toward such alimony and maintenance as to the said court shall from time to time seem reasonable and just, or to enforce the performance of the said orders by such other lawful ways and means as is usual, and according to the course and practice of the court of chancery; orders so made may be revised and altered by the court from time to time as circumstances may require.

§ 26. Abandonment of wife; support of wife and children; enforcement of orders.

In case a husband, without any justifiable cause, shall abandon his wife or separate himself from her, and refuse or neglect to maintain and provide for her, it shall be lawful for the court of chancery to decree and order such suitable support and maintenance, to be paid and provided by the said husband for the wife and her children, or any of them, by that marriage, or to be made out of his property, and for such time as the nature of the case and circumstances of the parties render suitable and proper in the

opinion of the court, and to compel the defendant to give reasonable security for such maintenance and allowance, and from time to time to make such further orders touching the same as shall be just and equitable, and to enforce such decree and orders in the manner mentioned in the last preceding section of this act; but during the time such maintenance shall be allowed by the decree or order of the court, the husband shall not be chargeable with her debts; in cases where a husband cannot be found within this state to be served with process, his estate, property and effects within this state, and the rents and profits thereof, may be sequestered to compel his appearances and performance of any decree or order which may be made in the suit, but the process of sequestration shall be issued only upon special order therefor, to be made upon proof of the claim alleged in the bill, and that the defendant cannot be found within the state for the service of process; upon process of sequestration, a bond as provided in cases of ne exeat may be given in discharge of the writ, and the sum in which the party shall give bond, with sufficient surety or sureties, shall be endorsed upon the writ in words at length; where the proceedings are by process of sequestration, and defendant does not appear, the decree shall be enforceable only out of and against the estate sequestered.

§ 27. Bonds for costs.

In any such suit as is mentioned in the last preceding section, it shall be lawful for the chancellor, if application therefor be made before answer filed, to order a bond to be given in the sum of one hundred dollars, by one or more sufficient sureties, with condition to pay such costs as shall or may be awarded by the court to be paid to the defendant.

VI. MISCELLANEOUS PROVISIONS.

§ 28. Collusion.

If it appear to the court that the adultery complained of shall have been occasioned by the collusion of the parties, and done

with an intention to procure a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of adultery not condoned, then no divorce shall be decreed.

§ 29. Assignment of counsel in indigent cases.

Whenever any poor person shall have cause of suit under this act, and shall make an affidavit or affirmation that he or she is not worth one hundred dollars clear estate, the chancellor may, at his discretion, assign to such poor person a solicitor and counsel learned in the law, to prosecute the said cause, who, together with all other officers, shall perform their respective duties therein without fee or reward.

§ 30. Resumption of name.

The court, upon or after granting a divorce from the bonds of matrimony, may allow her to resume her maiden name or the name of a former deceased husband.

§ 31. Imprisonment after desertion.

Willful and obstinate desertion shall be regarded, held and construed to be "continued" within the meaning of this act, notwithstanding that after such desertion has or shall have begun, the deserting party has or shall have been imprisoned in this or any other state or country upon conviction by due process of law for a crime, misdemeanor or offense, not political, committed in this or any other state or country, or for any other reason, shall have been under restraint, either by due process of law or his or her voluntary act.

§ 32. Rules of procedure.

The chancellor shall from time to time make such rules and orders regulating the practice and procedure under this act as may, in his judgment, render the proceedings more efficient and simple, and prevent unnecessary cost and delay.

VII. FOREIGN DECREES.

§ 33. Effect of decrees of other states and countries; exception.

Full faith and credit shall be given in all courts of this state to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another state, territory or possession of the United States when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections five, six and seven of this act. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce by a court of a foreign country as may be justified by the rules of international comity; provided, that if any inhabitant of this state shall go into another state, territory or country, in order to obtain a decree of divorce for a cause which occurred while the parties resided in this state, or for a cause which is not ground for divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state.

§ 34. Time of taking effect of act; pending causes.

This act shall take effect on January first, one thousand nine hundred and eight, and the acts mentioned in the schedule hereto annexed, and all acts and parts of acts inconsistent herewith are hereby repealed; provided, that nothing in this act contained shall affect proceedings in any suit pending at the time this act goes into effect so far as relates to the jurisdiction of the court or the causes of divorce or nullity, or the effect or validity of orders or divorces already made in such pending actions, but the further proceedings and practices in such actions shall be in accordance with this act, as nearly as may be practicable.

 EVIDENCE.
§ 5. Husband or Wife.

. . . nothing herein shall render any husband or wife . . . compellable in any action or proceeding for divorce on account of

adultery to give evidence for the other, except to prove the fact of marriage, . . .

§ 56a. Ex parte depositions in suits for divorce or anulment of marriage.

Whenever a cause is depending in the court of chancery for a divorce or for annulment of marriage, and the defendant has not entered an appearance or made defence to the bill or petition, and the cause has been referred to a master in chancery, according to the practice of that court, it shall be lawful for the chancellor, upon application on behalf of the complainant or petitioner, and on good cause shown, to order such master to take ex parte and without notice the testimony of any witness named in the order, in another state or territory, and to make use of depositions so taken in making his report, and to return such depositions therewith.

INFANTS.

§ 18. Children of divorced parents.

After a divorce decreed in any other state or country, if minor children of the marriage are inhabitants of this state, the court of chancery, on the petition of either parent, or of a next friend in behalf of the children, such notice being given to parents as the court shall direct, may make such decree concerning their care, custody, education and maintenance as if the divorce had been obtained in this state.

§ 19. Removal of children of parents separated, in custody of court of chancery.

When the court of chancery has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated or living separate, and such children are natives of this state, or have resided five years within its limits, they shall not be

removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order; the court, upon application of any person in behalf of such minors, may require such security and issue such writs and processes as shall be deemed proper to effect the purposes of this and the preceding sections.

CRIMES.

§ 116. Abduction; punishment; marriage void.

Any person who shall unlawfully take any maid, widow or wife, contrary to her will, and shall marry her himself, or cause or procure her to be married to another, either with or without her consent, or shall defile, or cause her to be defiled, his aiders, abettors, counselors and procurers, and such as receive such woman, so taken against her will, knowingly, shall be guilty of a high misdemeanor, and punished by fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding twelve years, or both; and every such marriage shall be void; and also, the person to whom such woman shall be so married shall not receive, take, hold, possess or enjoy any part of her estate, real or personal, by any gift, grant, bequest or devise of, from or under her; but every such gift, grant, bequest or devise so made to him, or for his use, shall be void and of no effect.

CHANCERY RULES.

L. 1915, ch. 116.

§ 78. Joinder with matrimonial suits.

Rule 21. Suits for divorce. In a suit for divorce or annulment of marriage no other cause of action shall be joined without leave of court.

L. 1915, ch. 299.

PROSECUTION OF MATRIMONIAL SUITS BY MINORS.

An act respecting the capacity of parties to matrimonial suits.

§ 1. Divorce proceedings by minors.

A man who has attained the age of eighteen years, and a woman who has attained the age of sixteen years, may appear, and prosecute or defend, a suit for divorce or nullity of marriage, in his or her proper person, or by his or her solicitor. A wife's suit for maintenance, under any statute of this state, may likewise be so prosecuted or defended.

§ 2. Parent or guardian may act.

Nothing in this act shall be construed to prevent any parent or guardian from prosecuting or defending any suit respecting the marriage status or relation of such infant or infants.

L. 1912, ch. 256.

CANCELLATION OF RECORDS OF MARRIAGES WHICH HAVE BEEN DECLARED VOID.

An act to provide for the cancellation of certain records of marriages declared to be null and void by the court of chancery.

§ 1. Cancellation of marriage records; procedure; order.

When a marriage shall have been declared to be null and void by the court of chancery in a suit instituted for that purpose, if the chancellor shall be satisfied by the proof taken before the final decree, or by affidavit or otherwise after the final decree, that a record of said marriage exists in the state bureau of vital statistics, he may order the said record to be cancelled as hereinafter directed. It shall not be necessary to pray for such relief in the bill or petition for such annulment of marriage, nor shall the

custodian of said record be made a party to the said cause for this purpose. The order shall only recite that it appears to the satisfaction of the chancellor that a record of the ceremony of marriage between the parties to this cause (naming them), performed on (date) by (naming the officer), exists in the state bureau of vital statistics, and that by a final decree bearing date, etc., said marriage was declared to be null and void, and shall then direct that the aforesaid record be cancelled pursuant to the directions of this act, reciting the title of this act.

§ 2. Record endorsed by register.

Upon presenting a certified copy of said order to the registrar of said bureau, he shall endorse on the return of said marriage the following words: "This marriage declared to be null and void by the court of chancery. See order hereto annexed" and shall annex to the said return the certified copy of said order.

§ 3. Fee.

The person procuring the said cancellation shall first pay to the registrar of the said bureau the sum of one dollar, who shall pay the same over to the state treasurer; which sum may be included in the taxable costs in the annulment suit.

L. 1916, ch. 57.

A supplement to an act entitled "An act providing for divorces and decrees of nullity of marriage, and for alimony and the maintenance of children (Revision of 1907)," approved May seventeenth, one thousand nine hundred and seven.

§ 1. On service of cross petition or cross bill, court has full jurisdiction.

Whenever the court of chancery shall have acquired jurisdiction of any suit under the provisions of the act to which this act is a

supplement, the defendant in such suit may, by cross petition or cross bill, as the case may be, present to the court any counter suit or suits, cause or causes of action, against the petitioner or complainant, which might be brought or charged by the defendant against the petitioner or complainant, under the provisions of said act to which this act is a supplement, and upon proof of service of such cross petition or cross bill upon the petitioner or complainant, or his or her solicitor, said court shall thereupon have full jurisdiction of such counter suit or suits, cause or causes of action without further service of process.

L. 1916, ch. 63.

An act to regulate the practice and procedure in suits for annulment of marriages brought under the general equity jurisdiction of the court of chancery.

§ 1. Petition first filed; affidavit of good faith.

All suits for the annulment of marriages brought under the general equity jurisdiction of the court of chancery shall be commenced by the filing of a petition in the office of the clerk of said court. To every such petition there shall be annexed an affidavit made by the petitioner that his or her petition is not made by any collusion between him or her and the defendant, but in truth and good faith, for the causes set forth in the petition.

§ 2. Procedure to be followed.

Upon filing the said petition the same practice and procedure shall be followed as is required in suits or actions for annulment of marriages under the provisions of an act entitled "An act providing for divorces and for decrees of nullity of marriage, and for alimony and the maintenance of children (Revision of 1907)," and the acts amendatory thereof or supplemental thereto, it being the

intent and purpose of this act to make uniform the practice and procedure in all causes of annulment of marriages.

§ 3. Taking appeals.

Appeals shall be taken from decrees nisi and not from final decrees, and shall be taken within six months from the filing of the decree nisi.

NEW MEXICO.*Statutes, 1915.*¹**ARTICLE V.****DIVORCE AND SEPARATION.**

- SECTION 2773.** Grounds for divorce.
2774. Suit for division of property or custody of children.
2775. Venue of suits.
2776. Divorce — residence required of plaintiff.
2777. Suits — complaint must be verified.
2778. Suits — alimony — support of children — division of property, etc.
2779. Alimony — effect of decree.
2780. Support of children — effect of decree on property.
2781. Divorce — failure to adjudicate property rights.
2782. How far may alter their relations.
2783. Consideration for agreement of separation.

§ 2773. Grounds for divorce.

The several district courts within and for the state of New Mexico are hereby vested with full power and authority to decree divorces from the bonds of matrimony for any of the following causes:

1. Abandonment.
2. Adultery.
3. Impotency.
4. When the wife, at the time of the marriage, was pregnant by another than her husband — said husband having been ignorant thereof.
5. Cruel and inhuman treatment.
6. Neglect on the part of the husband to support the wife, according to his means, station in life, and ability.

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7. Habitual drunkenness.

8. The conviction for a felony, and imprisonment therefor, in the penitentiary, subsequent to the marriage. All judgments and decrees heretofore made or rendered in the district courts of this state in divorce cases are hereby validated. Suits for divorce, alimony, divisions of property, or disposition of children, shall be commenced and prosecuted in all things according to the provisions of chapter LXXXVIII.

§ 2774. Suit for division of property or custody of children.

Whenever the husband and wife have permanently separated and no longer live or cohabit together, as husband and wife, either may institute suit in the district court for a division of property, or for the disposition of the children, without asking for or obtaining in said suit a dissolution of the bonds of matrimony; or the wife may institute suit for alimony alone.

§ 2775. Venue of suits.

Any suit for the dissolution of the bonds of matrimony, division of property, disposition of children, or alimony, as provided for in this chapter, may be instituted in the county where either of the parties resides, or where the property, or some part thereof, affected, or sought to be affected thereby, is located or situated. In such suit, the court shall have jurisdiction of all said property, wherever located or situated in said state.

§ 2776. Divorce — residence required of plaintiff.

The plaintiff in an action for the dissolution of the bonds of matrimony must have been an actual resident, in good faith, of the state for one year next preceding the filing of his or her complaint.

§ 2777. Suits — complaint must be verified.

The complaint, in all suits with reference to divorce, division of property, disposition of the children, or alimony, must be verified by the affidavit of the plaintiff.

§ 2778. Suits — alimony — support of children — division of property, etc.

In any suit for the dissolution of the bonds of matrimony, division of property, disposition of the children, or for alimony, the court in term time, or judge in vacation, may make and enforce, by attachment or otherwise, such order to restrain the use or disposition of the property of either party, or for the control of the children, or to provide for the support of the wife during the pendency of the suit, as in its or his discretion may seem just and proper; and may make such order, relative to the expenses of the suit, as will ensure the wife an efficient preparation and presentation of her case; and, on final hearing, may allow the wife such a reasonable portion of the husband's separate property, or such a reasonable sum of money to be paid by the husband, either in a single sum, or in installments, as alimony, as under the circumstances of the case may seem just and proper; and, on such hearing, may set apart out of the property of the respective parties, such portion thereof, for the maintenance and education of their minor children, as may seem just and proper, and may make such an order for the guardianship, care, custody, maintenance and education of said minor children, or with reference to the control of the property of the respective parties to the suit, or with reference to the control of the property decreed or fund created by the court for the maintenance and education of said minor children, as may seem just and proper; and may modify and change any order in respect to the guardianship, care, custody, maintenance or education of said children, whenever circumstances render such change proper. Said district court shall have exclusive jurisdiction of all matters pertaining to said guardianship, care, custody, maintenance and education of said children, and with reference to the property decreed or funds created for their maintenance and education, so long as they, or any of them, remain minors; and if any of the property decreed or funds created for the maintenance and education of the children, as aforesaid, shall remain on hand and be undisposed of at the time the minor chil-

dren become of age, the same may be disposed of by the court as unto it may seem just and proper.

§ 2779. Alimony — effect of decree.

In case of the allowance to the wife of a portion of the husband's property, as alimony, the decree making such allowance shall have the force and effect of vesting the title of the property so allowed in the wife. In case of the allowance to the wife of any sum or sums of money, as alimony, the decree making such allowance shall operate, without so specifying therein, as a judgment lien upon all the property of the husband located or situated in this state, and said lien may be satisfied by execution.

§ 2780. Support of children — effect of decree on property.

In case of the allowance of a certain part of the property of the parties to the suit, or either of them, for the maintenance and education of the minor children, the court, in term time, or judge in vacation, may vest title to such part of the property so allowed in a guardian or trustee appointed by the court; and shall have power to remove such guardian or trustee, at any time, for any cause, and appoint another, and shall have the power to vest title to such property in the new appointee. In case a sum of money is allowed the children, the same shall be a lien on all of the property of the party or parties by whom or out of whose property the same is to be paid, and the sum so allowed shall be collected by such process or procedure as by the court may be directed.

§ 2781. Divorce — failure to adjudicate property rights.

The failure to divide the property on divorce shall not affect the property rights of either the husband or wife, either may subsequently institute and prosecute a suit for division and distribution thereof, or with reference to any other matter pertaining thereto, which could have been litigated in the original suit for divorce.

§ 2782. How far may alter their legal relations.

A husband and wife cannot by any contract with each other alter their legal relations, except of their property, and except that they may agree in writing, to an immediate separation, and may make provisions for the support of either of them and of their children during their separation.

§ 2783. Consideration for agreement of separation.

The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

§ 3430. Marriages — certain relatives prohibited.

All marriages between relations and children, including grandfathers and grandchildren of all degrees, between half brothers and sisters, as also of full blood; between uncles and nieces, aunts and nephews, are hereby declared incestuous and absolutely void. This section shall extend to illegitimate as well as to legitimate children.

§ 3431. Marriage of persons under age.

No person authorized by the laws of this state to celebrate marriages, shall unite in a marriage, knowingly, any male under the age of twenty-one years, nor any female under the age of eighteen years without the consent of their parents or guardians under whose care and control such minor may be, and all marriages of any male under the age of eighteen years and of any female under the age of fifteen years, are absolutely invalid.

§ 3432. Id.—penalties.

If any person prohibited from contracting marriage by the foregoing sections, shall violate the provisions thereof by contracting marriage contrary to the provisions of said sections, he or they shall be punished by fine on conviction thereof, in any sum not

less than fifty dollars; and every person authorized under the laws of this state to celebrate marriages, who shall unite in wedlock any of the persons whose marriage is declared invalid by the previous sections of this chapter, on conviction thereof, shall be fined in any sum not less than fifty dollars.

§ 3433. Incestuous marriages or cohabitation — penalty.

If any person within the degrees of consanguinity, in which marriages are declared invalid by this chapter, shall contract marriage, one with the other, or shall cohabit dissolutely and lasciviously, one with the other, they or any one of them, shall be punished on conviction thereof, by imprisonment in the state penitentiary for not more than one year, or by fine of not less than fifty dollars.

§ 3434. Prohibited marriages — annulment.

No marriage between relatives within the prohibited degrees or between or with infants under the prohibited ages, shall be declared void, except by decree of the district court upon proper proceedings being had therein; and in case of minors, no person who may be over the prohibited age shall be allowed to apply for or obtain a decree of the court declaring such marriage void; but such minor may do so, and in the case of a female the court may in its discretion grant alimony until she becomes of age or remarries; and all children of marriages so declared void as aforesaid, shall be deemed and held as legitimate, with the right of inheritance from both parents; and also in case of minors, if the parties should live together until they arrive at the age under which marriage is prohibited by the statute, then and in that case, such marriage shall be deemed legal and binding.

NEW YORK.

Parsons' Code of Civil Procedure (L. 1876, ch. 448, and L. 1880, ch. 178).

CHAPTER 15.

SPECIAL PROVISIONS, REGULATING OTHER PARTICULAR ACTIONS AND RIGHTS OF ACTIONS, AND ACTIONS BY OR AGAINST PARTICULAR PARTIES.

TITLE I.
MATRIMONIAL ACTIONS.

- ARTICLE I.** Action to annul a void or voidable marriage.
 II. Action for a divorce.
 III. Action for a separation.
 IV. Provisions applicable to two or more of the actions specified in this title.

ARTICLE I.
ACTION TO ANNUL A VOID AND VOIDABLE MARRIAGE.

- SECTION** 1743. In what other cases marriage may be annulled.
 1744. Action when party was under the age of consent.
 1745. Id.; when former husband or wife was living.
 1746. Id.; where party was an idiot.
 1747. Id.; where party was a lunatic.
 1748. Action by next friend of idiot or lunatic.
 1749. Issue; when entitled to succeed, etc.
 1750. Action on the ground of force, fraud, etc.
 1751. Custody, maintenance, etc., of issue of such a marriage.
 1752. Action on the ground of physical incapacity.
 1753. Certain proceedings regulated in action to annul marriage.
 1754. Judgment annulling a marriage, how far conclusive.
 1755. How next friend of infant, lunatic, etc., allowed to sue, etc.

§ 1743. Action for judgment declaring nullity of void marriage or annulling voidable marriage.

An action may be maintained to procure a judgment declaring the nullity of a void marriage or annulling a voidable marriage heretofore or hereafter entered into or contracted. (As amended by L. 1919, ch. 144.)

§ 1744. Action when party was under the age of consent.

An action to annul a marriage on the ground that one or both of the parties had not attained the age of legal consent may be maintained by the infant, or by either parent of the infant, or by the guardian of the infant's person; or the court may allow the action to be maintained by any person, as the next friend of the infant. But a marriage shall not be annulled, at the suit of a party who was of the age of legal consent when it was contracted, or by a party who for any time after he or she attained that age, freely cohabited with the other party as husband or wife. (As amended by L. 1919, ch. 144.)

§ 1745. Action when former husband or wife was living.

An action to annul a marriage, upon the ground that the former husband or wife of one of the parties was living, the former marriage being in force, may be maintained by either of the parties during the life-time of the other, or by the former husband or wife. (As amended by L. 1919, ch. 202.)

§ 1746. Id.; where party was an idiot.

An action to annul a marriage, on the ground that one of the parties thereto was an idiot, may be maintained, at any time during the life-time of either party, by any relative of the idiot, who has an interest to avoid the marriage.

§ 1747. Id.; where party was a lunatic.

An action to annul a marriage, on the ground that one of the parties thereto was a lunatic, may be maintained, at any time during

the continuance of the lunacy, or, after the death of the lunatic, in that condition, and during the life of the other party to the marriage, by any relative of the lunatic, who has an interest to avoid the marriage. Such an action may also be maintained by the lunatic, at any time after restoration to a sound mind; but in that case, the marriage should not be annulled, if it appears that the parties freely cohabited as husband and wife, after the lunatic was restored to a sound mind.

§ 1748. Action by next friend of idiot or lunatic.

Where no relative of the idiot or lunatic brings an action to annul the marriage, as prescribed in either of the last two sections, the court may allow an action for that purpose to be maintained, at any time during the life-time of both the parties to the marriage, by a person as the next friend of the idiot or lunatic. But this section does not apply, where the marriage might have been annulled, at the suit of the lunatic, as prescribed in the last section.

§ 1749. Legitimacy of children.

The following provisions govern the effect of declaring a marriage void or annulling a voidable marriage upon the legitimacy of children of the marriage:

1. If a marriage be annulled on the ground that one or both of the parties had not attained the age of legal consent, a child of the marriage is deemed the legitimate child of both parents.

2. If a marriage be annulled on the ground of the idiocy or lunacy of one of the persons entering into the marriage, a child of the marriage is deemed the legitimate child of the parent of sound mind, and the court by the judgment may decide that a child of the marriage is the legitimate child of the parent of unsound mind.

3. If a marriage be annulled on the ground of the idiocy or lunacy of both of the persons entering into the marriage, the court by the judgment may decide that a child of the marriage is the legitimate child of either or both parents.

4. If a marriage be annulled on the ground of force, duress or fraud, a child of the marriage is deemed the legitimate child of both parents unless the court by the judgment decides otherwise as to either or both parents.

5. If a marriage be declared a nullity as incestuous, a child of the marriage is deemed the legitimate child of both parents.

6. If a marriage be declared a nullity or annulled upon the ground that the former husband or wife of one of the parties was living, the former marriage being in force, if it appears, and the judgment determines, that the subsequent marriage was contracted by at least one of the parties thereto in good faith, and with the full belief that the former husband or wife was dead or that the former marriage had been annulled or dissolved, or without any knowledge on the part of the innocent party of such former marriage, a child of such subsequent marriage is deemed the legitimate child of the parent who at the time of the marriage was competent to contract. If either or both parties to such subsequent marriage were incompetent to contract, the court by the judgment may decide that a child of the marriage is the legitimate child of such an incompetent.

7. If a marriage be declared a nullity or annulled for any cause or under any conditions other than those specified in the foregoing subdivisions, the court by the judgment may decide that a child of the marriage is the legitimate child of either or both of its parents.

8. If the court be authorized by this section to decide that a child of a marriage is the legitimate child of either or both of its parents, the judgment may limit the effect of legitimatization to rights other than succession to real and personal property of a deceased parent. (As amended by L. 1919, ch. 202.)

§ 1750. Action on the ground of force, fraud, etc.

An action to annul a marriage, on the ground that the consent of one of the parties thereto was obtained by force, duress, or fraud,

may be maintained, at any time, by the party whose consent was so obtained. Such an action may also be maintained, during the life-time of the other party, by the parent or the guardian of the person of the party, whose consent was so obtained, or by any relative of that party, who has an interest to avoid the marriage. But a marriage shall not be annulled on the ground of force or duress, if it appears that, at any time before the commencement of the action, the parties thereto voluntarily cohabited as husband and wife; or on the ground of fraud, if it appears that, at any time before the commencement thereof, the parties voluntarily cohabited as husband and wife, with a full knowledge of the facts constituting the fraud.

§ 1751. Custody and maintenance of children.

If a marriage be declared a nullity or annulled, the court, by the judgment or by subsequent order, may award the custody of a child of the marriage to either party as the interests of the child require, and may make provision for his education and maintenance out of the property of either or both of its parents if the marriage shall have been declared a nullity, and out of the property of the guilty parent, if the marriage shall have been annulled. (As amended by L. 1919, ch. 202.)

§ 1752. Action on the ground of physical incapacity.

An action to annul a marriage, on the ground that one of the parties was physically incapable of entering into the marriage state, may be maintained by the injured party against the party whose incapacity is alleged; or such an action may be maintained by the party who was incapable against the other party, provided the incapable party was unaware of the incapacity at the time of marriage, or if aware of such incapacity, did not know it was incurable. Such an action can be maintained only where the incapacity continues and is incurable; and must be commenced before five years have expired since the marriage. (As amended by L. 1919, ch. 144.)

§ 1753. Certain proceedings regulated in action to annul marriage.

In an action brought as prescribed in this article, a final judgment, annulling the marriage, shall not be rendered by default, for want of an appearance or pleading, or upon the trial of an issue, without proof of the facts, upon which the allegation of nullity is founded. And the declaration or confession of either party to the marriage is not alone sufficient as proof; but other satisfactory evidence of the facts must be produced. In such an action, except where it is founded upon an allegation of the physical incapacity of one of the parties thereto, the court must, upon the application of either of the parties, make an order directing the trial, by a jury, of all the issues of fact; or it may of its own motion, make an order directing the trial, by a jury, of one or more issues of fact; for which purpose, the questions to be tried must be prepared and settled as prescribed in section 970 of this act.

§ 1754. Judgment annulling a marriage; how far conclusive.

A final judgment, annulling a marriage, rendered during the lifetime of both the parties, is conclusive evidence of the invalidity of the marriage in every court of record or not of record, in any action or special proceeding, civil or criminal. Such a judgment, rendered after the death of either party to the marriage, is conclusive only as against the parties to the action, and those claiming under them.

§ 1755. How next friend of infant, lunatic, etc., allowed to sue, etc.

An order, allowing a person to maintain an action, as the next friend of an infant, as prescribed in section 1744 of this act, or as the next friend of an idiot or lunatic, as prescribed in section 1748 of this act, may be granted by the court, in its discretion, without notice, or upon notice to such persons and in such a manner, as it deems proper. A motion to vacate such an order must be made at a term held by the judge who granted it, unless he is dead, out

of office, or unable to hear it by reason of sickness or otherwise; or unless he expressly directs it to be heard at a term held by another judge. But where such an order has been granted, the court, to which application for final judgment is made, may dismiss the complaint, if justice so requires, although, in a like case, the party to the marriage, if plaintiff, would be entitled to judgment.

ARTICLE II.

ACTION FOR DIVORCE.

- SECTION 1756.** In what cases action may be maintained.
 1757. Answer; mode of trial; judgment by default.
 1758. When divorce denied, although adultery proved.
 1759. Regulations when action brought by wife.
 1760. Id.; when action brought by husband.
 1761. Regulation when action brought by either husband or wife.

§ 1756. In what cases action may be maintained.

In either of the following cases, a husband or a wife may maintain an action, against the other party to the marriage to procure a judgment, divorcing the parties and dissolving the marriage, by reason of the defendant's adultery.

1. Where both parties were residents of the state, when the offence was committed.
2. Where the parties were married within this state.
3. Where the plaintiff was a resident of the state, when the offence was committed, and is a resident thereof, when the action is commenced.
4. Where the offence was committed within the state, and the injured party, when the action is commenced, is a resident of the state.

§ 1757. Answer; mode of trial; judgment by default.

1. The answer of the defendant, may be made, without verifying it, notwithstanding the verification of the complaint, except

that an answer containing a counterclaim, which charges adultery must be verified in respect of such counterclaim, where the complaint is verified. If the answer puts in issue the allegation of adultery, the court must, upon the application of either party, or it may, of its own motion, make an order directing the trial, by a jury, of that issue; for which purpose the questions to be tried must be prepared and settled, as prescribed in section nine hundred and seventy of this act. If the answer does not put in issue the allegation of adultery, or if the defendant makes default in appearing or pleading, the plaintiff before he is entitled to judgment, must nevertheless satisfactorily prove the material allegations of his complaint, and also, by his own testimony or otherwise, that there is no judgment or decree, in any court of the state of competent jurisdiction, against him in favor of the defendant for a divorce on the ground of adultery.

2. In an action brought to obtain a divorce on the ground of adultery, the plaintiff or defendant may serve a copy of his pleading on the co-respondent named therein. At any time within twenty days after such service on said co-respondent, he may appear to defend such action, so far as the issues affect such co-respondent. If no such service be made, then at any time before the entry of judgment any co-respondent named in any of the pleadings shall have the right, at any time before the entry of judgment, to appear either in person or by attorney, in said action and demand of plaintiff's attorney a copy of the summons and complaint, which must be served within ten days thereafter, and he may appear to defend such action, so far as the issues affect such co-respondent. In case no one of the allegations of adultery controverted by such co-respondent shall be proved, such co-respondent shall be entitled to a bill of costs against the person naming him as such co-respondent, which bill of costs shall consist only of the sum now allowed by law as a trial fee, and disbursements, and such co-respondent shall be entitled to have an execution issue for the collection of the same. (As amended by L. 1911, ch. 311.)

§ 1758. When divorce denied, although adultery proved.

In either of the following cases, the plaintiff is not entitled to a divorce, although the adultery is established :

1. Where the offence was committed by the procurement or with the connivance of the plaintiff.

2. Where the offence charged has been forgiven by the plaintiff. The forgiveness may be proved, either affirmatively, or by the voluntary cohabitation of the parties, with the knowledge of the fact.

3. Where there has been no express forgiveness, and no voluntary cohabitation of the parties, but the action was not commenced within five years after the discovery, by the plaintiff, of the offence charged.

4. Where the plaintiff has also been guilty of adultery, under such circumstances, that the defendant would have been entitled, if innocent, to a divorce.

§ 1759: Regulations when action brought by wife.

Where the action is brought by the wife, the following regulations apply to the proceedings :

1. The legitimacy of any child of the marriage, born or begotten before the commencement of the action, is not affected by the judgment dissolving the marriage.

2. The court may, in the final judgment dissolving the marriage, require the defendant to provide suitably for the education and maintenance of the children of the marriage, and for the support of plaintiff, as justice requires, having regard to the circumstances of the respective parties ; and may, by order, upon the application of either party to the action, and after due notice to the other, to be given in such manner as the court shall prescribe, at any time after final judgment whether heretofore or hereafter rendered, annul, vary or modify such a direction. But no such application shall be made by a defendant unless leave to make the same shall have been previously granted by the court by order made upon or without notice as the court in its discretion may deem proper

after presentation to the court of satisfactory proof that justice requires that such an application should be entertained. (As amended by L. 1900, ch. 742.)

3. If, when final judgment is rendered, dissolving the marriage, the plaintiff is the owner of any real property; or has, in her possession or under her control, any personal property, or thing in action, which was left with her by the defendant, or acquired by her own industry, or given to her by bequest or otherwise; or if she is or may thereafter become entitled to any property, by the decease of a relative intestate; the defendant shall not have any interest therein, absolute or contingent, before or after her death.

4. Where final judgment is rendered dissolving the marriage, the plaintiff's inchoate right of dower, in any real property, of which the defendant then is or was theretofore seized, is not affected by the judgment.

§ 1760. Id.; when action brought by husband.

Where the action is brought by the husband, the following regulations apply to the proceedings:

1. The legitimacy of a child, born or begotten before the commencement of the offence charged, is not affected by a judgment dissolving the marriage; but the legitimacy of any other child of the wife may be determined, as one of the issues in the action. In the absence of proof to the contrary, the legitimacy of all the children, begotten before the commencement of the action, must be presumed.

2. A judgment dissolving the marriage does not impair, or otherwise affect, the plaintiff's rights and interests, in and to any real or personal property, which the defendant owns or possesses, when the judgment is rendered.

3. Where judgment is rendered dissolving the marriage, the defendant is not entitled to dower in any of the plaintiff's real property, or to a distributive share in his personal property.

§ 1761. Regulation when action brought by either husband or wife.

Whenever the relation of husband and wife ceases by the entry of a judgment dissolving the marriage, the defendant guilty of adultery is not entitled to any interest in any policy of insurance on the life of the plaintiff, wherein such defendant is named as a beneficiary, and the plaintiff may apply to the court granting the final decree or to a special term of the supreme court on notice to the defendant, or the attorney who appeared for defendant in action for divorce, and to the insurance company issuing the policy or policies, for an order directing the insurance company issuing the policy or policies to substitute therein such beneficiary as the plaintiff may nominate. In case where it is shown that the defendant has contributed from his or her separate estate toward the payment of the premiums on such policy, the court shall grant such order on such terms as in the discretion of the court shall be equitable. This section shall also apply in like manner when the defendant obtains a decree against the plaintiff on the counterclaim. (As added by L. 1913, ch. 536.)

ARTICLE III.

ACTION FOR A SEPARATION.

- SECTION 1762.** For what causes action may be maintained.
1763. Id.; in what cases.
1764. Requisites of complaint.
1765. Defendant may set up plaintiff's misconduct.
1766. Support, maintenance, etc., of wife and children.
1767. Judgment for separation may be revoked.

§ 1762. For what causes action may be maintained.

In either of the cases specified in the next section, an action may be maintained, by a husband or wife, against the other party to the marriage, to procure a judgment, separating the parties from bed and board, forever, or for a limited time, for either of the following causes:

1. The cruel and inhuman treatment of the plaintiff by the defendant.

2. Such conduct, on the part of the defendant towards the plaintiff, as may render it unsafe and improper for the former to cohabit with the later.

3. The abandonment of the plaintiff by the defendant.

4. Where the wife is plaintiff, the neglect or refusal of the defendant to provide for her.

§ 1763. Id.; in what cases.

Such an action may be maintained, in either of the following cases:

1. Where both parties are residents of the state, when the action is commenced.

2. Where the parties were married within the state, and the plaintiff is a resident thereof, when the action is commenced.

3. Where the parties, having been married without the state, have become residents of the state, and have continued to be residents thereof at least one year; and the plaintiff is such a resident, when the action is commenced.

§ 1764. Requisites of complaint.

The complaint in such an action must specify particularly the nature and circumstances of the defendant's misconduct, and must set forth the time and place of each act complained of, with reasonable certainty.

§ 1765. Defendant may set up plaintiff's misconduct.

The defendant may set up, in justification, the misconduct of the plaintiff; and if that defence is established to the satisfaction of the court, the defendant is entitled to judgment.

§ 1766. Support, maintenance, etc., of wife and children.

Where the action is brought by the wife, the court may, in the final judgment of separation, give such directions as the

nature and circumstances of the case require. In particular, it may compel the defendant to provide suitably for the education and maintenance of the children of the marriage, and for the support of the plaintiff, as justice requires, having regard to the circumstances of the respective parties. And the court may, in such an action, render a judgment, compelling the defendant to make the provision specified in this section, where, under the circumstances of the case, such a judgment is proper, without rendering a judgment of separation.

§ 1767. Judgment for separation may be revoked.

Upon the joint application of the parties, accompanied with satisfactory evidence of their reconciliation, a judgment for a separation, forever, or for a limited period, rendered as prescribed in this article, may be revoked, at any time, by the court which rendered it, subject to such regulations and restrictions as the court thinks fit to impose.

ARTICLE IV.

PROVISIONS APPLICABLE TO TWO OR MORE OF THE ACTIONS SPECIFIED IN THIS TITLE.

- SECTION 1768.** Married woman deemed a resident in certain cases.
 1769. Alimony, expenses of action, and costs; how awarded.
 1770. What is deemed a counterclaim.
 1771. Custody and maintenance of children and support of plaintiff.
 1772. Support, maintenance, etc., of wife and children. Sequestration.
 1773. Id.; when enforced by punishment for contempt.
 1774. Regulations respecting judgment.

§ 1768. Married woman deemed a resident in certain cases.

If a married woman dwells within the state, when she commences an action against her husband, as prescribed in either of the last two articles, she is deemed a resident thereof, although her husband resides elsewhere.

§ 1769. Alimony, expenses of action and costs; how awarded.

Where an action is brought, as prescribed in either of the last two articles, the court may, in its discretion, during the pendency thereof, from time to time, make and modify an order or orders, requiring the husband to pay any sum or sums of money necessary to enable the wife to carry on or defend the action, or to provide suitably for the education and maintenance of the children of the marriage, or for the support of the wife, having regard to the circumstances of the respective parties. The final judgment in such an action may award costs, in favor of or against either party, and an execution may be issued for the collection thereof, as in an ordinary case; or the court may, in the judgment, or by an order made at any time, direct the costs to be paid out of any property sequestered, or otherwise in the power of the court.

§ 1770. What is deemed a counterclaim.

Where an action is brought by either husband or wife, as prescribed in either of the last two articles, a cause of action, against the plaintiff and in favor of the defendant, arising under either of said articles, may be interposed, in connection with a denial of the material allegations of the complaint, as a counterclaim. (As amended by L. 1881, ch. 703.)

§ 1771. Custody and maintenance of children, and support of plaintiff.

Where an action is brought by either husband or wife, as prescribed in either of the last two articles, the court must, except as otherwise expressly prescribed in those articles, give, either in the final judgment, or by one or more orders, made from time to time, before final judgment, such directions as justice requires, between the parties, for the custody, care, education, and maintenance of any of the children of the marriage, and where the action is brought by the wife, for the support of the plaintiff. The court may, by order, upon the application of either party to the action, after due notice to the other, to be given in such manner

as the court shall prescribe, at any time after final judgment, annul, vary or modify such directions, or in case no such direction or directions shall have been made, amend it by inserting such direction or directions as justice requires for the custody, care, education and maintenance of any such child or children in such final judgment or order or orders. But no such application shall be made by a defendant unless leave to make the same shall have been previously granted by the court by order made upon or without notice as the court in its discretion may deem proper after presentation to the court of satisfactory proof that justice requires that such an application should be entertained. Where an action is brought by a wife, as prescribed in article second of this chapter, and a final judgment of divorce has been rendered in her favor, the court, upon the application of the defendant on notice, and on proof of the marriage of the plaintiff after such final judgment, must by order modify such final judgment and any orders made with respect thereto, by annulling the provisions of such final judgment or orders, or of both, directing payments of money for the support of the plaintiff. (As amended by L. 1908, ch. 297.)

**§ 1772. Support, maintenance, etc., of wife and children.
Sequestration.**

Where a judgment rendered, or an order made, as prescribed in this article, or in either of the last two articles, or a judgment for divorce or separation rendered in another state, upon the ground of adultery upon which an action has been brought in this state, and judgment rendered therein, requires a husband to provide for the education or maintenance of any of the children of a marriage, or for the support of his wife, the court may, in its discretion, also direct him to give reasonable security, in such a manner, and within such a time, as it thinks proper, for the payment, from time to time, of the sums of money required for that purpose. If he fails to give the security, or to make any payment required by the terms of such a judgment or order, whether he has or has not given security therefor; or to pay any

sum of money which he is required to pay by an order, made as prescribed in section seventeen hundred and sixty-nine of this act; the court may cause his personal property, and the rents and profits of his real property, to be sequestered, and may appoint a receiver thereof. The rents and profits, and other property, so sequestered, may be, from time to time, applied, under the direction of the court, to the payment of any of the sums of money specified in this section, as justice requires; and if the same shall be insufficient to pay the sums of money required, the court may, on application of the receiver, direct the mortgage or sale by the receiver, under such terms and conditions as it may prescribe of sufficient of his real estate to pay such sums. (As amended by L. 1918, ch. 189.)

§ 1773. When enforced by punishment for contempt.

Where a husband makes default in paying any sum of money specified in the last section, as required by the judgment or order directing the payment thereof; and it appears presumptively, to the satisfaction of the court, that payment cannot be enforced by means of the proceedings prescribed in the last section, or by resorting to the security, if any, given as herein prescribed, the court may, in its discretion, make an order requiring the husband to show cause before it, at a time and place therein specified, why he should not be punished for his failure to make the payment; and thereupon proceedings must be taken to punish him, as prescribed in article nineteen of the judiciary law for the punishment of a contempt of court, other than a criminal contempt, and where the judgment or order directs the payment to be made in instalments, or at stated intervals, failure to make any such single payment or instalment may be punished as therein provided, and such punishment, either by fine or commitment, shall not be a bar to a subsequent proceeding to punish him as for a contempt for his failure to pay subsequent instalments, but for such purpose he may be proceeded against under the said order in the same manner and with the same effect as though such instal-

ment payment was directed to be paid by a separate and distinct order, and the provisions of section one hundred and eleven of this act are hereby superseded so far as they are in conflict herewith. Such order to show cause may also be made, without any previous sequestration, or direction to give security, where the court is satisfied that they would be ineffectual. (As amended by L. 1919, ch. 478.)

§ 1774. Regulations respecting judgment.

In an action brought as prescribed in this title, a final judgment shall not be rendered in favor of the plaintiff upon the defendant's default in appearing or pleading, unless either the summons and a copy of the complaint were personally served upon the defendant; or the copy of the summons delivered to the defendant, upon personal service of the summons, or delivered to him without the state, or published, pursuant to an order for that purpose, obtained as prescribed in chapter fifth of this act, contains the following words, or words to the same effect, legibly written or printed upon the face thereof, to wit: "Action to annul a marriage;" "Action for a divorce;" or "Action for a separation;" according to the article of this title, under which the action is brought. Where the summons is personally served, but a copy of the complaint is not served therewith; or where a copy of the summons and copy of the complaint are delivered to the defendant without the state, the certificate or affidavit proving service, must affirmatively state, in the body thereof, that such an inscription, setting forth a copy thereof, was so written or printed upon the face of the copy of the summons delivered to the defendant. In an action brought under either article first or article second of this title for judgment annulling a marriage, or divorcing the parties and dissolving a marriage, the decision of the court or report of the referee must be filed and interlocutory judgment thereon must be entered within fifteen days after the party becomes entitled to file or enter the same, and can not be filed or entered after the

expiration of said period of fifteen days unless by order of the court upon application and sufficient cause being shown for the delay. Three months after the entry thereof the interlocutory judgment shall become the final judgment as of course unless the decision of the court or report of the referee shall require and the interlocutory judgment shall provide for the entry of final judgment or unless for sufficient cause the court in the meantime shall have otherwise ordered. If the interlocutory judgment provides for the entry of final judgment such final judgment must be entered within thirty days after the expiration of said period of three months and can not be entered after the expiration of such period of thirty days except by order of the court on application and sufficient cause being shown for the delay. The interlocutory judgment may, in the discretion of the court, provide for the payment of alimony until the interlocutory judgment becomes final or until the entry of final judgment; it may include a judgment for costs, when costs are awarded, in which case said judgment for costs shall be docketed by the clerk, and thereupon shall have the same force and effect as if docketed upon the entry of final judgment therein, except that it shall not be enforceable by execution or punishment until the interlocutory judgment becomes the final judgment or until the entry of final judgment in said action. (As amended by L. 1919, ch. 277.)

§ 111. Imprisonment on execution.

No person shall be imprisoned within the prison walls of any jail for a longer period than three months under an execution or any other mandate against the person to enforce the recovery of a sum of money less than five hundred dollars in amount or under a commitment upon a fine for contempt of court in the non-payment of alimony or counsel fees in a divorce case where the amount so to be paid is less than the sum of five hundred dollars;

and where the amount in either of said cases is five hundred dollars or over, such imprisonment shall not continue for a longer period than six months. It shall be the duty of the sheriff in whose custody any such person is held to discharge such person at the expiration of said respective periods without any formal application being made therefor. No person shall be imprisoned within the jail liberties of any jail for a longer period than six months upon any execution or other mandate against the person, and no action shall be commenced against the sheriff upon a bond given for the jail liberties by such person to secure the benefit of such liberties, as provided in articles fourth and fifth of this title for an escape made after the expiration of six months' imprisonment as aforesaid. Notwithstanding such a discharge in either of the above cases, the judgment creditor in the execution, or the person at whose instance the said mandate was issued, has the same remedy against the property of the person imprisoned which he had before such execution or mandate was issued; but the prisoner shall not be again imprisoned upon a like process issued in the same action or arrested in any action upon any judgment under which the same may have been granted. Except in a case hereinbefore specified nothing in this section shall effect a commitment for contempt of court. (As amended by L. 1886, ch. 672.)

§ 438. Cases in which service of summons by publication, etc., may be ordered.

An order directing the service of a summons upon a defendant, by publication, may be made in either of the following cases:

* * * * *

4. Where the complaint demands judgment annulling a marriage, or for a divorce, or a separation. (Subd. 4 as amended by L. 1879, ch. 542.)

§ 791. Id.; among civil actions.

Civil causes are entitled to preference among themselves, in the trial or hearing thereof, in the following order, next after the causes specified in the last section but one :

* * * * *

13. An action for absolute divorce in which an order has been made granting temporary alimony. (Subd. 13 as added by L. 1902, ch. 357.)

§ 831. When husband and wife not competent witnesses; when competent.

A husband or wife is not competent to testify against the other, upon the trial of an action, or the hearing upon the merits of a special proceeding, founded upon an allegation of adultery, except to prove the marriage or disprove the allegation of adultery. However, if upon such trial or such hearing the party against whom the allegation of adultery is made produces evidence tending to prove any of the defenses thereto mentioned in section seventeen hundred and fifty-eight of this act, the other party is competent to testify in disproof of any such defense. A husband or wife shall not be compelled, or without consent of the other if living, allowed to disclose a confidential communication made by one to the other during marriage. (As amended by L. 1915, ch. 181.)

§ 1012. Qualification of the last section.

But a reference shall not be made, of course, upon the consent of the parties, in an action to annul the marriage, or for a divorce or a separation; . . . In a case specified in this section, where the parties consent to a reference, the court may, in its discretion, grant or refuse a reference; and, where a reference is granted, the court must designate the referee. If the referee, thus

designated, refuses to serve, or if a new trial of an action tried by a referee, so designated, is granted, the court must, upon the application of either party, appoint another referee. (As amended by L. 1898, ch. 317.)

§ 1229. In matrimonial causes, judgment can be rendered only by the court.

In an action to annul a marriage, or for a divorce or separation, judgment cannot be taken, of course, upon a referee's report, as prescribed in the last section, or where the reference was made, as prescribed in section 1215 of this act. Where a reference is made in such an action, the testimony, and the other proceedings upon the reference, must be certified to the court, by the referee, with his report; and judgment must be rendered by the court.

DOMESTIC RELATIONS LAW.

(L. 1909, ch. 19.)

ARTICLE II.

MARRIAGES.

- SECTION 5. Incestuous and void marriages.**
6. Void marriages.
 7. Voidable marriages.
 8. Marriage after divorce for adultery.

§ 5. Incestuous and void marriages.

A marriage is incestuous and void whether the relatives are legitimate or illegitimate between either:

1. An ancestor and a descendant;
2. A brother and sister of either the whole or the half blood;
3. An uncle and niece or an aunt and nephew.

If a marriage prohibited by the foregoing provisions of this section be solemnized it shall be void, and the parties thereto shall each be fined not less than fifty nor more than one hundred dollars and may, in the discretion of the court in addition to said fine, be imprisoned for a term not exceeding six months. Any person who shall knowingly and wilfully solemnize such marriage, or procure or aid in the solemnization of the same, shall be deemed guilty of a misdemeanor and shall be fined or imprisoned in like manner.

§ 6. Void marriages.

A marriage is absolutely void if contracted by a person whose husband or wife by a former marriage is living, unless either:

1. Such former marriage has been annulled or has been dissolved for a cause other than the adultery of such person; provided, that if such former marriage has been dissolved for the cause of the adultery of such person, he or she may marry again in the cases provided for in section eight of this chapter and such subsequent marriage shall be valid;

2. Such former husband or wife has been finally sentenced to imprisonment for life;

3. Such former husband or wife has absented himself or herself for five successive years then last past without being known to such person to be living during that time. (As amended by L. 1915, ch. 266.)

§ 7. Voidable marriages.

A marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party thereto:

1. Is under the age of legal consent, which is eighteen years;
2. Is incapable of consenting to a marriage for want of understanding;

3. Is incapable of entering into the married state from physical cause;

4. Consents to such marriage by reason of force, duress or fraud;

5. Has a husband or wife by a former marriage living, and such former husband or wife has absented himself or herself for five successive years then last past without being known to such party to be living during that time.

Actions to annul a void or voidable marriage may be brought only as provided in the code of civil procedure.

§ 8. Marriage after divorce for adultery.

Whenever a marriage has been or shall be dissolved, the complainant may marry again during the lifetime of the defendant. But a defendant for whose adultery the judgment of divorce has been granted in this state may not marry again during the lifetime of the complainant, unless the court in which the judgment of divorce was rendered shall in that respect modify such judgment, which modification shall be made only upon satisfactory proof that three years have elapsed since the decree of divorce was rendered, and that the conduct of the defendant since the dissolution of said marriage has been uniformly good; and a defendant for whose adultery the judgment of divorce has been rendered in another state or country may not marry again in this state during the lifetime of the complainant unless three years have elapsed since the rendition of such judgment and there is no legal impediment, by reason of such judgment, to such marriage in the state or country where the judgment was rendered. But this section shall not prevent the remarriage of the parties to an action for divorce. (As amended by L. 1919, ch. 265.)

§ 51. Powers of married woman.

. . . but a husband and wife can not contract to alter or dissolve the marriage or to relieve the husband from his liability to support his wife.

JUDICIARY LAW.

(L. 1909, ch. 35.)

§ 4. Sittings of courts to be public.

The sittings of every court within this state shall be public, and every citizen may freely attend the same, except that in all proceedings and trials in cases for divorce, on account of adultery, . . . the court may, in its discretion, exclude therefrom all persons who are not directly interested therein, excepting jurors, witnesses, and officers of the court.

REAL PROPERTY LAW.

(L. 1909, ch. 52.)

§ 196. When dower barred by misconduct.

In case of a divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

§ 206. Divorced woman may release dower.

A woman who is divorced from her husband, whether such divorce be absolute or limited, or granted in his or her favor, by any court of competent jurisdiction, may release to him, by an instrument in writing, sufficient to pass title to real estate, her inchoate right of dower in any specific real property theretofore owned by him, or generally in all such real property, and such as he shall thereafter acquire.

PENAL LAW.

(L. 1909, ch. 88.)

§ 120. Advertising to procure divorces.

Whoever prints, publishes, distributes or circulates, or causes to be printed published, distributed or circulated any circular, pamphlet, card, hand bill, advertisement, printed paper, book, newspaper or notice of any kind offering to procure or to aid in procuring any divorce or the severance, dissolution, or annulment of any marriage, or offering to engage, appear or act as attorney or counsel in any suit for alimony or divorce or the severance, dissolution or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state.

§ 1450. Solemnizing unlawful marriages and unlawful solemnizing of marriages.

. . . Until a marriage has been dissolved or annulled by a proper tribunal or court of competent jurisdiction, any person who shall assume to grant a divorce, in writing, purporting to divorce husband and wife and permitting them or either of them to lawfully marry again, shall be guilty of a misdemeanor punishable by fine for the first offense not exceeding five hundred dollars, and for the second offense one thousand dollars, or imprisonment not exceeding one year, or both such fine and imprisonment. (As amended by L. 1916, ch. 368.)

NORTH CAROLINA.*Pell's Revision, 1908.*¹

CHAPTER 31.

DIVORCE AND ALIMONY.

- SECTION 1557.** Jurisdiction.
1558. Bonds for costs unnecessary.
1559. Venue.
1560. What marriages may be declared void on application of either party.
1561. Grounds for absolute divorce.
1562. From bed and board; grounds for.
1563. Affidavit to be filed with complaint; provisos.
1564. Material facts found by jury; parties cannot testify to adultery.
1565. Alimony on divorce from bed and board.
1566. Alimony pendente lite.
1567. Alimony without divorce, when.
1568. Alimony in real estate, writ of possession issued.
1569. Effects of absolute divorce.
1570. Custody of children in divorce.

§ 1557. Jurisdiction.

The superior court shall have jurisdiction of complaints for divorce and alimony, or either.

§ 1558. Bonds for costs unnecessary.

It shall not be necessary for either party to a proceeding for divorce or alimony to give any undertaking to the other party to secure such costs as such other party may recover.

§ 1559. Venue.

In all proceedings for divorce, the summons shall be returnable to the court of the county in which either the plaintiff or defendant resides. (As amended by L. 1915, ch. 229.)

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§ 1560. What marriages may be declared void on application of either party.

The superior court in term time, on application made as by law provided, by either party to a marriage contracted contrary to the prohibitions contained in the chapter entitled Marriage, or declared void by said chapter, may declare such marriage void from the beginning, subject, nevertheless, to the proviso contained in said chapter.

§ 1561. Grounds for absolute divorce.

Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony on application of the party injured, made as by law provided, in the following cases:

1. If the husband shall commit adultery.
2. If the wife shall commit adultery.
3. If either party at the time of the marriage was and still is naturally impotent.
4. If the wife at the time of her marriage be pregnant, and the husband be ignorant of the fact of such pregnancy and be not the father of the child with which the wife was pregnant at the time of the marriage.
5. If there shall have been a separation of husband and wife, and they shall have lived separate and apart for ten successive years, and they shall have resided in this state for that period. (As amended by L. 1917, chs. 25, 57.)

§ 1562. From bed and board; grounds for.

The superior court may grant divorces from bed and board on application of the party injured, made as by law provided, in the following cases:

1. If either party shall abandon his or her family; or,
2. Shall maliciously turn the other out of doors; or,
3. Shall, by cruel or barbarous treatment endanger the life of the other; or,

4. Shall offer such indignities to the person of the other as to render his or her condition intolerable and life burdensome; or,
5. Shall become an habitual drunkard.

§ 1563. Affidavit to be filed with complaint; provisos.

The plaintiff in a complaint seeking either divorce or alimony, or both, shall file with his or her complaint an affidavit that the facts set forth in the complaint are true to the best of affiant's knowledge and belief, and that the said complaint is not made out of levity or by collusion between husband and wife; and if for divorce, not for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the complaint; and the plaintiff shall also set forth in such affidavit, either that the facts set forth in the complaint, as grounds for divorce, have existed to his or her knowledge at least six months prior to the filing of the complaint; and that complainant has been a resident of the state for two years next preceding the filing of the complaint; or, if the wife be the plaintiff, that the husband is removing, or about to remove his property and effects from the state, whereby she may be disappointed in her alimony: Provided, if any wife shall file in the office of the superior court clerk of the county where she resides an affidavit, setting forth the fact that she intends to file a petition or bring an action for divorce against her husband, and that she has not had knowledge of the facts upon which said petition or action will be based for six months, then and in that case it shall be lawful for such wife to reside separate and apart from her said husband, and to secure for her own use the wages of her own labor during the time she shall so remain separate and apart from her said husband: provided further, that if such wife shall fail to file her petition or bring her action for divorce within ninety days after the six months shall have expired since her knowledge of the facts upon which she intends to file her said petition or bring her said action, then she shall not be entitled any longer to the benefit of this section.

§ 1564. Material facts found by jury; parties cannot testify to adultery.

The material facts in every complaint asking for a divorce shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff on any such complaint until such facts have been found by a jury, and on such trial neither the husband nor wife shall be a competent witness to prove the adultery of the other, nor shall the admissions of either party be received as evidence to prove such fact.

§ 1565. Alimony on divorce from bed and board.

When any court shall adjudge any two married persons divorced from bed and board, it may also decree to the party upon whose application such judgment was rendered such alimony as the circumstances of the several parties may render necessary; which, however, shall not in any case exceed the one-third part of the net annual income from the estate, occupation or labor of the party against whom the judgment shall be rendered.

§ 1566. Alimony pendente lite.

If any married woman shall apply to a court for a divorce from the bonds of matrimony, or from bed and board, with her husband, and shall set forth in her complaint such facts, which upon application for alimony shall be found by the judge to be true and to entitle her to the relief demanded in the complaint, and it shall appear to the judge of such court, either in or out of term, by the affidavit of the complainant; or other proof, that she has not sufficient means whereon to subsist during the prosecution of the suit, and to defray the necessary and proper expenses thereof, the judge may order the husband to pay her such alimony during the pendency of the suit as shall appear to him just and proper, having regard to the circumstances of the parties; and such order may be modified or vacated at any time, on the application of either party or of any one interested: provided, that no order allowing alimony

pendente lite shall be made unless the husband shall have had five days' notice thereof, and in all cases of application for alimony pendente lite under this or the succeeding section, whether in or out of term, it shall be admissible for the husband to be heard by affidavit in reply or answer to the allegations of the complaint: provided further, that if the husband shall have abandoned his wife and left the state, or shall be in parts unknown, or shall be about to remove or dispose of his property for the purpose of defeating the claim of his wife, no notice shall be necessary.

§ 1567. Alimony without divorce, when.

If any husband shall separate himself from his wife and fail to provide for her and the children of the marriage with the necessary subsistence according to his means and condition in life, or if he shall be a drunkard or spendthrift, or be guilty of any misconduct or acts that would be or constitute cause for divorce, either absolute or from bed and board, the wife may institute an action in the superior court of the county in which the cause of action arose to have a reasonable subsistence allotted and paid or secured to her from the estate or earnings of her husband. Pending the trial and final determination of the issues involved in such action, and also after they are determined, if finally determined, in favor of the wife, such wife may make application to the resident judge of the superior court, or the judge holding the superior courts of the district in which the action is brought, for an allowance for such subsistence, and it shall be lawful for such judge to cause the husband to secure so much of his estate or to pay so much of his earnings, or both, as may be proper, according to his condition and circumstances, for the benefit of his said wife and the children of the marriage, having regard also to the separate estate of the wife: provided, that no order for such allowance shall be made unless the husband shall have had five days notice thereof. Such application may be heard in or out of term, orally or upon affidavit, or either or both: provided further, that if the husband shall have abandoned his wife and left the state, or shall be in parts unknown,

or shall be about to remove or dispose of his property for the purpose of defeating the claim of his wife, no notice shall be necessary. The order of allowance herein provided for may be modified or vacated at any time, on the application of either party or of any one interested. In actions brought under this section, the wife shall not be required to file the affidavit provided in section one thousand five hundred and sixty-three (1563) of the revisal of nineteen hundred and five (1905), but shall verify her complaint in the manner prescribed in section four hundred and eighty-nine (489) of the revisal of nineteen hundred and five (1905). (As amended by L. 1919, ch. 24.)

§ 1568. Alimony in real estate, writ of possession issued.

In all cases in which the court shall grant alimony by the assignment of real estate, the court shall have the power to issue a writ of possession when necessary in the judgment of the court to do so.

§ 1569. Effects of absolute divorce.

After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine, and either party may marry again unless otherwise provided by law: provided, that no judgment of divorce shall render illegitimate any children in esse, or begotten of the body of the wife during coverture.

§ 1570. Custody of the children in divorce.

After the filing of a complaint in any action for divorce, whether from the bonds of matrimony, or from bed and board, both before and after final judgment therein, it shall be lawful for the judge of the court, in which such application is or was pending, to make such orders respecting the care, custody, tuition and maintenance of the minor children of the marriage as may be proper, and from time to time to modify or vacate such orders, and may commit their custody and tuition to the father or mother as may be thought best; or the court may commit the custody and tuition of such

infant children, in the first place, to one parent for a limited time, and after the expiration of that time, then to the other parent; and so alternately: provided, that no order respecting the children shall be made on the application of either party without five days' notice to the other party, unless it shall appear that the party having the possession or control of such children has removed or is about to remove the children, or himself, beyond the jurisdiction of the court.

§ 2083. Who may not marry.

All marriages between a white person and a negro or Indian, or between a white person and person of negro or Indian descent to the third generation, inclusive, or between a Croatan Indian and a negro, or between a Croatan Indian and a person of negro descent to the third generation, inclusive, or between any two persons nearer of kin than first cousins, or between a male person under sixteen years of age and any female, or between a female person under fourteen years of age and any male, or between persons either of whom has a husband or wife living at the time of such marriage, or between persons either of whom is at the time physically impotent, or is incapable of contracting for want of will or understanding, shall be void: provided, double first cousins may not marry, and provided, that no marriage followed by cohabitation and birth of issue shall be declared void after the death of either of the parties for any of the causes stated in this section, except that for one of the parties was a white person, and the other a negro or Indian, or of negro or Indian descent to the third generation, inclusive, and for bigamy. (As amended by L. 1917, ch. 135.)

§ 2084. Prohibited degrees of kinship.

Whenever the degree of kinship shall be estimated with the view to ascertain the right of kinspeople to marry, the half-blood shall

be counted as the whole-blood: provided, that nothing herein contained shall be so construed as to invalidate any marriage heretofore contracted in case where by counting the half-blood as the whole-blood the persons contracting such marriage would be nearer of kin than first cousin; but in every case the kinship shall be ascertained by counting relations of the half-blood as being only half so near kin as those of the same degree of the whole-blood.

L. 1919, ch. 204.

An Act to amend chapter 57, public laws of 1917, relating to divorce.

§ 1. Divorce on ground of separation does not destroy right to alimony.

That in all cases where an absolute divorce is granted upon the grounds of separation of husband and wife for ten successive years as provided by law, such decree granting such divorce shall not have the effect of impairing or destroying the right of the wife to receive alimony under any judgment or decree of the court rendered before the commencement of such proceeding for absolute divorce.

NORTH DAKOTA.*Compiled Laws, 1913.*¹

- SECTION 4359.** Who disqualified to marry.
4360. When marriage voidable.
4368. Causes for annulling marriage.
4369. Limitation of action.
4370. Children legitimate.
4371. Custody of children.
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§ 4359. Who disqualified to marry.

Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, between uncles and nieces, aunts and nephews, or cousins of the first degree of the half as well as the whole blood, are declared to be incestuous and absolutely void. This section shall apply to illegitimate as well as legitimate children and relations.

§ 4360. When marriage voidable.

A marriage contracted by a person having a former husband or wife living, if the former marriage has not been annulled or dissolved, is illegal and void from the beginning unless such former husband or wife was absent and believed by such person to be dead for a period of five years immediately preceding.

§ 4368. Causes for annulling marriage.

A marriage may be annulled by an action in the district court to obtain a decree of nullity for any of the following causes existing at the time of the marriage:

1. When the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent and such marriage was contracted without the consent of his or her parent or guardian, unless after attaining the age of consent such party freely cohabited with the other as husband or wife.
2. When the former husband or wife of either party was living

and the marriage with such former husband or wife was then in force.

3. When either party was of unsound mind, unless such party after coming to reason freely cohabited with the other as husband or wife.

4. When the consent of either party was obtained by fraud, unless such party afterwards with full knowledge of the facts constituting the fraud freely cohabited with the other as husband or wife.

5. When the consent of either party was obtained by force, unless such party afterward freely cohabited with the other as husband or wife.

6. When either party was at the time of the marriage physically incapable of entering into the marriage state and such incapacity continues and appears to be incurable.

§ 4369. Limitation of action.

An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one, by the party to the marriage, who was married under the age of legal consent, within four years after arriving at the age of consent, or by his or her parent or guardian at any time before such party has arrived at the age of legal consent.

2. For causes mentioned in subdivision two, by either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision three, by the party injured, or a relative or guardian of the party of unsound mind at any time before the death of either party.

4. For causes mentioned in subdivision four, by the party injured within four years after the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivisions five and six, by the injured party within four years after the marriage.

§ 4370. Children legitimate.

When a marriage is annulled children begotten before the judgment are legitimate and succeed to the estate of both parents.

§ 4371. Custody of children.

The court must award the custody of the children of the marriage annulled on the ground of fraud or force to the innocent parent and may also provide for their education and maintenance out of the property of the guilty party.

§ 4372. Effect of judgment.

A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

§ 4373. Persons prohibited from marrying.

No woman under the age of forty-five years, or man of any age, except he marries a woman over the age of forty-five years, either of whom is a common drunkard, habitual criminal, epileptic, imbecile, feeble minded person, idiot or insane person, or person who has theretofore been afflicted with hereditary insanity, or is afflicted with pulmonary tuberculosis in its advanced stages, or any contagious venereal disease, shall hereafter intermarry or marry any other person within this state.

CHAPTER 6.**DISSOLUTION OF MARRIAGE.**

- ARTICLE I. Causes for granting divorce, §§ 4379-4386.**
II. Causes for denying divorce, §§ 4387-4400.
III. General provisions, §§ 4401-4406.

ARTICLE I.**CAUSES FOR GRANTING DIVORCE.****§ 4379. Marriage; how dissolved.**

Marriage is dissolved only:

1. By the death of one of the parties; or,

2. By a judgment of a court of competent jurisdiction decreeing a divorce of the parties.

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons, except that neither party to a divorce may marry except in accordance with the decree of the court granting the divorce.

It shall be the duty of the court granting a divorce to specify in the order for judgment whether either of both of the parties shall be permitted to marry, and if so when, and the court shall have jurisdiction to modify the decree of the divorce at any time so as to permit one or both of the parties to marry, if in his discretion he shall deem it right.

§ 4380. Causes for divorce.

Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. Habitual intemperance.
6. Conviction of felony.
7. Insanity for a period of five years, the insane person having been an inmate of a state institution for the insane in the state of North Dakota, or an inmate of a state institution for the insane in some other state for such period, and affected with any one of the following types of insanity; paranoia, paresis, dementia praecox, Huntington's chorea, and epileptic insanity; provided, that no divorce shall be granted because of insanity until after a thorough examination of such insane person by three physicians who are recognized authorities on mental diseases, one of which physicians shall be the superintendent of the State Hospital for the Insane, the other two physicians to be appointed by the court before whom the action is pending, all of whom shall agree that such insane person is incurable; provided, however, that no divorce shall be granted to any person whose husband or wife is an inmate

of a state institution in any other than the state of North Dakota, unless the person applying for such divorce shall have been a resident of the state of North Dakota for at least five years previous to the passage of this act. (As amended by L. 1915, ch. 121.)

§ 4381. Adultery defined.

Adultery within the meaning of this article is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

§ 4382. Extreme cruelty defined.

Extreme cruelty is the infliction by one party to the marriage of grievous bodily injury or grievous mental suffering upon the other.

§ 4383. Desertion defined.

Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

1. Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

2. When one party is induced by the stratagem or fraud of the other party to leave the family dwelling place or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

3. Departure or absence of one party from the family dwelling place caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other is not desertion by the absent party, but it is desertion by the other party.

4. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

5. Absence or separation, proper in itself, becomes desertion

whenever the intent to desert is fixed during such absence or separation.

6. Consent to a separation is a revocable act and if one of the parties afterwards in good faith seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

7. If one party deserts the other and before the expiration of the statutory period required to make the desertion a cause of divorce returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuses such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of the refusal.

8. A husband may choose any reasonable place or mode of living, and if the wife does not conform thereto it is desertion.

9. If the place or mode of living selected by the husband is unreasonable and grossly unfit and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

§ 4384. Willful neglect defined.

Willful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy or dissipation.

§ 4385. Habitual intemperance defined.

Habitual intemperance is that degree of intemperance from the use of intoxicating drinks, morphine, opium, chloral, cocaine or other like narcotic drugs, which disqualifies the person a great portion of the time from properly attending to business or which would reasonably inflict a course of great mental anguish upon the innocent party.

§ 4386. Duration of offenses as grounds for divorce.

Willful desertion, willful neglect or habitual intemperance must continue for one year before either is a ground for divorce.

ARTICLE 2.

CAUSES FOR DENYING DIVORCE.

§ 4387. When divorce will be denied.

Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time.

§ 4388. Connivance defined.

Connivance is the corrupt consent of one party to the commission of the acts of the other constituting the cause of divorce: Corrupt consent is manifested by passive permission with intent to connive at or actively procure the commission of the acts complained of.

§ 4389. Collusion defined.

Collusion is an agreement between the husband and wife that one of them shall commit, or appear to have committed, or be represented in court as having committed, acts constituting a cause of divorce for the purpose of enabling the other to obtain a divorce.

§ 4390. Condonation defined.

Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

§ 4391. Requisites of condonation.

The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce.

2. Reconciliation and remission of the offense by the injured party.

3. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent, that the forgiving party must be treated with conjugal kindness. When the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from successive acts of ill treatment, which may aggregately constitute the offense, cohabitation or passive endurance or conjugal kindness shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases condonation can be made only after the cause of divorce has become complete as to the acts complained of. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned and existing at the time of condonation avoid such condonation.

§ 4392. Revocation of condonation.

Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,

2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith or not fulfilled.

§ 4393. Recrimination defined.

Recrimination is a showing by the defendant of any cause of divorce against the plaintiff in bar of the plaintiff's cause of divorce. Condonation of a cause of divorce shown in the answer as a recriminatory defense is a bar to such defense, unless the condonation is revoked as above provided, or two years have elapsed after the condonation and before accruing or completion of the cause of divorce against which the recrimination is shown.

§ 4394. Adultery by husband.

When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

§ 4395. By wife. Legitimacy.

When a divorce is granted for the adultery of the wife the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court upon the evidence in the case.

In every such case all children begotten before the commencement of the action are to be presumed legitimate until the contrary is shown.

§ 4396. Time limited.

A divorce must be denied when there is an unreasonable lapse of time before the commencement of the action. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion or condonation of the offense, or full acquiescence in the same with intent to continue the marriage relation, notwithstanding the commission of the offense set up as a ground of divorce. The presumption arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

§ 4397. Only statutory limitations.

There are no limitations of time for commencing actions for divorce except such as are contained in the foregoing section.

§ 4398. Term of residence.

A divorce must not be granted unless the plaintiff has in good faith been a resident of the state for twelve months next preceding the commencement of the action and is either a citizen of the

United States or has declared his intention to become such or is an Indian. Provided, however, that where the defendant is an Indian a copy of the summons and complaint in such divorce action shall be served upon the superintendent of the reservation on which the defendant resides in like manner as upon the defendant. (As amended by L. 1915, ch. 122.)

§ 4399. Presumption of domicile.

In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife does not apply. After separation each party may have a separate domicile, depending for proof upon actual residence and not upon legal presumptions.

§ 4400. Affirmative proof required.

No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must in addition to any statement or finding of the referee require proof of the facts alleged.

ARTICLE 3.

General Provisions.

§ 4401. Maintenance.

Though a judgment of divorce is denied the court may in an action for divorce provide for the maintenance of a wife and her children, or any of them, by the husband.

§ 4402. Alimony pending action.

When an action for divorce is pending, the court may in its discretion, require either party thereto to pay as alimony any money necessary for the support of the other party thereto, or children of the marriage, or to prosecute or defend the action.

§ 4403. Temporary support and maintenance.

In all actions brought to enforce the obligations established by law for the support or maintenance of either party to a marriage in an action of divorce, the court shall have authority, in its discretion, to require the defendant therein to pay such sum or sums of money as it may deem necessary for the temporary support and maintenance of the plaintiff and to prosecute the action.

§ 4404. Custody of children.

In an action for divorce the court may before or after judgment give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper and may at any time vacate or modify the same.

§ 4405. Support.

When divorce is granted, the court shall make such equitable distribution of the property of the parties thereto as may seem just and proper and may compel either of such parties to provide for the maintenance of the children of the marriage, and make such suitable allowances to the other party for support during life, or for a shorter period as to the court may seem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects.

§ 4406. Security, separate estate. Homestead.

The court may require such party to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter and may enforce the same by appointment of a receiver or by any other remedy applicable to the case. But when the wife has a separate estate sufficient to give her a proper support the court, in its discretion may withhold any allowance to her out of the separate property of the husband. The court in rendering the decree of divorce may assign the homestead or such part thereof as may to the court seem just, to the innocent party either absolutely or for a limited period, according to the

facts in the case and in consonance with law relating to homesteads. The disposition of the homestead by the court and all orders and decrees touching the alimony and maintenance of either party to a marriage and for the custody, education and support of the children as above provided are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

§ 4412. Cannot alter relations.

A husband and wife cannot by any contract with each other alter their marital relations, except that they may agree in writing to an immediate separation and may make provision for the support of either of them and of their children during such separation.

§ 4413. Separation.

The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

§ 4416. Abandonment. Separation.

A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct in abandoning him; nor is he liable for her support when she is living separate from him by agreement, unless such support is stipulated in the agreement.

OHIO.

*Page and Adams' Annotated Ohio General Code.*¹

CHAPTER 3.

DIVORCE AND ALIMONY.

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§ 11979. For what cause divorce may be granted.

Courts of common pleas may grant divorces for the following causes:

1. That either party had a husband or wife living at the time of the marriage from which the divorce is sought;
2. Wilful absence of either party from the other for three years;
3. Adultery;
4. Impotency;
5. Extreme cruelty;
6. Fraudulent contract;
7. Any gross neglect of duty;
8. Habitual drunkenness for three years;
9. The imprisonment of either party in a penitentiary under sentence thereto. The petition for divorce under this clause must be filed during the imprisonment of the adverse party;
10. The procurement of a divorce without this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while they remain binding upon the other party.

§ 11979-1. Delay of decree until alimony secured.

When a husband who is entitled to a decree of divorce, is ordered to pay alimony, or money for the support of a child or children who are not in his custody, the judge hearing said cause, may, in his discretion, delay entering a decree for divorce until said husband shall, by bond or otherwise, secure the payment of said alimony or money for the support of said child or children to the satisfaction of the trial judge.

§ 11979-2. Mailing copy of petition to consular representative when defendant subject of foreign nation.

In all actions hereafter commenced for divorce with or without alimony, where the defendant is the subject of a foreign nation and a non-resident of the county in which the action is filed, the plaintiff must state said facts, together with time and place of mar-

riage, in the petition; and when the same is filed, it shall be the duty of the clerk of the court to forthwith mail by registered letter a copy of said petition to the nearest consular representative of said foreign nation residing within this state.

§ 11980. Residence of plaintiff; where action shall be brought.

Except in an action for alimony alone, the plaintiff must have been a resident of the state at least one year before filing the petition. Actions for divorce or for alimony shall be brought in the county of which the plaintiff is and has been for at least thirty days immediately preceding the filing of the petition, a bona fide resident or in the county where the cause of action arose. The court shall hear and determine the case, whether the marriage took place, or the cause of divorce occurred, within or without the state.

§ 11981. Prepayment or security for costs.

No clerk of a court of common pleas shall receive or file a petition for divorce or alimony until the party named as plaintiff therein, or some one on his or her behalf, makes prepayment or deposit with the clerk of such an amount as will cover the costs likely to accrue in the action exclusive of attorney fee, or gives such security for the costs as in the judgment of the clerk is satisfactory; but when a plaintiff makes affidavit of inability either to prepay or give security for costs, the clerk shall receive and file the petition. Such affidavit shall be filed with it, and treated as are similar papers in such cases.

§ 11982. Residence of wife not affected by that of husband.

When a wife files a petition for a divorce, or for alimony, the residence of her husband shall not be so construed as to preclude her from the provisions of this chapter.

§ 11983. Service when defendant resident of the state.

When the defendant is a resident of this state, the clerk shall issue a summons, directed to the sheriff of the county in which he or

she resides or is found, which together with a copy of the petition shall be served on him or her at least six weeks before the hearing of the cause.

§ 11984. Notice when defendant's residence unknown.

If the defendant is not a resident of this state or his residence is unknown, notice of the pendency of the action must be given by publication as in other cases. Unless it be made to appear to the court, by affidavit or otherwise, that his residence is unknown to the plaintiff, and could not with reasonable diligence be ascertained, a summons and copy of the petition, forthwith in the filing of it, shall be deposited in the post-office, directed to the defendant at his place of residence.

§ 11985. When cause may be heard.

The cause may be heard and decided after the expiration of six weeks from the service of the summons, or the first publication of notice.

§ 11986. Answer, hearing and judgment.

If the defendant fails to appear, or, having appeared, admits or denies in his answer the allegations in the petition, the court shall hear and determine the cause. On the hearing, if any of the causes for divorce charged in the petition be proved to the satisfaction of the court, it may pronounce the marriage contract dissolved and both of the parties released from its obligations.

§ 11987. Divorce not to affect legitimacy of children.

The granting of a divorce and dissolution of the marriage in no wise shall affect the legitimacy of children of the parties thereto. The court shall make such order for the disposition, care and maintenance of the children, if any, as is just.

§ 11988. Testimony of parties.

A divorce, or a judgment for alimony shall not be granted upon the testimony or admissions of a party unsupported by other evi-

dence. No admission shall be received which the court has reason to believe was obtained by fraud, connivance, coercion or other improper means. The parties, notwithstanding their marital relation, shall be competent to testify in actions and proceedings under this chapter to the same extent that any other witness might.

§ 11989. Evidence of marriage.

Proof of cohabitation, and reputation of the marriage of the parties, is competent evidence to prove such marriage, and within the discretion of the court, may be sufficient therefor.

§ 11990. Divorce for aggression of husband.

When a divorce is granted because of the husband's aggression, by force of the judgment the wife shall be restored to all her lands, tenements and hereditaments, not previously disposed of, and the husband barred of all right of dower therein. If she so desires the court shall restore to her any name she had before such marriage, and allow such alimony out of her husband's property as it deems reasonable, having due regard to property which came to him by marriage and the value of his real and personal estate at the time of the divorce.

§ 11991. Alimony in such cases.

Such alimony may be allowed in real or personal property, or both, or by decreeing to her such sum of money, payable either in gross or installments, as the court deems equitable. If the wife survives her husband, she also shall be entitled to her right of dower in his real estate not allowed to her as alimony, of which he was seized during the coverture, and in which she had not relinquished her right of dower.

§ 11992. Husband's alimony.

When it appears to the court that the husband is the owner of little or no property and the wife is the owner of lands or personal

estate, or both, the court may adjudge to the husband such share of her real or personal property, or both, or may decree to him such sum of money out of her estate, payable in gross or by installments, as it deems just, having due regard to all the circumstances of the parties.

§ 11993. Divorce for aggression of wife.

When the divorce is granted by reason of the aggression of the wife, she shall be barred of all right of dower in the lands of which her husband is seized at the time of filing the petition for divorce, or which he thereafter acquires, whether there is issue or not. The judgment of divorce shall restore to her the whole of her lands, tenements or hereditaments not previously disposed of and not allowed to her husband as alimony, subject to the dower right of her husband therein. The court may adjudge to her such share of the husband's real or personal property, or both, as it deems just; or the husband shall be allowed such alimony out of the real and personal property of the wife as the court deems reasonable, having due regard to the property which came to the wife by marriage, and the value of her real and personal estate at the time of the divorce. Such alimony may be allowed to him in real or personal property, or both, or by decreeing to him such sum of money payable either in gross or by installments, as the court deems equitable. If the husband survives his wife, he shall also be entitled to his right of dower in the real estate of his wife not allowed to him as alimony, of which she was seized during coverture, and to which he had not relinquished his right of dower.

§ 11994. Alimony and allowance pendente lite.

On notice to the opposite party of the time and place of the application, the court, or a judge thereof in vacation, may grant alimony to either of the parties for his or her sustenance and expenses during the suit, and allowance for the support of minor children dependent upon either party for support and not provided for by such party during the pendency of the action for divorce,

or alimony alone. When an appeal is taken by either party to the circuit court, that court, or a judge thereof in vacation, may grant like alimony and support during the pendency of the appeal, upon like notice.

§ 11995. Parties defendant.

A person or corporation having possession or control of or claiming an interest in property, real or personal, of the party out of which another seeks alimony, may be made a party defendant.

§ 11996. Injunction.

When it is made to appear to the court, or a judge in vacation, that a party is about to dispose of or incumber property, or any part thereof, so as to defeat the other party in obtaining alimony, such court or judge may allow an injunction to prevent this, with or without bond, at discretion. A party may sell and assign the order for alimony or allowance, after it is made.

§ 11997. Cause for which alimony allowed.

When the wife files her petition for divorce or alimony, the husband may file a cross-petition for divorce, upon either cause hereinbefore mentioned. The wife may file her petition for alimony alone, or, if a petition for divorce has been filed by the husband, she may file a cross-petition for alimony, with or without a prayer for the dissolution of the marriage contract. Such petition or cross-petition for alimony may be for the following causes:

1. Adultery;
2. Any gross neglect of duty;
3. Abandonment of the wife without good cause;
4. That there is a separation in consequence of ill treatment on the part of the husband, whether the wife is maintained by the husband or not;
5. Habitual drunkenness;
6. Sentence to and imprisonment in a penitentiary, in which case the application must be made while the husband is so confined.

§ 11998. Proceedings on petition for alimony alone.

Upon satisfactory proof of any of the charges in the petition, the court shall make such order for the disposition, care and maintenance of the children of such marriage, if any, as is just, and give judgment in favor of the wife for such alimony out of her husband's property as is equitable, which may be allowed to her in real or personal property, or both, or in money, payable either in gross or by installments.

§ 11999. Effect of alimony judgment in wife's favor.

Such judgment shall restore to the wife all her lands, tenements, and hereditaments not previously disposed of, free from the control or interference of her husband, unless the court, for good cause, vests such property or powers in trustees, for her use and benefit.

§ 12000. Change of venue.

Upon application of a party and his or her affidavit that a fair and impartial hearing and determination can not be had before the court in which a petition for divorce or alimony is filed, a change of venue shall be allowed, and the cause removed to some county in the same judicial district for hearing and determination.

§ 12001. Injunction against husband from disposing of property.

A married woman may file a petition in the common pleas court, setting forth that from habitual intemperance, or other cause, her husband is about to waste and squander the property, legal or equitable, money, credits, or choses in action, to which she is entitled in her own right, or a part thereof, or is proceeding, or about to proceed, fraudulently to convert them, or a part thereof, to his own use, for the purpose of placing them beyond her reach, and depriving her of their benefit, whereupon the court may enjoin him from disposing of, or otherwise interfering with, such property, money, credits, or choses in action, appoint a receiver to manage and control them for the benefit of the wife, and also make

such other order in the premises as it deems just and proper. On filing the petition, a provisional injunction also may be allowed as in other cases, with or without bond, at discretion. Such petition shall be filed in the county where the petitioner resides, and the husband made a party defendant, as in the case of a petition for a divorce.

§ 12002. Appeal.

No appeal shall be allowed from a judgment or order of the common pleas court under this chapter, except from an order dismissing the petition without final hearing, or from a final order or judgment granting or refusing alimony, or in cases under the next preceding section. When judgment is rendered for both divorce and alimony, the appeal will lie only to so much of the judgment as relates to the alimony. When an appeal is taken by the wife, she shall not be required to give bond.

§ 12003. No verification.

Pleadings under this chapter need not be verified.

§ 13412. Advertising to procure divorce.

Whoever advertises, prints, publishes, distributes or circulates a circular, pamphlet, card, hand-bill, advertisement, printed paper, book, newspaper or notice, or causes such to be done, with intent to procure or aid in procuring a divorce, either in this state or elsewhere, shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than six months, or both. This section shall not apply to the printing or publishing of a notice or advertisement authorized by law.

§ 8000. Separation agreement.

A husband and wife can not by any contract with each other alter their legal relations, except that they may agree to an im-

mediate separation, and make provisions for the support of either of them and their children during the separation.

§ 8032. Rights and duties of parents separated or divorced.

When husband and wife are living separate and apart from each other, or are divorced and the question as to the care, custody and control of the offspring of their marriage is brought before a court of competent jurisdiction in this state, they shall stand upon an equality as to the care, custody and control of such offspring, so far as it relates to their being either father or mother thereof.

§ 10494. Probate court; concurrent jurisdiction with common pleas.

In the counties of Pickaway, Licking, Richland, Perry, Defiance, Henry and Coshocton, the probate court shall have concurrent jurisdiction with the court of common pleas in all proceedings in divorce, alimony, partition, and foreclosure of mortgages. In such suits or proceedings in the probate courts of such counties, it shall have jurisdiction to make, and enter any finding, order, judgment or decree, which the common pleas could make, and enter in such suits or proceedings.

OKLAHOMA.*Revised Laws, 1910.***ARTICLE 18.****DIVORCE AND ALIMONY.**

- SECTION 4962.** Grounds for divorce.
 4963. Plaintiff's residence.
 4964. Petition and summons.
 4965. Answer.
 4966. Divorce refused; when.
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 4970. Effect of divorce; appeal.
 4971. Appeal in ten days.
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 4973. Decree to show date.
 4974. Avoidance of marriage of incompetents.
 4975. Alimony without divorce.
 4976. Evidence.
 4977. Residence of the wife when plaintiff.
 4978. Parties may testify.

§ 4962. Grounds for divorce.

The district court may grant a divorce for any of the following causes:

First. When either of the parties had a former husband or wife living at the time of the subsequent marriage.

Second. Abandonment for one year.

Third. Adultery.

Fourth. Impotency.

Fifth. When the wife, at the time of the marriage, was pregnant by another than her husband.

Sixth. Extreme cruelty.

Seventh. Fraudulent contract.

Eighth. Habitual drunkenness.

Ninth. Gross neglect of duty.

Tenth. The conviction of a felony, and imprisonment in the penitentiary therefor, subsequent to the marriage.

§ 4963. Plaintiff's residence.

The plaintiff in an action for divorce must have been an actual resident, in good faith, of the state, for one year next preceding the filing of the petition, and a resident of the county in which the action is brought at the time the petition is filed.

§ 4964. Petition and summons.

The petition must be verified as true, by the affidavit of the plaintiff. A summons may issue thereon, and shall be served, or publication made, as in other cases. When service by publication is proper, a copy of the petition, with a copy of the publication notice attached thereto, shall, within six days after the first publication is made, be inclosed in an envelope addressed to the defendant, at his or her place of residence, postage paid, and deposited in the nearest postoffice, unless the plaintiff shall make and file an affidavit that such residence is unknown to the plaintiff, and cannot be ascertained by any means within the control of the plaintiff.

§ 4965. Answer.

The defendant, in his or her answer, may allege a cause for a divorce against the plaintiff, and may have the same relief thereupon as he or she would be entitled to for a like cause if he or she were plaintiff. When new matter is set up in the answer, it shall be verified as to such new matter by the affidavit of the defendant.

§ 4966. Divorce, refused when.

When the parties appear to be in equal wrong the court may in its discretion refuse to grant a divorce, and in any such case or in

any other case where a divorce is refused, the court may for good cause shown make such order as may be proper for the custody, maintenance, and education of children, and for the control and equitable division and disposition of the property of the parties, or of either of them, as may be proper, equitable and just, having due regard to the time and manner of acquiring such property, whether the title thereto be in either or both or said parties.

§ 4967. Attachment may issue, when.

After a petition has been filed in an action for divorce and alimony, or for alimony alone, the court, or a judge thereof in vacation, may make and enforce by attachment such orders to restrain the disposition of the property of the parties or of either of them, and for the use, management and control thereof, or for the control of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and on granting a divorce in favor of the wife or refusing one on the application of the husband, the court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper, considering the respective parties and the means and property of each.

§ 4968. Care of children.

When a divorce is granted, the court shall make provision for guardianship, custody, support and education of the minor children of the marriage, and may modify or change any order in this respect, whenever circumstances render such change proper, either before or after final judgment in the action.

§ 4969. Disposition of property.

When a divorce shall be granted by reason of the fault or aggression of the husband, the wife shall be restored to her maiden name

if she so desires, and also to all the property, lands, tenements, hereditaments owned by her before marriage or acquired by her in her own right after such marriage, and not previously disposed of, and shall be allowed such alimony out of the husband's real and personal property as the court shall think reasonable, having due regard to the value of his real and personal estate at the time of said divorce; which alimony may be allowed to her in real or personal property, or both, or by decreeing to her such sum of money, payable either in gross or in installments, as the court may deem just and equitable. As to such property, whether real or personal, as shall have been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the court shall make such division between the parties respectively as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to pay such sum as may be just and proper to effect a fair and just division thereof. In case of a finding by the court, that such divorce should be granted on account of the fault or aggression of the wife, the court may set apart to the husband and for the support of the children, issue of the marriage, such portion of the wife's separate estate as may be proper.

§ 4970. Effect of divorce—appeal.

A divorce granted at the instance of one party shall operate as a dissolution of the marriage contract as to both, and shall be a bar to any claim of either party in or to the property of the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party.

§ 4971. Appeal in ten days.

A party desiring to appeal from a judgment granting a divorce, must within ten days after such judgment is rendered file a written notice in the office of the clerk of the court, duly entitled in such action, stating that it is the intention of such party to appeal

from such judgment. If notice be filed as aforesaid, the party filing the same may commence proceedings in error for the reversal or modification of such judgment at any time within four months from the date of the decree appealed from and not thereafter. It shall be unlawful in any event for either party to such divorce suit to marry any other person within six months from the date of the decree of divorcement; and if notice be filed and proceedings in error be commenced as hereinbefore provided, then it shall be unlawful for either party to such cause to marry any other person until the expiration of thirty days from the day on which final judgment shall be rendered pursuant to such appeal. Any person marrying contrary to the provisions of this section shall be deemed guilty of bigamy, and such marriage shall be absolutely void.

§ 4972. Punishment for remarriage within six months.

Every person convicted of bigamy as such offense is defined in the foregoing section shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than three years.

§ 4973. Decree to show date.

Every decree of divorce shall recite the day and date when the judgment was rendered in the cause, and that the decree does not become absolute and take effect until the expiration of six months from said time, or as provided in case of appeal.

§ 4974. Avoidance of marriage of incompetents.

When either of the parties to a marriage shall be incapable, from want of age or understanding, of contracting such marriage, the same may be declared void by the district court, in an action brought by the incapable party or by the parent or guardian of such party; but the children of such marriage, begotten before the same is annulled, shall be legitimate. Cohabitation after such incapacity ceases, shall be a sufficient defense to any such action.

§ 4975. Alimony without divorce.

The wife or husband may obtain alimony from the other without a divorce, in an action brought for that purpose in the district court, for any of the causes for which a divorce may be granted. Either may make the same defense to such action as he might to an action for divorce, and may, for sufficient cause, obtain a divorce from the other in such action.

§ 4976. Evidence.

Upon the trial of an action for divorce, or for alimony, the court may admit proof of the admissions of the parties to be received in evidence, carefully excluding such as shall appear to have been obtained by connivance, fraud, coercion or other improper means. Proof of cohabitation, and reputation of the marriage of the parties, may be received as evidence of the marriage. But no divorce shall be granted without proof.

§ 4977. Residence of the wife when plaintiff.

A wife who resides in this state at the time of applying for a divorce, shall be deemed a resident of this state, though her husband resides elsewhere.

§ 4978. Parties may testify.

In any action for divorce hereafter tried, the parties thereto, or either of them, shall be competent to testify in like manner, respecting any fact necessary or proper to be proven, as parties to other civil actions are allowed to testify.

§ 1816. Jurisdiction.

. . . Provided, that the county court shall not have jurisdiction in any action . . . or in any action for divorce or alimony,
 . . .

§ 4678. Action brought — domicile of plaintiff.

An action for divorce or annulment of marriage may be brought in the county of which the plaintiff is an actual resident at the time of filing the petition. (As amended by L. 1917, ch. 199.)

§ 8420. Inheritance by illegitimate child.

. . . The issue of all marriage null in law, or dissolved by divorce, are legitimate.

OREGON.*Laws, 1920.***CHAPTER 8.****OF SUITS TO DECLARE VOID OR DISSOLVE THE MARRIAGE CONTRACT.**

- SECTION 501.** Suits to dissolve or annul marriage contract.
- 502. What marriages absolutely void.
 - 503. What marriages voidable only.
 - 504. At whose suit marriages declared void from beginning.
 - 505. At whose suit and when marriages declared void from decree.
 - 506. Suit to declare marriage valid.
 - 507. Marriage dissolved; causes.
 - 508. Residence of parties in suit for annulment.
 - 509. Residence of plaintiff in suit for dissolution.
 - 510. What may be pleaded in bar by defendant.
 - 511. Disposition of real property by decree.
 - 512. Provision for maintenance and custody of children pending suit.
 - 513. Decree for maintenance and for custody of children.
 - 514. Power of court to modify decree.
 - 515. Marriage terminated by decree—right to remarry.

§ 501. Suits to dissolve or annul marriage contract.

A husband or wife may maintain a suit against the other for dissolution of the marriage contract, or to have the same declared void, as provided in this chapter.

§ 502. What marriages absolutely void.

All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, or on account of either of them being one-fourth or more of negro blood, shall, if solemnized within this state, be absolutely void.

§ 503. What marriages voidable only.

When either of the parties to a marriage shall be incapable of making such contract or assenting thereto, for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage shall be void from time it is so declared by the decree of a court having jurisdiction thereof.

§ 504. At whose suit marriages declared void from beginning.

A marriage may be declared void from the beginning, at the suit of either party, for any of the causes specified in section 502, and whether so declared or not shall be deemed and held to be void in any action, suit or proceeding whatever in which the same may come in question; but a marriage once declared to be valid by the decree of a court having jurisdiction thereof, in a suit for that purpose, cannot afterwards be questioned for the same cause directly or otherwise.

§ 505. At whose suit and when marriages declared void from decree.

A marriage shall not be declared void for any of the causes specified in section 503, except at the suit or claim of the party laboring under the disability, or upon whom the force or fraud was imposed or practiced; nor at the suit or claim of such party if it appears that the parties freely cohabited together as husband and wife after the party had arrived at legal age, acquired sufficient understanding, been restored to reason, freed from the force, or discovered the fraud, as the case may be.

§ 506. Suit to declare marriage valid.

When either husband or wife shall claim or pretend that the marriage is void or voidable, as provided in sections 502 and 503, the same may be declared valid and lawful at the suit of the other; and in such suit the court shall have power, if the pleadings and proofs authorize it, to declare such marriage void from the

beginning, or from the time of the decree, or that it is valid and lawful, and binding on the parties thereto.

§ 507. Marriage dissolved; causes.

The dissolution of the marriage contract may be declared at the suit or the claim of the injured party in either of the following causes:—

1. Impotency existing at the time of the marriage, and continuing to the commencement of the suit;
2. Adultery;
3. Conviction of felony;
4. Habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the suit;
5. Willful desertion for the period of one year;
6. Cruel and inhuman treatment or personal indignities rendering life burdensome.

§ 508. Residence of parties in suit for annulment.

When a marriage has been solemnized in this state, a suit may be maintained to declare it void if the plaintiff is an inhabitant of the state at the commencement of the suit. If the marriage has not been solemnized in this state, such suit can only be maintained when both the parties are inhabitants thereof at the commencement of the suit, and the plaintiff for one year prior thereto.

§ 509. Residence of plaintiff in suit for dissolution.

In a suit for the dissolution of the marriage contract, the plaintiff therein must be an inhabitant of the state at the commencement of the suit, and for one year prior thereto; which residence shall be sufficient to give the court jurisdiction, without regard to the place where the marriage was solemnized, or the cause of suit arose.

§ 510. What may be pleaded in bar by defendant.

In a suit for the dissolution of the marriage contract on account of adultery, the defendant may admit the adultery, and show in bar of the suit, either,—

1. That the act was committed by the procurement or with the connivance of the plaintiff; or,

2. That the act has been expressly forgiven, or impliedly so, by the voluntary cohabitation of the parties after knowledge thereof; or,

3. That the plaintiff has been guilty of adultery also without the procurement or connivance of the defendant, and not forgiven as provided in subdivision 2 of this section; or,

4. That the suit has not been commenced within one year after the discovery of the act by the plaintiff. When the suit is for any of the causes specified in subdivisions 3, 4, 5, or 6 of section 507, the defendant may admit the charge, and show in bar of the suit that the act was committed by the procurement of the plaintiff, or that it has been expressly forgiven and in case the suit is founded on subdivision 3 of said section 507, the defendant may also show in bar thereof that the suit was not prosecuted within one year after the same occurred to the plaintiff.

§ 511. Disposition of real property by decree.

Whenever a marriage shall be declared void or dissolved, the party at whose prayer such decree shall be made shall in all cases be entitled to the undivided third part in his or her individual right in fee of the whole of the real estate owned by the other at the time of such decree, in addition to the further decree for maintenance provided for in section 513; and it shall be the duty of the court in all such cases to enter a decree in accordance with this provision.

§ 512. Provision for maintenance and custody of children pending suit.

After the commencement of a suit, and before a decree therein, the court or judge thereof, may, in its [or his] discretion, provide by order as follows:

1. That the husband pay, or secure to be paid, to the clerk of the court, such an amount of money as may be necessary to en-

able the wife to prosecute or defend the suit, as the case may be, and also such an amount of money as may be necessary to support and maintain the wife during the pendency of the suit;

2. For the care, custody and maintenance of the minor children of the marriage during the pendency of the suit;

3. For the freedom of the wife from the control of the husband during the pendency of the suit.

§ 513. Decree for maintenance and for custody of children.

Whenever a marriage shall be declared void or dissolved, the court shall have power to further decree as follows:

1. For the future care and custody of the minor children of the marriage, as it may deem just and proper, having due regard to the age and sex of such children, and unless otherwise manifestly improper, giving the preference to the party not in fault;

2. For the recovery of the party in fault, and not allowed the care and custody of such children, such an amount of money, in gross or in installments, as may be just and proper for such party to contribute towards the nurture and education thereof;

3. For the recovery of the party in fault such an amount of money, in gross or in installments, as may be just and proper for such party to contribute to the maintenance of the other;

4. For the delivery to the wife, of her personal property in the possession or control of the husband at the time of giving the decree;

5. For the appointment of one or more trustees to collect, receive, expend, manage, or invest, in such manner as the court shall direct, any sum of money decreed for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;

6. To change the name of the wife.

§ 514. Power of court to modify decree.

At any time after a decree is given, the court or judge thereof, upon the motion of either party, shall have power to set aside,

alter, or modify so much of the decree as may provide for the appointment of trustees for the care and custody of the minor children, or the nurture and education thereof, or the maintenance of either party to the suit.

§ 515. Marriage terminated by decree — right to remarry.

A decree declaring a marriage void or dissolved at the suit or claim of either party shall have the effect to terminate such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, and if he or she does so contract, shall be liable therefor as if said decree had not been given, until the suit has been heard and determined on appeal; but in no case until the expiration of six months from the date of said decree; provided, however, that all marriages made prior to the passage of this act where the period of six months had not expired from the date of decree and which were in all other respects regular, are hereby declared valid marriages.

§ 527. Jurisdiction of natural person.

No natural person is subject to the jurisdiction of a court of this state, unless he appear in the court, or be found within the state, or be a resident thereof, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached; but this section is not to be construed to limit the power of the courts of this state to declare a marriage void, or a dissolution thereof, when the defendant is a non-resident of the state, in the cases provided for in chapter VIII of title VI.

§ 880. Confession of adultery.

In a suit for the dissolution of the marriage contract, on the ground of adultery, a confession of adultery, whether in or

out of the pleadings, is not of itself sufficient to justify a decree of dissolution.

§ 396. Venue of suits.

. . . and provided, further, that in any suit for the dissolution of the marriage contract the same may be commenced and tried in any county in this state in which either party to the suit resides.

§ 1020. District attorney; duties in suit for divorce.

In any suit for the dissolution of the marriage contract, or to have the same declared void, the state is to be deemed a party defendant, and the party plaintiff in such suit shall cause the summons to be served upon the district attorney of the district within which the suit is commenced, or his duly appointed deputy, at least ten days before the term at which the defendant is required to appear and answer. It shall be the duty of such district attorney, so far as may be necessary to prevent fraud or collusion in such suit, to control the proceedings on the part of the defense, and in case the defendant does not appear therein, or defend against the same in good faith, to make a defense therein in behalf of the state. The court shall not hear or determine any suit for a divorce until service has been made upon the district attorney as hereinbefore provided, unless the district attorney or his duly appointed deputy waive the provisions of this section by appearing in person at the trial of said cause or by written acknowledgment of service waiving time for his appearance therein. All decrees of divorce heretofore granted in which the requirements of this section have not been complied with, are hereby validated and declared to be legal and binding upon the parties thereto, if otherwise regular.

§ 1116. Trial fees.

Such clerk shall exact from the plaintiff, appellant or moving party, at the time such action, suit or proceedings comes on for trial on its merits, the sum of \$6, trial fee, except in divorce cases where default has been made, when \$3 shall be exacted.

§ 2163. Intermarriage with negro, etc., declared void.

Hereafter it shall not be lawful within this state for any white person, male or female, to intermarry with any negro, Chinese, or any person having one-fourth or more negro, Chinese, or Kanaka blood, or any person having more than one-half Indian blood; and all such marriages, or attempted marriages, shall be absolutely null and void.

§ 9721. What marriages are prohibited.

The following marriages are prohibited:—

1. When either party thereto had a wife or husband living at the time of such marriage;
2. When the parties thereto are first cousins or any nearer of kin to each other, whether of the whole or half blood, computing by the rules of the civil law;
3. When either of the parties is a white person and the other a negro, or Mongolian, or a person of one-fourth or more of negro or Mongolian blood.

§ 9722. Marriage, when voidable.

When either party to a marriage shall be incapable of consenting thereto, for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or

fraud, such marriage is voidable, but only at the suit of the party laboring under the disability, or upon whom the force or fraud is imposed.

§ 2165 — 1. Advertising for divorce business prohibited.

Whoever advertises, prints, publishes, distributes, or circulates, or causes to be advertised, printed, published, distributed or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure or obtain, or to aid in procuring or obtaining any divorce, or the severance, dissolution or annulment of any marriage, or offering to engage or appear or act as attorney, counsel, or referee, in any suit for alimony, separate maintenance or divorce, or the severance, dissolution, or annulment of any marriage, either in this state or elsewhere, shall be guilty of a misdemeanor. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state.

§ 2165 — 2. Penalty for advertising for divorce business.

Any person convicted of the violation of any of the provisions of section 1 of this act shall be punished by fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for not more than six (6) months, or by both fine and imprisonment.

PENNSYLVANIA.*Purdon's Digest, 1916.*¹

DIVORCE.

I. FROM THE BOND OF MARRIAGE.

(1) JURISDICTION OF THE COURTS.

- SECTION**
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 2. Incestuous marriages to be void; courts to grant divorces in such cases.
 3. Applicant for divorce to be a citizen.
 4. Divorces heretofore decreed, for adultery committed in this state, to be valid, although the parties, at the time of the offence, were residents of another state, if personal notice were given to respondents.
 5. Party may apply, on the ground of desertion, at the end of six months, but no divorce to be decreed until the expiration of two years.
 6. Courts to have jurisdiction to decree divorces, for desertion and adultery, although the parties at the time were domiciled in another state.
 7. Further causes of divorce; fraud; conviction of crime; cruelty or indignities by wife; alimony.
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 12. In case of desertion, wife may make application after six months.
 13. Proceedings.
 14. Act to apply to pending cases.
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I. FROM THE BOND OF MARRIAGE.

(1) JURISDICTION OF THE COURTS.

§ 1. For what causes divorces may be decreed.

When a marriage hath been heretofore or shall hereafter be contracted and celebrated between any two persons, and it shall be judged in the manner hereinafter mentioned, that either party, at the time of the contract, was and still is naturally impotent or incapable of procreation; or that he or she hath knowingly entered into a second marriage in violation of the previous vow he or she made to the former wife or husband, whose marriage is still subsisting; or that either party shall have committed adultery; or wilful and malicious desertion and absence from the habitation of the other, without a reasonable cause, for and during the term and space of two years; or when any husband shall have, by cruel and barbarous treatment, endangered his wife's life, or offered such indignities to her person as to render her condition intolerable, and life burdensome, and thereby force her to withdraw from his house and family; in every such case, it shall and may be lawful for the innocent and injured person to obtain a divorce from the bond of matrimony.

§ 2. Incestuous marriages to be void; courts to grant divorces in such cases.

All marriages within the degree of consanguinity or affinity, according to the table established by law are hereby declared void, to all intents and purposes; and it shall and may be lawful for the courts of common pleas of this commonwealth, or any of them, to grant divorces from the bonds of matrimony in such cases; and the parties shall be subject to the like penalties as are contained in the act against incest. But when any of the said marriages shall not have been dissolved during the lifetime of the parties, the unlawfulness of the same shall not be inquired into after the death of either the husband or wife.

§ 3. Applicant for divorce to be a citizen.

No person shall be entitled to a divorce from the bond of matrimony, by virtue of this act, who is not a citizen of this state, and who shall not have resided therein at least one whole year previous to the filing his or her petition or libel.

§ 4. Divorces decreed for adultery to be valid, although the parties at the time of the offence were residents of another state.

In all cases where divorces have been decreed by the courts of this commonwealth having jurisdiction, for the offence of adultery, and no appeal has been taken therefrom within the time prescribed by law, such divorces, so decreed, shall be deemed good and valid, if the offence shall have been committed within this commonwealth, and the libellants have resided therein one year or more previous to the application therefor, although, at the time of the commission of such offence, the libellants and respondents may have been residents of another state: Provided, that in cases where the respondents resided out of this commonwealth at the time of the preferment of the libels, personal notice shall have been given to them.

§ 5. Party may apply on the ground of desertion at the end of six months, but no divorce to be decreed until the expiration of two years.

The jurisdiction of the several courts of common pleas of this commonwealth shall hereafter extend to all cases of divorce from the bonds of matrimony, for the cause of wilful, malicious and continued desertion by either of the parties from the habitation of the other, without reasonable cause; and it shall be lawful for either party to make application in such case, by petition or libel, to the proper court, in accordance with the provisions of the several acts of assembly now in force, at any time not less than six months after such cause of divorce shall have taken place; but the said court shall not proceed to make a final decree, divorcing the

said parties from the bonds of matrimony aforesaid, until after the expiration of two years from the time at which such desertion took place.

§ 6. Courts to decree divorces for desertion and adultery, although the parties at the time were domiciled in another state.

It shall be lawful for the said several courts to entertain jurisdiction of all cases of divorce from the bonds of matrimony, for the causes of desertion as aforesaid, or adultery, notwithstanding the parties were, at the time of the occurrence of said causes, domiciled in any other state: Provided, that no such divorce shall be granted, unless the applicant therefor shall be a citizen of this commonwealth, or shall have resided therein for the term of one year, as provided for by existing laws.

§ 7. Further cause of divorce.

In addition to the cases now provided for by law, it shall be lawful for the courts of common pleas of this commonwealth to grant divorces in the following cases:

I. Where the alleged marriage was procured by fraud, force or coercion, and has not been subsequently confirmed by the acts of the injured party.

II. When either of the parties shall hereafter, either within or without this state, be convicted as principal, or as accessory either before or after the fact, of the crime of arson, burglary, embezzlement, forgery, kidnapping, larceny, murder, either in the first or second degrees, voluntary manslaughter, perjury, rape, robbery, sodomy, buggery, treason, or misprision of treason, and be sentenced by a competent court, having jurisdiction, to imprisonment for any term exceeding two years: Provided, that such application for a divorce be made by the husband or wife of the party so convicted and sentenced.

III. Where a wife shall have, by cruel and barbarous treatment or indignities to his person, rendered the condition of her husband

intolerable, or life burdensome: Provided, that in case of divorce under this act, if the application shall be made on the part of the husband, the court granting such divorce may allow such support or alimony to the wife as her husband's circumstances may admit of, and as said court may deem just and proper.

§ 8. Mode of proceeding; who to be deemed a citizen.

The proceedings in cases embraced within the provisions of this act, shall be the same as those prescribed by the act, entitled "An act concerning divorces," approved the 13th day of March, 1815, and the several acts supplementary thereto, with the like right of appeal as is therein given. The word citizen, used in the 11th section of the said act, shall not be so construed as to exclude any party who shall, for one year, have had a bona fide residence within this commonwealth, previous to the filing of his or her petition or libel.

§ 9. Causes of divorce extended; applicant to be a citizen.

It shall be lawful for the several courts of common pleas in this commonwealth, to entertain jurisdiction of all cases of divorce from the bonds of matrimony, for the cause of personal abuse, or for such conduct on the part of either the husband or wife, as to render the condition of the other party intolerable and life burdensome, notwithstanding the parties were at the time of the occurring of said causes domiciled in another state: Provided, that no application for such divorce shall be made unless the applicant therefor shall be a citizen of this commonwealth, or shall have resided therein for the term of one year, as provided for by the existing laws of this commonwealth.

§ 10. Jurisdiction extended.

The jurisdiction conferred in and by the said act to which this is a supplement, is hereby extended to all cases of divorce from the bonds of matrimony, for the causes therein mentioned, where either of the parties were, or may be, at the time of the occurring

of said cause, domiciled in another state or country: Provided, that no application for such divorce shall be made, unless the applicant therefor shall be a citizen of this commonwealth, or shall reside therein for the term of one year, as provided by the existing laws of this commonwealth.

§ 11. Divorce for adultery, desertion, or cruel treatment, where the wife having been a citizen, intermarries with a foreigner and is compelled to abandon her former domicile.

It shall be lawful for the several courts of common pleas in this commonwealth to entertain jurisdiction of all cases of divorce from the bonds of matrimony and from bed and board for the causes of adultery committed by the husband, or wilful and malicious desertion on the part of the husband and absence from the habitation of the wife without reasonable cause, for and during the term and space of two years, or where any husband shall have, by cruel and barbarous treatment, endangered his wife's life or offered such indignities to her person as to render her condition intolerable and life burdensome, and thereby force her to withdraw from his house and family; where it shall be shown to the court by any wife that she was formerly a citizen of this commonwealth, and that having inter-married with a citizen of any other state or any foreign country, she has been compelled to abandon the habitation and domicile of her husband in such other state or foreign country by reason of his adultery or wilful and malicious desertion and absence from the habitation of the wife without reasonable cause, for and during the term and space of two years, or by cruel and barbarous treatment endangered his wife's life or offered such indignities to her person as to render her condition intolerable and life burdensome, and thereby force her to withdraw from his house and family, and has thereby been forced to return to this commonwealth in which she had her former domicile: Provided, that where, in any such case, personal service of the subpoena cannot

be made upon such husband by reason of his non-residence within this commonwealth, the court, before entering a decree of divorce, shall require proof that in addition to the publication now required by law, that actual or constructive notice of said proceedings has been [given] to such non-resident husband, either by personal service or by registered letter to his last known place of residence, and that a reasonable time has thereby been afforded to him to appear and defend in said suit: And provided further, that no application for such divorce shall be made, unless the applicant therefor shall be a citizen of this commonwealth, or shall have resided therein for the term of one year prior to filing her petition or libel as provided by the laws of this commonwealth.

§ 12. In case of desertion wife may make application after six months.

Where the wife petitions the court for a divorce under the provisions of section first of this act on the ground of wilful, malicious and continued desertion by the husband from the habitation of the wife without reasonable cause, it shall be lawful for the wife to make application in such case by petition or libel to the proper court at any time not less than six months after such cause of divorce shall have taken place, but the said court shall not proceed to make a final decree divorcing the said parties from the bonds of matrimony aforesaid until after the expiration of two years from the time at which such desertion took place.

§ 13. Proceedings; appeal.

The proceedings in cases embraced within the provisions of this act, except so far as they are prescribed by this act, shall be the same as those prescribed by the act, entitled "An act concerning divorces," approved the thirteenth day of March, Anno Domini one thousand eight hundred and fifteen, and the several acts supplementary thereto, with the like right of appeal as is therein given.

§ 14. Act to apply to pending cases.

The provisions of this act shall apply to all suits or proceedings for divorce which may be pending in the courts of this commonwealth at the time it is approved, and to all subsequent divorce proceedings.

§ 15. Repeal of act of 8 June, 1891.

The act approved the eighth day of June, Anno Domini one thousand eight hundred and ninety-one, entitled "A further supplement to an act, entitled 'An act extending the jurisdiction of the courts of this commonwealth in cases of divorce,'" approved the ninth day of March, Anno Domini one thousand eight hundred and fifty-five, is hereby repealed.

§ 16. Divorce for causes occurring without jurisdiction.

It shall be lawful for the several courts of common pleas in this commonwealth to entertain jurisdiction of all cases of divorce from the bonds of matrimony, for the cause of wilful and malicious desertion on the part of either the husband or wife, and absence from the habitation of the other, without a reasonable cause, for and during the term and space of two years, as provided for in the act of assembly to which this is a supplement; or for the adultery of either husband or wife, or for the cause of personal abuse, or for such conduct on the part of either husband or wife as to render the condition of the other party intolerable and life burdensome; or when any husband shall have, by cruel and barbarous treatment, endangered his wife's life, or offered such indignities to her person as to render her condition intolerable and life burdensome, and thereby forced her to withdraw from his house and family; notwithstanding the said causes of divorce have occurred or shall hereafter occur in a foreign country, or in a country, state or territory subject to the jurisdiction of the United States: Provided, that no application for such divorce shall be made, unless at the time the said cause or causes of divorce occurred the applicant therefor was a citizen of this commonwealth: Provided

further, that the said applicant shall have resided therein for the term of one year, as provided for by the existing laws of this commonwealth.

§ 17. Jurisdiction in case of void marriages.

In all cases where a supposed or alleged marriage shall have been contracted, which is absolutely void, by reason of one of the parties thereto having a husband or wife living at the time, the court of common pleas shall have power to decree the said supposed or alleged marriage to be null and void, upon the application of an innocent or injured party; and the jurisdiction shall be exercised, and proceedings conducted, according to the principles and forms which are or shall be prescribed by law for cases of divorce from the bond of matrimony.

(2) PROCEEDINGS TO OBTAIN A DIVORCE.

§ 18. Injured party to proceed by libel; affidavit thereto.

If any person hath been or shall be injured as aforesaid, the husband, in his own proper person, or the wife, by her next friend, may exhibit his or her petition or libel, to the judge of the court of common pleas of the proper county where the injured party resides, in term-time, or to one of the judges of the same court, in the vacation, at least thirty days before the next term, setting forth particularly and specially, the causes of his or her complaint; and shall, together with such petition or libel, also exhibit an affidavit, on oath or affirmation, taken before one of the same judges or a justice of the peace of the proper county, that the facts contained in said petition or libel are true, to the best of his or her knowledge and belief, and that the said complaint is not made out of levity or by collusion between the said husband and wife, and for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the said petition, or libel. And thereupon a subpoena shall issue from the said court, signed by one of the judges thereof,

directed to the party so complained against, commanding him or her to appear at the next or any subsequent court of common pleas, to answer the said petition or libel, and upon due proof, at the return of the said subpoena, that the same shall have been served personally on the said party, wherever found, or that a copy had been given to him or her, fifteen days before the return of the same, the said court shall and may make such preparatory rules and orders in the cause, that the same may be brought to a hearing and determined at the term to which the said process may be returnable, or afterwards, at which hearing, the court may determine the same ex parte, if necessary. But if either of the parties shall desire any matter of fact, that is affirmed by the one and denied by the other, to be tried by a jury, an issue shall be formed, and the same shall be tried accordingly; but when neither of the parties require an issue to be formed, the court may inquire and decide upon the case, in the presence of the parties, or if either of them will not attend, then ex parte, by the examination of witnesses, or interrogatories, exhibits or other legal proofs, had either before or at the hearing.

§ 19. Who may administer oaths in divorce proceedings.

From and after the passage of this act it shall be lawful for notaries public, prothonotaries or clerks of the courts to administer oaths or affirmations and take affidavits to the petition or libel and all other papers and proceedings concerning divorces.

§ 20. If the subpoena be not served alias to issue; and on return thereof, public notice to be given to defendant to appear at the next term.

If upon the return of the said subpoena, proof shall be made, that the said party could not be found in the said county, an alias subpoena shall issue, returnable the first day of the next or any subsequent term, and be served personally in manner aforesaid, and if so served the same proceedings shall be had as are directed and authorized in the 2d section of this act. And if, on the return of

the said alias subpoena proof shall be made, that the said party could not be found in the said county, the sheriff of the same shall cause notice to be published in one or more newspapers printed within or nearest to the said county, for four weeks successively, prior to the first day of the then next term of said court, requiring the said party to appear on the said day, to answer to the said complaint, at which term, or any subsequent term, the same proceedings shall be had as are authorized and directed by the 2d section of this act.

§ 21. Bill of particulars to be furnished ; non pros. to be entered, on default.

In any suit or action in divorce, now pending, or that shall hereafter be brought, it shall and may be lawful for the respondent, at any time after the return-day of the subpoena, to enter a rule upon the libellant to furnish a bill of particulars of cause of action, as set forth in the libellant's petition filed; and if the same be not furnished by the libellant, within thirty days after service of notice of rule entered, it shall be the duty of the court to enter a judgment or decree of non pros: Provided, that the court may, upon cause shown, extend the time in which to file a bill of particulars.

§ 22. Masters in divorce ; duties.

In all suits of divorce now pending, or hereafter to be brought, in any court of common pleas as in this commonwealth, it shall and may be lawful for the court when the case is ready to be proceeded with, either upon answer not demanding a trial by jury or ex parte, to appoint a master, who shall take the testimony and return the same, together with a report of the proceedings before him and his opinion of the case, to the court.

§ 23. Courts may adopt rules.

The said courts shall have power to adopt rules regulating the proceedings before the master and fixing his fees.

§ 24. Rules; courts to pronounce sentence of divorce; effect thereof.

It shall and may be lawful for the said courts, after hearing any cause commenced before them by virtue of this act, to determine the same as to law and justice shall appertain, by either dismissing the petition or libel, or sentencing and decreeing a divorce and separation from the nuptial ties or bonds of matrimony, or that the marriage is null and void. And after such sentence, nullifying or dissolving the marriage, all and every the duties, rights and claims accruing to either of the said parties at any time theretofore, in pursuance of the said marriage, shall cease and determine, and the said parties shall severally be at liberty to marry again, in the like manner as if they never had been married.

§ 25. Of the costs.

The said court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as to them shall appear to be reasonable and just.

§ 26. Either party may appeal to supreme court; recognizance; when respondent by reason of property cannot furnish recognizance.

Either of the parties in any suit or action for divorce now pending or that shall hereafter be brought, after the final sentence or decree, may appeal therefrom to the supreme court of the proper district upon entering into a recognizance before the prothonotary of the court of common pleas in which the cause shall have been tried, with at least one good surety, in a sum double the amount of the costs incurred, conditioned to prosecute the said appeal with effect; the said appeal shall be prosecuted in the usual manner, and the judges of the supreme court shall transmit the record with their judgment thereon, with all the proceedings as in other cases, to the court below to be carried into effect: Provided, that where the respondent in any proceeding for divorce files with the

prothonotary of the said court, an affidavit that such appeal is not intended for delay but because he or she believes injustice has been done, and that by reason of his or her property said respondent is unable to furnish the required recognizance aforesaid, such respondent shall be entitled to take such appeal the same as if the recognizance aforesaid was given.

§ 27. Repealing clause.

All acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

§ 28. Proceedings where the wife is the injured party and a lunatic.

In cases where the wife is a lunatic or non compos mentis, the courts of common pleas of this commonwealth are invested with authority to receive a petition or libel for a divorce, which may be exhibited by any relative or next friend of the wife; and the affidavit required by the act concerning divorces may be made in the manner required by the act, by such relative or next friend; and all the provisions of the several acts relating to divorces shall apply to all applications made under the directions of this section: Provided, that the fact of the lunacy of the wife, and such circumstances as may be sufficient to satisfy the mind of the court as to the truth of the allegation, shall be set forth in the petition. And upon the hearing of the case before the court, or upon an issue to be tried by the jury, the question of lunacy, with every other matter of fact that is affirmed by one party and denied by the other, shall be heard and investigated in the manner prescribed by the provisions of the several acts concerning divorces.

(3) MISCELLANEOUS PROVISIONS.

§ 29. Conviction of adultery.

When either party shall have been convicted and sentenced for adultery, the records of the said conviction shall be received in evidence on any application for a divorce by the injured party.

§ 30. Party marrying on false rumor of the other's death who has been absent two years, not to be punishable for adultery.

If any husband or wife, upon any false rumor, in appearance well founded, of the death of the other (when such other has been absent for the space of two whole years), hath married, or shall marry again, he or she shall not be liable to the pains of adultery; but it shall be in the election of the party remaining unmarried, at his or her return, to insist to have his or her former wife or husband restored, or to have his or her own marriage dissolved, and the other party to remain with the second husband or wife; and in any suit or action instituted for this purpose within six months after such return, the court may and shall sentence and decree accordingly.

§ 31. Recrimination, condonation or connivance to be a bar.

In any action or suit commenced in the said court for a divorce for the cause of adultery, if the defendant shall allege and prove that the plaintiff has been guilty of the like crime; or has admitted the defendant into conjugal society or embraces, after he or she knew of the criminal fact; or that the said plaintiff (if the husband) allowed of the wife's prostitution, or received hire for them, or exposed his wife to lewd company, whereby she became insnared to the crime aforesaid, it shall be good defence and a perpetual bar against the same.

§ 32. Adulterer not to marry participem criminis.

The wife or husband who shall have been guilty of the crime of adultery, shall not marry the person with whom the said crime was committed, during the life of the former wife or husband; but nothing herein contained shall be construed to extend to or effect, or render illegitimate, any children born of the body of the wife during the coverture.

§ 33. Adultrous woman not to alien, if she afterwards cohabit with her paramour.

When any woman shall be divorced as aforesaid, and shall afterward openly cohabit, at bed and board, with the person named in the petition or libel, and proved to be partaker in her crime, she is hereby declared to be incapable to alienate, directly or indirectly, any of her lands, tenements or hereditaments; but all deeds, wills, appointments and conveyances thereof, shall be absolutely void and of none effect, and after her death, the same shall descend and be subject to distribution in like manner as if she had died seised thereof intestate.

II. FROM BED AND BOARD.

§ 34. Divorce from bed and board; alimony may be decreed in certain cases; amount of alimony; when decree may be suspended.

If any husband shall maliciously either abandon his family, or turn his wife out of doors, or by cruel and barbarous treatment endanger her life, or offer such indignities to her person as to render her condition intolerable, or life burdensome, and thereby force her to withdraw from his house and family, it shall be lawful for the court of common pleas of the respective counties, upon complaint and due proof thereof made, in the manner prescribed in the act to which this is a supplement, to grant the wife a divorce from bed and board, and also to allow her such alimony as her husband's circumstances will admit of, so as the same do not exceed the third part of the annual profit or income of his estate, or of his occupation and labor; which shall continue until a reconciliation shall take place, or until the husband shall, by his petition or libel, offer to receive and cohabit with her again, and to use her as a good husband ought to do; and then, in such case, the court may either suspend the aforesaid sentence or decree, or, in case of her refusal to return and cohabit, under the protection

of the court, discharge and annul the same according to their discretion; and if he fail in performing his said offers and engagements, the former sentence or decree may be revived and enforced, and the arrears of the alimony ordered to be paid.

§ 35. Alimony to be a lien; when execution may issue therefor; court may require security from respondent; how such security to be taken.

Upon a decree a mensa et thoro, and the allowance of alimony shall have been made by any of the courts of common pleas of the respective counties of this commonwealth, or hereafter may be made, it shall be the duty of the prothonotary of said court to enter the said decree on the judgment-docket of said court, which said decree when so entered, is hereby declared to be and shall remain a lien on the real estate of such respondent, and (until) the same is satisfied, for the full amount that may be due up to the period of such satisfaction. And after such lien shall be so entered, it shall be the duty of the prothonotary of said court, upon affidavit by the libellant, that any payment under said decree, as the same has been made due and payable by the court, is due and unpaid, to issue execution, on the written order of the libellant, or her attorney, setting forth the amount so due and unpaid, which shall be directed to and served by the sheriff in like manner as executions upon judgment. And if the court should be of opinion that the said lien is not sufficient for the full or permanent security of payment of said decree, it shall have power and authority, on satisfactory proof being made that the respondent is possessed of sufficient estate, to order a decree and require that security, such as shall be determined and approved by said court, shall be given for the due payment of the said alimony according to the terms of said decree; the said security to be either by a bond, with sufficient sureties, or mortgage on real estate, taken in the name of the commonwealth, to the use of the party entitled to said alimony, or by the deposit of money, to be invested as the court may deem

proper, as may seem to the court sufficient to secure the payment of said alimony, as the same may fall due.

§ 36. Decree may be enforced by attachment.

The said courts may enforce their decrees by attachment, on the return of which they may make such order, either to imprison or discharge the defendant, as the facts of the case may justify.

§ 37. Divorce a mensa et thoro and alimony may be granted for adultery; amount of alimony; power to suspend decree.

In addition to the several causes mentioned in the act or acts to which this is a supplement, for which a married woman may obtain a divorce from the bed and board of her husband, with allowance of alimony, shall be that of adultery; and it shall be lawful for the court of common pleas of the respective counties, upon complaint and due proof thereof made, in the manner prescribed by the said acts to which this is a supplement, or either of them, to grant the wife a divorce from bed and board; and in addition to the powers now conferred upon the said court by the said acts, or either of them, to grant alimony, and the amount thereof, it shall be lawful for the said court to decree to be paid by the said husband, in addition thereto, to his said wife, the one-half of the value of all money and property, of every kind whatsoever, which the said husband may have received by, through or from his said wife, as her individual money and property; which amount the said court shall inquire into and ascertain, by proper proof, on and at the time of the hearing of the said complaint; which decree the said court shall have the power to enforce, suspend or discharge and annul, in the same manner as the said court may now enforce, suspend or discharge and annul its decrees under and by virtue of the said acts or either of them.

I. FROM THE BONDS OF MARRIAGE.

(1) JURISDICTION OF THE COURT

- SECTION**
1. Enumerated crimes; party to complain.
 2. When husband and wife reside in different counties; proceeding in either county; personal service.
 4. Repeal; divorce and causes arising without jurisdiction; desertion; absence; adultery; abuse, etc.
 5. Citizenship and residence; validating decrees.
 6. Divorce; jurisdiction of courts of common pleas; libellant a competent witness.
 7. Libellant's residence.
 8. Where husband or wife is a lunatic; petition; libel; affidavit; service of subpoena.
 9. Hearing; expert testimony.
 10. Proof required.
 11. Alimony; bond.
 12. Insane wife.
 13. Libelee in divorce; presentation of to court or judge; subpoena; return.
 14. Alias or pluries subpoenas; return; publication of proclamation.
 15. Rules of practice.
 17. Repeal.
 18. Divorces; granted on ground of hopeless insanity of respondent; validation.
 19. Procedure.
 20. Ibid; return of rule.
 21. Hearing; master.
 22. Pending cases.
 23. Repeal.
 24. Service and return of subpoena validated.
 25. Libellant shall be competent to prove all the facts; service of notice; *ibid*.

§ 1. Enumerated crimes; party to complain.

When either of the parties shall have been, either within or without this state, convicted as principal, or as accessory either before or after the fact, of the crime of arson, burglary, embezzlement, forgery, kidnapping, larceny, murder, either in the first or second degrees, assault with intent to kill, voluntary manslaughter, perjury, rape, robbery, sodomy, buggery, treason, or misprision of treason, and be sentenced by a competent court having jurisdic-

tion, to imprisonment for any term exceeding two years: Provided, that such application for a divorce be made by the husband or wife of the party so convicted and sentenced.

§ 2. When husband and wife reside in different counties; proceeding in either county; personal service.

Where a husband and wife shall be resident in different counties of this commonwealth, and while they are so severally resident a cause of divorce shall arise, the injured husband or wife may, at his or her option, institute and prosecute proceedings in divorce either in the county of his or her own residence, or in the county where the offending husband or wife shall be resident and the cause of divorce shall have arisen: Provided, that whenever an action in divorce shall be instituted, under the provisions of this act, in a county wherein the respondent is resident, the same being a different county from that in which the libellant resides, personal service of the subpoena in divorce shall be had upon the respondent, if he or she can be found within said county; otherwise, service by advertisement in that county shall be had, in the manner now provided by law.

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§ 4. Repeal; divorce for causes arising without jurisdiction; desertion; absence; adultery; abuse, etc.; barbarous treatment.

The several courts of common pleas in this commonwealth shall entertain jurisdiction of all cases of divorce from the bonds of matrimony, for the cause of wilful and malicious desertion on the part of either the husband or wife, and absence from the habitation of the other, without a reasonable cause, for and during the term and space of two years, as provided for in the act of assembly to which this is a supplement; or for the adultery of either husband and wife, or for the cause of personal abuse, or for such conduct on the part of either husband or wife as to render the condition

of the other party intolerable and life burdensome; or when any husband shall have, by cruel and barbarous treatment, endangered his wife's life, or offered such indignities to her person as to render her condition intolerable and life burdensome, and thereby forced her to withdraw from his house and family; notwithstanding the said causes of divorce have occurred or shall hereafter occur in a foreign country, or in a country, state, or territory subject to the jurisdiction of the United States.

§ 5. Citizenship and residence; validating decrees.

Provided, that no application for such divorce shall be made unless at the time the said cause or causes of divorce occurred the applicant was a citizen of this commonwealth: provided further, that the said applicant shall have resided therein for the term of one year, as provided for by the existing laws of this commonwealth: And provided, that if the procedure shall be otherwise correct, and a jury shall have rendered a verdict in favor of the libellant, or, when the case shall have been heard without a jury trial, and the court shall be satisfied that the evidence warrants the granting of a divorce, then in such cases a decree to that effect shall be made by such court.

§ 6. Divorce; jurisdiction of courts of common pleas; libellant a competent witness.

The several courts of common pleas shall have jurisdiction in any action in divorce, for any cause now or hereafter allowed by law, notwithstanding the fact that the marriage of the parties and the cause for divorce occurred outside of this commonwealth, and that both parties were at the time of the occurrence of said cause domiciled without this commonwealth, and that the respondent has been served with the subpoena only by publication as required by law. In such cases the libellant shall be a competent witness to prove his or her residence within this commonwealth.

§ 7. Libellant's residence.

The said courts shall also entertain jurisdiction of all cases of divorce from the bonds of matrimony, for any cause now or hereafter provided for by law, when the libellant or applicant for such divorce shall, at the time of filing the petition or libel in divorce, have been a resident of this commonwealth for one year previous to the filing of the petition or libel in divorce.

(2) PROCEEDINGS TO OBTAIN DIVORCE.**§ 8. Where husband or wife is a lunatic; petition; libel; affidavit; service of subpoena.**

From and after the passage of this act, in cases where the husband or wife is a hopeless lunatic or non compos mentis, the courts of common pleas of this commonwealth are invested with the authority to receive a petition or libel for divorce; the affidavit, as now required by law to such petition for libel, to be made by the petitioner; and the service of subpoena in divorce shall be made as now provided, such service to be made upon the committee of such lunatic; and all the provisions of the several acts relating to divorces shall apply to all applications made under this act.

§ 9. Hearing; expert testimony.

The fact of the lunacy of the husband or wife, and such circumstances as may be sufficient to satisfy the mind of the court as to the truth of the allegation, shall be set forth in the petition; and upon the hearing of the case before the court, a master, or issue to be tried by jury, the question of lunacy shall be fully established by expert testimony, together with every other matter of fact that is affirmed by one party and denied by the other, and the same shall be heard and investigated in the manner prescribed by the provisions of the several acts concerning divorces.

§ 10. Proof required.

No divorce shall be granted under this act to any petitioner or libellant unless it be proved beyond a reasonable doubt that the

husband or wife of the petitioner is hopelessly insane: Provided, however, that if the husband or wife has been for ten or more years an inmate of an asylum for the insane, it shall be conclusive proof of hopeless insanity.

§ 11. Alimony; bond.

In case of the application of a husband for divorce from an insane wife, under the provisions of this act, the courts of common pleas of this commonwealth, or the judges thereof to whom application is made, are hereby vested with full and complete authority to provide alimony for the support of such insane wife during the term of her natural life, by requiring the petitioner to file a bond, with surety or sureties if necessary, in such sum as they may direct, conditioned as aforesaid, before granting the divorce prayed for. And if the wife be the petitioner, and have sufficient means, the courts aforesaid, or the judges thereof, may provide for the support of the insane husband as in this section required for an insane wife; provided the insane husband has not sufficient estate in his own right for his support.

§ 12. Insane wife.

This act shall in no way interfere or prevent an insane wife from obtaining a divorce from a husband, as provided in the act of April thirteenth, eighteen hundred and forty-three, to which this is a supplement.

§ 13. Libels in divorce; presentation of to court or judge; subpoena; return.

From and after the passage of this act, any libel in divorce may be presented to any court of common pleas, or to a judge thereof, at any time, in term time or in vacation, and a subpoena may be awarded thereon at the time of the presentation of said libel, without regard to any return day in court, which said subpoena may be made returnable to the next or any subsequent

quarterly or monthly return day; provided the time to which it is made returnable be at least thirty days after the awarding of said subpoena.

§ 14. Alias or pluries subpoenas; return; publication of proclamation.

Any alias or pluries subpoena or order of proclamation may be made returnable to any quarterly or monthly return day, in the discretion of the court or judge awarding the same: Provided, that the said return shall be at least thirty days after the awarding of such subpoena or proclamation: And provided further, that every proclamation shall be published at least once a week for four successive weeks, as now required by law.

§ 15. Rules of practice.

The several courts of common pleas are hereby authorized to make such rules of practice as may be necessary to carry this act into effect.

* * * * *

§ 17. Repeal.

Whereas, under the act of assembly, approved the eighteenth day of April, Anno Domini one thousand nine hundred and five, entitled "An act to amend section eight of the act approved the thirteenth day of April, one thousand eight hundred and forty-three, entitled 'An act to convey certain real estate, and for other purposes,' so as to extend its provisions to the husband or wife of a lunatic or non compos mentis, and to further regulate the procedure in such actions for divorce," certain divorces were granted by courts of common pleas, on the ground of the hopeless insanity of the respondent, and subsequent thereto it was held by the superior court that the said act of assembly did not constitute insanity a new ground of divorce, and it is desired to

settle the legality of such divorces as may have theretofore been granted; therefore,—

§ 18. Divorces; granted on the ground of hopeless insanity of respondent; validation.

In all cases where divorces have been heretofore granted by the courts of common pleas, under the provisions of an act, approved the eighteenth day of April, Anno Domini one thousand nine hundred and five, entitled “An act to amend section eight of the act, approved the thirteenth day of April, one thousand eight hundred and forty-three, entitled ‘An act to convey certain real estate, and for other purposes,’ so as to extend its provisions to the husband or wife of a lunatic or non compos mentis, and to further regulate the procedure in actions for divorce,” on the ground of hopeless insanity, in which the libellant therein complied with all of the provisions of said act, that the said divorce shall be legal and valid, and binding upon the parties thereto.

§ 19. Procedure.

And be it further enacted by the authority aforesaid, that if any person hath been or shall be injured as aforesaid, the husband or the wife may exhibit his or her petition or libel to the judges of the court of common pleas of the proper county where the injured party resides, in term time, or to one of the judges of the same court in the vacation, at least thirty days before the next term, setting forth therein particularly and specially the cause of his or her complaint, and shall, together with such petition or libel, also exhibit an affidavit on oath or affirmation, taken before one of the same judges or any person in the county legally authorized to take acknowledgments, that the facts contained in the said petition or libel are true to the best of his or her knowledge and belief, and that the said complaint is not made out of levity or by collusion between the said husband and wife, and for the mere purpose of being freed and separated from each other, but in

sincerity and truth for the causes mentioned in the said petition or libel; and thereupon a subpoena shall issue from the said court, signed by one of the judges thereof, directed to the party so complained against, commanding him or her to appear at the next or any subsequent court of common pleas to answer the said petition or libel; and, upon due proof at the return of the said subpoena that the same shall have been served personally upon the said party, wherever found, or that a copy had been given to him or her on or before the return day of the same, the said court shall and may make such preparatory rules and orders in the cause that the same may be brought to a hearing and determined at the term to which said process may be returnable, or afterwards, at which hearing the court may determine the same *ex parte*, if necessary; but either of the parties who shall desire any matter of fact, that is affirmed by the one and denied by the other, to be tried by a jury, may take a rule upon the opposite party, to be allowed by a judge of the court of common pleas, to show cause why the issues of fact set forth in the said rule shall not be tried by a jury, which said rule shall be served upon the opposite party or his or her counsel. (As amended by L. 1919, no. 109.)

§ 20. *Ibid*; return of rule.

Upon the return of said rule, after hearing, the court may discharge it or make it absolute, or frame issues itself, and only the issues as ordered by the court shall be tried accordingly; but such rule shall not be made absolute when, in the opinion of the court, a trial by a jury cannot be had without prejudice to public morals. When neither of the parties takes a rule as aforesaid, or when after hearing the rule is discharged, the court may proceed to hear the cause, or may, upon motion of either party, appoint a master to take the testimony and return the same to the court, together with a report of the proceedings had before him and his and upon such terms as it may order, authorize and direct the opinion of the case, and may, upon the application of either party, master to take testimony of witnesses in any other country, state,

or territory, subject to the jurisdiction of the United States, or in any foreign country. And the said court shall have power to adopt rules regulating the proceedings before the master and fixing his fees.

Whenever heretofore any subpoena in divorce has been regularly issued according to law, and the sheriff of the proper county has served such subpoena personally on the respondent therein any time prior to the return day thereof, or whenever the sheriff of the proper county has at any time prior to such return day made oath to a return of non est inventus to such subpoena, whether such sworn return be filed with the prothonotary before or after such return day,—in all such cases such personal service shall be deemed lawful and valid, and such return of non est inventus and all proceedings in divorce otherwise valid in law based on such service or such return are hereby validated and made good in law. (As amended by L. 1919, no. 109.)

§ 21. Hearing; master.

When neither of the parties takes a rule as aforesaid, or when, after hearing, the rule is discharged, the court may proceed to hear the cause; or may, upon motion of either party, appoint a master to take the testimony and return the same to the court, together with a report of the proceedings had before him, and his opinion of the case and may, upon the application of either party, and upon such terms as it may order, authorize and direct the master to take testimony of witnesses in any other country, state, or territory, subject to the jurisdiction of the United States, or in any foreign country. And the said court shall have power to adopt rules regulating the proceedings before the master and fixing his fees.

§ 22. Pending cases.

From and after the passage of this act, all cases in divorce now pending or hereafter begun shall be proceeded with only in accordance with the provisions hereof.

§ 23. Repeal.

An act, entitled "An act empowering the courts of common pleas to appoint masters in divorce proceedings, and to adopt rules to regulate the proceedings before the master and fixing his fees," approved March tenth, one thousand eight hundred and ninety-nine, be and the same is hereby repealed.

§ 24. Service and return of subpoena validated.

Whenever, heretofore, any subpoena in divorce has been regularly issued according to law, and the sheriff of the proper county has served such subpoena personally on the respondent therein, any time prior to the return day thereof; or where the sheriff of the proper county has, at any time prior to such return day, made oath to a return of non est inventus to such subpoena, whether such sworn return be filed with the prothonotary before or after such return day; that in all cases, such personal service shall be deemed lawful and valid, and such return of non est inventus, and all proceedings in divorce, otherwise valid in law, based on such service or return, are hereby validated and made good in law.

§ 25. Libellant shall be competent to prove all the facts; service of notice; *ibid.*

In all proceedings for divorce the libellant shall be fully competent to prove all the facts, though the respondent may not have been personally served with a libel, subpoena, or rule to take depositions, and may not be residing within the commonwealth, but has been served by publication only.

PORTO RICO.

Civil Code, 1902.

TITLE V.

DIVORCE.

CHAPTER I.

GROUND FOR DIVORCE.

SECTION 164. *Ground for Divorce.*

CHAPTER II.

PROCEDURE IN THE CASE OF AN ACTION FOR DIVORCE.

SECTION 165. *Procedure in the case of an action for divorce.*

CHAPTER III.

PROVISIONAL MEASURES TO WHICH A SUIT FOR DIVORCE MAY GIVE OCCASION.

- SECTION 166. *Custody of children.*
167. *Residence of wife pending suit.*
168. *Maintenance of wife during suit.*
169. *Debt; when valid.*
170. *Appeals; amendment of decisions.*
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CHAPTER IV.

OBJECTION TO THE ACTION FOR DIVORCE.

- SECTION 171. *Reconciliation of parties; effect.*
172. *Same; causes occurring after conciliation.*

CHAPTER V.

THE EFFECTS OF DIVORCE.

- SECTION 173.** Effect in general.
174. Gifts.
175. Custody of children.
176. Rights of children.

Civil Code, 1902.

TITLE V.

DIVORCE.

CHAPTER I.

GROUND FOR DIVORCE.

§ 164. The causes for divorce are as follows:

- 1.— Adultery on the part of either of the parties to the marriage.
- 2.— Conviction of one of parties to the marriage of a felony, which may involve the loss of civil rights.
- 3.— Habitual drunkenness or the continued and excessive use of opium, morphine, or any other narcotic.
- 4.— Cruel treatment or grave injury.
- 5.— The abandonment of the wife by the husband or of the husband by the wife for a longer period of time than one year.
- 6.— The absolute, perpetual and incurable impotency occurred after marriage.
- 7.— The attempt of the husband or wife to corrupt their sons or to prostitute their daughters, and connivance in their corruption or prostitution.
- 8.— The proposal of the husband to prostitute the wife.

CHAPTER II.

PROCEDURE IN THE CASE OF AN ACTION FOR DIVORCE.

§ 165. A divorce can only be granted in an action instituted in the ordinary manner, and by judgment rendered therein by a district court.

A divorce cannot be granted when the ground upon which it is sought be the consequence of an agreement or understanding between the husband and wife or an acquiescence of either to secure it.

No person can secure a divorce under this code who has not resided in the island for one full year next immediately preceding the action, unless the act on which the suit is based has been committed in Porto Rico, or while one of the parties to the marriage resided here.

CHAPTER III.

PROVISIONAL MEASURES TO WHICH A SUIT FOR DIVORCE MAY GIVE OCCASION.

§ 166. Custody of children.

If there are children of the marriage whose provisional custody is claimed by both parties to the marriage, they shall be placed under the custody of the wife, during the time the suit is pending, unless there be strong reasons in the discretion of the district court for depriving the wife of the custody of her children, either wholly or in part.

§ 167. Residence of wife pending suit.

If a wife who is suing for divorce, shall have left, or declared her intention of leaving the domicil of her husband, the district court shall designate the house in which she shall reside pending the termination of the suit.

§ 168. Maintenance of wife during suit.

If the wife have not sufficient means to provide for her maintenance during the suit, the district court shall order the husband to pay her a sum for her separate maintenance in proportion to his means.

§ 169. Debt when valid.

From the day proceedings in a suit for divorce are begun, no debt contracted by the husband on account of the community property shall be valid, unless authorized by the court.

§ 170. Appeals; amendment of decisions.

No appeal shall lie from the decisions of the district court under this chapter and they shall be amended by the said court when the circumstances of the case require it.

CHAPTER IV.**OBJECTIONS TO THE ACTION FOR DIVORCE.****§ 171. Reconciliation of parties, effect.**

An action for divorce shall be lost upon the reconciliation of the parties, whether said reconciliation occurs after the act which might have been the cause for the divorce, or after the action has been brought.

§ 172. Same; causes occurring after conciliation.

In case of reconciliation the plaintiff cannot continue exercising the rights which he may have, but is at liberty to file a new suit for causes that have occurred after the reconciliation, and in such case may allege the former causes to corroborate the new action.

CHAPTER V.

THE EFFECTS OF DIVORCE.

§ 173. Effect in general.

A divorce carries with it a complete dissolution of all matrimonial ties, and the division of all property and effects between the parties to the marriage.

§ 174. Gifts.

The party against whom the judgment is rendered shall forfeit to the party obtaining the divorce all gifts which the other party may have conferred upon such party during the marriage, or when the same was contracted, and the innocent party shall retain everything which has been acquired from the other.

§ 175. Custody of children.

In all cases of divorce the minor children shall be placed under the "patria potestas" of the party who had obtained the decree; but the other spouse shall have the right to continue family relations with his or her children.

§ 176. Rights of children.

The divorce of the parents will not deprive the children born during the marriage of the rights and privileges which, according to law, belong to them, by reason of the marriage of their parents; but such rights shall not be claimed except in the form and under the circumstances in which such claims would have been made if a divorce had not taken place.

§ 177. Alimony.

If the divorced wife, in whose favor judgment was rendered, has not sufficient means of subsistence, the district court may allow her, in its discretion, an alimony out of the property of her di-

vorced husband, which alimony shall not exceed one-third of his income.

The alimony shall be revoked if it shall become unnecessary, or if the divorced wife contracts a second marriage.

TITLE 6.

CHAPTER I.

NULLITY OF MARRIAGE.

§ 178. When marriage null and void.

When a marriage has not been contracted according to the requirements of this code, the same is null and void.

§ 179. To whom right to action belongs.

The right to an action for a declaration of nullity of a marriage, belongs to the parties to the marriage, to the public attorney, and to such other persons as may have an interest in the annulment of the same.

In case of violence or intimidation, the action of nullity can only be exercised by the innocent party.

Code of Civil Procedure.

§ 6. Sittings of court public; exceptions.

In an action for divorce, . . . the court may direct the trial of any issue of fact joined therein to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel; provided, that in any cause the court may, in the exercise of a sound discretion, during the examination of a witness, exclude any and all witnesses in the cause.

RHODE ISLAND.*General Laws, 1909.***CHAPTER 247.****OF DIVORCE.**

- SECTION** 1-3. Causes for divorce.
4. Effect of collusion.
 5. Property-rights of the wife in estate of the husband when divorce is granted for his fault.
 6. Property-rights of the husband in estate of the wife when divorce is granted for her fault.
 7. No property-rights in the estate of the other, except as provided in sections 5 and 6.
 8. Divorces from bed and board; separate maintenance on such divorce.
 9. Petitions; how signed.
 10. Residence of petitioner; what required.
 11. Petitions; where tried.
 12. Practice to follow rules of court.
 13. Additional notice to the adverse party.
 14. Custody of children; separate maintenance and allowance to wife; incidental orders.
 15. Change of name.
 16. Interlocutory decrees.
 17. Of service of process on defendant.
 18. Divorce not granted on default; and how only.
 19. Decree final; when.

§ 1. Causes for divorce.

Divorces from the bond of marriage shall be decreed in case of any marriage originally void or voidable by law, and in case either party is for crime deemed to be or treated as if civilly dead, or, from absence or other circumstances, may be presumed to be actually dead.

§ 2. Same.

Divorces from the bond of marriage shall also be decreed for the following causes: Impotency, adultery, extreme cruelty, wilful desertion for five years of either of the parties, or for such desertion for a shorter period of time in the discretion of the court, for continued drunkenness, for the habitual, excessive and intemperate use of opium, morphine, or chloral, and for neglect and refusal, for the period of at least one year next before the filing of the petition, on the part of the husband to provide necessaries for the subsistence of his wife, the husband being of sufficient ability; and for any other gross misbehavior and wickedness, in either of the parties, repugnant to and in violation of the marriage covenant.

§ 3. Same.

Whenever in the trial of any petition for divorce from the bond of marriage, it shall be alleged in the petition that the parties have lived separate and apart from each other for the space of at least ten years, the court may in its discretion enter a decree divorcing the parties from the bond of marriage, and may make provision for alimony.

§ 4. Effect of collusion.

Whenever it shall appear that the absence, adultery, cruelty, desertion or other cause of complaint as aforesaid was committed or occasioned by the collusion of the parties, and done or contrived with an intention to procure a divorce, in such case no divorce shall be decreed.

§ 5. Property-rights of wife in estate of husband when divorce is granted for his fault.

Whenever a divorce is granted for fault on the part of the husband, the wife shall have dower as if the husband were dead; but such dower shall be claimed on proceedings begun within six months after the absolute decree, and, if not claimed within said period, or if claim be made for alimony within said period, then

dower shall be deemed to be waived and released, and the only relief of the wife shall be a claim for alimony chargeable upon the estate of the husband, or some specific portion thereof, as the court may decree (but any such decree whether entered before or after the passage of this act ordering payment of alimony in any fixed sum or sums either indefinitely or for a certain period may for sufficient cause at any time be altered, amended and annulled by said court, after notice to the parties interested therein): provided, that in case of such divorce between parties married before the digest of eighteen hundred forty-four went into operation, the wife shall be reinstated in all of her real estate and have restored to her all of her personal estate not, in either case, disposed of at the date of filing of the petition for said divorce. (As amended by L. 1917, ch. 1532.)

§ 6. Property-rights of the husband in estate of wife, when divorce is granted for her fault.

Whenever a divorce is granted for fault on the part of the wife, the husband, if he be entitled to curtesy-initiate, shall have a life-estate in all the lands of the wife as if the wife were dead, but subject to such allowance to the wife, to be charged on such life-estate, as the court in the peculiar circumstances of the case may deem just and proper.

§ 7. No property-rights in the estate of the other, except as provided in sections 5 and 6.

Otherwise than as provided in the two preceding sections, neither husband nor wife, on divorce being granted, shall have any right in the estate of the other.

§ 8. Divorces from bed and board; separate maintenance on such divorce.

Divorces from bed, board, and future cohabitation, until the parties be reconciled, may be granted for any of the causes for which by law a divorce from the bond of marriage may be decreed,

and for such other causes as may seem to require the same: provided, the petitioner shall be a domiciled inhabitant of this state and shall have resided in this state such length of time as to the court in its discretion shall seem to warrant the exercise of the powers in this section conferred. In case of such divorce the court may assign to the petitioner a separate maintenance out of the estate or property of the husband or wife, as the case may be, in such manner and of such amount as it may think necessary or proper.

§ 9. Petitions, how signed.

Every petition shall be signed and sworn to by the petitioner, if of sound mind and of legal age to consent to marriage; otherwise, upon application to the court and after notice to the party in whose name the petition shall be filed, the court may allow such petition to be signed and sworn to by a resident guardian or next friend.

§ 10. Residence of petitioner, what required.

No petition for divorce from the bond of marriage shall be granted unless the petitioner shall have been a domiciled inhabitant of this state and have resided therein for the period of two years next before the preferring of such petition: provided, that if the defendant shall have been a domiciled inhabitant of this state and shall have resided in this state for the period of two years next before the preferring of such petition, and shall be actually served with process, the above requirement as to domicile and residence on the part of the petitioner shall be deemed to have been satisfied and fulfilled.

§ 11. Petitions, where tried.

All such petitions shall be filed, heard, and tried in Providence, unless the petitioner shall reside in the county of Newport or in the county of Washington or in the county of Kent, in which case such petition shall be filed, heard, and tried in Newport or South Kingstown or East Greenwich, respectively.

§ 12. Practice to follow rules of court.

The court may by general rule determine the return-day of petitions for divorce and prescribe the notice to be given, within or without the state, on all such petitions, and may issue such process as may be necessary to carry into effect all powers conferred upon it in relation to the same; and said court may also, by general rule, fix the times, during its session, when all petitions for divorce shall be heard, as they may be filed in Providence, Newport, East Greenwich or South Kingstown, respectively. Such general rules shall, however, be subject to such special orders as the court may make in special cases. And until general rules are made, special order in each case shall be made.

§ 13. Additional notice to the adverse party.

Whenever any petition for divorce shall have been filed or be pending in the superior court, and said court shall be of the opinion that sufficient notice of the pendency of said petition shall not, from any cause, have been given to the adverse party, said court may order notice or further notice to the adverse party to be given in such manner as the court may prescribe.

§ 14. Custody of children, separate maintenance and allowance to wife; incidental orders.

The said court may regulate the custody and provide for the education, maintenance, and support of children of all persons by them divorced or petitioning for a divorce, and of all persons to whom a separate maintenance may be granted or who may petition for the same; may in its discretion make such allowance to the wife, out of the estate of the husband, for the purpose of enabling her to prosecute or defend against any such petition for divorce or separate maintenance, in case she has no property of her own available for such purpose, as it may think reasonable and proper; which allowance shall be so far regarded as a judgment for debt that suits may be brought or executions may issue thereon for amounts due and unpaid, from time to time, to be shown by affi-

davits of the person entitled to the same and the attorney of record of such person, such executions to run against the goods and chattels of the husband, and for want thereof against his body; and the court may make all necessary orders and decrees concerning the same and the same at any time may alter, amend, and annul for sufficient cause, after notice to the parties interested therein.

§ 15. Change of name.

Any woman to whom a divorce from the bond of marriage is decreed may be authorized by such decree to change her name subject to the same rights and liabilities as if her name had not been changed.

§ 16. Interlocutory decrees.

After the filing and during the pendency of any petition for divorce the said court may make such interlocutory decrees and grant such temporary injunctions as may be necessary until a hearing can be had before said court.

§ 17. Of service of process on defendant.

No person shall be entitled to a divorce from the bond of marriage unless the defendant shall, in accordance with rules adopted by the court, have been personally served with process, if within the state, or with personal notice duly authenticated, if out of the state, or unless the defendant shall have entered an appearance in the cause; or unless it shall appear to the satisfaction of the court that the petitioner does not know the address nor the residence of the defendant and has not been able to ascertain either after reasonable and due inquiry and search for six months, in which case the court, or in vacation a judge thereof, may authorize notice by publication of the pendency of the petition for divorce to be given in a manner provided by law.

§ 18. Divorce not granted on default, and how only.

No divorce from the bond of marriage shall be granted solely upon default nor solely upon admissions by the pleadings, nor

shall such divorce be granted where the court is satisfied that there has been any collusion or corrupt conduct by the parties, or either of them, in regard to the proceedings to obtain the same.

§ 19. Decree final, when.

After final decree for divorce from the bond of marriage either party may marry again; but no decree for such divorce shall become final and operative until six months after the trial and decision.

CHAPTER 289.

§ 1. Proceedings equitable.

All petitions for . . . divorce, . . . shall follow the course of equity so far as the same is applicable.

§ 13. Cross-bill not necessary.

No cross-bill shall be necessary in any suit in equity, and no cross-petition in divorce proceedings, but the respondent in any such suit or proceeding may avail himself of any matter which would be open to him upon a cross-bill or petition, by setting up such matter in his answer, or in divorce proceedings by motion in writing setting forth the grounds therefor; and the court, upon hearing the cause, may make any decree for or against either party, interlocutory or final, warranted by the merits of the cause, that it could make in such suit or proceeding had a cross-bill or cross-petition been filed therein.

CHAPTER 292.

§ 39. Husband or wife to be competent witness, except when.

In the trial of every civil cause, the husband or wife of either party shall be deemed a competent witness: provided, that neither

shall be permitted to give any testimony tending to criminate the other or to disclose any communication made to him or her, by the other, during their marriage, except on trials of petitions for divorce between them, and trials between them involving their respective property rights.

§ 40. Testimony in divorce cases to be given orally, except when.

In all divorce cases, the testimony shall be given *viva voce* in open court, unless (1) the witness shall be unable to attend by reason of physical disability, in which case a sworn certificate to that effect from a physician shall be filed with the deposition of such witness, or (2) unless the witness reside and be out of the state, or (3) unless the deposition be taken before a standing master in chancery, whose fees for taking the same shall be those prescribed by law for the taking of depositions by notaries public.

CHAPTER 275.

§ 11. Superior court in vacation time, not to hear certain cases.

In vacation the superior court shall not hear . . . petitions for divorce. . . .

CHAPTER 347.

§ 38. Penalty for advertising offering to procure divorce, etc.

Whoever prints, publishes, distributes, or circulates, or causes to be printed, published, distributed, or circulated, any circular, pamphlet, card, hand-bill, advertisement, printed paper, book, newspaper, or notice of any kind offering to procure or to aid in procuring any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage, appear, or act as attorney or counsel in any suit for alimony or divorce or the severance,

dissolution, or annulment of any marriage, either in this state or elsewhere, shall be fined not exceeding one hundred dollars. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state.

CHAPTER 245.

OF HUSBAND AND WIFE.

- SECTION 1.** A married woman whose husband never lived with her in this state, may have custody of her minor children.
2. Of rights of woman divorced, during separate residence.
 3. Of petition of husband to change custody of infant children.
 4. Of appointment of guardians to children in such cases.

§ 1. A married woman whose husband never lived with her in state, may have custody of her minor children.

Whenever any married woman shall have come from any other state or country into this state without her husband, he never having lived with her in this state, and shall have resided in this state, without her husband, for the space of one year continuously, she shall have the exclusive care, custody and guardianship of her minor children, if any be living with her, in like manner and in all respects as if she were unmarried.

§ 2. Of rights of woman divorced, during separate residence.

If, during her separate residence, such married woman shall have obtained a decree of divorce against her said husband under the laws of this state, or if her said husband, previous to his coming into this state, shall have caused the marriage contract to be dissolved by an act or decree of divorce obtained against her in any state or country, in any suit or proceeding to which she is not a voluntary party nor present thereat, so as to have like opportunity of defence as she would have if such suit were brought against her in this state, she shall not thereafter be liable in this state, if resi-

dent therein for the space of six months, to be deprived by her late husband of the custody of any infant child.

§ 3. Of petition of husband to change custody of infant children.

If, however, upon petition of her former husband to the superior court, served upon her by copy and citation, the return day whereof shall be at least thirty days after the date of such service, and setting forth substantially the whole subject-matter of complaint against her, it shall be made to appear by evidence that she is not a person of good moral character, suitable to have charge of her children, the court may, in its discretion, having regard to the well-being of the infant, order its custody to be changed.

§ 4. Of appointment of guardians to children in such cases.

The superior court, on application of any such woman, either before or after said divorce, on her giving satisfactory evidence of her having resided one year in this state next before said application, separate from her husband and without being supported by him, may appoint a guardian of the person and estate of such children, in the same manner that courts of probate are now authorized to appoint guardians of minors.

CHAPTER 243.

OF MARRIAGE.

- SECTION 1. What kindred a man may not marry.
 2. What kindred a woman may not marry.
 3. Marriage within the prohibited degrees is void.
 4. Exception of Jews.
 5. Marriage of married persons, idiot or lunatic, is void.

§ 1. What kindred man may not marry.

No man shall marry his mother, grandmother, daughter, son's daughter, daughter's daughter, stepmother, grandfather's wife,

son's wife, son's son's wife, daughter's son's wife, wife's mother, wife's grandmother, wife's daughter, wife's son's daughter, wife's daughter's daughter, sister, brother's daughter, sister's daughter, father's sister, mother's sister.

§ 2. What kindred woman may not marry.

No woman shall marry her father, grandfather, son, son's son, daughter's son, stepfather, grandmother's husband, daughter's husband, son's daughter's husband, daughter's daughter's husband, husband's father, husband's grandfather, husband's son, husband's son's son, husband's daughter's son, brother, brother's son, sister's son, father's brother, mother's brother.

§ 3. Marriage within prohibited degrees is void.

If any man or woman shall intermarry within the degrees aforesaid, every such marriage shall be null and void, and the issue thereof shall be deemed and adjudged illegitimate and be subject to all the disabilities of such issue.

§ 4. Exception of Jews.

The provisions of the preceding sections shall not extend to, or in any way affect, any marriage which shall be solemnized among the Jews, within the degrees of affinity or consanguinity allowed by their religion.

§ 5. Marriage of married person, idiot or lunatic is void.

All marriages when either of the parties has a former wife or husband living at the time of such marriage, or where either of them shall be an idiot or lunatic at the time of such marriage, shall be absolutely void; and no dower shall be assigned to any widow in consequence of such marriage, and the issue shall be deemed illegitimate and be subject to all the disabilities of such issue.

SOUTH CAROLINA.

CONSTITUTION.

ARTICLE 17.

§ 3. Divorces.

Divorces from the bonds of matrimony shall not be allowed in this state.

Code of Laws, 1912.

SECTION 3743. Who may contract matrimony.

SECTION 3752. Validity of marriage; if denied, how affirmed.

3753. Validity of marriage; how determined and declared.

3754. Bigamous marriages void; provisio.

SECTION 3757. Intermarriage of races prohibited.

§ 3743. Who may contract matrimony.

All persons, except idiots and lunatics, not prohibited by this section, may lawfully contract matrimony. No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, or mother's sister.

No woman shall marry her father, grandfather, son, grandson, stepfather, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, or mother's brother.

§ 3752. Validity of marriage, if denied — how affirmed.

When the validity of a marriage shall be denied or doubted by either of the parties, the other may institute a suit for affirming the marriage; and, upon due proof of the validity thereof, it shall be decreed to be valid; and such decree shall be conclusive upon all persons concerned.

§ 3753. Validity of marriage — how determined and declared.

The court of common pleas shall have authority to hear and determine any issue affecting the validity of contracts of marriage, and to declare said contracts void for want of consent of either of the contracting parties, or for any other cause going to show that, at the time the said supposed contract was made, it was not a contract: provided, that such contract has not been consummated by the cohabitation of the parties thereto.

§ 3754. Bigamous marriages void — proviso.

All marriages contracted while either of the parties has a former wife or husband living, shall be void: provided, that this section shall not extend to a person whose husband or wife shall be absent for the space of seven years, the one not knowing the other to be living during that time; nor to any person who shall be divorced, or whose first marriage shall be declared void by the sentence of a competent court.

§ 3757. Intermarriage of races prohibited.

It shall be unlawful for any white man to intermarry with any woman of either the Indian or negro races, or any mulatto, mestizo, or half-breed, or for any white woman to intermarry with any person other than a white man, or for any mulatto, half-breed, negro, Indian, or mestizo, to intermarry with a white woman; and any such marriage, or attempted marriage, shall be utterly null and void and of none effect.

SOUTH DAKOTA.*Revised Code, 1919.*

CHAPTER 1.

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ARTICLE 1.

MARRIAGE CONTRACT.

§ 106. Incestuous marriages.

Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, and between cousins of the half as well as of the whole blood, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.

§ 107. Voidable marriages.

If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable. Every marriage of a stepfather with a stepdaughter, or a stepmother with a stepson, is illegal and void.

§ 108. Subsequent marriage illegal.

A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless :

1. The former marriage has been annulled or dissolved.

2. Unless such former husband or wife was absent and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

§ 128. Race marriages forbidden.

The intermarriage or illicit cohabitation of any persons belonging to the African, Corean, Malayan, or Mongolian race, with

any person of the opposite sex belonging to the Caucasian or White race, is prohibited, and any person who shall enter into any such marriage, or who shall indulge in any such illicit cohabitation shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not exceeding one thousand dollars or by imprisonment in the state penitentiary for a term not exceeding ten years, or both such fine and imprisonment.

§ 129. License prohibited.

No license intended to authorize any marriage prohibited by the preceding section shall be granted or issued in this state, and no such marriage, either with or without such license, shall be solemnized or performed in this state. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

§ 130. Marriage void.

Any marriage entered into or solemnized, contrary to the provisions of section 128, shall be, and the same is hereby, deemed and declared to be null and void from the beginning.

ARTICLE 2.

MARRIAGE ANNULLED.

§ 131. Causes for annulment.

A marriage may be annulled by an action in the circuit court to obtain a decree of nullity, for any of the following causes existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her, unless after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.

4. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

6. That either party was, at the time of the marriage physically incapable of entering into the marriage state, and such incapacity continues and appears to be incurable.

Every minister or magistrate who solemnizes any marriage where either of the parties is known to him to be under the age of legal consent, and without the consent of his or her parents or guardian, or persons having charge of him or her, or where either of the parties is known to him to be of unsound mind, or any marriage to which, within his knowledge, any legal impediment exists, is guilty of a misdemeanor.

§ 132. Limitation of action.

An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision 1, by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent, or by a parent, guardian or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent.

2. For causes mentioned in subdivision 2, by either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision 3, by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

4. For causes mentioned in subdivision 4, by the party injured, within four years after the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivision 5, by the injured party, within four years after the marriage.

6. For causes mentioned in subdivision 6, by the injured party, within four years after the marriage.

§ 133. Children legitimate.

Where the marriage is annulled on the ground that a former husband or wife was living, or on the ground of insanity, children begotten before the judgment are legitimate, and succeed to the estate of both parents.

§ 134. Custody of children.

The court must award the custody of the children of a marriage annulled on the ground of fraud or force, to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

§ 135. Effect of judgment.

A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE 3.

DIVORCE.

§ 136. Marriage dissolved.

Marriage is dissolved only:

1. By the death of one of the parties; or,

2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons. The circuit court in each county such jurisdiction in an action according to title 2 of this code.

§ 137. Causes for divorce.

Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion.
4. Wilful neglect.
5. Habitual intemperance.
6. Conviction for felony.

§ 138. Adultery defined.

Adultery is the unlawful voluntary sexual intercourse of a married person with one the opposite sex, and, when the crime is committed between parties only one of whom is married, both are guilty of adultery.

§ 139. Extreme cruelty defined.

Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other, by one party to the marriage.

§ 140. Desertion defined.

Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

1. Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

2. When one party is induced by the stratagem or fraud of the other party to leave the family dwelling place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

3. Departure or absence of one party from the family dwelling place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

4. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

5. Absence or separation, proper in itself, becomes a desertion whenever the intent to desert is fixed during such absence or separation.

6. Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

7. If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfil the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of the refusal.

8. The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto it is desertion.

9. If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

§ 141. Wilful neglect defined.

Wilful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having ability to do so;

or it is the failure to do so by reason of idleness, profligacy, or dissipation.

§ 142. Habitual intemperance defined.

Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

§ 143. Duration of offenses necessary as cause.

Wilful desertion, wilful neglect, or habitual intemperance, must continue for one year before either is a ground for divorce.

ARTICLE 4.

CAUSES FOR DENYING DIVORCE.

§ 144. Divorce, when denied.

Divorces must be denied upon showing:

1. Connivance;
2. Collusion;
3. Condonation;
4. Recrimination; or,
5. Limitation and lapse of time.

§ 145. Connivance defined.

Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce. Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

§ 146. Collusion defined.

Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

§ 147. Condonation defined.

Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

§ 148. Requisites of condonation.

The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce.

2. Reconciliation and remission of the offense by the injured party.

3. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent, that the forgiving party must be treated with conjugal kindness. Where the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from excessive acts of ill treatment, which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases, condonation can be made only after the cause of divorce has become complete, as to the acts complained of. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

§ 149. Revocation of condonation.

Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,

2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

§ 150. Recrimination defined.

Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce. Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense, unless the condonation be revoked, as above provided, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown.

§ 151. Adultery by husband — children legitimate.

When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage, begotten of the wife before the commencement of the action, is not affected.

§ 152. Adultery by wife — presumption of legitimacy.

When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. In every such case all children begotten before the commencement of the action are to be presumed legitimate until the contrary is shown.

§ 153. Guilty party may not remarry.

When a divorce is granted for adultery, the innocent party may marry again during the life of the other; but the guilty party can-

not marry any person except the innocent party, until the death of the other.

§ 154. Limitation of action for divorce.

A divorce must be denied when there is an unreasonable lapse of time before the commencement of the action. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of the offense set up as a ground of divorce. The presumption, arising from lapse of time, may be rebutted by showing reasonable grounds for the delay in commencing the action.

§ 155. Only limitation.

There are no limitations of time for commencing actions for divorce, except such as are contained in the foregoing section.

§ 156. Residence required.

The plaintiff in an action for divorce must have been an actual resident, in good faith, of this state for one year, and of the county wherein such action is commenced for three months next preceding the commencement of said action, except as herein otherwise provided.

§ 157. No term of residence required in certain cases.

If the parties were married in this state and the plaintiff shall have resided therein from the time of marriage until the commencement of the action, said action may be commenced at any time after the cause of action has arisen.

§ 158. Cause of action arising in state.

If the cause of action arose in this state, then said action may be commenced at any time after the plaintiff shall have resided in the state for a period of six months.

§ 159. Trial in public at regular term.

All hearings and trials upon the merits in actions for divorce, except default cases and except such hearings as relate to alimony during the pendency of the action, or the granting of an interlocutory order or decree, shall be had at a regular term of court.

§ 160. Presumption as to domicile.

In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife does not apply. After separation each party may have a separate domicile, depending for proof upon actual residence, and not upon legal presumption.

§ 161. Affirmative proof, corroboration.

No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers.

ARTICLE 5.**SEPARATE MAINTENANCE AND ALIMONY.****§ 162. Maintenance.**

Though judgment of divorce is denied, the court may, in an action for divorce, provide for maintenance of the wife and her children, or any of them, by the husband.

§ 163. Temporary alimony.

While an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money

necessary to enable the wife to support herself or her children, or to prosecute or defend the action.

§ 164. Custody of children.

In an action for divorce the court may, before or after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

§ 165. Support.

Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects.

§ 166. Security — homestead — judgment.

The court may require the husband to give reasonable security for providing maintenance, or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case. But when the wife has a separate estate sufficient to give her a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband. The court, in rendering a decree of divorce, may assign the homestead to the innocent party, either absolutely or for a limited period, according to the facts in the case, and in consonance with the law relating to homesteads. The disposition of the homestead by the court, and all orders and decrees touching the alimony and maintenance of the wife, and for the custody, education and support of the children, as above provided, are sub-

ject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.



§ 172. Cannot alter relations.

A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree in writing to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

§ 173. Separation.

The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.



§ 2338. Service by publication.

Where the person on whom the service of the summons is to be made cannot, after due diligence, be found within the state, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, . . . such court or judge may grant an order that the service be made by the publication of a summons in either of the following cases:

* * * * *

6. Where the action is for divorce, or for a decree annulling a marriage.

TENNESSEE.*Thompson's Shannon Code, 1917.*¹

CHAPTER I.

HUSBAND AND WIFE.

ARTICLE I.

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CHAPTER I.

HUSBAND AND WIFE.

- ARTICLE** I. Marriage.
 II. Divorce.

ARTICLE I.

MARRIAGE.

§ 4185. Marriage, with what kindred not to be contracted.

Marriage cannot be contracted with a lineal ancestor or descendant, nor the lineal ancestor or descendant of either parent,

nor the child of a grandparent, nor the lineal descendants of husband and wife, as the case may be, nor the husband or wife of a parent, or lineal descendant.

§ 4186. Whites, negroes, etc., not to intermarry or cohabit.

The intermarriage of white persons with negroes, mulattoes, or persons of mixed blood descended from a negro, to the third generation inclusive, or their living together as man and wife in this state, is hereby prohibited.

§ 4187. Felony, imprisonment.

The persons knowingly violating the provisions of the last section shall be deemed guilty of a felony, and upon conviction thereof shall undergo imprisonment in the penitentiary not less than one nor more than five years, and the court may, in the event of conviction, on the recommendation of the jury, substitute, in lieu of punishment in the penitentiary, fine and imprisonment in the county jail.

§ 4188. Second marriage may be contracted, when.

A second marriage cannot be contracted before the dissolution of the first. But the first shall be regarded as dissolved for this purpose if either party has been absent five years and is not known to the other to be living.

ARTICLE II.

DIVORCE.

§ 4201. Causes of divorce from bonds of matrimony.

The following shall be causes of divorce from the bonds of matrimony:

(1) That either party, at the time of the contract, was and still is naturally impotent and incapable of procreation.

(2) That either party has knowingly entered into a second marriage, in violation of a previous marriage, still subsisting.

(3) That either party has committed adultery.

(4) Willful or malicious desertion, or absence of either party without a reasonable cause for two whole years.

(5) Being convicted of any crime which, by the laws of the state, renders the party infamous.

(6) Being convicted of a crime which, by the laws of the state, is declared to be a felony, and sentenced to confinement in the penitentiary.

(7) That either party has attempted the life of the other, by poison or any other means, showing malice.

(8) Refusal, on part of a wife, to remove with her husband to this state, without a reasonable cause, and willfully absenting herself from him for two years.

(9) That the woman was pregnant at the time of the marriage, by another person, without the knowledge of the husband.

(10) Habitual drunkenness of either party, when the husband or wife have contracted the habit of drunkenness after marriage.

§ 4202. Causes of divorce from bed and board, or from bonds of matrimony.

The following shall be causes of divorce from bed and board, and from the bonds of matrimony, at the discretion of the court:

(1) That the husband is guilty of such cruel and inhuman treatment or conduct towards his wife, as renders it unsafe and improper for her to cohabit with him, and be under his dominion and control.

(2) That he has offered such indignities to her person as to render her condition intolerable, and thereby forced her to withdraw.

(3) That he has abandoned her, or turned her out of doors, and refused or neglected to provide for her.

§ 4203. Petitioner must be resident of state two years.

A divorce may be granted for any of the aforesaid causes, though the acts complained of were committed out of the state, or the

petitioner resided out of the state at the time, no matter where the other party resides, if the petitioner has resided in this state two years next preceding the filing of the petition.

§ 4204. Bill, in whose name and where to be filed.

The bill may be filed in the proper person and name of the complainant, in the circuit or chancery court of the county or district where the parties resided at the time of their separation, or in which the defendant resides, or is found, if a resident; but, if a nonresident or convict, then in the county where the applicant resides.

§ 4205. Statements of the bill.

It shall be set forth particularly and specially the causes of the complaint, with circumstances of time and place with reasonable certainty, and pray only for a divorce from the defendant, or for a divorce and such other and further relief as the complainant may think him or herself entitled to.

§ 4206. Verification of the bill.

The bill shall be verified by an affidavit, upon oath or affirmation, before a justice of the peace, or the judge or clerk of the court, that the facts stated in the bill are true to the best of the complainant's knowledge and belief, and that the complaint is not made out of levity, or collusion with the defendant, but in sincerity and truth, for the causes mentioned in the bill.

§ 4207. Process to compel appearance.

The complainant, upon giving security for costs, shall have the usual process to compel the defendant to appear and answer the bill, or it may be taken for confessed, as in other chancery cases; and if the divorce be demanded because the defendant is a convict confined in the penitentiary, the bill may be taken for confessed, upon publication, as if he were a nonresident.

§ 4208. Trial at first term, if subpoena served.

If the subpoena to answer be served upon the defendant, the cause may be set for hearing and tried at the first term of the court thereafter.

§ 4209. Trial at first term without service, when.

If a woman sue for a divorce, her bill or petition may be heard, and a divorce granted, without service of the subpoena or publication, if her bill was filed, and subpoena for the defendant was placed in the hands of the sheriff of the county in which the suit was instituted, three months before the time when the subpoena is returnable; but the officer having the subpoena shall execute it if he can.

§ 4210. Defense.

The defendant may appear according to the rules of the court and answer the bill upon oath or affirmation, or plead or demur to the same.

§ 4211. Issues.

Issues may be made up at the request of either party upon matters of fact charged in the bill and denied in the answer, and be tried by a jury in presence of the court, and a new trial may be granted of said issues should the court deem it necessary.

§ 4212. Decree not to be made without proof.

If the defendant admit the facts charged in the bill, and relied upon as the ground for a divorce, or the bill be taken for confessed, the court shall, nevertheless, before decreeing a divorce, hear proof of the facts aforesaid, and then either dismiss the bill or grant a divorce, as the justice of the case may require.

§ 4213. Adultery of applicant, when a defense to bill for that cause.

If the cause assigned for the divorce be adultery, it shall be a good defense and perpetual bar to the same, if the defendant allege and prove:

(1) That the complainant has been guilty of like crime.

(2) That the complainant has admitted the defendant into conjugal society and embraces after knowledge of the criminal act.

(3) That the complainant, if the husband, allowed of the wife's prostitutions and received hire for them.

(4) That he exposed her to lewd company, whereby she became ensnared to the crime aforesaid.

§ 4214. Restoration of conjugal rights.

If upon a false rumor, apparently well founded, of the death of one of the parties, who has been absent two whole years, the other party marries again, the party remaining single may, upon returning, insist upon a restoration of conjugal rights or upon a dissolution of the marriage, and the court shall sentence and decree accordingly, to wit: that the first marriage shall stand and the second be dissolved, or vice versa; but such bill shall be filed within one year after the return.

§ 4215. Evidence, how to be adduced.

Either party may take proof by depositions according to the rules and orders of the court, or have the witnesses examined in open court at pleasure.

§ 4216. Proof, when willful absence is cause assigned.

If the divorce be demanded by the husband on the ground of the wife's refusal to remove with him to this state, and of her willful absence for two years without reasonable cause, he shall prove endeavors to induce her to live with him after the separation, and that he did not remove from the state where she resided for the purpose of obtaining a divorce.

§ 4217. When cause is that defendant is a convict.

The proof that the defendant is a convict, or is sentenced to the penitentiary, if that be the cause relied upon for the divorce, shall be by the record of the conviction and sentence.

§ 4218. Relief, form of.

If, upon hearing the cause, the court is satisfied that the complainant is entitled to relief, it may be granted either by pronouncing the marriage null and void from the beginning or by dissolving it forever, and freeing each party from the obligations thereof, or by separation for a limited time.

§ 4219. Ill conduct of complainant, when a defense to wife's bill.

If the cause assigned by the wife for a divorce be any of those specified in section 4202, the defendant may make his defense by insisting upon and proving the ill conduct of the complainant as a justifiable cause for the conduct on his part complained of; and, on making out the defense to the satisfaction of the court, the bill may be dismissed with or without costs, at the discretion of the court.

§ 4220. Annuling marriage or decreeing separation.

But if the court be of the opinion that the wife is entitled to relief, it may be granted according to the prayer of the bill, by annulling the marriage, or by ordering a separation, perpetual or temporary, or such other decree as the nature and circumstances of the case require.

§ 4221. Alimony.

Whether the marriage be dissolved absolutely or a perpetual or temporary separation be decreed, the court may make an order and decree for the suitable support and maintenance of the complainant and her children, or any of them, by the husband, or out

of his property, according to the nature of the case and the circumstances of the parties.

§ 4222. Amount of alimony, how to be estimated.

And in such case the court may decree to the wife such part of the husband's real and personal estate as it may think proper. In doing which, the court may have reference to the property which the husband received by his wife at the time of the marriage, or afterwards, as well as to the separate property secured to her by marriage contract or otherwise.

§ 4223. Decree for alimony, how enforced.

The court may enforce its orders and decrees by sequestering the rents and profits of the real estate of the husband, if he has any, and his personal estate and choses in action, and by appointing a receiver thereof, and from time to time causing the same to be applied to the use of the complainant and her children, or by such other lawful ways and means as are usual and according to the course and practice of the court, as to the court shall seem meet and agreeable to equity and good conscience.

§ 4224. Wife's own property, when to be decreed to her.

If the wife, at the time of a decree dissolving a marriage, be the owner of any lands, or have in her possession goods or chattels or choses in action acquired by her own industry or given to her by devise or otherwise, or which may have come to her, or to which she may be entitled by the decease of any relative intestate, she shall have entire and exclusive dominion and control thereof, and may sue for and recover the same in her own name, subject, however, to the rights of creditors who became such before the decree was pronounced.

§ 4225. When not.

When a marriage is dissolved at the suit of the husband, and the defendant is owner, in her own right, of lands, his right to,

and interest therein, and to the rents and profits of the same, shall not be taken away or impaired by the dissolution, but the same shall remain to him as though the marriage had continued. And he shall also be entitled to her personal estate in possession or in action, and may sue for and recover the same in his own name.

§ 4226. Dower, distributive share, and alimony, when denied to wife.

If the bonds of matrimony be dissolved at the suit of the husband, the defendant shall not be entitled to dower in the complainant's real estate, nor to any part of his personal estate, in case of his intestacy, nor to alimony.

§ 4227. Disability of wife divorced for adultery.

After a divorce for adultery on part of the wife, if she afterwards openly cohabit at bed and board with the adulterer, she shall be incapable of alienating, directly or indirectly, any of her lands; but all deeds, wills, appointments, and conveyances thereof, by her made, shall be void and of no effect; and, after her death, the same shall descend, and be subject to distribution, as if she had died seized and possessed thereof intestate.

§ 4228. Marrying again.

When a marriage is absolutely annulled, the parties shall severally be at liberty to marry again; but a defendant who has been guilty of adultery shall not marry the person with whom the crime was committed, during the life of the former husband or wife.

§ 4229. Legitimacy of children.

The dissolution of the marriage shall not in anywise affect the legitimacy of the children of the same.

§ 4230. Costs:

The court may decree costs against either party, except a female in whose favor a decree is made, and may award execution for the

same; or, in case any estate is sequestered, or in the power of the court, or in the hands of a receiver, it may order the costs to be paid out of such property.

§ 4230a. Divorce proctor in counties having population of 100,000 or over.

There is hereby created the office of divorce proctor for each county of this state having a population of 100,000 or over by the federal census of 1910 or any subsequent federal census.

§ 4230a-1. Qualifications; not to appear for either party.

Any lawyer licensed to practice before the supreme court of Tennessee, residing and being a qualified voter in the county for which he is elected, shall be eligible to hold the office of divorce proctor. During his term of office neither the divorce proctor nor his deputy hereinafter provided for, shall appear for either party in any divorce suit filed in his county.

§ 4230a-2. Duty of divorce proctor; as to service of process.

It shall be the duty of the divorce proctor to appear upon the trial of every divorce case in his county, whether the suit is contested by the defendant or not; and it shall be the duty of the divorce proctor to acknowledge service upon him of a copy of every bill for divorce with [which] acknowledgment of service shall be indorsed by him upon the original bill before the same is filed in any court in his county, and no bill for divorce shall be filed unless it bears such acknowledgment over the signature of the divorce proctor with the date of service; but nothing herein shall be construed as dispensing with the necessity of the service of proper process upon the defendant as is required by existing law.

§ 4230a-3. To investigate charges, when, and be prepared to advise court as to merits of case.

Immediately upon the commencement of a suit for divorce, it shall be the duty of the divorce proctor to investigate the charges

made in the bill and he shall be prepared to advise the court, upon the hearing, as to the merits of the case.

§ 4230a-4. Has power to have witnesses subpoenaed and to examine them.

The divorce proctor shall have power to cause witnesses, including the parties to the suit, to be subpoenaed to testify, respecting any charges made in the bill or the answer or upon any matter touching the material status of the parties, the performance or neglect, of any duty by either, to the end that justice may be done the parties and that society may be protected and the sanctity of the marriage relation preserved; and the divorce proctor shall have the power and authority, upon the trial of the suit, to examine all witnesses.

§ 4230a-5. Divorce proctor, election of; term of office.

A divorce proctor shall be elected by the county court of each county in this state, at the first regular term after the passage of this act, and every four years thereafter. The divorce proctor elected shall serve for a term of four years from the date of his election and until his successor is elected.

§ 4230a-6. Vacancies, how filled.

In the event of a vacancy in the office of divorce proctor, the county court at its next regular term shall fill the vacancy for the unexpired term of the office, and until such vacancy is filled, the deputy divorce proctor, hereinafter provided for, shall act as divorce proctor.

§ 4230a-7. Compensation.

The divorce proctor shall be allowed as compensation, a fee of five dollars in each divorce suit filed in his county, which sum shall be taxed as part of the costs in each suit, in addition to costs as now provided by law.

§ 4230a-8. Deputy divorce proctor may be appointed; powers and duties.

Each divorce proctor shall have the power and authority to appoint a deputy divorce proctor who shall have the power and authority to acknowledge service in the name of the divorce proctor, by him as deputy divorce proctor, of all bills for divorce, and in case of the absence from the county, or the disability, or at the request of the divorce proctor, he shall have and exercise all the rights, powers and duties of such divorce proctor.

§ 4230a-9. Deputy, term of office; compensation; commission, who to issue.

The deputy divorce proctor shall hold his office at the will and pleasure of the divorce proctor appointing him, and his compensation shall be fixed and paid by the divorce proctor. The chairman of the county court shall issue to the deputy divorce proctor his commission as such officer.

§ 4230a-10. Legislative intent.

It is hereby declared to be the legislative intention that if any provision of this act is for any cause held unconstitutional, that all other provisions of this act shall nevertheless remain in full force and effect.

§ 4249a-8. Does not apply when divorce cause is pending; exception; may leave state to take up employment previously accepted.

The provisions of this act shall not apply where a divorce cause is pending between the said husband and wife, whether filed by the husband or wife in any of the courts of this state having jurisdiction of such causes except where alimony pending the suit has been allowed, and it is established to the satisfaction of the court or jury trying the cause that the husband left the state with the

deliberate intention of defeating the said decree for alimony pendente lite, nor where the said husband leaves the state to accept employment previously offered him and accepted by him.

§ 4890. Appeals; divorce cases.

In divorce cases, an appeal shall be the only mode of revising errors.

§ 6070. Divorce and release of trustees.

They [the circuit courts] have concurrent jurisdiction with chancery courts to grant divorces, . . .

§ 6111. Divorce.

It [the chancery court] has jurisdiction, concurrent with the circuit court, of all proceedings for divorce.

Laws of 1919, ch. 70.

§ 1. Wife guilty of cruelty.

It shall be a cause of divorce from the bonds of matrimony that the wife is guilty of such cruel and inhuman treatment or conduct toward her husband as renders it unsafe or improper for him to cohabit with her.

TEXAS.*Complete Texas Statutes, 1920.*¹

CHAPTER IV.

DIVORCE.

- ARTICLE 4630. Marriage may be annulled, when.
4631. Divorce may be granted in what cases.
4632. Plaintiff must be resident in state and county.
4633. Husband and wife may testify.
4634. Division of property.
4635. Connivance and collusion.
4636. Legitimacy of children, etc.
4637. Debts and alienations after suits.
4638. Inventory and appraisements, etc.
4639. Temporary orders, etc.
4640. Alimony.
4641. Custody of children.
4642. Costs.

Art. 4630. Marriage may be annulled, when.

The district court shall have power to hear and determine suit for the dissolution of marriage, where the causes alleged therefor shall be natural or incurable impotency of body at the time of entering into the marriage contract, or any other impediment that renders such contract void, and shall have power and authority to decree the marriage to be null and void.

Art. 4631. Divorce may be granted in what cases.

A divorce by separation from the bonds of matrimony may be decreed in the following cases:

1. Where either the husband or wife is guilty of excesses, cruel

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treatment or outrages toward the other, if such ill treatment is of such a nature as to render their living together insupportable.

2. In favor of the husband, where his wife shall have been taken in adultery, or where she shall have voluntarily left his bed and board for a space of three years with the intention of abandonment.

3. In favor of the wife, where the husband shall have left her for three years with intention of abandonment, or where he shall have abandoned her and lived in adultery with another woman.

4. In favor of either the husband or wife, when the other shall have been convicted, after marriage, of a felony and imprisoned in the state prison; provided, that no suit for divorce shall be sustained because of the conviction of either party for felony until twelve months after final judgment of conviction, nor then if the governor shall have pardoned the convict; provided, that the husband has not been convicted on the testimony of the wife, nor the wife on the testimony of the husband.

Art. 4632. Plaintiff must be resident; suit not to be heard within 30 days; remarriage; divorce where marriage was to escape penalties for seduction; additional grounds for divorce.

No suit for divorce from the bonds of matrimony shall be maintained in the courts of this state unless the petitioner for such divorce shall at the time of exhibiting his or her petition, be an actual bona fide inhabitant of the state for a period of twelve months, and shall have resided in the county where the suit is filed six months next preceding the filing of the suit; provided that such suit shall not be heard or divorce granted before the expiration of thirty days after the same is filed; and provided, further, that neither party to a divorce suit, wherein a divorce is granted upon the ground of cruel treatment, shall marry any other person for a period of twelve months next after such divorce is granted, but the parties so divorced may marry each other at any time upon obtaining a license as provided in article 4610;

provided that where a man marries the woman whom he seduces to escape penalties of the law punishing for seduction, the man shall not be entitled to a divorce for any cause within three years after such marriage, provided that this act shall not apply to any case where either the husband or wife is insane.

Provided further that in addition to the grounds for divorce now provided by statute, that where any husband and wife have lived apart without cohabitation for as long as ten years, the same shall be sufficient grounds for divorce.

Art. 4633. Husband and wife competent witnesses.

In all suits and proceedings for divorce from the bonds of matrimony, the defendant shall not be compelled to answer upon oath, nor shall the petition be taken as confessed for want of answer, but the decree of the court shall be rendered upon full and satisfactory evidence, upon the verdict of a jury, if a jury shall have been demanded by either party, and if not, upon the judgment of the court affirming the material facts alleged in the petition. In all such suits and proceedings the husband and wife shall be competent witnesses for and against each other, but neither party shall be compelled to testify as to any matter that will criminate himself or herself; and where the husband or wife testifies, the court or jury trying the case shall determine the credibility of such witness, and the weight to be given such testimony; but no divorce shall be granted upon the evidence of either husband or wife, if there be any collusion between them.

Art. 4634. Division of property.

The court pronouncing a decree of divorce from the bonds of matrimony shall also decree and order a division of the estate of the parties in such a way as to the court, shall seem just and right, having due regard to the rights of each party and their children, if any; provided, however, that nothing herein contained shall be construed to compel either party to divest himself or herself of the title to real estate.

Art. 4635. Condonation, connivance, and collusion.

In any suit for divorce for the cause of adultery, if it shall be proved that the complainant has been guilty of the like crime, or has admitted the defendant into conjugal society or embraces after he or she knew the criminal fact, or that the complainant, if the husband, connived at his wife's prostitution, or exposed her to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defense and a perpetual bar against said suit; or if it appears that the adultery complained of is occasioned by collusion of the parties, and done with intention to procure a divorce, or where both parties shall be guilty of adultery, then no divorce shall be decreed.

Art. 4636. Legitimacy of children; parties may marry again.

A divorce from the bonds of matrimony shall not in any wise affect the legitimacy of the children thereof; and either party may, after the dissolution of the marriage, marry again.

Art. 4637. Debts and alienations after suit filed.

On and after the day on which the action for divorce shall be brought, it shall not be lawful for the husband to contract any debts on account of the community, nor to dispose of the lands belonging to the same; and any alienation made by him after that time shall be null and void, if it be proved to the satisfaction of the court that such alienation was made with a fraudulent view of injuring the rights of the wife.

Art. 4638. Inventory and appraisement; injunction.

At any time during a suit for divorce the wife may, for the preservation of her rights, require an inventory and an appraisement to be made of both real and personal estate which are in the possession of the husband, and an injunction restraining him from disposing of any part thereof in any manner.

Art. 4639. Temporary orders.

Pending any suit for a divorce the court, or the judge thereof, may make such temporary orders respecting the property and parties as shall be deemed necessary and equitable.

Art. 4640. Alimony.

If the wife, whether complainant or defendant, has not a sufficient income for her maintenance during the pendency of the suit for a divorce, the judge may, either in term time or in vacation, after due notice, allow her a sum for her support in proportion to the means of the husband, until a final decree shall be made in the case.

Art. 4641. Custody of children.

The courts aforesaid shall have power, in all cases of separation between man and wife, to give the custody and education of the children to either father or mother, as to the said court shall seem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the child or children, to be determined and decided on the petition of either party; and in the meantime to issue any injunction or make any order that the safety and well being of any such children may require.

Art. 4642. Costs.

The court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as to the court shall appear reasonable.

Art. 4609. Who not permitted to marry.

Males under sixteen and females under fourteen years of age shall not marry.

Art. 4613. Certain intermarriages prohibited.

It shall not be lawful for any person of Caucasian blood or their descendants to intermarry with Africans or the descendants of

Africans; and, should any person as aforesaid violate the provisions of this article, such marriage shall be null and void.

Art. 4614. Marriages by bond, etc., validated.

Whereas, many persons heretofore, previous to the passage of an act approved June 5, 1837, regulating marriages, and for other purposes, had, for the want of some person legally qualified to celebrate the rites of matrimony, resorted to the practice of marrying by bond, and others have been married by various officers of justice not authorized to celebrate such marriages, and whereas, public policy and the interest of families require a further legislative action on the subject, therefore, all such marriages are declared legal and valid to all intents and purposes, and the issue of such persons are declared legitimate children and capable of inheritance.

Art. 4623. Presumption as to community property.

All the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved.

Art. 1591. Courts of civil appeals.

The judgments of the courts of civil appeals shall be conclusive on the law and fact, nor shall a writ of error be allowed thereto from the supreme court in the following cases, to-wit:

* * * * *

4. All cases of divorce.
-

Art. 1705. Original jurisdiction of the district court.

The district court shall have original jurisdiction in civil cases —

* * * * *

2. Of all cases of divorce.

Art. 1766. Jurisdiction of county court denied in certain cases.

The county court shall not have jurisdiction . . . of suits for divorce.

Art. 2296. Justices' courts.

Justices' courts have no jurisdiction of suits . . . for divorce.

Art. 1830. Venue, general rule.

No person who is an inhabitant of this state shall be sued out of the county in which he has his domicile, except in the following cases, to-wit:

* * * * *

16. *Suits for divorce.* Suits for divorce from the bonds of matrimony shall be brought in the county in which the plaintiff whether husband or wife shall have resided for six months next preceding the bringing of the suit.

Art. 5954. In divorce suits name may be changed.

In suits for divorce, the court may, in its discretion, on the final disposition of the case, enter a decree changing the name of either party to said suit, if such change of name is specially prayed for in the pleadings of such party.

Art. 6274. Pensions denied to whom.

No application shall be allowed, nor shall any aid be given or pension paid in any case, to any soldier or sailor, or the widow of any soldier or sailor under the provisions of this chapter, where it shall appear that any such soldier or sailor deserted his command,

or voluntarily abandoned his post of duty, or the said service during the said war, nor shall any application be allowed, nor any aid given, nor any pension paid, to any widow of any soldier or sailor who has been divorced from any such soldier or sailor, being her husband, nor to any widow who voluntarily abandoned and without cause any such soldier or sailor, being her husband, and continued to live separately from him up to the time of his death, nor to any such soldier or sailor who served as a substitute for another, nor to the widow of said substitute.

§ 7094. Sequestration; in what cases to be issued.

Judges and clerks of the district . . . courts, . . . shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the following cases:

1. When a married woman sues for divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits or revenue produced by either, or that he will sell or otherwise dispose of the same so as to defraud her of her just rights, or remove the same out of the limits of the county during the pendency of the suit.

* * * * *

UTAH.*Compiled Laws, 1917.*

TITLE 46.

HUBAND AND WIFE.

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MARRIAGE.

- SECTION 2966. Incestuous marriages.
2967. Other void marriages.
2968. Children of bigamous marriages contracted in good faith.
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 TITLE 46.

HUSBAND AND WIFE.

 CHAPTER I.

MARRIAGE.

§ 2966. Incestuous marriages.

Marriages between parents and children, ancestors and descendants of every degree, brothers and sisters of the half as well as the whole blood, uncles and nieces, aunts and nephews, first cousins, or between any persons related to each other within and not including the fifth degree of consanguinity, computed according to the rules of civil law, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.

§ 2967. Other void marriages.

Marriages prohibited and declared void:

1. With an idiot, lunatic, or person afflicted with syphilis, or gonorrhoea, that is uncured, or a person subject to chronic epileptic fits; provided, that the last qualification shall not apply to a female over the age of forty-five years;
2. When there is a husband or wife living from whom the person marrying has not been divorced;
3. When not solemnized by an authorized person, except as provided in § 2970;

4. When, at the time of marriage, the male is under sixteen or the female is under fourteen years of age;

5. Between a negro and a white person;

6. Between a Mongolian and a white person;

7. Between a divorced person and any person other than the husband or wife from whom the divorce was secured, within the period allowed for an appeal, and, if an appeal is taken, until after the affirmation of the decree of divorce.

§ 2968. Children of bigamous marriages contracted in good faith.

When a marriage is contracted in good faith and with the belief of the parties that a former husband or wife, then living and not legally divorced, was dead or legally divorced, the issue of such marriage, born or begotten before notice of the mistake, shall be the legitimate issue of both parents.

§ 2969. Foreign marriages.

Marriages solemnized in any other country, state, or territory, if valid where solemnized, are valid here.

§ 2970. Marriage in good faith before unauthorized person.

No marriage solemnized before any person professing to have authority therefor shall be invalid for want of such authority, if it is consummated with the belief of the parties, or either of them, that he had authority and that they have been lawfully married.

CHAPTER III.

DIVORCE, ETC.

§ 2995. Procedure; residence; causes; proviso as to insane defendant.

Proceedings in divorce shall be commenced and conducted in the manner provided by law for the proceedings in civil cases, except

as hereinafter provided, and the court may decree a dissolution of the marriage contract between the plaintiff and defendant in all cases where the plaintiff, for one year next prior to the commencement of the action, shall have been an actual and bona fide resident of the county within the jurisdiction of the court, for any of the following causes, to wit:

1. Impotency of the defendant at the time of marriage;
2. Adultery committed by defendant subsequent to marriage;
3. Wilful desertion of plaintiff by defendant for more than one year;
4. Wilful neglect of defendant to provide for plaintiff the common necessaries of life;
5. Habitual drunkenness of defendant;
6. Conviction of defendant for felony;
7. Cruel treatment of plaintiff by the defendant to the extent of causing bodily injury or great mental distress to plaintiff;
8. Permanent insanity of defendant; provided, that no divorce shall be granted on the grounds of insanity unless, first, the defendant shall have been duly and regularly adjudged to be insane by the legally constituted authorities of this or some other state at least five years prior to the commencement of the action; second, unless it shall appear to the satisfaction of the court, by the testimony of competent witnesses, that the insanity of the defendant is incurable. In all such actions, the court shall appoint for the defendant a guardian ad litem, who shall take such measures as may be necessary and proper to protect the interests of the defendant; and a copy of the summons and complaint must be duly served on the defendant in person, or by publication, as provided for by the laws of this state in other actions for divorce, on his guardian ad litem, and on the county attorney for the county in which such action is prosecuted; it shall be the duty of such county attorney to make an investigation into the merits of the case, and, if defendant resides out of this state, have a commission issued to take such depositions as are necessary for that purpose, and to attend the court upon the trial of said cause, and make such de-

fense therein as may be just and proper to protect the rights of the defendant and the interest of the state. In all such actions the court and judge thereof shall have all the powers relative to the payment of alimony, the distribution of property, and the custody and maintenance of minor children which such courts now have or may hereafter possess in other actions for divorce. Either the plaintiff or defendant, or legal representatives shall, if the defendant resides in this state, upon proper notice, be entitled to have the defendant brought into the court upon the trial or to have an examination of the defendant by two or more competent physicians, to determine the mental condition of the defendant, and for such purpose either party may, upon application, have process from the court to enter any asylum or institution within the state where such defendant may be confined. The costs of court in such action shall be assessed or apportioned by the court according to the equities of the case, as may be just and proper.

§ 2996. Decrees validated.

All decrees of divorce heretofore made and entered by the courts of this state under § 2995 where constructive service of the summons on the defendant was had are hereby validated and confirmed, and shall have the same force and effect as though they had been granted after the enactment of this chapter.

§ 2997. Husband may obtain divorce.

The husband may in all cases obtain a divorce from his wife for the like causes, and in the same manner as the wife obtains a divorce from her husband.

§ 2998. Temporary alimony.

The court may order either party to pay to the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action.

§ 2999. Complaint; testimony; decrees.

The complaint or petition shall be in writing and verified by the oath of plaintiff, and no decree in divorce shall be granted upon default or otherwise, except upon legal testimony taken in the cause; and all hearings and trials for divorce shall be had before the court, and not before a master, referee, or any other delegated representative; and the court, in all cases in divorce, shall make and file its findings and decrees upon the testimony.

§ 3000. Disposal of children and property.

When an interlocutory decree of divorce is made, the court may make such order in relation to the children, property, parties, and the maintenance of the parties and children as shall be equitable; provided, that if any of the children have attained the age of ten years and are of sound mind, such children shall have the privilege of selecting to which of the parents they will attach themselves. Subsequent changes, or new orders, may be made by the court in respect to the disposal of the children or the distribution of property, as shall be reasonable and proper.

§ 3001. Interlocutory decree.

If, after the hearing of any divorce cause, the court shall be of the opinion that the divorce ought to be granted to either person, a decree shall be entered granting to such person a divorce; but the said decree shall specifically provide that it shall not become absolute until the expiration of six months from the date of its entry.

§ 3002. Id.; becomes absolute, when.

The decree of divorce shall become absolute after the expiration of six months from the entry thereof, unless proceedings for a review are pending, or the court before the expiration of said period for sufficient cause, upon its own motion or upon the application of any party, whether interested or not, otherwise orders.

§ 3003. Unlawful for divorced persons to marry, when.

It shall be unlawful for either party to a divorce proceeding, whose marriage is dissolved by the final decree provided for by § 3002, to marry any person other than the husband or wife from whom the divorce was granted, within the period allowed for an appeal from such final decree under the code of civil procedure, and if an appeal from such final decree be taken, until after the affirmance of such decree; and any marriage contracted in violation of the provisions of this section shall be null and void.

§ 3004. Care of minor children.

In the case of the separation of husband and wife having minor children, the mother of said children shall be entitled to the care, control, and custody of all such children; provided, that if any of said children have attained the age of twelve years and are of sound mind, such children shall have the privilege of electing to which of the parents they will attach themselves; provided further, that if it shall be made to appear to a court of competent jurisdiction that the mother is an immoral or otherwise incompetent or improper person, then the court may award the custody of said children to the father or make such other order as may be just.

§ 3005. Guilty party.

When a divorce is decreed, the guilty party forfeits all rights acquired by marriage.

*Avoidance or Affirmance of Marriage.***§ 3006. When validity uncertain; procedure.**

When doubt is felt as to the validity of a marriage, either party may, in a court of equity, demand its avoidance or affirmance, but when one of the parties was within the age of consent at the time of the marriage, the other party, being of proper age, shall have no such proceeding for that cause against the party under age.

§ 3007. When obtained by force or fraud; minors.

Courts having general equity jurisdiction may declare void a marriage obtained by force, or fraud, or where the male was under sixteen or the female under fourteen years of age at the time of the marriage, and the marriage was without the consent of the father, mother, guardian, or other person having the proper charge of his or her person, and has not been ratified by cohabitation after that age.

CHAPTER IV.**SEPARATE MAINTENANCE.****§ 3010. Neglected or deserted wife; alimony.**

Whenever a husband, being a resident of this state, shall have deserted his wife without good and sufficient cause, or, being of sufficient ability to support her, shall have neglected or refused to properly provide for and suitably maintain her, or, having property within this state, and the wife being a resident of this state, shall have so deserted or neglected or refused to provide for her, or where a married woman, without her fault, now lives or may hereafter live separate and apart from her husband, the district court shall, on the application of the wife, allot, assign, set apart, and decree to her as alimony, the use of such part of her husband's real and personal estate or earnings as the court may determine in its discretion; and, during the pendency of the proceedings, the court may require the husband to pay such sums for costs, expenses, and attorney's fees, and for the support of the wife as it shall deem necessary and proper, in like manner as in actions for divorce.

§ 3011. Procedure.

In all cases commenced pursuant to the preceding section, the proceedings and practice therein shall be the same, as near as may

be, as is now or hereafter may be provided by law in actions for divorce; but suit may be brought either in the county where the wife resides or in any county in which the husband may be found.

§ 3012. Disposal of children and property; subsequent changes.

In all actions brought pursuant to this chapter the court may order and decree concerning the care, custody, and maintenance of the minor children of the parties, and may determine with which of the parties, the children or any of them shall remain, and may assign and decree to the wife the possession of any of the real or personal estate of the husband, and decree the payment of a fixed sum of money for the support of the wife and minor children, and provide that the payment of the same be secured upon real estate or otherwise, the payment to be made at such times and in such manner as may be proper, and may enforce the performance of such decree by the sale of the real estate of the husband, or by any proceedings in contempt or otherwise as may be necessary. And the court shall have the power to change the allowance from time to time, according to circumstances, or may revoke such allowance altogether upon satisfactory proof of a voluntary and permanent reconciliation; provided, that such allowance shall be only during the joint lives of such husband and wife.

§ 3013. Restraining disposal of property.

At the time of filing the complaint mention in § 3010, or at any time subsequent thereto, the plaintiff may procure from the court and file with the county recorder of any county in the state in which the defendant may own real estate, an order enjoining and restraining the defendant from disposing of or encumbering the same or any portion thereof, describing such real estate with reasonable certainty, and from the time of filing such order the property described therein shall be charged with a lien in favor of the plaintiff to the extent of any judgment which may be rendered in the action.

§ 3014. Dependent husband; effect of imprisonment.

Like rights and remedies shall be extended to a dependent husband in case he shall be deserted by, or with just cause live apart from, his wife; and, to either husband or wife, on the imprisonment of the other in the state prison under a sentence of one year or more, when suitable provision has not been made for the support of one not so imprisoned.

§ 1789. Sittings public; exceptions.

In an action for divorce, . . . the court may, in its discretion, exclude all persons who are not directly interested therein, except jurors, witnesses, and officers of the court; provided, that in any cause the court may, in its discretion, during the examination of a witness, exclude any and all other witnesses in the cause.

VERMONT.*General Laws, 1917.*

CHAPTER 166.

ANNULLING MARRIAGE, AND DIVORCE.

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MARRIAGE.

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CHAPTER 166.

ANNULLING MARRIAGE, AND DIVORCE.

Void Marriages.

§ 3544. What are.

Marriages prohibited by law on account of consanguinity or affinity between the parties, or on account of either of them having a former wife or husband living shall, if solemnized within the state, be void without decree of divorce or other legal process.

§ 3545. May be declared null.

When a marriage is supposed to be void or the validity thereof is doubted for causes mentioned in the preceding section, either party may file a libel to annul the same; and upon proof of the nullity of the marriage, it shall be declared void by a decree of nullity.

§ 3546. Issue illegitimate.

Upon the dissolution, by a decree of nullity, of a marriage prohibited on account of consanguinity or affinity between the parties, the issue of the marriage shall be illegitimate.

Voidable Marriages.

§ 3547. What are.

The marriage contract may be annulled when, at the time of marriage, either party had not attained the age of sixteen years,

or was an idiot or lunatic, or physically incapable of entering into the marriage state, or when the consent of either party was obtained by force or fraud.

§ 3548. Party under age of sixteen years.

A libel to annul a marriage on the ground that one of the parties was under the age of sixteen years, may be brought by the parent or guardian entitled to the custody of such minor, or by a person admitted by the court to prosecute the same as the next friend of such minor; but such marriage shall not be annulled on the application of a party of legal age at the time it was contracted, nor when the parties, after they had attained the age of consent, had freely cohabited as husband and wife.

§ 3549. Party an idiot.

When a marriage is sought to be annulled on the ground of the idiocy of one of the parties, it may be declared void on the application of a relative of such idiot, interested to avoid the marriage, at any time during the life of either of the parties.

§ 3550. Party a lunatic.

When a marriage is sought to be annulled on the ground of the lunacy of one of the parties, it may, on the application of a relative of the lunatic, interested to avoid the marriage, be declared void during the continuance of that lunacy, or after the death of the lunatic in that state, during the lifetime of the other party to the marriage.

§ 3551. Marriage of idiot or lunatic may be annulled; petition.

The marriage of an idiot or a lunatic may be annulled, during the lifetime of both the parties to the marriage, if an action is not prosecuted by a relative, on the application of a person admitted by the court to prosecute as the next friend of such idiot or lunatic.

§ 3552. Marriage of lunatic may be annulled on his application.

The marriage of a lunatic may be declared void, upon the application of a lunatic after restoration to reason, but a decree of nullity shall not be pronounced if the parties freely cohabited as husband and wife after the lunatic was restored to sound mind.

§ 3553. Children to inherit from sane parent.

Children of a marriage annulled on the ground of lunacy or idiocy, shall succeed like legitimate children to the real and personal estate of the parent who was of sound mind.

§ 3554. Lunatic, defined.

The word "lunatic" as used in the preceding sections of this chapter, shall extend to persons of unsound mind, other than idiots.

§ 3555. When party's consent was obtained by force or fraud.

A marriage may be annulled during the lifetime of the parties, or one of them, on the ground that the consent of one of the parties was obtained by force or fraud, on the application of the party whose consent was so obtained, or of the parent or guardian of such party, or of some relative interested to contest the validity of the marriage. When such proceedings have been commenced and the party whose consent was so obtained dies before final decree, a parent or relative interested to contest the validity of the marriage may enter and prosecute such application. A marriage shall not be annulled on such ground, if, before the commencement of the action, the parties voluntarily cohabited as husband and wife.

§ 3556. Same; custody and maintenance of issue.

If there is issue of a marriage annulled on the ground of force or fraud, the court shall decree their custody to the innocent parent, and may provide for their education and maintenance out of the estate and property of the guilty party.

§ 3557. Party physically incapacitated.

A suit to annul a marriage on the ground of the physical incapacity of one of the parties shall be maintained only by the injured party against the party whose incapacity is alleged, and shall be brought within two years from the solemnization of the marriage.

§ 3558. Parties' confessions not sufficient proof.

A marriage shall not be declared null solely on the declarations or confessions of the parties, but the court shall require other satisfactory evidence of the facts on which the allegation of nullity is founded.

§ 3559. Sentences of nullity; conclusiveness.

A decree of nullity of marriage, if pronounced during the lifetime of the parties, shall be conclusive evidence of the invalidity of the marriage in all courts and proceedings; but if pronounced after the death of either of the parties to the marriage, it shall be conclusive only as against the parties in the action and those claiming under them.

*Divorce from Bond of Matrimony.***§ 3560. When decreed.**

A divorce from the bond of matrimony may be decreed:

I. For adultery in either party;

II. When either party is sentenced to confinement at hard labor in the state prison in this state for life, or for three years or more, and is actually confined at the time of the bringing of the libel; or when either party being without the state, receives a sentence for an equally long term of imprisonment by a competent court having jurisdiction as the result of a trial in any one of the other states of the United States, or in a federal court, or in any one of the territories, possessions or other courts subject to the jurisdiction of the United States, or in a foreign country granting

a trial by jury, and is actually confined at the time of the bringing of the libel;

III. For intolerable severity in either party;

IV. For wilful desertion for three consecutive years, or when either party has been absent for seven years and not heard of during that time;

V. On petition of the wife when the husband has sufficient pecuniary or physical ability to provide suitable maintenance for her and, without cause, grossly or wantonly and cruelly refuses or neglects so to do.

§ 3561. When not decreed.

A divorce shall not be decreed for a cause which accrued in another state or country before the parties lived together in this state as husband and wife, and while neither party was a resident of this state, unless the libellant has resided in this state at least two years and in the county where the libel is preferred at least six months preceding the term of court to which such libel is preferred.

§ 3562. Action, where to be brought.

Libels for divorce for other causes and for affirming or annulling the marriage contract, shall be heard and determined in the county in which the parties or one of them resides.

§ 3563. Year's residence required.

A divorce shall not be decreed for any cause, unless the libellant has resided in the state one year next preceding the filing of the libel in court.

Divorce from Bed and Board.

§ 3564. When decreed.

A divorce from bed and board forever or for a limited time may, when the libel is brought therefor, be decreed for any of the

causes for which a divorce from the bond of matrimony may be decreed.

§ 3565. **Separate maintenance.**

Upon decree of divorce from bed and board, the court may assign to the petitioner a separate maintenance out of the estate or property of the petitionee, in such manner and of such amount as it may deem necessary.

§ 3566. **Orders and decrees.**

Pending proceedings for, at the time of and after a decree of divorce from bed and board, the court may make such orders and decrees in respect to the property of the parties and concerning the care, custody, maintenance and education of their minor children, as it may make upon libels for a divorce from the bond of matrimony, and in orders and decrees thereon and in cases where the parents of minor children are living separate.

Instituting and Conducting Divorce Libels.

§ 3567. **County courts to try; exceptions.**

County courts shall hear and determine libels for divorce and for affirming or annulling the marriage contract, and may issue process of attachment, execution and other proper processes, necessary for the dispatch and final determination of such causes. The judges of the county court shall be triers of questions of fact as well as of law; their determination of questions of fact shall be final; and exceptions may be taken and questions of law heard in the supreme court as in other causes.

§ 3568. **Libel; contents; by whom signed.**

A libel shall state particularly the cause of complaint, and be signed by the libellant, if of sound mind and of the age of sixteen years; otherwise it may be signed by the guardian or person ad-

mitted by the court to prosecute the same, as next friend of the libellant.

§ 3569. Same, service of.

A libel with a summons to appear and answer thereto, shall be served upon the libellee in this state at least twelve days before the sitting of the court to which the same is returnable, by delivering to him a true and attested copy thereof, or by leaving such copy at the place of his usual abode; but service by leaving a copy at the place of his usual abode shall not be sufficient, if it appears that the libellee has not been at such abode after the service, unless it appears that he has had personal notice of the action.

§ 3570. Summons, who may sign.

The summons attached to a libel for divorce may be signed by the clerk or a judge of the county court to which it is returnable, or by a justice of the supreme court, a superior judge, a justice of the peace or a master in chancery.

§ 3571. Notice when libellee out of state.

If the libellee is without the state and the place of his domicile is known to the libellant, notice of pendency of the libel shall be given to the libellee in the manner prescribed in sections two thousand two hundred and seventy-four, two thousand two hundred and seventy-five and two thousand two hundred and seventy-six for notice to an absent defendant. If the libellee is without the state and his domicile is unknown to the libellant, he may file his libel in the office of the clerk of the court in the county where the same is required to be brought; and such clerk shall issue an order stating the substance of the libel or petition and requiring the adverse party to appear on the first day of the next stated term of the county court in such county and make answer to such libel or petition; and the libellant shall cause such order to be published in such newspaper as is directed by the order, three weeks successively, the last publication to be at least six weeks

previous to the commencement of the term at which the libellee is required to appear. Such order of notice for publication shall issue only upon satisfactory proof by way of affidavit that the libellant has made diligent inquiry and does not know where the libellee resides. A superior judge may grant to the libellant an order of notice by publication, or in such other manner as he deems proper or effectual.

§ 3572. Further notice.

When the libellee does not appear and the notice of the pendency of the libel is by publication, or when the notice is considered by the court defective or insufficient, it may continue the cause and may order further notice to be given.

§ 3573. Guardian to be appointed for insane libellee.

If the libellee is insane at the commencement or during the pendency of the libel the court shall appoint some suitable person as a guardian, to appear and answer for such party, as a guardian is appointed for an infant defendant in an action at common law.

§ 3574. Testimony how given; exclusion of public.

The testimony of witnesses shall be given orally in court and by deposition as in other causes; and the court may, in its discretion, exclude from the trial all persons except the officers of court and the parties in interest.

Orders Pending Action.

§ 3575. As to personal liberty of wife and care of children.

After the filing of a libel to annul a marriage or for a divorce, the county court in which the cause is pending, or a superior judge, may, on the petition of the wife, prohibit the husband from imposing restraint on her personal liberty during the pendency of the libel, and may, on the application of either party, make such

order concerning the care and custody of the minor children of the parties, during the pendency of the libel, as is deemed expedient and for the benefit of the children.

§ 3576. Temporary alimony.

After a libel for divorce is filed, the court in which the cause is pending, or a superior judge, may, on application of either party, on such notice to the adverse party as the court or judge directs, make such order in regard to temporary alimony and funds to support the wife and minor children, and maintain the litigation during the pendency of the libel, as is just.

§ 3577. Court may enjoin husband from conveying property.

When a libel for divorce is filed or pending, a superior judge may, during the pendency of the libel, or of a motion or prayer for alimony, or in any proceeding under this chapter, upon the application of either party, enjoin the libellee in such libel, motion or prayer, from conveying, concealing or interfering with the property or clothing of the party making such application, or that of such party's minor children, or from interfering with the possession, use and control of any property in the possession of either party and claimed by the other, and may make such mandatory or other orders in respect to the possession, control or use of the real and personal property of the wife, the minor children, the husband, or of the husband and wife jointly, as could be made by a chancellor on the same facts set forth and verified by oath in a bill of chancery, and may enjoin either party from conveying or removing from the state, during the pendency of such libel, motion or prayer, such portion of his or her property as, in the opinion of the judge, is necessary to secure the alimony which may be decreed, or the rights of either party, or the performance of any order or decree that may be made during the pendency of such libel.

§ 3578. A lien on property.

Such orders, when filed and recorded in the office of the clerk of a town or served upon a private corporation, shall be a lien upon such of the real and personal estate of the respondent in such town, and upon such of the stock of the respondent in such corporation, as is mentioned in the order.

*Enforcement of Liens.***§ 3579. Sale of property.**

If a party in a cause instituted under the provisions of this chapter shall be in default for the period of thirty days upon an order for the payment of money, made according to the provisions thereof, which shall have become a valid lien upon the real or personal property of such party or on the stock of such party in a corporation as provided in this chapter, the court before which such cause is pending, or a superior judge, may order to be sold at public sale the real or personal property and stock upon which such lien shall exist, or such portion thereof as shall be necessary to satisfy the cost of the sale and the amount in arrears at the time of such order of sale, or so much thereof as said court or judge shall designate.

§ 3580. Same.

If, in the opinion of the court or of said judge, the real estate upon which such lien exists, is so constituted as to render it impracticable to divide the same, the whole of such real estate may be ordered to be sold.

§ 3581. Same; execution.

Execution signed by the clerk of said court shall issue to carry the order of sale mentioned in the two preceding sections into effect, and shall be governed by all the provisions and limitations touching executions issued on judgments, so far as shall be consistent with the six following sections.

§ 3582. Disbursement of proceeds.

The sheriff or constable selling such property upon such execution shall, after deducting his lawful fees, pay the proceeds to the clerk of said court, who shall disburse such proceeds to the petitioner or other persons entitled to the same pursuant to the terms of such order.

§ 3583. Same.

If the terms of such order are not fully complied with, by the aforesaid payment by the clerk, the lien upon such property or stock shall attach to the balance of such proceeds; and such proceeds shall be retained by the clerk of said court or deposited in some savings bank, trust company or other banking institution in this state to the credit of said clerk in such manner as shall be directed in such order of sale.

§ 3584. Same.

Said clerk shall thereafterwards pay, from time to time, out of the proceeds so deposited or held by him, to said petitioner or other persons designated in such order, such amount as shall, from time to time, become due by the terms thereof, unless the person against whom such order is made shall deposit with the clerk other funds to carry out the terms of such order.

§ 3585. Same.

When the terms of such order have been fully and finally complied with, all of such proceeds in the hands of said clerk or deposited as aforesaid shall be paid to the party against whom such order is made.

§ 3586. Same; clerk's fees.

The clerk shall be entitled, for receiving and disbursing such funds, to be retained by him out of such proceeds, such compensation as shall be fixed in the order of sale.

§ 3587. Subsequent default; proceedings.

The same proceedings shall be had in case of any subsequent default after an order of sale has been made, as if such prior orders of sale had not been made.

*Property of Husband and Wife.***§ 3588. Wife to have her realty; exception.**

Upon the dissolution of a marriage by a divorce or decree of nullity, for any cause except that of adultery committed by the wife, the wife shall be entitled to the immediate possession of her real estate.

§ 3589. Wife may convey her realty in case of divorce from bed and board.

In all cases where a divorce from bed and board has been or shall be granted, the wife may convey her real estate without the signature or consent of her husband, and the laws of descent applicable to absolute divorce shall apply.

§ 3590. Alimony; husband to make sworn disclosure.

Upon dissolution of marriage, the court may decree to the wife such part of the real and personal estate of her husband, or such sum of money to be paid in lieu thereof by the husband, as it deems just, having regard to the circumstances of the parties respectively; and it may require the husband to disclose on oath, what real and personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof remains in his hands; and, in case the court decrees to the wife any real estate as such alimony, the wife shall cause a copy of such order and decree to be recorded in the office of the clerk of the town in which such real estate is situated, within thirty days from the adjournment of the court at which such decree was obtained.

§ 3591. Judge out of office may sign decree.

A judge of the county court may, after the expiration of his term of office, sign a decree for alimony as of the term when made.

§ 3592. Court may order money paid to trustee.

When part of the estate of the husband, or money in lieu thereof, is awarded to the wife, as provided in this chapter, the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it delivered or paid to one or more trustees, appointed by the court, to invest the same and apply the income thereof to the support and maintenance of the wife and minor children of the marriage, or any of them, in such manner as the court directs, and to pay over the principal sum to the wife and children in such proportions and at such times as is ordered by a final decree of the court in the premises. In the disposition of such income and of the principal sum, regard shall be had to the situation and circumstances of the wife and children, and the trustees shall give such bonds as the court requires for the faithful performance of their trust.

§ 3593. Allowance to husband when divorce decreed for wife's adultery.

When a divorce is decreed for adultery committed by the wife, the court may decree the husband such part of the real and personal estate of the wife, as it deems just, having regard to the circumstances of the parties respectively.

§ 3594. Security for payment of alimony.

When alimony or other annual allowance is decreed for the wife or children, the court may require sufficient security to be given for payment thereof, according to the terms of the decree.

§ 3595. Revision of alimony decree.

After a decree for alimony or other annual allowance for the wife or children, and also after a decree for the appointment of trustees to receive and hold property for the use of the wife or children, as hereinbefore provided, the court may, from time to time, on the petition of either party and due notice, revise and

alter its decree, respecting the amount of such alimony or other annual allowance and the payment thereof, and the appropriation and payment of the principal and income of the property so held in trust, and may make such decree respecting any of such matters as might have been made in the original action.

§ 3596. Costs on petition to revise.

Upon a petition to revise and alter a decree made by force of this chapter, the court may award costs to either party, as equity requires.

Care of Minor Children.

§ 3597. Orders as to.

When a marriage is annulled or a divorce granted, and at any time thereafter, upon petition of either of the parents, the court may make such other or further decree as it deems expedient concerning the care, custody and maintenance of the minor children of the parties, and may, on the petition of either of the parents, annul, vary or modify such order.

§ 3598. Same; when parents live separate.

When parents of minor children are living separate, the county court may, on the petition of either parent, make such decree concerning the care, custody, maintenance and education of the children, as it can in cases where the court grants a divorce, and may thereafter, on the petition of either of the parents, annul, vary or modify such decrees.

§ 3599. Proceedings under two preceding sections.

When petition is made under either of the two preceding sections, a summons shall be issued to the other party to appear at the court to which the petition is returnable, and show cause why the prayer of the petition should not be granted, which summons and the petition shall be served on said party twelve days prior to the session of the court; and, after the filing of such petition,

the county court in which the cause is pending, or any superior judge, may, on application of either party, make such order concerning the care and custody of the minor children during the pendency of the petition, as is deemed expedient and for the benefit of said children.

§ 3600. When husband deserts or fails to support wife.

When a husband fails, without just cause, to furnish suitable support for his wife, or has deserted her, or when the wife, for a justifiable cause, is actually living apart from her husband, the county court may, by its order, on the petition of the wife, or, if she is insane, on the petition of her guardian or next friend, prohibit the husband from imposing restraint on her personal liberty for such time as the court in such order directs, or until further order, and may, upon the application of the husband or wife, or of her guardian or next friend, make such orders as it deems expedient concerning the support of the wife and the care, custody, education and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them, shall remain, and may thereafter, from time to time, on similar application, revise and alter such order, or make a new order or decree, as the case requires. The petition may be brought in the county in which either of the parties resides, except that, if the petitioner has left the county in which the parties have lived together, the adverse party still residing therein, the petition shall be brought in that county.

§ 3601. Same; proceedings.

When petition is made as provided in the preceding section, a summons shall be issued to the other party to appear at the court to which the petition is returnable, and show cause why the prayer of the petition should not be granted, which summons and the petition shall be served on such party twelve days prior to the session of the court; and, after filing such petition, the county court in which the cause is pending, or a superior judge, may,

on application of either party, make such order concerning the care and custody of such minor children, or the support of the wife, during the pendency of the petition, as is deemed expedient and for the benefit of the wife or children; and such order, when filed and recorded in the office of the clerk of a town, or served upon a private corporation, shall be a lien upon such of the real estate and personal property of the petitionee in such town, and upon the stock of the petitionee in such corporation, as is mentioned in the order.

Remarriage.

§ 3602. Allowed; restriction.

When a marriage is dissolved pursuant to this chapter, the parties shall be deemed single and may lawfully marry again; but it shall not be lawful for the libellee to marry a person other than the libellant for three years from the time such divorce is granted, unless the libellant dies.

§ 3603. Penalty.

A person who violates a provision of the preceding section or lives in this state under a marriage relation forbidden by such section, shall be imprisoned in the state prison not more than five years nor less than one year.

General Provisions.

§ 3604. Divorced wife may be allowed to take maiden name.

The court, upon granting to a woman a divorce, may, unless good cause is shown to the contrary, allow her to resume her maiden name or the name of a former husband.

§ 3605. Court may change children's names.

The court may change the names of the minor children of divorced parents when application for that purpose is made in the libel for divorce.

§ 3606. Contempt.

A person who disobeys a lawful order or decree of a court or judge, made under the provisions of this chapter, may be proceeded against for contempt.

§ 3607. When mode of procedure not prescribed.

The county court may, in cases where the course of proceedings is not specially prescribed, hear and determine matters coming within the purview of this chapter, according to the usages of law applicable to such cases.

CHAPTER 163**MARRIAGE.****GENERAL PROVISIONS.****§ 3510. Man not to marry relatives named.**

A man shall not marry his mother, grandmother, stepmother, daughter, granddaughter, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, sister, brother's daughter, sister's daughter, father's sister or mother's sister.

§ 3511. Woman not to marry relatives named.

A woman shall not marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother, brother's son, sister's son, father's brother or mother's brother.

§ 3512. Affinity bars, though marriage dissolved.

In the cases mentioned in the two preceding sections, if the relationship is founded on a marriage, the prohibition shall con-

tinue in force notwithstanding the dissolution of such marriage by death or divorce, unless the divorce is for a cause which shows the marriage to have been originally unlawful or void.

§ 3513. Marriage contracted while one in force.

Marriages contracted while either party has a former wife or husband living shall be void, unless the former marriage has been dissolved.

§ 3514. Marriage of resident void in this state, void if entered into in another state.

If a person residing and intending to continue to reside in this state, who is prohibited from contracting marriage under the laws of this state, goes into another state or country and there contracts a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state, with the same effect as though such prohibited marriage had been entered into in this state.

§ 3515. Marriage prohibited if void in state of residence.

A marriage shall not be contracted in this state by a person residing and intending to continue to reside in another state or jurisdiction, if such marriage would be void if contracted in such other state or jurisdiction, and every marriage solemnized in this state in violation of this section shall be null and void.

§ 1894. Husband and wife.

Husband and wife shall be competent witnesses for or against each other in all causes, civil or criminal, except that neither shall be allowed to testify against the other as to a statement, conversation, letter or other communication made to the other or to another person; nor shall either be allowed in any case to testify as to a matter which, in the opinion of the court, would lead to a

violation of marital confidence, but nothing in this section shall be construed so as to prevent a libelant and libelee from testifying as to all matters in divorce causes.

Exclusion of Public.

§ 1485. Powers of court.

When a cause of scandalous or obscene nature is on trial, the presiding judge or the justice shall exclude therefrom all minors, unless necessarily present as parties or witnesses, and may, in his discretion, exclude all persons not so present.

VIRGINIA.*Code, 1918.***CHAPTER 205.****DIVORCES.**

- SECTION 5100.** Suit to annul a marriage.
5101. Exception to the preceding section.
5102. Suit to affirm a marriage.
5103. Divorces from bond of matrimony.
5104. Divorces from bed and board.
5105. Jurisdiction of suits to affirm or annul marriages, or to obtain divorces; when such suits are maintainable.
5106. How instituted and conducted.
5107. What orders the court may make pending the suit; allowances for maintenance of the woman, etc.
5108. Order of publication against nonresident defendant.
5109. Testimony may be required to be given orally; how certified; same footing as deposition.
5110. When divorce for adultery not to be granted.
5111. Court, on dissolving marriage, may decree as to estate and maintenance of parties, and custody, etc., of children; provision for revision of decree.
5112. Divorce from bed and board, what the court may decree; effect thereof.
5113. Dissolution of bond of matrimony; neither party to marry for six months.
5114. When court may restrain guilty party from marrying again.
5115. When and how a decree for divorce from bed and board may be revoked, or may be merged into a decree of divorce from the bonds of matrimony.
5116. To prohibit advertising of any offer to obtain divorces.

§ 5100. Suit to annul a marriage.

When a marriage is supposed to be void for any of the causes mentioned either in section five thousand and eighty-seven, five thousand and eighty-eight, five thousand and eighty-nine, or five

thousand and ninety, either party may, except as is provided in the next section, institute a suit for annulling the same; and, upon due proof of the nullity of the marriage, it shall be decreed to be void by a decree of divorce or nullity.

§ 5101. Exception to the preceding section.

A party who, at the time of such marriage as is mentioned in section five thousand and ninety, was capable of consenting, with a party not so capable, shall not be permitted to institute a suit for the purpose of annulling such marriage.

§ 5102. Suit to affirm a marriage.

When the validity of any marriage shall be denied or doubted by either of the parties, the other party may institute a suit for affirming the marriage, and upon due proof of the validity thereof, it shall be decreed to be valid, and such decree shall be conclusive upon all persons concerned.

§ 5103. Divorces from bond of matrimony.

A divorce from the bond of matrimony may be decreed:

For adultery;

For natural or incurable impotency of body existing at the time of entering into the matrimonial contract;

Where either of the parties subsequent to the marriage has been sentenced to confinement in the penitentiary of this state or of any other state of the United States or to confinement in a penitentiary of the United States, and cohabitation has not been resumed after such confinement (in which case no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights);

Where, prior to the marriage, either party, without the knowledge of the other, had been convicted of an infamous offense:

Where either party charged with an offense punishable with death or confinement in the penitentiary has been indicted, is a fugitive from justice, and has been absent for two years;

Where either party wilfully deserts or abandons the other for three years such divorce may be decreed to the party abandoned; and

Where, at the time of the marriage, the wife without the knowledge of the husband, was with child by some person other than the husband;

Or prior to such marriage had been, without the knowledge of her husband, a prostitute, such divorce may be decreed to the husband.

But no such divorce shall be decreed if it appears that the party applying for the same has cohabited with the other after knowledge of such conviction of an infamous offense, or a husband has cohabited with the wife after the knowledge of the fact that she was with child or had been a prostitute as aforesaid.

§ 5104. Divorces from bed and board.

A divorce from bed and board may be decreed for cruelty, reasonable apprehension of bodily hurt, abandonment or desertion.

§ 5105. Jurisdiction of suits to affirm or annul marriages, or to obtain divorces; when such suits are maintainable.

The circuit and corporations courts, on a chancery side thereof, and every court of this state exercising chancery jurisdiction, shall have jurisdiction of suits for annulling or affirming marriages, and for divorces. No suit for annulling a marriage or for divorce shall be maintainable, unless one of the parties has been domiciled in this state for at least one year preceding the commencement of the suit; nor shall any suit for affirming a marriage be maintainable, unless one of the parties be domiciled in this state at the time of bringing such suit. The suit, in either case, shall be brought in the county or corporation in which the parties last cohabited, or (at the option of the plaintiff), in the county or corporation in which the defendant resides, if a resident of this state, and if not

a resident, in the county or corporation in which the plaintiff resides.

§ 5106. How instituted and conducted; marriage license to be filed with bill.

Such suit shall be instituted and conducted as other suits in equity, except that the bill shall not be taken for confessed, nor shall a divorce be granted on the uncorroborated testimony of the parties or either of them; and, whether the defendant answer or not, the cause shall be heard independently of the admissions of either party in the pleadings or otherwise; and no process or notice in such proceedings shall be served in this state, except by officers authorized to serve the same. Costs may be awarded to either party as equity and justice may require.

With every bill praying a divorce, whether a mensa et thoro or a vinculo matrimonii, there shall be filed a duly certified copy of the marriage license with certificate of time and place of marriage by the person who performed the ceremony if the marriage is alleged to have taken place in this state, except where it is alleged in said bill that such certified copy cannot be obtained, unless the same shall have been lost or destroyed. (As amended by L. 1920, ch. 334.)

§ 5107. What orders the court may make pending the suit; allowances for maintenance of the woman, etc.

The court in term or the judge in vacation may, at any time pending the suit, in the discretion of such court or judge, make any order that may be proper to compel the man to pay any sums necessary for the maintenance of the woman and to enable her to carry on the suit, or to prevent him from imposing any restraint on her personal liberty, or to provide for the custody and maintenance of the minor children of the parties during the pendency of the suit, or to preserve the estate of the man, so that it be forthcoming to meet any decree which may be made in the suit, or to compel him to give security to abide such decree.

§ 5108. Order of publication against non-resident defendant.

When in a suit for divorce, either a vinculo matrimonii or a mensa et thoro, affidavit shall be filed that the defendant is not a resident of the state of Virginia, an order of publication shall be entered against said defendant, by the clerk of the court wherein such suit is pending, either in term time or vacation, which order shall state the object of the suit and the grounds thereof, as shown by said application, and said order of publication shall be published as required by law. No depositions in said suit shall be commenced until at least fifteen days shall have elapsed after said order of publication shall have been duly published as required by law.

§ 5109. Testimony may be required to be given orally; how certified; same footing as deposition.

In any suit for divorce the trial court may require the whole or any part of the testimony to be given orally in open court, and if either party desires it, such testimony and the rulings of the court on the exceptions thereto, if any, shall be reduced to writing, and the judge shall certify that such evidence was given before him and such rulings made. When so certified the same shall stand on the same footing as a deposition regularly taken in the cause.

§ 5110. When a divorce for adultery not to be granted.

When the suit is for divorce for adultery, the divorce shall not be granted, if it appear that the parties voluntarily cohabited after the knowledge of the fact of adultery, or that it occurred more than five years before the institution of the suit, or that it was committed by the procurement or connivance of the plaintiff.

§ 5111. Court, on dissolving marriage, may decree as to estate and maintenance of parties, and custody, etc., of children; provision for revision of decree.

Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from

bed and board, the court may make such further decree as it shall deem expedient concerning the estate and maintenance of the parties, or either of them, and the care, custody, and maintenance of their minor children, and may determine with which of the parents the children, or any of them, shall remain; and the court may, from time to time afterwards, on petition of either of the parents, revise and alter such decree concerning the care, custody, and maintenance of the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require.

§ 5112. Divorce from bed and board, what the court may decree; effect thereof.

In granting a divorce from bed and board, the court may decree that the parties be perpetually separated and protected in their persons and property. Such decree shall operate upon property thereafter required, and upon the personal rights and legal capacities of the parties, as a decree for a divorce from the bond of matrimony, except that neither party shall marry again during the life of the other.

§ 5113. Dissolution of bond of matrimony; neither party to marry for six months.

On the dissolution of the bond of matrimony for any cause arising subsequent to the date of the marriage, neither party shall be permitted to marry again for six months from the date of such decree, and such bond of matrimony shall not be deemed to be dissolved as to any marriage subsequent to such decree, or in any prosecution on account thereof, until the expiration of such six months.

§ 5114. When court may restrain guilty party from marrying again.

In granting a divorce for adultery, the court may decree that the guilty party shall not marry again at any time; in which case,

the bond of matrimony shall be deemed not to be dissolved as to any future marriage of such party, or in any prosecution on account thereof. But, for good cause shown, so much of any decree as prohibits the guilty party from marrying again, may be revoked and annulled, at any time after the expiration of six months from the date of such decree, by the same court by which it was pronounced.

§ 5115. When and how a decree for divorce from bed and board may be revoked, or may be merged into a decree of divorce from the bond of matrimony.

When a decree for a separation forever, or a limited period, has been made in a suit for a divorce from bed and board, it may at any time thereafter, upon the joint application of the parties, and the production by them of satisfactory evidence of their reconciliation, be revoked by the same court which made it and under such regulations and restrictions as the court may impose. And when three years shall have elapsed after the entering of a decree for divorce from bed and board, upon any other ground than that of desertion, and in any case where desertion is the ground for divorce when three years shall have elapsed from the time of such desertion, upon application of the party injured, and upon the production of satisfactory evidence, whether taken theretofore or in support of such application, the court may merge such decree for divorce from bed and board into a decree for a divorce from the bonds of matrimony; if the court shall be of opinion, from the evidence so taken, that no reconciliation has taken place, or is probable, and that a separation has continued without interruption since the granting of such divorce.

§ 5116. To prohibit advertising of any offer to obtain divorces.

Whosoever prints, publishes, distributes, or circulates, or causes to be printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure, or aid in pro-

curing, any divorce, or the severance, dissolution, or annulment of any marriage, and by such publication as above mentioned offering to engage, appear, or act as attorney or counsel in any suit for alimony, divorce, or the severance, dissolution, or annulment of marriage, either in this state or elsewhere, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars nor more than three hundred dollars, and the person so convicted shall, in addition to the above penalty, be disbarred from practicing as such attorney at law in the courts of this commonwealth. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state or orders of any court.

§ 5084. Marriages within certain degrees prohibited.

No man shall marry his mother, grandmother, stepmother, sister, daughter, granddaughter, half-sister, aunt, son's widow, wife's daughter or her granddaughter, or step-daughter, brother's daughter, or sister's daughter. If any man has prior to June fifteenth, nineteen hundred and ten, married his brother's widow or the widow of his brother's or sister's son or his uncle's widow, or his son's widow or step-daughter, such marriage is hereby declared to be legal and valid and exempt from the penalties prescribed by existing laws.

§ 5085. The same.

No woman shall marry her father, grandfather, step-father, brother, son, grandson, half-brother, uncle, daughter's husband, husband's son, or his grandson or step-son, brother's son, sister's son, or husband of her brother's or sister's daughters.

§ 5086. Prohibition continued notwithstanding dissolution of marriage.

In the cases mentioned in the two preceding sections, in which the relationship is founded on a marriage, the prohibition shall con-

tinue in force, notwithstanding the dissolution of such marriage by death or by divorce, unless the divorce be for a cause which made the marriage originally unlawful or void.

§ 5087. What marriages are void without decree.

All marriages between a white person and a colored person, and all marriages which are prohibited by law on account of either of the parties having a former wife or husband then living, shall be absolutely void, without any decree of divorce, or other legal process.

§ 5088. What marriages are void from time declared or time of conviction.

All marriages which are prohibited by law on account of consanguinity or affinity between the parties, and all marriages solemnized when either of the parties was insane, or incapable from physical causes of entering into the marriage state, shall, if solemnized within this state, be void from the time they shall be so declared by a decree of divorce or nullity, or from the time of the conviction of the parties, under section forty-five hundred and forty.

§ 5089. Marriage of persons leaving state to evade the law.

If any persons, resident in this state, one of whom is a white person and the other a colored person, or one of whom has a former husband or wife living, or who are within the degree of relationship of consanguinity or affinity within which marriages are prohibited by the law of this state, shall, with the intention of returning to reside in this state, go into another state or country and there intermarry, and return to and reside in this state, cohabiting as man and wife, such marriage shall be governed by the same law, in all respects as if it had been solemnized in this state.

§ 5090. When marriage of party under age of consent void without decree of divorce; age of consent.

In case of a marriage solemnized when either of the parties was under the age of consent, if they shall separate during such non-age, and not cohabit afterwards, the marriage shall be deemed void, without any decree of divorce, or other legal process. The age of consent of the male shall be fourteen years, and of the female twelve years.

WASHINGTON.*Remington's Codes and Statutes, 1915.*¹

CHAPTER 12.

DIVORCE AND ALIMONY.

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 984. Resident may apply, when.
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CHAPTER 12.

DIVORCE AND ALIMONY.

§ 982. Grounds for divorce.

Divorces may be granted by the superior court on application of the party injured, for the following causes:

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1. When the consent to the marriage of the party applying for the divorce was obtained by force or fraud, and there has been no subsequent voluntary cohabitation.

2. For adultery on the part of the wife or of the husband, when unforgiven, and the application is made within one year after it shall have come to the knowledge of the party applying for a divorce.

3. Impotency.

4. Abandonment for one year.

5. Cruel treatment of either party by the other, or personal indignities rendering life burdensome.

6. Habitual drunkenness of either party, or the neglect or refusal of the husband to make suitable provisions for his family.

7. The imprisonment of either party in a state penal institution if complaint is filed during the term of such imprisonment; and a divorce may be granted upon application of either party for any other cause deemed by the court sufficient, and the court shall be satisfied that the parties can no longer live together.

8. Where the parties are estranged and have lived separate and apart for eight years or more and the court shall be satisfied that the parties can no longer live together.

9. In case of incurable chronic mania or dementia of either party, having existed for ten years or more, the court may, at its discretion, grant a divorce. (As amended by L. 1917, ch. 106.)

§ 983. Annulment of marriage.

When there is any doubt as to the facts rendering a marriage void, either party may apply for, and on proof obtain, a decree of nullity of marriage.

§ 984. Resident may apply, when.

Any person who has been a resident of the state for one year may file his or her complaint for a divorce or decree of nullity of marriage, under oath, in the superior court of the county where

he or she may reside, and like proceedings shall be had thereon as in civil cases.

§ 985. Proof required.

When the defendant does not answer, or, answering, admits the allegations in the complaint, the court shall require proof before granting a divorce or a decree of nullity.

§ 986. Defendant may file cross-complaint.

The defendant may, in addition to his or her answer, file [a] cross-complaint for divorce, and the court may, in such case, grant a divorce, if any, in favor of either party, or as an [on] application of both.

§ 987. Both parties deemed applying.

Both parties shall be considered as applying for a divorce when the complaints of both are filed in the same action, and when the defendant, by his or her cross-complaint, also applies for divorce.

§ 988. Interlocutory orders.

Pending the action for divorce the court, or judge thereof, may make, and by attachment enforce, such orders for the disposition of the persons, property and children of the parties as may be deemed right and proper, and such orders relative to the expenses of such action as will insure to the wife an efficient preparation of her case, and a fair and impartial trial thereof; and on decreeing or refusing to decree a divorce, the court may, in its discretion, require the husband to pay all reasonable expenses of the wife in the prosecution or defense of the action, when such divorce has been granted or refused, and give judgment therefor.

§ 989. Decree — disposition of property.

In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable,

having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody, and support and education of the minor children of such marriage.

§ 990. Divorce dissolves marriage as to both parties.

Whenever judgment of divorce from the bonds of matrimony is granted by the courts in this state, the court shall order a full and complete dissolution of the marriage as to both parties.

§ 991. Remarriage pending appeal unlawful.

Whenever a judgment or decree of divorce from the bonds of matrimony is granted by the courts in this state, neither party thereto shall be capable of contracting marriage with a third person until the period in which an appeal may be taken has expired; and in case an appeal is taken then neither party shall intermarry with a third person until the cause has been fully determined; and it shall be unlawful for any divorced person to intermarry with any third person within six months from the date of the entry of the judgment or decree granting the divorce, or in case an appeal is taken it shall be unlawful to contract such marriage until judgment be rendered on said appeal in the supreme court. All marriages contracted in violation of the provisions of this section, whether contracted within or without this state, shall be void.

§ 992. Decree to prohibit remarriage within six months.

Whenever judgment or decree of divorce from the bonds of matrimony is granted by any court in this state, such judgment or decree shall expressly prohibit the plaintiff and defendant named therein from contracting any marriage with third parties within the period of six months from the date of the entry of such judg-

ment or decree, and in case either party to said decree shall remarry within said period, he or she shall be deemed guilty of contempt of the court granting such judgment or decree, and shall be proceeded against and punished in like manner as in other cases of contempt of court.

§ 993. Prosecuting attorney to prosecute for contempt.

It shall be the duty of the prosecuting attorney of each county to prosecute for contempt any person violating the provisions of any decree mentioned in the last section rendered by any superior court of his county.

§ 994. Name of wife changed.

In all actions for a divorce, if a divorce be granted, the court may, for just and reasonable cause, change the name of the female, who shall thereafter be known and called by such name as the court shall in its order or decree appoint.

§ 995. Prosecuting attorney to resist undefended actions.

Whenever a complaint for divorce remains undefended, it shall be the duty of the prosecuting attorney to resist such complaint; but no prosecuting attorney shall be employed in or allowed to conduct any action for a divorce on the part of the plaintiff or applicant in the courts of this state; nor shall any prosecuting attorney be allowed to resist a complaint for divorce in those cases where the defendant does not appear, or appearing admits the allegations of the complaint, if the attorney for the applicant is a partner of such prosecuting attorney in the practice of law, or keeps his office with such prosecuting attorney; but in all such cases the court or judge before whom the case is to be heard shall appoint an attorney to resist the complaint, who shall be entitled to the compensation allowed by law to prosecuting attorneys in such cases.

§ 996. Trial — appeal — proceedings.

In all instances where the superior court shall grant a divorce, it shall be for cause distinctly stated in the complaint, and proved, and found by the court, and the court shall state the facts found upon which the decree is rendered; and when either party shall signify a desire to appeal from any of the orders of the court, in the disposition of the property or of the children, the court shall certify the evidence adduced on the trial, and the supreme court shall be possessed of the whole case as fully as the superior court was, and may reverse, modify, or affirm said judgment, according to the real merits of the case.

§ 997. Practice — trial without jury.

The practice in civil actions shall govern all proceedings in the trial of actions for divorce, except that trial by jury is dispensed with.



§ 15. Original jurisdiction of superior courts.

The superior courts shall have original jurisdiction . . . of all matters . . . of divorce, and for annulment of marriage.



§ 228. Service of summons by publication.

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4. When the action is for divorce in the cases prescribed by law;

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§ 2463. Advertising for divorce business.

Every person who shall cause to be published in any newspaper, magazine or other publication, or who shall cause or allow to be

posted or distributed, in any place frequented by the public, any card or notice offering to procure or obtain, or to directly or indirectly aid in procuring or obtaining any divorce or the dissolution or nullification of any marriage, or offering to appear or act as attorney or counsel in any suit for divorce, alimony, or the dissolution or nullification of any marriage, either in this state or elsewhere, shall be guilty of a misdemeanor. Any advertisement stating or intimating that any person is a specialist in "the laws of husband and wife" or "domestic relations," or is engaged in the business of procuring divorces, shall be considered a violation of this act. (As amended by L. 1917, ch. 100.)

§ 7150. Who may contract.

Marriage is a civil contract which may be entered into by males of the age of twenty-one years, and females of the age of eighteen years, who are otherwise capable.

§ 7151. Marriages prohibited in certain cases — consanguinity, etc.

Marriages in the following cases are prohibited:—

1. When either party thereto has a wife or husband living at the time of such marriage;

2. When the parties thereto are nearer of kin to each other than second cousins, whether of the whole or half-blood, computing by the rules of the civil law;

3. It shall be unlawful for any man to marry his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter, or sister's daughter; it shall be unlawful for any woman to marry her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's

husband, brother's son, or sister's son; and if any person being within the degrees of consanguinity or affinity in which marriages are prohibited by this section carnally know each other, they shall be deemed guilty of incest, and shall be punished by imprisonment in the state penitentiary for a term not exceeding ten years and not less than one year.

§ 7152. Same — age of criminal or diseased persons, etc.

No woman under the age of forty-five years, or man of any age, except he marry a woman over the age of forty-five years, either of whom is a common drunkard, habitual criminal, epileptic, imbecile, feeble-minded person, idiot or insane person, or person who has theretofore been afflicted with hereditary insanity, or who is afflicted with pulmonary tuberculosis in its advanced stages, or any contagious venereal disease, shall hereafter intermarry or marry any other person within this state.

§ 7162. Marriage, when voidable.

When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party laboring under the disability, or upon whom the force or fraud is imposed.

WEST VIRGINIA.*Hogg's West Virginia Code, 1914.*¹

CHAPTER 64.

OF DIVORCES.

- SECTION 3636. Void marriages.
 3637. Age of consent.
 3638. Solemnization of marriages out of state to evade laws.
 3639. Action to affirm or annul marriage—decree—presumptions of validity.
 3640. Grounds for divorce a vinculo.
 3641. Grounds for divorce a mensa.
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 3643. Procedure—decree pro confesso—hearing—admissions—costs.
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 3646. Decree of dissolution a vinculo or a mensa—additional decree—custody and maintenance of minor children—amendments.
 3647. Decree a mensa—operation and effect.
 3648. Amendment or revocation of decree a mensa.

§ 3636. Void marriages.

All marriages between a white person and a negro; all marriages which are prohibited by law on account of either of the parties having a former wife or husband then living; all marriages which are prohibited by law on account of consanguinity or affinity between the parties; all marriages solemnized when either of the parties was insane, or incapable from physical causes of entering into the marriage state, or under the age of

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consent, shall, if solemnized within this state, be void from the time they are so declared by a decree of divorce or nullity.

§ 3637. Age of consent.

The age of consent of the male shall be eighteen years, and of the female sixteen years.

§ 3638. Solemnization of marriages out of state to evade laws.

If any person resident in this state shall, in order to evade the law, and with an intention of returning to reside in this state, go into another state or country, and there intermarry in violation of the provisions of the first section of this chapter, and shall afterwards return and reside here, co-habiting as man and wife, such marriage shall be governed by the same law, in all respects, as if it had been solemnized in this state.

§ 3639. Action to affirm or annul marriage — decree — presumptions of validity.

When a marriage is supposed to be void, or any doubt exists as to its validity, for any of the causes mentioned in the first section of this chapter, either party may institute a suit for affirming or annulling the same, and upon hearing the proofs and allegations of the parties, the court shall render a decree affirming or annulling the marriage, according to the right of the case. In every such case, and in every other case where the validity of a marriage is called in question, it shall be presumed that the marriage is valid, unless the contrary be clearly proven.

§ 3640. Grounds for divorce a vinculo.

A divorce from the bond of matrimony may be decreed for adultery, or for natural or incurable impotency of body, existing at the time of entering into the matrimonial contract; where either of the parties is sentenced to confinement in the penitentiary (and no pardon granted to the party so sentenced shall restore

such party to his or her conjugal rights); where, prior to the marriage, either party, without the knowledge of the other, had been convicted of an infamous offence; where either party wilfully abandons or deserts the other for three years, a divorce may be decreed to the party abandoned; where, at the time of marriage, the wife, without the knowledge of the husband, was enciente by some person other than the husband, or prior to such marriage had been without the knowledge of the husband, notoriously a prostitute, such divorce may be decreed to the husband; or where, prior to such marriage, the husband, without the knowledge of the wife, had been notoriously a licentious person, such divorce may be decreed to the wife; but no such divorce shall be decreed, if it appear that the party applying for the same has cohabited with the other after knowledge of such conviction of an infamous offence, or has cohabited with the wife after knowledge of the fact that she was enciente or had been a prostitute, or has cohabited with the husband after the knowledge of the fact that he had been notoriously a licentious person as aforesaid.

§ 3641. Grounds for divorce a mensa.

A divorce from bed and board may be decreed for cruel or inhuman treatment, reasonable apprehension of bodily hurt, abandonment, desertion, or where either party after marriage becomes a habitual drunkard. A charge of prostitution made by the husband against the wife falsely shall be deemed cruel treatment, within the meaning of this section.

§ 3642. Jurisdiction — residence — venue — suits by wife.

The circuit court, on the chancery side thereof, shall have jurisdiction of suits for annulling or affirming marriages, or for divorces. If the marriage was not performed in the United States of America, no such suit shall be maintainable unless the plaintiff is a citizen of the United States, or the cause of action arose within the United States; and in no case shall a suit for divorce be maintainable unless the plaintiff be an actual bona fide citizen

of this state, and shall have resided in the state for at least one year immediately preceding the bringing of the suit. The suit shall be brought in the county in which the parties last cohabited, or (at the option of the plaintiff) in the county in which the defendant resides, if a resident of this state; but if not, then in the county in which the plaintiff resides. Such suit may be brought and prosecuted by the wife in her own name, without a next friend, and a decree may be entered in the case upon an order of publication had, published and posted, as provided in chapter one hundred and twenty-four of the code of West Virginia; but such publication shall be in a newspaper of general circulation in the county. (As amended by L. 1915, ch. 73.)

§ 3643. Procedure — verification — decree pro confesso — hearing — admissions — costs.

Such suits shall be instituted and conducted as other chancery suits, except as hereinafter provided. All pleadings shall be verified by the party in whose name they are filed; but the bill shall not be taken for confessed, and whether the defendant answers or not, the case shall be tried and heard independently of the admissions of either party in the pleadings, or otherwise. Costs may be awarded to either party as equity and justice require, and in all cases the court, in its discretion, may require payment of costs at any time, and may suspend or withhold any order or decree until the costs are paid. (As amended by L. 1915, ch 73.)

§ 3644. Orders pending proceedings — security.

The court in term, or the judge in vacation, may at any time pending the suit, make any order that may be proper to compel the man to pay any sum necessary for the maintenance of the woman, and to enable her to carry on the suit, or to prevent him from imposing any restraint on her personal liberty, or to provide for the custody and maintenance of the minor children of the parties, during the pendency of the suit, or to preserve the estate of the

man, so that it be forthcoming to meet any decree which may be made in the suit, or to compel him to give security to abide such decree, or to compel the man to deliver to the woman any of her separate estate, which may be in his possession or control or to prevent him from interfering with her separate estate.

§ 3645. Adultery — corroboration — time of commission — confession — procurement or connivance.

No divorce for adultery shall be granted on the uncorroborated testimony of a prostitute, or a *particeps criminis*, or when it appears that the parties voluntarily cohabited after the knowledge of the adultery, or that it occurred more than three years before the institution of the suit, or that it was committed by the procurement or connivance of the plaintiff. (As amended by L. 1915, ch. 73.)

§ 3646. Decree of dissolution, a vinculo or a mensa — additional decree — custody and maintenance of minor children — amendments.

Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from bed and board, the court may make such further decree as it shall deem expedient, concerning the estate and maintenance of the parties, or either of them, and the care, custody and maintenance of the minor children, and may determine with which of the parents the children, or any of them, may remain; and the court may, from time to time afterward, on the petition of either of the parties, revise or alter such decree concerning the care, custody and maintenance of the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require, and whether the divorce be granted or not, if the parties are living separate and apart from each other, the court may make such order or decree, concerning the care, custody and maintenance, of the minor children, or any of them, and may

determine with which of the parents, the children, or either or any of them may remain, as to the court may seem proper, and the benefit of the child or children may require.

§ 3647. Decree a mensa — operation and effect.

In granting a divorce from bed and board, the court may decree that the parties be perpetually separated and protected in their persons and property. Such decree shall operate upon property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a decree for a divorce from the bond of matrimony, except that neither party shall marry again during the life of the other.

§ 3648. Amendment or revocation of decree a mensa.

When a decree for a separation forever, or for a limited period, shall have been pronounced in a suit for divorce from bed and board, it may be revoked at any time thereafter by the same court by which it was pronounced under such regulations and restrictions as the court may impose, upon the joint application of the parties, and upon their producing satisfactory evidence of their reconciliation; and when a divorce from bed and board has been decreed for abandonment, or desertion, or other cause, and two years shall have elapsed from the bringing of the suit wherein such decree is entered, without such reconciliation, the court may upon the application of the injured party, and the production of satisfactory evidence, taken in support of such application, decree a divorce from the bonds of matrimony and upon such application the court may read and consider the evidence in the cause taken and filed in the former hearing: Provided, the court shall be of the opinion that no reconciliation is probable, and this shall apply to such decrees heretofore, as well as hereafter entered.

§ 3648a. Remarriage of parties.

Neither party to a divorce suit shall again marry within six months from the date of a decree of divorce; but this provision

shall not apply to, or prohibit the divorced parties from being remarried to each other at any time. The court may further prohibit the guilty party from marrying within a certain time, to be fixed in the decree, not to exceed five years from the date of the decree; and any marriage contracted by the parties, or either of them, except a re-marriage by the divorced parties to each other, within the prohibited period, shall be void, and the party shall be criminally liable the same as if no divorce had been granted. The court may, at any time after the expiration of one year, modify the restraint imposed upon the guilty party, upon it being shown that such person, by reason of his or her life and conduct, since the date of the decree, is entitled to such relief. (As added by L. 1915, ch. 73.)

§ 3648b. Trial — depositions — reference.

If the process has been served on the defendant sixty days before the first day of the term of court, or if the defendant is a non-resident, and has been proceeded against by an order of publication which has been fully completed at least thirty days before the first day of the term, the case shall be placed on the docket for trial and the same shall be tried before the court in chambers, and all witnesses shall appear and testify at the trial the same as witnesses in an action at law; and the law governing the taking and reading of depositions in an action at law shall apply to depositions in the trial of divorce cases; provided, the court may, instead of proceeding with the case under this section, refer the same to a commissioner in chancery, or a special commissioner, as hereinafter provided. (As added by L. 1915, ch. 73.)

§ 3648c. Divorce commissioners.

The circuit court of each county, or the judge thereof in vacation, may in his discretion, appoint a competent attorney in each county as a commissioner in chancery, to investigate divorce cases, who shall be designated as "divorce commissioner." He shall

be a man of good moral character, or standing in his profession, and a resident of the county for which he is appointed, and shall, before assuming the duties of such commissioner, take the oath required of other commissioners in chancery; said commissioner shall discharge his duties and hold his office at the pleasure of the court, and may be removed at any time by the court. It shall be the duty of the divorce commissioner to investigate all divorce suits; to appear at all trials and examine witnesses when necessary, and defend the interests of the state; to bring before the court, at the trial, all witnesses necessary to develop the true facts, and generally take all necessary steps to prevent fraud and collusion in divorce cases. For which services he shall be allowed the sum of not less than five dollars nor more than fifteen dollars, to be fixed by the court, which amount shall be taxed as a part of the costs of the case. (As added by L. 1915, ch. 73.)

§ 3648d. Same — entitled to notice of trial and defendant's address.

The plaintiff shall, in every case, at least thirty days before the first day of the term at which it is expected to try the case before the court, give the divorce commissioner notice in writing that a trial will be demanded. If the plaintiff has not in the bill stated the residence and post office address of the defendant, he shall furnish it to the commissioner at the time of giving such notice; but if the residence and post office address of the defendant are unknown to the plaintiff, at the time of giving due notice, an affidavit of this fact, by the plaintiff, delivered to the commissioner with the notice will be sufficient. (As added by L. 1915, ch. 73.)

§ 3648e. Reference — taking testimony outside county — commissioner's compensation — costs.

Instead of proceeding with the cause under the provisions of the fifteenth section of this act, the court may, in its discretion, refer it to one of the commissioners in chancery of such court, or to

a special commissioner, who shall take and return the testimony in such cause, together with a report of all such facts as the commissioner may be able to obtain as to property rights of the parties, their income, their character, conduct, health, habits, their children, and their respective places of residence from the time of their marriage up to the time of such report, and any other matter deemed necessary by the court, and all such facts so reported shall be considered by the court in passing on the merits of the cause, whether the same be referred to in the pleadings or evidence, or not.

If testimony is to be taken in a county other than that in which the cause is pending, the same shall be taken before one of the commissioners in chancery of the circuit court of the county in which the same is taken. If testimony is taken of witnesses residing out of the state of West Virginia, the same shall be taken before some person duly authorized to take depositions in divorce cases in the state where taken. If depositions are taken out of the county in which the cause is pending, or without the state, the same shall be, by the person taking the same, filed with or forwarded to the clerk of the court wherein such cause is pending, and on receipt of such depositions said clerk shall lay the same before the commissioner to whom said cause has been referred, who shall consider the same in connection with his report hereinbefore mentioned. The person before whom depositions are taken hereunder, shall be personally present at the time and place of taking depositions, and no depositions shall be taken or read in the cause unless it appear therefrom that such person was personally present during the taking of same. It is hereby made the duty of the person before whom such depositions are taken, to see that all witnesses are so examined as to elicit all facts within their knowledge pertaining to the cause. If any person before whom any such depositions are taken certify falsely as to his presence at the taking of said depositions, he shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars. The court in which such cause is

pending may refer the same as often as in its judgment justice requires, and may, if it so elect, summons any one to appear before said court, and give evidence with reference thereto, and base its finding on such oral evidence solely. The commisssioner shall be allowed for his services the same compensation as is allowed in other chancery causes, and all costs, including stenographer's fees, shall be taxed as in all other chancery causes. (As added by L. 1915, ch. 73.)

§ 3648f. Sealing papers after final decree.

When a final decree is entered in any divorce cause the clerk shall immediately seal in a package all the testimony, bill and other papers, and the same shall not be again reopened unless by order of the court entering such decree or his successor in office. (As added by L. 1915, ch. 73.)

§ 3609. Marriage within certain degrees of relationship prohibited.

No man shall marry his mother, grand-mother, step-mother, sister, daughter, grand-daughter, half sister, aunt, son's wife, wife's daughter, or her grand-daughter or step-daughter, brother's daughter, sister's daughter, first cousin, double cousin, or wife of his brother's or sister's son. If any man has heretofore married his brother's widow, uncle's widow, first cousin or double cousin, such marriage is hereby declared to be legal and valid and exempt from penalties prescribed by former laws. (As amended by L. 1917, ch. 19.)

§ 3610. Same.

No woman shall marry her father, grand-father, step-father, brother, son, grand-son, half-brother, uncle, daughter's husband, husband's son, or his grand-son or step-son, brother's son, sister's

son, first cousin, double cousin, or husband of her brother's or sister's daughter. (As amended by L. 1917, ch. 19.)

§ 3611. Same — dissolution of marriage — effect.

In the cases mentioned in the two preceding sections, in which the relationship is founded on a marriage, the prohibition shall continue in force, notwithstanding the dissolution of such marriage by death or divorce, unless the divorce be for a cause which made the marriage, originally, unlawful or void.

WISCONSIN.*Statutes, 1919.***CHAPTER 109.****DIVORCE.**

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§ 2348. Jurisdiction.

The circuit court has jurisdiction of all actions to affirm or to annul a marriage, or for a divorce from the bond of matrimony, or from bed and board, and authority to do all acts and things necessary and proper in such actions and to carry its orders and judgments into execution as hereinafter prescribed. All such actions shall be commenced and conducted and the orders and judgments therein enforced according to the provisions of these statutes in respect to actions in courts of record, as far as applicable, except as provided in this chapter.

§ 2349 and § 2350. (Repealed by L. 1909, ch. 323.)

§ 2351. Marriages; annulment; causes for.

A marriage may be annulled for any of the following causes existing at the time of marriage:

Impotency, etc. (1) Incurable physical impotency or incapacity of copulation, at the suit of either party, provided that the party making the application was ignorant of such impotency or incapacity at the time of marriage.

Consanguinity, etc. (2) Consanguinity or affinity where the parties are nearer of kin than the second cousins, computing by the rule of civil law, whether of the half or of the whole blood, at the suit of either party; but when any such marriage shall not have been annulled during the lifetime of the parties, the validity thereof shall not be inquired into after the death of either party.

Former marriage. (3) When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

Fraud, etc. (4) Fraud, force, or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.

Insanity. (5) Insanity, idiocy, or such want of understanding as renders either party incapable of assenting to marriage, at the suit of the other, or at the suit of a guardian of the lunatic or incompetent, or of the lunatic or incompetent on regaining reason, unless such lunatic or incompetent, after regaining reason, has confirmed the marriage; provided that where the party compos mentis is the applicant, such party shall have been ignorant of the other's insanity or mental incompetency at the time of the marriage, and shall not have confirmed it subsequent to such person's regaining reason.

Nonage of wife. (6) At the suit of the wife when she was under the age of fifteen years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age.

Nonage of husband. (7) At the suit of the husband when he was under the age of eighteen at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.

§ 2352. Proceedings to affirm marriage.

When the validity of any marriage shall be denied or doubted by either of the parties the other party may commence an action to affirm the marriage, and the judgment in such action shall declare such marriage valid or annul the same, and be conclusive upon all persons concerned.

§ 2553. Divorce; kinds.

Divorce shall be of two kinds:

(1) Divorce from the bonds of matrimony, or divorce a vinculo matrimonii.

(2) Divorce from bed and board, or divorce a mensa et thoro.

§ 2354. Annulment; jurisdiction; publication; personal service.

For the purposes of annulment of marriage, jurisdiction may be acquired by publication as provided in the statutes, or by personal service upon the defendant within this state, when either party is a bona fide resident of this state at the time of the commencement of the action.

§ 2355. Divorce; jurisdiction; publication; personal service; conditions.

For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by publication as provided in the statutes or by personal service upon the defendant within this state, under the following conditions:

Residence. (1) When, at the time the cause of action arose, either party was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action, except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a bona fide resident of this state.

Same. (2) If, since the cause of action arose, either party, for at least two years next preceding the commencement of the action, has continued to be a bona fide resident of this state.

§ 2356. Causes for divorce from contract.

A divorce from the bond of matrimony may be adjudged for either of the following causes:

(1) For adultery.

(2) For impotency.

(3) When either party, subsequent to the marriage, has been sentenced to imprisonment for three years or more; and no pardon granted after a divorce for that cause shall restore the party sentenced to his or her conjugal rights.

(4) For the wilful desertion of one party by the other for the term of one year next preceding the commencement of the action.

(5) When the treatment of the wife by the husband has been cruel and inhuman, whether practiced by using personal violence or by any other means; or when the wife shall be guilty of like cruelty to her husband or shall be given to intoxication.

(6) When the husband or wife shall have been a habitual drunkard for the space of one year immediately preceding the commencement of the action.

(7) Whenever the husband and wife shall have voluntarily lived entirely separate for the space of five years next preceding the commencement of the action, the same may be granted at the suit of either party. And such living apart for five years or more, pursuant to a decree of divorce from bed and board, without request during that period by either party to the other in good faith for a reconciliation and revocation of said judgment, shall not be any bar to an absolute divorce upon this ground at the suit of either party; provided further, however, that no divorce absolute upon this ground shall be granted unless six months of such separation shall be subsequent to the time when this act shall go into effect.

§ 2357. Causes for divorce from bed and board.

A divorce from bed and board forever or for a limited time may be adjudged:

(1) For the fourth, fifth and sixth causes above specified.

(2) For extreme cruelty of either party.

(3) On the complaint of the wife, when the husband, being of sufficient ability, shall refuse or neglect to provide for her or

when his conduct toward her is such as may render it unsafe and improper for her to live with him.

§ 2358. Divorce from bond for same causes.

A divorce from the bond of matrimony may also be adjudged for either of the causes specified in the second and third subdivisions of the preceding section whenever, in the opinion of the court, the circumstances of the case are such that it will be discreet and proper so to do.

§ 2359. (Repealed by L. 1909, ch. 323.)

§ 2360. Collusion; procurement; connivance; condonation; stipulation; property rights.

No decree for divorce shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offense charged, or has condoned it, or has been guilty of adultery not condoned; provided that the parties may, subject to the approval of the court, stipulate for a division of estate, for alimony, or for the support of children, in case a divorce be granted or a marriage annulled.

§ 2360f. Accomplice to be interpleaded.

Any one charged as a particeps criminis shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

§ 2360. Hearings and trials.

All hearings and trials to determine whether or not a decree shall be granted shall be had before the court, and not before a referee, or any other delegated representative, and shall in all cases be public.

§ 2360h. Divorce counsel; appointment; oath; removal; Milwaukee county.

In each county of the state the circuit judge or judges in and for such county shall by order filed in the office of the clerk of the circuit court on or before the first Monday of July of each year, appoint some reputable attorney, of recognized ability and standing at the bar, divorce counsel for such county. Before entering upon the discharge of his duties, such counsel shall take and file in the office of the clerk of the circuit court, an oath to support the constitution of the United States and of the state of Wisconsin and to faithfully, fearlessly, and impartially discharge the duties of such office. The person so appointed shall continue to act until his successor is appointed and duly qualified. Provided that in any county having a population of two hundred and fifty thousand or more according to the last state or national census, there shall be no appointment of divorce counsel, but the district attorney or any assistant district attorney shall be the divorce counsel thereof and perform all the duties of such office.

§ 2360h-1. Summons and complaint; service on divorce counsel.

In any action to affirm or annul a marriage, or for a divorce, the plaintiff and defendant shall, within ten days after making service on the opposite party of his complaint, answer, counterclaim or reply, as the case may be, serve a copy of the same upon the divorce counsel of the county in which the action is begun. In addition to all other allegations, the complaint shall specifically allege whether or not an action for obtaining a divorce by either of the parties was or has been at any time commenced or pending in any other court, or before any judge thereof, in this state, or elsewhere. Such counsel shall appear in the action when the defendant fails to answer or withdraws his answer before trial; also, when the defendant interposes a counterclaim and the plaintiff thereupon neither supports his complaint nor opposes the counterclaim by proof; and when the court is satisfied that the issues are not contested in good faith by either party.

§ 2360h-2. Default actions; divorce counsel to appear.

No decree in any action in which divorce counsel is required by section 2360h-1 to appear shall be granted until such counsel or the divorce counsel of the county in which the action is tried shall have appeared in open court and in behalf of the public made a fair and impartial presentation of the case to the court and fully advised the court as to the merits of the case and the rights and interests of the parties and of the public, nor until the proposed findings and judgment shall have been submitted to such divorce counsel.

§ 2360h-3. Divorce counsel or law partner; when interested; procedure.

Neither such divorce counsel nor his partner or partners shall appear in any action to affirm or annul a marriage or for a divorce in any court held in the county in which he shall be acting, except when authorized to appear by section 2360h-1. In case he or his partner shall be in any way interested in such action, the presiding judge shall appoint some reputable attorney to perform the services enjoined upon such divorce counsel and such attorney, so appointed, shall take and file the oath and receive the compensation provided by law.

§ 2360h-4. Divorce counsel; fees.

For each case in which such divorce counsel appears, excepting in counties having a population of two hundred and fifty thousand or more, he shall receive the sum of ten dollars to be paid by the county wherein the action was tried upon the order of the presiding judge and the certificate of the clerk of the circuit court; provided that when any case shall occupy more than one day of the time of such divorce counsel, the court may, in its discretion, require the parties to the action or either of them to pay such additional sum to compensate such divorce counsel, as the justice of the case may require, having due regard to the financial

ability of such parties, which additional sum in counties having a population of two hundred and fifty thousand or more shall be paid into the treasury of the county.

§ 2360i. Default actions; affirmative proof required.

No decree for annulment of marriage, or for divorce, shall be granted in any action in which the defendant does not appear and defend the same in good faith unless the cause is shown by affirmative proof aside from any admission to the plaintiff on the part of the defendant.

§ 2360j. Record; impounding, etc.

No record or evidence in any case shall be impounded, or access thereto refused, except by special written order of the court made in its discretion in the interests of public morals.

§ 2360k and § 2360l. (Repealed by L. 1911, ch. 239.)

§ 2360n. Former name of wife.

The court, upon granting a divorce from the bonds of matrimony, may allow the wife to resume her maiden name or the name of a former deceased husband in case there be no children of the marriage.

§ 2360r. Foreign decrees; comity of states.

Full faith and credit shall be given in all the courts of this state to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another state, territory or possession of the United States, when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 2354 and 2355. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce, by a court of a foreign country as may be justified by the rules of international

comity; provided, that if any inhabitant of this state shall go into another state, territory or country for the purpose of obtaining a decree of divorce for a cause which occurred while the parties resided in this state, or for a cause which is not ground for divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state.

§ 2360s. Pending actions.

Nothing in this act contained shall effect or apply to any action for annulment of marriage or for divorce, now pending.

§ 2361. Support of wife and children; suit money.

In every action to affirm or annul a marriage or for a divorce the court or a judge may, during the pendency thereof, make such orders concerning the care, custody and suitable maintenance of the minor children and to require the husband to pay such sums for the support of the wife and the minor children in her custody and to enable her to carry on or defend the action and in relation to the persons or property of the parties as in its discretion shall be deemed necessary or proper; and may prohibit the husband from imposing any restraint on her personal liberty.

§ 2362. Judgment; care and custody, etc., of minor children.

In rendering a judgment of nullity of marriage or for divorce, whether from the bond of matrimony or from bed and board, the court may make such further provisions therein as it shall deem just and proper concerning the care, custody, maintenance, and education of the minor children of the parties, and give the care and custody of the children of such marriage to one of the parties to the action, or may, if the interest of any such child shall demand it, and if the court shall find that neither of the parents is a fit and proper person to have the care and custody of any such child, give the care and custody of such child to any fit and proper person, who is a resident of this state and willing to receive and properly care for such child, or to any institution incorporated

for such purposes and willing and authorized to receive and care for such child, having due regard to the age and sex of such child. Whenever the welfare of any such child will be promoted thereby, the court granting such decree shall always have the power to change the care and custody of any such child, either by giving it to or taking it from such parent or other person or such institution, provided that no order changing the custody of any child shall be entered until after notice of such application shall be given the parents of such child, if they can be found, and also to the person or institution that then has the custody of such child.

§ 2363. Revision of judgment.

The court may from time to time afterwards, on the petition of either of the parties, revise and alter such judgment concerning the care, custody, maintenance and education of the children, or any of them, and make a new judgment concerning the same as the circumstances of the parents and the benefit of the children shall require.

§ 2364. Alimony, how adjudged.

Upon every divorce from the bond of matrimony for any cause excepting that of adultery committed by the wife, and also upon every divorce from bed and board, the court may further adjudge to the wife such alimony out of the estate of the husband, for her support and maintenance, and such allowance for the support, maintenance and education of the minor children committed to her care and custody as it shall deem just and reasonable, or the court may finally divide and distribute the estate, both real and personal, of the husband and so much of the estate of the wife as shall have been derived from the husband, between the parties and divest and transfer the title of any thereof accordingly, having always due regard to the legal and equitable rights of each party, the ability of the husband, the special estate of the wife, the character and situation of the parties and all the circumstances of the case; but no such final division shall impair the power of

the court in respect to revision of allowances for minor children under the next preceding section. No such judgment shall divest or transfer title to real estate unless such judgment or a certified copy thereof is recorded in the office of the register of deeds of the county in which such real estate is situated.

§ 2365. Wife to support children, when.

When a divorce shall be adjudged for a cause or fault committed by the wife and the care, custody and maintenance of their minor children or any of them shall be adjudged to the husband the court may adjudge to the husband, out of the separate estate of the wife, such sums for the support and education of such minor children as it shall deem just and reasonable, considering the ability of the parties and all the other circumstances of the case.

§ 2366. Support and maintenance of wife and children.

In a judgment in an action for a divorce, although such divorce be denied, the court may make such order for the support and maintenance of the wife and children, or any of them, by the husband or out of his property as the nature of the case may render suitable and proper.

§ 2367. Alimony, payment of and security for.

In all cases where alimony or other allowance shall be adjudged to the wife or for the maintenance or education of the children the court may provide that the same shall be paid in such sums and at such times as shall be deemed expedient, and may impose the same as a charge upon any specific real estate of the party liable or may require sufficient security to be given for the payment thereof according to the judgment; and upon neglect or refusal to give such security or the failure to pay such alimony or allowance the court may enforce the payment thereof by execution or otherwise as in other cases. No such judgment shall become effectual as a charge upon specific real estate until the

judgment or a certified copy thereof is recorded in the office of the register of deeds in the county in which the real estate is situated.

§ 2368. Trustee may be appointed.

The court may also appoint a trustee, when deemed expedient, to receive any money adjudged to the wife upon trust, to invest the same and pay over the income thereof for her maintenance or the maintenance and education of the minor children or any of them, or to pay over the principal sum in such proportions and at such times as the court shall direct. The trustee shall give such bond, with such sureties as the court shall require, for the faithful performance of his trust.

§ 2369. Revision of judgment.

After a judgment providing for alimony or other allowance for the wife and children, or either of them, or for the appointment of trustees as aforesaid the court may, from time to time, on the petition of either of the parties, revise and alter such judgment respecting the amount of such alimony or allowance and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any judgment respecting any of the said matters which such court might have made in the original action. But when a final division of the property shall have been made under the provisions of section 2364 no other provisions shall be thereafter made for the wife.

§ 2370. Judgment; from bed and board; revocation.

In all cases of divorce from bed and board for any of the causes specified in section 2357, the court may decree a separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree; and upon such application the court shall make such order as may be just and reasonable.

§ 2371. Restoring wife's property.

Upon rendering a judgment annulling a marriage the court may make provision for restoring to the wife the whole or such part, as it shall deem just and reasonable, of any estate which the husband may have received from her or the value thereof, and may compel him to disclose what estate he shall have received and how the same has been disposed of.

§ 2372. Judgment not to affect wife's property.

No judgment nullifying a marriage or for a divorce of any kind shall in any way affect the right of a wife to the possession and control of her separate property, real or personal, except as provided in this chapter; and nothing contained in this chapter shall authorize the court to divest any party of his title in any real estate further than is expressly provided herein.

§ 2373. Dower rights.

When a marriage shall be dissolved by the granting of a decree of divorce from the bonds of matrimony, the wife shall not be entitled to dower in any lands of the husband.

§ 2374. Effect of judgment of divorce from bonds.

1. When a judgment of divorce from the bonds of matrimony is granted so far as it affects the status of the parties it shall not be effective until the expiration of one year from the date of the entry of such judgment; excepting that it shall immediately bar the parties from cohabitation together and that it may be reviewed on appeal during said period. But in case either party dies within said period such judgment, unless vacated or reversed, shall be deemed to have entirely severed the marriage relation immediately before such death. Should the parties cohabit together after entry of such judgment and before vacation or reversal of same, they shall be subject to the penalties provided by section 2376.

2. So far as said judgment affects the status of the parties the

court shall have power to vacate or modify the same for sufficient cause shown, upon its own motion, or upon the application of either party to the action, at any time within one year from the entry of such judgment, provided both parties are then living. But no such judgment shall be vacated or modified without the service of notice of motion, or order to show cause on the divorce counsel, and on the parties to the action, if they be found. If the judgment shall be vacated it shall restore the parties to the marital relation that existed before the entry of such judgment.

3. It shall be the duty of every judge, who shall enter a judgment of divorce, to inform the parties appearing in court that the judgment, so far as it affects the status of the parties, will not become effective until one year from the date when such judgment is entered.

4. Such judgment, or any provision of the same, may be reviewed by an appeal taken within one year from the date when such judgment was entered. At the expiration of such year, such judgment shall become final and conclusive without further proceedings, unless an appeal be pending, or the court, for sufficient cause shown, upon its own motion, or upon the application of a party to the action, shall otherwise order before the expiration of said period. If an appeal be pending at the expiration of said year, such judgment shall not become final and conclusive until said appeal shall have been finally determined.

§ 2375. Judgment revoked on remarriage.

When a judgment of divorce has been granted and the parties shall afterwards intermarry the court, upon their joint application and upon satisfactory proof of such marriage, may revoke all judgments and orders of divorce, alimony and subsistence which will not affect the right of third persons. After a final judgment of divorce has been rendered, the court, upon the application of the party paying alimony, on notice to, and on proof of the marriage, after such final judgment, of the party receiving such alimony, shall by order modify such final judgment and any orders made

with respect thereto, by annulling provisions of such final judgment or orders, or both, directing payment of such alimony.

§ 2376. Adultery, who guilty of.

If any persons, after being divorced from the bond of matrimony for any cause whatever, shall cohabit together before intermarriage they shall be liable to all the penalties provided by law against adultery.

§ 2330. Who shall not marry; divorced persons.

1. No marriage shall be contracted while either of the parties has a husband or wife living, nor between persons who are nearer of kin than second cousins, * * * excepting that marriage may be contracted between first cousins where the female has attained the age of fifty years. Relationship under this section shall be computed by the rule of the civil law, whether the parties to the marriage are of the half or of the whole blood. No insane person, epileptic or idiot shall be capable of contracting marriage.

2. It shall not be lawful for any person, who is a party to an action for divorce from the bonds of matrimony, in any court in this state, to marry again until one year after judgment of divorce is entered, and the marriage of any such person solemnized before the expiration of one year from the date of the entry of judgment of divorce shall be null and void.

§ 2330m. Marriage abroad to circumvent the laws.

1. If any person residing and intending to continue to reside in this state who is disabled or prohibited from contracting marriage under the laws of this state shall go into another state or country and there contract a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all

purposes in this state with the same effect as though such prohibited marriage has been entered into in this state.

2. No marriage shall be contracted in this state by a party residing and intending to continue to reside in another state or jurisdiction, if such marriage would be void if contracted in such other state or jurisdiction and every marriage celebrated in this state in violation of this provision shall be null and void.

§ 2339n-1. Marriage contract, how made.

Marriage may be validly contracted in this state only after a license has been issued therefor, in the manner following:

(1) Before any person authorized by the laws of this state to celebrate marriages (and hereinafter designated as the officiating person), by declaring in the presence of at least two competent witnesses other than such officiating person, that they take each other as husband and wife; or,

(2) In accordance with the customs, rules and regulations of any religious society, denomination or sect to which either of the parties may belong, by declaring in the presence of at least two competent witnesses, that they take each other as husband and wife.

§ 2339n-21. Unlawful marriages void; validation.

All marriages hereafter contracted in violation of any of the requirements of section 2339n-1 shall be null and void (except as provided in section 2339n-22 and 2339n-23); provided, that the parties to any such void marriage may, at any time, validate such marriage by complying with the requirements of sections 2339n-1 to 2339n-27, inclusive.

§ 2339n-24. Removal of impediments to subsequent marriage.

If a person during the lifetime of a husband or wife, with whom the marriage is in force, enters into a subsequent marriage contract

in accordance with the provisions of section 2339n-1, and the parties thereto live together thereafter as husband and wife, and such subsequent marriage contract was entered into by one of the parties in good faith, in the full belief that the former husband or wife was dead, or that the former marriage had been annulled or dissolved by a divorce, or without knowledge of such former marriage, they shall, after the impediment to their marriage has been removed by the death or divorce of the other party to such former marriage, if they continue to live together as husband and wife in good faith on the part of one of them, be held to have been legally married from and after the removal of such impediment, and the issue of such subsequent marriage shall be considered as the legitimate issue of both parents.

§ 3041. Appeals in divorce actions.

The time within which an appeal may be taken from any order modifying or revising a judgment of divorce, so far as it determines the status of the parties to the action, is limited to six months from the date of the entry of such order.

§ 2843. Issues, by whom tried.

. . . An issue of fact in an action . . . for a divorce on the ground of adultery must be tried by a jury except as otherwise provided in this chapter.

§ 3479. Prison or house of correction for refusal to pay costs.

. . . Where an order of the court, or a judge, in an action for divorce, requires the payment of a sum or sums of money, and personal service of such order has been made upon the defendant, no proof of personal demand of such sum of money and a refusal to pay shall be required before the defendant is punished as provided in this section.

WYOMING.*Compiled Statutes, 1910.*

CHAPTER 266.

DIVORCE AND ALIMONY.

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§ 3917. Void marriages defined.

Marriages are void without any decree of divorce that may hereafter be contracted in this state:

First — When either party has a husband or wife living at the time of contracting the marriage.

Second — When either party is insane or an idiot at the time of contracting the marriage.

Third — When the parties stand in the relation to each other of parent and children, grand-parent and grand-children, brothers and sisters, of half as well as of whole blood, uncle and niece, aunt and nephew, and first cousins, and this sub-division extends to illegitimate as well as legitimate children and relations; provided, that this prohibition shall not extend to any persons not related by consanguinity.

§ 3918. Marriage without legal consent voidable.

In case of a marriage solemnized when either of the parties are under the age of legal consent, if they shall separate during such non-age, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed voidable.

§ 3919. Petition to annul marriage.

When a marriage is supposed to be void, or the validity thereof is doubted for any of the causes mentioned in the two preceding sections, either party, excepting in the cases where a contrary provision is hereinafter made, may file a petition in the district court of the county where the parties or one of them reside, for annulling the same, and such shall be filed, and proceedings shall be had thereon, as in the case of a petition filed in said court for

divorce, and upon due proof thereof it shall be declared void by a decree of nullity.

§ 3920. Annulling marriage when party under age.

An action to annul a marriage on the ground that one of the parties was under the age of legal consent may be exhibited by the parent or guardian entitled to the custody of such minor, but in no case shall such marriage be annulled on the application of a party who was of the age of legal consent at the time of the marriage nor when it shall appear that the parties, after they had attained the age of consent, had freely cohabited as man and wife.

§ 3921. Next friend to prosecute for idiot.

A petition to annul a marriage on the ground of insanity or idiocy may be exhibited by any person admitted by the court to prosecute as the next friend of such idiot or lunatic.

§ 3922. Petition by restored lunatic.

The marriage of a lunatic may also be declared void upon the application of the lunatic after the restoration of reason, but in such cases no decree of nullity shall be pronounced if it shall appear that the parties freely cohabited as husband and wife after the lunatic was restored to a sound mind.

§ 3923. Petition to affirm marriage.

When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a petition in the manner aforesaid for affirming the marriage, and upon due proof of the validity thereof, it shall be declared valid by a decree of the court, and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned.

§ 3924. Causes for divorce.

A divorce from the bonds of matrimony may be decreed by the district court of the county where the parties, or one of them re-

side, on the application of the aggrieved party by petition, in either of the following cases:

First.— When adultery has been committed by any husband or wife.

Second.— When one of the parties was physically incompetent at the time of the marriage, and the same has continued to the time of the divorce.

Third.— When one of the parties has been convicted of a felony and sentenced to imprisonment therefor in any prison, and no pardon granted, after a divorce for that cause, shall restore such party to his or her conjugal rights.

Fourth.— When either party has wilfully deserted the other for the term of one year.

Fifth.— When the husband or wife shall have become an habitual drunkard.

Sixth.— When one of the parties has been guilty of extreme cruelty to the other.

Seventh.— When the husband for the period of one year, has neglected to provide the common necessaries of life, when such neglect is not the result of poverty, on the part of the husband, which he could not avoid by ordinary industry.

Eighth.— When either party shall offer such indignities to the other, as shall render his or her condition intolerable.

Ninth.— When the husband shall be guilty of such conduct as to constitute him a vagrant within the meaning of the law respecting vagrancy.

Tenth.— When prior to the contract of marriage or the solemnization thereof, either party shall have been convicted of a felony or infamous crime in any other state, territory or county without knowledge on the part of the other party of such fact at the time of such marriage.

Eleventh.— When the intended wife at the time of contracting marriage, or at the time of the solemnization thereof shall have been pregnant by any other man than her intended husband and without his knowledge at the time of such solemnization.

§ 3925. Residence required.

No divorce shall be granted unless the plaintiff shall have resided in this state for one year immediately preceding the time of filing the petition, or unless the marriage was solemnized in this state, and the applicant shall have resided therein from the time of the marriage until the filing of the petition.

§ 3926. Collusion or equal guilt prevents divorce.

No divorce shall be decreed in any case where it shall appear that the petition therefor was founded in, or exhibited by, collusion between the parties, nor where the party complaining shall be guilty of the same crime or misconduct charged against the defendant.

§ 3927. Parties competent to sue and testify.

A petition for a divorce may be exhibited by a wife in her own name as well as a husband, and each party in a divorce proceeding shall be competent to testify in his or her own behalf.

§ 3928. Process may issue to any county.

In an action to annul or affirm a marriage, or for a divorce, when the plaintiff resides in the county in which the action is brought, and the defendant is a non-resident of said county, or is absent therefrom, and is residing or is to be found in some other county of the state, the summons or process at the request of the plaintiff may issue to such other county and service upon said defendant in such other county shall give to the court jurisdiction.

§ 3929. Action — how conducted.

Actions to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as civil actions, and the court shall have the power to award issues, to decree costs, and enforce its decree as in other cases.

§ 3930. Restraint of husband during litigation.

After the exhibition of the petition to annul a marriage, or for a divorce from the bonds of matrimony, the court may at any

time either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint upon her personal liberty, during the pendency of the action.

§ 3931. Temporary alimony — costs.

In every action brought for a divorce, the court may, in its discretion, require the husband to pay any sum necessary to enable the wife to carry on, or defend the action, or for her support, and the support of the children of the parties during its pendency, and it may decree costs against either party, and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver, and the court may also direct the payment to the wife for such purpose of any sum or sums that may be due and owing to the husband from any party, person or corporation.

§ 3932. Care and custody of children.

The court may, in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance during the pendency of such action, as shall be deemed proper and necessary, for the benefit of the children; and may enforce its order and decree in the manner provided in the last preceding section.

§ 3933. Provision for children in decree.

The court, in granting a divorce, and also upon pronouncing a decree of nullity of a marriage, may make such disposition of, and provision for, the children as shall appear most expedient under all the circumstances, and most for the present comfort and future well-being of such children; and the court may from time to time afterward on the petition of either of the parents, revise and alter such decree concerning the care, custody and maintenance of such children, as the circumstances of the parents and the benefit of the children shall require.

§ 3934. Disposition of property—alimony.

In granting a divorce, the court shall also make such disposition of the property of the parties, as shall appear just and equitable, having regard to the respective merits of the parties and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of the wife and children, and the court may also decree to the wife reasonable alimony out of the estate of the husband having regard for his ability, and to effectuate 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 the wife for life, or may decree a specific sum to be paid by him to her, and use all necessary legal and equitable processes to carry its decrees into effect.

§ 3935. Restraining orders may be granted during litigation.

If after filing a petition for divorce, it shall be made to appear probable to the court, or the judge in vacation, that either party is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, and such legal or equitable process issued as the court may deem necessary or proper.

§ 3936. Examination of husband.

In a proceeding for divorce, the court or judge in vacation may cause the attendance of the husband and compel him to answer under oath concerning his property, rights or interests, or money that he may have, or money due or to become due to him from others, and make such order thereon as shall seem just and equitable; and to enforce its orders concerning alimony, temporary or permanent, or property or pecuniary interests, the court, or judge in vacation, may require security for obedience thereto, or may enforce the same by attachment, commitment, injunction or by other means, according to the usages of courts.

§ 3937. Petition for support of wife and children.

When the husband and wife are living separately, or when they are living together, but the husband failing or neglecting to contribute to the support of the wife and children, or either, and no proceeding for divorce is pending the wife may in behalf of herself or minor children if any or either, institute a proceeding by petition setting forth fully her case and upon five days' notice to the husband, if he can be served personally with notice in the state, the judge may hear the same in term or vacation, and grant such order concerning the support of the wife and children or either, as he might grant, were it based on a pending proceeding for divorce, to be enforced in the same manner, together with any remedy applicable in a court of equity, such as appointing a receiver and the like. In case the husband cannot be personally served with process within this state, but has property within the jurisdiction of the court, or debts owing to him, the court or judge in vacation may order such constructive service as shall appear sufficient and proper and may cause a sequestration or attachment of said property and upon completion of said constructive service as ordered shall have the same power to act as if personal service was had.

§ 3938. Disposition of wife's personal estate.

Whenever the nullity of a marriage or a divorce from the bonds of matrimony for any cause, except that of adultery committed by the wife, shall be decreed, the wife shall be entitled to the whole or such part as to the court shall seem just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or the court may award her the value thereof, to be paid by her husband in money.

§ 3939. Court may appoint trustees for children.

Upon every divorce when provision is made for the children, the court may order any amount set apart for them, instead of being delivered to the wife or husband to be paid into the hands of a

trustee or trustees, to be appointed by the court, upon trust to invest the same, and to apply the income thereof to the support of such children or any of them, in such manner as the court shall direct.

§ 3940. Decree for alimony may be revised.

After a decree for alimony or other allowance for the wife and children, or either of them, and also after a decree for the appointment of trustees to receive and hold any property for the use of the wife or children, the court may, from time to time, on the petition of either of the parties, revise and alter such decree respecting the amount of such alimony or allowance, or the payment thereof, and respecting the appropriation and payment of the principal and income of the property so held in trust and may make any decree respecting any of said matters which such court might have made in the original action.

§ 3941. Legitimacy of children presumed.

A divorce for the cause of adultery committed by the wife, shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children if questioned may be determined by the court upon proofs in the case, and in every case the legitimacy of all children begotten before the commencement of the action, shall be presumed until the contrary is shown.

§ 3942. Certain divorces not to affect legitimacy of children.

Upon the dissolution of a marriage on account of the non-age, insanity or idiocy of either party, the issue of the marriage shall be deemed to be in all respects, the legitimate issue of the parent, who at the time of the marriage was capable of contracting, or if neither parent be of age, then of the oldest parent.

§ 3943. Divorce because of prior marriage — form of decree — legitimacy of children.

When a marriage is dissolved on account of a prior marriage of either, and it shall appear that the second marriage was contracted

in good faith and with the full belief of the parties that the former wife or husband was dead, or that one of the parties was ignorant of the fact that the other had a wife or husband living, the fact shall be stated in the decree of divorce or nullity, and the issue of such second marriage born or begotten before the commencement of the action shall be deemed to be the legitimate issue of the parent who at the time of the marriage was capable of contracting.

§ 3944. When issue deemed illegitimate.

Upon the dissolution by decree of nullity of any marriage that is prohibited on account of consanguinity between the parties, the issue of the marriage shall be deemed to be illegitimate.

§ 3945. Custody of children on annulling marriage.

If there shall be any issue of a marriage annulled on the ground of force or fraud, the court shall decree their custody to the innocent person, and may also decree a provision for their education and maintenance, out of the estate and property of the guilty party.

§ 3946. Physical incapacity as cause for divorce — restrictions.

An action to annul a marriage on the ground of the physical incapacity of one of the parties shall only be maintained by the injured party against the party whose incapacity is alleged, and shall in all cases be brought within two years from the solemnization of the marriage.

§ 3947. Corroborating evidence required.

No decree of divorce, and of the nullity of a marriage, shall be made solely on the declarations, confessions or admissions of the parties, but the court shall in all cases require other evidence in its nature corroborative of such declarations, concessions or admissions.

§ 3948. Proof of adultery insufficient when.

In any action brought for divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

First — When the offense shall appear to have been committed by the procurement, or with the connivance of the plaintiff.

Second — When the offense charged shall have been forgiven by the injured party and such forgiveness shall be proved by express proof, or by the voluntary cohabitation of the parties with the knowledge of the offense.

Third — When there shall have been no express forgiveness and no voluntary cohabitation of the parties but the action shall not have been brought within three years after discovery by the plaintiff of the offense charged.

§ 3949. Residence of married woman.

If any married woman at the time of exhibiting a petition against her husband, under the provisions of this chapter, shall reside in this state, she shall be deemed a resident thereof, although her husband may reside elsewhere.

§ 3950. Certain divorces legalized.

All divorces decreed in the courts of the territory of Wyoming prior to the 13th day of December, 1873, are hereby declared legal and valid, so far as such divorces may be illegal or invalid because of the manner in which notice of the pendency of proceedings for divorce was given.

§ 3951. Remarriage prohibited within one year.

During the period of one year from the granting of a decree of divorce, neither party thereto shall be permitted to remarry to any other person. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars nor more than

one hundred dollars, or be imprisoned in the county jail not exceeding three months, in the discretion of the court.

§ 5732. Divorce not to affect inheritance.

Divorces of husband and wife shall not affect the right of children personally together, to inherit their property.

§ 3904. Effect of solemnization by unauthorized person.

No marriage solemnized before any person professing to be a justice of the peace or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed justice or minister; provided, the marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

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