STATE OF MICHIGAN

COMPILATION OF LAWS

CONCERNING THE

REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES;

THE SOLEMNIZATION OF MARRIAGES AND THE ISSUANCE OF LICENSES THEREFOR;

AND THE

LAWS CONCERNING DIVORCE,

WITH

SUGGESTIONS TO PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES.

Compiled under the Supervision of

WASHINGTON GARDNER,

Secretary of State.

BY AUTHORITY

LANSING
ROBERT SMITH & CO., STATE PRINTERS AND BINDERS
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LAWS RELATING TO THE REGISTRATION OF BIRTHS AND DEATHS.

REGISTRATION OF BIRTHS AND DEATHS. (a)

AN ACT to provide for the Registration of Births, Marriages and Deaths.

§ 858, *S. L. 1867, Act 194; Am. 1869, Act 125.* SECTION 1. *The People of the State of Michigan enact,* That it shall be the duty of the supervisor of each township, and the supervisor or assessor of any city or ward therein, in this State, between the tenth day of April and the first day of June, in the year eighteen hundred and sixty-nine, to ascertain, by actual inquiry or otherwise, of the inhabitants thereof, the births and deaths which have occurred in their respective townships, cities, or wards, from and including April fifth, eighteen hundred and sixty-eight, to and including December thirty-first, eighteen hundred and sixty-eight, together with the facts relative thereto, as are hereinafter provided for, and shall make an accurate return thereof to the clerk of the county in which such township or city is situated, on or before the first said day of June; and for such service shall receive ten cents for each birth and death so returned by them, to be paid by the county in which such returns are made. In the year eighteen hundred and seventy, and in each and every year thereafter, it shall be the duty of the officers above mentioned, between the tenth day of April and the first day of June, to asceratin, by actual inquiry or otherwise, of the inhabitants thereof, the births and deaths which have occurred in their respective townships, cities or wards, during the year ending on the last day of the preceding December, and shall make the return and receive therefor compensation above provided for: *Provided,* That in the city of Detroit, the duties required by this act to be performed by supervisors and assessors shall be performed by persons appointed by the common council for that purpose; and it shall be the duty of the common council, on or before the tenth day of April in each year, to appoint such number of persons in each ward of said city as shall be necessary to perform said duties within the time limited by

Duties of supervisors and assessors.

In 1869 returns to be made from April 5 to Dec. 31, 1868.

Return to county clerk.

In 1870 and thereafter.

Returns to include from January to December last preceding.

Statistics, how obtained.

Compensation.

Proviso relative to the city of Detroit.

Duty of common council.

(a) The requirements as to registration of marriages are governed by Act 128, Public Acts 1887.

Persons to be appointed by.

this act; and such persons shall possess all the authority conferred upon, and perform all the duties required of supervisors and assessors, by this act, within the territory assigned them,

Compensation of persons so appointed.

respectively, by the common council, and shall receive such compensation for their services, not exceeding the sum allowed by this act to supervisors and assessors, as shall be fixed by the

How paid.

common council, to be paid by the county of Wayne, and shall

Penalties.

be liable to the same penalties for refusal or neglect to perform any of said duties.

Marriages to be recorded.

§ 859. SEC. 2. Every justice of the peace, minister of the gospel, and all other persons authorized by law to solemnize marriages in this State, shall make a record of each marriage

Marriage of Quakers.

so solemnized by him, and every clerk or keeper of the records of the meetings in which any marriage among the Friends or Quakers shall be solemnized, shall make a record of such marriage, together with all the facts relating to the same, as

Certificates to be furnished.

required by the third section of this act; and such justice, minister of the gospel, clerk, or other person, shall, at the time such marriage is solemnized, deliver, on demand, to either of the parties so joined in marriage, as aforesaid, a certificate of such marriage, containing all the facts in relation thereto, required by said third section of this act, and shall, within ninety days thereafter, deliver to the clerk of the county in which such marriage took place, a certified copy of

Fee for recording.

such record, and, at the same time, pay to the clerk twenty-five cents for recording the same.

County clerks; duties of.

§ 860. *Am. 1869, Act 125.* SEC. 3. It shall be the duty of the county clerks of the several counties in this State, on receiving the returns of such births, marriages and deaths, to record the same at length in separate books, to be provided at the expense of the State by the Secretary of State, for that

Births, marriages and deaths to be numbered and indexed.

purpose, with proper indexes thereto. The births, marriages and deaths shall be numbered and recorded in the order in which they are received by the clerk, and the record of marriages shall be indexed, using both the name of the bridegroom

Record of births shall state.

and bride. The record of births shall state, in separate columns, the date of the birth, the name of the child (if it have any), the sex and color of the child, the place of birth, the christian and surname of both parents, the residence and nativity of the parents, the occupation of the father, and the

Proviso.

date when the record was made: *Provided*, That in case the child has no christian name, such name shall be obtained and reported to the county clerk in the next annual report of the supervisor or assessor, and such christian name shall be distinctly designated in such report as the christian name belonging to a child previously reported, and shall be properly entered by said county clerk, in the blank left for such christian name in his book of record; and it shall be the duty of the several county clerks, on or before the tenth day of April in each year, to give to the officers required to make the said returns, lists of such children whose christian names have not been previously reported in their respective towns, cities or wards. The record of marriages shall state, in separate col-

umns, the date and place of marriage, the christian and surname of the birdegroom and bride, and the maiden name of the bride, if a widow, the color, age, and place of birth of each, the residence of each at the time of marriage, the occupation of the bridegroom, and the name and official station of the person by or before whom they were married, the names and residences of at least two witnesses present at such marriage, and the date when such record was made. The record of deaths shall state, in separate columns, the date of the death, the christian and surname of the deceased, the sex and color, whether married or single, the age in years, months, and days, the place of death, the disease or apparent cause of death, the nativity of the deceased, and the occupation, if any, and the names, residence of the parents, if known, and the date when such record was made. The clerks of the several counties shall annually, on or before the first day of September make and transmit to the Secretary of State, a certified copy of the records of his office, of all the births, marriages and deaths reported in their respective counties for the year ending December thirty-first, last preceding. And each county clerk shall receive for the record of each birth and death in his office three cents, and three cents for each birth, marriage and death returned by him to the Secretary of State, to be paid by the county, and shall be compensation in full for all services required by this act to be performed by him.

Record of marriage shall state.

Record of deaths shall state.

Return of county clerk.

Compensation.

§ 861. *Am. Id.* SEC. 4. The Secretary of the State shall prepare and furnish to the county clerks of the several counties in this State, blank books of suitable quality and size, with proper rulings and headings, to be used as books of record, in carrying into effect the provisions of this act. He shall also prepare and furnish blank "forms for returns," as hereinbefore specified, accompanied with such instructions and explanations as may be necessary to insure uniformity in such returns, which blanks shall be forwarded to the several county clerks on or before the first day of March in each year; and the said county clerks shall deliver the same to the supervisors or assessors of the several townships, cities, or wards therein, in their respective counties, on or before the tenth day of April.

Secretary of State shall furnish all blank books, blanks, instructions, etc.

§ 862. SEC. 5. It shall be the duty of the Secretary of State to receive the returns made in pursuance of the third section of this act, and he shall cause the same for each year to be bound together, in one or more volumes, at the expense of the State, and make indexes thereto; and with such assistance as may be voluntarily rendered by any authorized committee appointed by the medical faculty of the University of Michigan, or by any regularly authorized medical society in this State, for that purpose, he shall prepare such tabular statements, results, and deductions therefrom as will render them of practical utility, and make report thereof, annually, to the Governor of the State, which report may be ordered published and distributed in such manner as the Legislature may from time to time direct.

Returns to be bound and indexed.

Secretary of State to make annual report.

Neglect to keep records.

§ 863. SEC. 6. Every justice of the peace, minister of the gospel, and all other persons authorized by the laws of this State to solemnize marriages, and clerks or keepers of records of the meetings in which any marriage among the Friends or Quakers shall be solemnized, who shall neglect or refuse to make a record of such marriage, or to deliver to the county clerk of the county in which the marriage took place, a certified copy of such record, or who shall refuse, on demand, to deliver to the parties to such marriage the certificate thereof, as required by section two of this act, or who shall wilfully make a false or fictitious entry in his record of marriages, or in the certified copy of such record delivered to the county clerk, or in the certificates of marriages delivered to the parties thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine not exceeding one hundred dollars, and in default of paying the same, shall be imprisoned in the county jail of the county in which such conviction shall be had, until said fine be paid, but not to exceed the period of ninety days.

Neglect to deliver certificates.

Penalty.

Certificate of death.

§ 864. SEC. 7. Every physician, surgeon or midwife who shall have been in attendance upon any deceased person, shall, upon application of any supervisor or assessor of the township, city, or any ward thereof, in which such death occurred, make out and deliver to such supervisor or assessor a certified statement, without fee, containing the name of the disease, or cause (if known), producing the death of such person; and any medical attendant who shall neglect or refuse to give such statement, or who shall wilfully make a false statement in relation to such death, shall, for such offense, be liable to pay a fine of not less than ten nor more than fifty dollars, and the costs of prosecution, which fine the said supervisor or assessor is hereby required to sue for and collect, in his official character.

Refusal to make certificate.

Penalty.

Facts to be obtained by supervisor.

§ 865. SEC. 8. It shall be the duty of each supervisor or assessor to obtain the facts in relation to births and deaths within his township, city, or any ward therein (not otherwise obtained), from the heads of families, the keepers, overseers, or superintendents of asylums, hospitals, jails, prisons, workhouses, almshouses, houses of correction, and similar institutions, the keepers of hotels, public and private boarding houses, and the masters or chief officers of steamboats and sail vessels, navigating any of the waters of this state, and touching at any port of entry therein, in which such births or deaths occurred; and if either of the above named persons shall refuse to give such information, then the same shall be obtained by such supervisor or assessor from any person having a knowledge of the facts in relation to such birth or death; and if the supervisor or assessor shall have reason to believe that any person or persons wilfully misrepresented or concealed any facts relative to such birth or death in his township, city, or any ward therein, which he cannot otherwise obtain, he may examine such person or persons on oath (which oath such supervisor or assessor is hereby empowered and authorized to

Refusal to furnish.

Obtained under oath.

administer) in relation to any birth or death within his township, city or any ward therein, of which such person or persons may have knowledge or information; and if any person, after being duly subpœnaed (as provided for compelling the attendance of witnesses in justices' courts) by such supervisor or assessor, for the purposes aforesaid, shall neglect or refuse to appear before such officer, or, appearing, shall refuse to be sworn and testify in relation to such matter, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished therefor by fine not exceeding fifty dollars, and in default of paying the same shall be imprisoned in the county jail of the county in which such conviction shall be had, until said fine be paid, but not exceeding ninety days; and any person who, after being duly sworn as aforesaid, shall wilfully make any false statement in relation to any birth or death, about which he is required to testify, shall be deemed guilty of wilful and corrupt perjury: *Provided*, That no person shall be required to answer any question which will tend to criminate himself or herself upon any such examination.

Neglecting to answer a subpœna.

Penalty.

Perjury.

Proviso.

§ 866. SEC. 9. In case of the refusal or neglect by any of the officers mentioned in this act, to perform any of the duties hereinbefore required of them or either of them, to be done and performed by any of the provisions herein contained, such officer shall be liable to a fine not to exceed one hundred dollars, and the costs of prosecution; and the prosecuting attorney in each county is hereby required to prosecute, in the name of the people of the State of Michigan, all persons in his county who shall wilfully violate any of the provisions of this act; and the said supervisor or assessors of any township, city or any ward therein, may be prosecuted for a misdemeanor under this section, and upon conviction, punished as therein provided for.

Neglect to perform duties.

Penalty.

Misdemeanor.

§ 867. *Added 1869, Act 125.* SEC. 10. (11). The several supervisors and assessors of the townships, villages, and cities in this State, who have made any returns of births and deaths to the county clerk of their respective counties for the year eighteen hundred and sixty-eight, and have not received the amount of compensation as provided for in this act, shall be paid therefor at rates set forth in the preceding sections. And such county clerks as have made returns of the births, marriages and deaths to the Secretary of State for the year eighteen hundred and sixty-eight, and who have not received compensation therefor, shall be paid for the same at the rates set forth in the preceding sections.

Compensation of supervisors and assessors for 1868.

County clerks.

MARRIAGE AND THE SOLEMNIZATION THEREOF. (a)

Who shall be capable of contracting marriage.

§ 6209. *Rev. Stat. 1846, Chap. 83.* SECTION 1. Every male who shall have attained the full age of eighteen years, and every female who shall have attained the full age of sixteen years, shall be capable in law of contracting marriage, if other wise competent. (*See notes.*)

Marriage is a civil contract.

§ 6210. SEC. 2. Marriage as far as its validity in law is concerned, is a civil contract to which the consent of parties capable in law of contracting is essential. (*See notes.*)

Who shall not intermarry.

§ 6211. SEC. 3. 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. (*See notes.*)

Idem.

§ 6212. SEC. 4. 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, or mother's brother.

Who not to marry.

§ 6213. SEC. 5. 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. (*b*) (*See notes.*)

Insane persons, etc.

§ 6214. SEC. 6. No insane person or idiot shall be capable of contracting marriage.

What marriages declared valid.

All marriages heretofore contracted between white persons and those wholly or in part of African

(*a*) For prior Statutes relative to the solemnization of Marriages, see Woodward Code, p. 42; Cass Code, p. 111; Code of 1820, p. 259; Rev. of 1827, p. 280; Laws of 1832, p. 6; Rev. of 1838, p. 329; R. S. of 1838, p. 333. The requirements as to licenses and solemnization of marriages are governed by Act 128, Public Acts 1887.

(*b*) Act 137, Laws of 1887, prohibits divorced persons from remarrying for a period specified in the decree, not to exceed two years.

NOTE.—The effect of marriage was, at the common law, to produce what is called *unity of person;* the husband and wife being but one person in the law: *Burdeno v. Amperse*, 14 Mich. 92.

6209. Age of legal consent: *People v. Slack*, 15 Mich. 193; *Bouker v. People*, 37 Mich. 7; *Lewis v. People*, 37 Mich. 518.

Contracting marriage means the actual forming of the marriage relation. Marriages contracted by parties who are of the legal age to consent are valid. But executory contracts to marry, made by parties under the age of twenty years, have not the legal force necessary to sustain an action for breach of promise: *Frost v. Vought* 37 Mich. 65.

§ 6210. Marriage a contract, etc., *Leavitt v. Leavitt*, 13 Mich. 456. Chastity is not requisite to its validity: *Id.*

A contract by which two parties mutually agreed to live as man and wife, but each was to retain the right to buy, sell, or transfer his or her property without question from the other. *Held* to provide only for a concubinage intercourse, is not a valid contract under which either party can claim any rights: *Clancy v. Clancy*, 66 Mich. 202.

Where one of the parties to an alleged marriage, instead of assenting to the contract, positively dissents from it, there can be no legal or valid marriage, although a ceremony is performed by the officiating minister or magistrate: *Roszel v. Roszel*, 73 Mich. 133.

§ 6211. Marriages are prohibited within the degrees of consanguinity named, whether the parties are legitimate or illegitimate, or of the whole or the half blood: *People v Jenness*, 5 Mich. 318.

§ 6213. *People v. Dawell*, 25 Mich. 273.

§ 6214. *People v. Brown*, 34 Mich. 340.

Marriages between members of Indian tribe in tribal relations, were unquestionably good by the Indian rules. The court cannot interfere with the validity of such marriages without subjecting them to rules of law which never bound them: *Kobogum v. Jackson Iron Co.*, 76 Mich. 498.

It is a principal of universal law that marriages valid by the law governing both parties when made, must be treated as valid everywhere: *Id.*

descent are hereby declared valid and effectual in law for all purposes, and the issue of such marriages shall be deemed and taken legitimate as to such issue and as to both of the parents. (*See notes.*)

Marriages by whom solemnized.

§ 6215. SEC. 7. Marriages may be solemnized by any justice of the peace in the county in which he was chosen, and they may be solemnized throughout the State by any minister of the gospel who has been ordained according to the usages of his denomination, and who is a pastor of any church or churches in this State, or who shall continue to preach the gospel in this State: *Provided*. That all non-resident ministers of the gospel who are authorized by this act to solemnize marriages, shall keep proper records and make returns as required by section two, chapter sixteen, of the compiled laws of eighteen hundred and seventy-one. (*a.*) (*See notes.*)

Proviso as to non-resident ministers.

One of parties to be examined on oath.

§ 6216. SEC. 8 All justices of the peace and ministers of the gospel are hereby authorized and required, before solemnizing any marriage, to examine at least one of the parties on oath, which oath they are hereby authorized to administer, as to the legality of such intended marriage. (*See notes.*)

No particular form required.

§ 6217. SEC. 9. In the solemnization of marriage, no par-

(*a*) Previous to 1871 the Mayor of Flint was also authorized to solemnize marriages.

§ 6215. The validity of marriages solemnized in other states, must, in criminal cases, be shown by the laws of such states: *People v. Lambert*, 5 Mich. 364.

A marriage by a justice outside of his county, followed by cohabitation of the parties as husband and wife for fourteen years, held legal, in a criminal prosecution for adultery: *People v. Girdler*, 65 Mich. 68.

While there may be countries where marriages are void unless solemnized by a person having actually the authority to perform them, such is not the general rule, and such is not our law: *People v. Perriman*, 72 Mich. 184.

A witness who swears to seeing a man and woman joined together by a marriage ceremony, performed seriously and in earnest, by a person acting in the character of a clergyman or magistrate, testifies to what is a valid marriage unless clearly made illegal by statute: *Id.*

A marriage valid when it is celebrated will be valid everywhere, but if void where celebrated it will be void everywhere: *Hutchins v. Kimmell*, 31 Mich. 131.

§ 6216. Examination of the parties on oath: *Bouker v. People*, 37 Mich. 4, 10.

§ 6217. In this state, whatever the form of ceremony, or even if all ceremony be dispensed with, if the parties agree presently to take each other for husband and wife, and from that time live together professedly in that relation, this will be sufficient to constitute a marriage binding upon the parties, and which will subject them and others to legal penalties for a disregard of its obligations: *Hutchins v. Kimmell*, 31 Mich. 130. A marriage ceremony is not conclusive of a valid marriage; consent is necessary. When a marriage is not otherwise made out, very clear evidence of conduct in confirmation with that relation is required: *Kopke v. People*, 43 Mich. 45.

Continued cohabitation as husband and wife establishes the relation without any actual marriage ceremony, if the parties are competent to marry and consent to take each other as husband and wife: *Peet v. Peet*, 52 Mich. 464; *Williams v. Kilburn*, 88 Mich. 279.

Reputation is important as evidence to establish the fact of a marriage, but it cannot disprove an actual marriage. And where there is doubt, the presumption should favor a lawful marriage, rather than notorious immorality: *Id.*

In proving marriage, reputation is important only as circumstantial evidence as to whether the parties themselves regarded each other as husband and wife: *Cross v. Cross*, 55 Mich. 280.

As to marriages solemnized in other states and countries, a formal ceremony of marriage, whether in due form or not, must be assumed to be by consent, and therefore *prima facie* a contract of marriage *per verba de presenti;* and when the local law is not shown, the argument in its favor is, that marriage between parties capable of contracting it is of common right, and valid by a common law prevailing throughout christendom. *Prima facie*, a good marriage is shown when the contract is proved with cohabitation following it, and it cannot be assumed that there are regulations restrictive of the common right until they are shown. When parties take such steps abroad to constitute a marriage as would be sufficient under our laws, afterwards remove to this state and continue to live together here as husband and wife, recognizing the validity and binding obligation of that relation, they will be deemed to be legally married: *Hutchins v. Kimmell*, 31 Mich. 126. See *People v. Calder*, 30 Mich. 85; *Kopke v. People*, 43 Mich. 44-5.

It is quite possible for a valid marriage to be shown with no means to show its time and place, and this is especially true of marriages in distant places: *People v. Perriman*, 72 Mich. 184.

ticular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate or minister and the attending witnesses that they take each other as husband and wife; and in every case there shall be at least two witnesses, besides the minister or magistrate, present at the ceremony. (*See notes.*)

SEC. 10. *Repealed S. L. 1869, Act 194, Sec. 10.*

SEC. 11. *Repealed Id.*

SEC. 12. *Repealed Id.*

SEC. 13. *Repealed Id.*

Forfeiture for joining persons in marriage contrary to law.

§ 6218. SEC. 14. If any justice of the peace or minister of the gospel shall join any person in marriage contrary to the provisions of this chapter, he shall forfeit for every such offense a sum not exceeding five hundred dollars.

Punishment of persons unauthorized.

§ 6219. SEC. 15. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing of any legal impediment to the proposed marriage, he shall be deemed guilty of a misdemeaor, and, upon conviction thereof, shall be punished by imprisonment in the county jail not more than one year, or by a fine not less than fifty nor more than five hundred dollars, or by both such fine and imprisonment, in the discretion of the court. (*See notes.*)

Marriage not void in certain cases.

§ 6220. SEC. 16. 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*, That 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.

Marriages among Quakers.

§ 6221. SEC. 17. The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called Friends or Quakers; nor marriages among people of any other particular demonination having, as such, any peculiar mode of solemnizing marriages; but such marriages may be solemnized in the manner heretofore used and practiced in their respective societies or denominations.

Certificates and record made evidence.

§ 6222. SEC. 18. The original certificates and records of marriage made by the minister or justice, as prescribed in this chapter, and the record thereof made by the county clerk, or a

§ 6219. A misdemeanor, etc., *Bouker, v. People*, 37 Mich. 4. Whatever is in the way of a valid marriage is such an impediment as the statute has in view. This statute applies to a marriage where the girl is under the age of consent: *Id.*

§ 6222. The certificates and records of marriages referred to in this section were provided for in sections 10, 11, 12, 13 of this chapter. Those sections were repealed in 1867, and new provisions for such certificates and records were then enacted: See §§ 859, 860.

A duly authenticated certificate of a marriage celebrated in a foreign country may be received in evidence here: *Hutchins v. Kimmell*, 31 Mich. 126.

A paper purporting to be a certificate of a marriage solemnized in another state, and certified by the clerk of the county to be a true and perfect copy of such certificate, as the same appears from the records in his office, but which is not certified as required by the act of Congress, and does not conform to any rule of the state on the subject, is inadmissible as evidence of such alleged marriage in this state: *People v. Perriman*, 72 Mich. 184.

Proof of marriage in civil cases.—See *Shotwell v. Harrison*, 22 Mich. 410. Proof by certificate when solemnized in another state: *People v. Lambert*, 5 Mich. 365.

copy of such record duly certified by such clerk, shall be received in all courts and places as presumptive evidence of the fact of such marriage. (*See notes.*)

In civil cases, evidence of reputation is competent to prove marriage: *Peet v. Peet*, 52 Mich. 464. It is important only as circumstantial evidence as to whether the parties themselves regarded each other as husband and wife: *Cross v. Cross*, 55 Mich. 280.

Except in criminal prosecutions and cases of seduction, marriage may be proved by conduct and reputation, such as, that the parties lived together and raised a family, treated each other on all occasions as husband and wife, jointly signed papers in that relation, addressed each other as such, and were so reputed in the family and by their acquaintances. The law does not make marriage records the best evidence, and even where they exist some parol evidence is usually necessary to identify the parties in case of any controversy: *Proctor v. Bigelow*, 38 Mich. 282. See *Leonard v. Pope*, 27 Mich. 146. Thus, in an action for enticing away the plaintiff's wife, direct proof of a formal marriage is not requisite. But evidence of cohabitation and repute, and of defendant's admissions that the plaintiff and his alleged wife were married, may be allowed to satisfy a jury: *Perry v. Lovejoy*, 49 Mich. 532. The highest evidence of marriage is not required in suits not directly involving the marriage relation as a part of the main issue.

But such evidence of cohabitation and reputation as would be sufficient to prove marriage in civil cases, would not be sufficient where it is sought to fix a charge of adultery on a party; *Hutchins v. Kimmell*, 31 Mich. 130.

Proof of marriage in criminal cases—Dixon v. People, 18 Mich. 84. And when solemnized in other states: *People v. Calder*, 30 Mich. 85. And in actions for criminal conversation: *Id.* In prosecutions for adultery, see *People v. Broughton*, 49 Mich. 339.

A marriage by a justice outside of his county, followed by cohabitation of the parties as husband and wife for fourteen years, held legal, in a criminal prosecution for adultery: *People v. Girdler*, 65 Mich. 68.

Testimony of eye witnesses frequently more reliable than documentary evidence: *People v. Perriman*, 72 Mich. 184.

In criminal cases, proof of marriage solemnized in another state cannot be proved by the certificate thereof: *People v. Lambert*, 5 Mich. 349-365. Nor by certificate when the marriage was in this state: *People v. Bennett*, 39 Mich. 208.

LAWS RELATIVE TO REGISTRATION OF MARRIAGES.

LICENSES AND REGISTRATION OF MARRIAGES.

AN ACT for the requiring of a civil licence in order to marry, and the due registration of the same, and to provide a penalty for the violation of the provisions of the same.

Persons intending marriage must obtain license.

§ *6222a. P. A. 1887, Act 128; Am. 1889, Act 256.* SECTION 1. *The People of the State of Michigan enact,* It shall be necessary for all parties intending to be married to obtain a marriage license from the county clerk of the county in which either the man or woman resides, and to deliver the said license to the clergyman or magistrate who is to officiate, before the marriage can be performed. If both parties to be married are non-residents of the State it shall be necessary to obtain such license from the county clerk of the county in which the marriage is to be performed.

Where non-residents must obtain license.

Secretary of State to furnish forms, blanks.

§ 6222*b*. SEC. 2 Blank forms for marriage license and certificate, as also proper books of registration ruled for the items contained in said forms shall be prepared by the Secretary of State, and shall be furnished by him to the county clerk of the various counties of the State in quantities needed.

Form of license.

The blank forms for license and certificate shall be made in duplicate and shall provide spaces for the entry of the following items, to wit: The full name, age, color, place of residence, place of birth, occupation, and if known, the father's name, and mother's maiden name, of each of the parties to be married; the number of times either of the parties may have been previously married; the bride's maiden name, in case she is a widow; the date of the giving of the license; the signature of the county clerk; the date and place of the marriage; the names and residences of two witnesses to the marriage, and the certification of the officiating clergyman or magistrate, that the marriage contemplated by the license has been performed by him. And the Secretary of State shall furnish to the county clerks of the various counties of the State, blank forms of affidavit, containing the requisite allegations, under the laws of this State, of the competency of the parties to unite in the bonds of matrimony, and any party applying for license to

Secretary of State to furnish to county clerks blank forms of affidavit.

marry, shall cause such an affidavit to be made and filed with the county clerk, as a basis for the issuing of the license; and such affidavit, together with the license shall be made a matter of record of said clerk's office.

County clerk to fill out blank spaces to license for marriage.

§ 6222*c*. *Am. 1895, Act 243.* SEC. 3. It shall be the duty of the county clerk, on application being made to him, to fill out the blank spaces of the license according to the sworn answers of the applicant, taken before him or some person duly authorized by law to administer oaths. Whenever it shall appear from said affidavit that the said applicant applies for a license for the marriage of a female who has not attained the age of eighteen years, then it shall be the duty of said county clerk to require that there shall first be produced the written consent of one of the parents of said female or of her legal guardian to the marriage of said female, and to the issuing of the license for which application is made, unless such female have no parent or guardian living. No license shall be issued by said county clerk in such cases until the said requirement is complied with. Such written consent shall be preserved on file in the office of said county clerk. If it shall appear that the parties are legally entitled to be married, the county clerk shall sign the license in certification of the fact that it is properly issued, and he shall make a correct copy thereof in the books of registration. For his services connected therewith he shall be entitled to a fee of fifty cents, to be paid by the party applying, and at the time of the issuing of the license. He shall give the license thus filled out and signed by him, together with the blank form of certificate, to the party applying for delivery to the clergyman or magistrate who is to officiate at the marriage. On the return of the license to the county clerk as hereinafter provided, with the certificate of the clergyman or magistrate that the marriage has been performed, he shall record in the book of registration in their proper places of entry the date and place of the marriage, the names and residences of two witnesses to the marriage and the name of the officiating clergyman or magistrate. All licenses and certificates so issued and returned shall be preserved on file in the office of the county clerk, and he shall as often as once in three months make a faithful report to the Secretary of State of all licenses and certificates issued and received by him.

When to demand written consent of parents.

Written consent to be filed.

Fees for services.

To record licenses in book of registration.

Duty of officiating clergyman or magistrate.

§ 6222*d*. SEC. 4. It shall be the duty of the clergyman or magistrate, officiating at a marriage, to fill out the spaces of the certificate left blank for the entry of the time and place of the marriage, the names and residences of two witnesses, and his own signature in certification that the marriage has been performed by him. He shall separate the duplicate license and certificate and retain one-half for his own record, and he shall return the other half within ten days to the county clerk issuing the same.

Penalty for violating act by county clerk.

§ 6222*e*. SEC. 5. Any county clerk who shall refuse to give a license to persons properly applying and legally entitled to be married, or who shall violate any of the provisions of this

act, shall be adjudged guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or in default of payment thereof by imprisonment in the county jail for a term of thirty days.

Penalty for violation by clergyman.

§ 6222*f*. SEC. 6. Any clergyman or magistrate who shall join together in marriage parties who have not delivered to him a properly issued license, as provided for in this act, or who shall violate any of the provisions of this act, shall be adjudged guilty of a misdemeanor, and shall be punished by a fine of one hundred dollars, or, in default of payment thereof, by imprisonment in the county jail for a term of ninety days,

Penalty for neglect to return certificate.

§ 6222*g*. SEC. 7. Any person whose duty it shall be to return a marriage certificate to the county clerk, who shall neglect to return said certificate, shall be adjudged guilty of a misdemeanor, and shall be punished by a fine of not exceeding one hundred dollars or ninety days' imprisonment, or both, in the discretion of the court.

False swearing in application perjury.

§ 6222*h*. SEC. 8. Any person applying for a marriage license who shall swear to a false statement therein, shall be guilty of perjury and shall be prosecuted therefor under the general laws of the State.

Filing and recording of reports.

SEC. 9. All reports of marriage, sent by the county clerks of the various counties of the State to the office of the Secretary of State, shall be preserved on file in that office, and a proper record thereof shall be made and kept.

Records of license prima facie evidence.

§ 6222*i*. SEC. 10. The record of any license to marry, or of any marriage certificate in any county clerk's office, or a certified copy thereof, shall be *prima facie* evidence in any court or proceedings in this State, with the same force and effect as if the original were produced, both as to the facts therein contained and as to the genuineness of the signatures thereto.

Repealing clause.

§ 6222*k*. SEC. 11. All other acts and parts of acts which are inconsistent herewith are hereby repealed.

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§ 6222*f*. Where parties about to marry represented to the clergyman that they have procured the license from the county clerk and it was on the way by mail. *Held*, that the clergyman was guilty of a violation of Act No. 128, P. A. 1887.

The fact that one of the contracting parties was a bigamist and no legal marriage could be performed does not release the clergyman for performing the ceremony. *Held*, that the object of the act is sufficiently embraced in its title and the act is constitutional.

Supreme court, March 6, 1896.

LAWS RELATIVE TO DIVORCE.

DIVORCE.

§ 6223. *Rev. Stat. 1846, Chap. 84; Am. P. A. 1883, Act 24.* Marriages void without divorce.

SECTION 1. 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 marriages solemnized when either of the parties was insane or an idiot, shall, if solemnized within the 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. Proviso.

§ 6224. SEC. 2. 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. (*See notes.*) Idem.

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§ 6224. The legal age of consent is fixed by § 6209. The marriage, when one or both of the parties shall be under the legal age of consent, is voidable, but not void. It may be annulled by the mutual consent of both, or at the election of the party under age, but not at the election of the party of competent age. Upon the latter it is binding: *People v. Slack*, 15 Mich. 193. See § 6254. Voidable only: *Bouker v. People*, 37 Mich. 7. But will be void if the party under age withdraws and refuses to cohabit: *People v. Bennett*, 39 Mich. 209.

As to what frauds (such as duress, pregnancy before marriage) will invalidate a marriage, or authorize a decree of nullity: *Leavitt v. Leavitt*, 13 Mich. 456-7. See *Dawson v. Dawson*, 18 Mich. 335; *Smith v. Smith*, 51 Mich. 607; *Sissung v. Sissung*, 65 Mich. 168; *Harrison v. Harrison*, 94 Mich. 559.

The court granting a decree of divorce has the power to set it aside for fraud in its procurement, or want of jurisdiction, on the application of the party against whom it was obtained, even though the other party may have remarried and children may have been begotten: *Carlisle v. Carlisle*, 96 Mich. 128.

NOTE.—Divorces cannot be granted by the legislature; nor can it authorize the granting of them in special cases not provided for by the general laws of the state: Const. Art. 4, sec. 26; *Teft v. Teft*, 3 Mich 67.

Jurisdiction over divorce is purely statutory: *Baugh v. Baugh*, 37 Mich. 61; and not within the original cognizance of courts of equity: *Haines v. Haines*, 35 Mich. 145.

Foreign divorces.—The fact that a divorce procured in another state is fraudulent, may be shown collaterally in this state: *People v. Dawell*, 25 Mich. 247.

One who leaves Michigan temporarily to avoid legal process and stays in Indiana a year for the purpose of getting a divorce meanwhile, does not thereby acquire a residence which will give the Indiana courts jurisdiction of his divorce proceedings. And notice of such proceedings, served on the wife in Michigan, need not be heeded: *Reed v. Reed*, 52 Mich. 117.

An Indiana divorce cannot be impeached in a purely collateral civil action in Michigan by seeking to show that the residence of the complainant in the divorce suit was not such as to give the Indiana court jurisdiction: *Waldo v. Waldo*, 52 Mich. 94. In a collateral proceeding depending upon a divorce procured in another state, the court which granted it must be presumed to have had jurisdiction, and to have proceeded on the merits in accordance with the local laws: *Id.*

Suit may be brought to annul void marriage.

§ 6225. SEC. 3. 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. (*See notes.*)

Suit to affirm marriage.

§ 6226. SEC. 4. 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.

Sentence to imprisonment for life dissolves marriage.

§ 6227. SEC. 5. 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.

Divorce from bond of matrimony, for what cause may be decreed.

§ 6228. *Am. S. L. 1847, Act 105; 1848, Act 150; 1851, Act 64.* SEC. 6. A divorce from the bonds of matrimony may be decreed by the circuit court of the county where the parties,

§ 6225. See § 6257; *Leavitt v. Leavitt*, 13 Mich. 452.

A bill to annul a marriage for gross duress was sustained where the marriage had never been recognized and complainant was a youth of eighteen whom defendant had brought before a justice, and frightened into marriage on the spot: *Smith v. Smith*, 51 Mich. 607.

§ 6228. Residence of parties, see § 6612. The complainant must be domiciled in this state: *People v. Dawell*, 25 Mich. 254. A wife may acquire a domicil separate from her husband: *Id.* 263.

Where one of the parties resides in this state and the other in another state, each state has authority to dissolve the marriage: *Wright v. Wright*, 24 Mich. 180; *Van Inwagen v. Van Inwagen*, 86 Mich. 333.

The husband need not reside in Michigan two years before filing his bill for divorce when the desertion complained of is by the wife in another state: *Colburn v. Colburn*, 70 Mich. 647.

Omission to aver residence in county where bill is brought may be cured by amendment: *People v. McCoffrey*, 75 Mich. 115.

Where a divorce is sought by the wife on other grounds than the granting of a prior divorce to the husband in another state; which fact he sets up in a cross-bill in bar to relief sought, the complainant is not required to answer such new matter, nor is the court ousted of jurisdiction to decree the payment of temporary alimony: *Van Inwagen v. Van Inwagen*, 86 Mich. 333.

Bill or petition.—None but the husband and wife can be parties to a suit for divorce. Children and strangers cannot intervene: *Baugh v. Baugh*, 37 Mich., 59; *Peck v. Uhe*, 66 Mich. 592.

Under the R. S., 1838, Title 7, chap. 2, complainant's signature to the affidavit of verification at the foot of the petition was held to be a sufficient signing, etc., *Johnson v. Johnson*, Walk. Ch. 310.

Bill dismissed on failure to establish either civil or common-law marriage: *Rose v. Rose*, 67 Mich. 619; *Van Dusan v. Van Dusan*, 97 Mich. 70.

Process from our courts cannot be served beyond the state boundaries: *Pratt v. Bank of Windsor*, Har. Ch. 254; *McEwan v. Zimmer*, 38 Mich. 768. Nor is service beyond the jurisdiction of the court binding: *Id.* Formerly it was held that service of the subpœna upon the keeper of the state prison, the defendant being confined therein, was sufficient: *Johnson v. Johnson*, Walk. Ch. 310. But see, present chancery rule 10.

Affidavit of non-residence.—Sufficiency of, when no information and belief, etc.; if the affidavit tends to make out what is required as the basis for the order of publication to the satisfaction of the officer, the order will not be void for defect in the proof: *Pettiford v. Zoellner*, 45 Mich. 362.

An order pro confesso, cannot be entered until proof of service of the subpœna is filed: *Eaton v. Eaton*, 33 Mich. 305.

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; Adultery.

Second, When one of the parties was physically incompetent at the time of the marriage; Incompetency.

Opening proofs.—As to opening proofs and extending time to take testimony to a party who has caused vexatious delays, see *McClung v. McClung*, 40 Mich. 493.

Appeals.—In all appeals the matter is heard in appellate court as if it had not been heard before, and the order made, is such as should have been made below: *Haines v. Haines*, 35 Mich. 143. An appeal lies from a decree granting a divorce, although it orders a reference to determine the amount of temporary alimony to be allowed: *Shaw v. Shaw*, 9 Mich. 164. But the decree cannot be modified in favor of the party not appealing: *Hoff v. Hoff*, 48 Mich. 281.

An appeal by the wife, taken within the statutory period, from a decree of divorce granted to her deceased husband, will be entertained: *Shafer v. Shafer*, 30 Mich. 163. But the representatives of the deceased husband must be brought in before hearing: *Id.*

On appeal from a decree of divorce, the record of a collateral proceeding, in which conveyances by the defendant were set aside, was sent up with the divorce record, but no appeal was taken from the collateral decree. *Held*, that nothing could be done with it: *German v. German*, 57 Mich. 256.

A consent decree cannot be appealed from: *Owen v. Gale*, 75 Mich. 256.

Subdivision 1.—*Adultery.*—See § 6261. In proceedings for divorce for the cause of adultery, inflexible adherence to the settled forms and practice prescribed for the attainment of justice in courts of equity, should be observed: *Green v. Green*, 26 Mich. 440.

The time, place, and circumstances or occasion of the act charged, and the name of the guilty participator, if known, must be set forth definitely, and with particularity and distinctness: *Dunn v. Dunn*, 11 Mich. 284; *Shoemaker v. Shoemaker*, 20 Mich. 222; *Bennett v. Bennett*, 24 Mich. 482; *Green v. Green*, 26 Mich. 437; *Randall v. Randall*, 31 Mich. 194; *Herrick v. Herrick*, 31 Mich. 298. An allegation that the defendant lived "in open and notorious adultery," naming the time and place and party with whom, etc., is sufficient: *Marble v. Marble*, 36 Mich. 386.

A charge of adultery made after the parties have lived together many years, founded upon suspicious circumstances of which the complainant had notice at the time of marriage, is too late: *Stuart v. Stuart*, 47 Mich. 566.

Amendments to the bill charging adultery must be sworn to in the same manner as the original bill: *Green q. Green*, 26 Mich. 437; *Briggs v. Briggs*, 20 Mich. 40. Facts proved but not alleged in the bill are not to be made available by way of amendment: *Green v. Green*, *supra*.

Proof of, etc.—Bishop v. Bishop, 17 Mich. 211. The adultery must be proved by evidence and not by scandal merely: *Soper v. Soper*, 29 Mich. 305. Reputation is not sufficient, but may be received in aid of and as incident to substantial proof: *Marble v. Marble*, 36 Mich. 386.

The proof must be confined strictly to the issue. Proof of adulterous acts not alleged, cannot avail: *Dunn v. Dunn*, 11 Mich. 284; *Shoemaker v. Shoemaker*, 20 Mich. 222; and cannot, in fact, be proved or considered: *Bennett v. Bennett*, 24 Mich. 482; *Green v. Green*, 26 Mich. 437; *Randall v. Randall*, 31 Mich. 194; *Herrick v. Herrick*, 31 Mich. 298. But the charge may be established by circumstantial evidence: *Marble v. Marble*, 36 Mich. 386. And it will be presumed that licentious persons, holding and expressing loose and depraved notions in regard to the marriage relation, will commit such offenses as they have opportunity for, when consorting together: *McClung v. McClung*, 40 Mich. 498.

Proof by particeps criminis: Emmons v. Emmons, Walk. Ch. 534; *Herrick v. Herrick*, 31 Mich. 298. Taking the testimony of children of tender age, as to their parents' guilt, is reprehensible: *Kneale v. Kneale*, 28 Mich. 344; *Crowner v. Crowner*, 44 Mich. 180.

The evidence of a party to the suit, taken without the order of the court, cannot be regarded: *Stuart v. Stuart*, 47 Mich. 556.

Proof of a single act is sufficient. But confessions alone will not establish a case of adultery: See § 6260. *Sawyer v. Sawyer*, Walk. Ch. 52-3.

Subdivision 3.—Sentenced for three years, etc., *Johnson v. Johnson*, Walk. Ch. 309.

Subdivision 4.—*Desertion.*—What will amount to it: *Porritt v. Porritt*, 18 Mich. 420, 424; *Rudd v. Rudd*, 33 Mich. 101; *Holmes v. Holmes*, 44 Mich. 555.

Desertion can exist only against the will and acquiescence of the deserted party; separation br consent cannot amount to it: *Cooper v. Cooper*, 17 Mich. 210; *Porritt v. Porritt*, 18 Mich. 424; *Cox v. Cox*, 35 Mich. 463. As to what will justify a separation: *Id.*

After a separation, by mutual agreement, nothing but an unconditional and entire resumption of the marriage relations can restore the parties to a position where a new separation could amount to desertion: *Cooper v. Cooper*, 17 Mich. 210.

The desertion must continue without interruption for two full years, and up to the time of filing the bill. Time consumed in mutual consultations, deliberations and treaties for a resumption of the marriage relations, should not be counted: *Rudd v. Rudd*, 33 Mich. 101. The desertion must be proved substantially as alleged: *Id.*

Divorce cannot be granted for desertion except on satisfactory proof: (1) That cohabitation has ceased; (2) that defendant intends desertion; and (3) that the separation is against the will of complainant: *Rose v. Rose*, 50 Mich. 92.

Imprisonment.

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;

Desertion.

Fourth, When either party shall desert the other for a term of two years;

Drunkards.

Fifth, When the husband or wife shall have become an habitual drunkard;

Power of circuit court.

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. (*See notes.*)

Divorce from bed and board, when may be decreed.

§ 6229. *Am. Id., 1847; 1848, Id.* SEC. 7. A divorce from bed and board forever, or for a limited time, may be decreed

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Separation of married persons differs from desertion of one by the other; desertion, in Michigan, is wilful abandonment for two years without cause, and against the wish of the person abandoned, and it may even be charged upon the one who stays at home: *Warner v. Warner*, 54 Mich. 492.

A wife who leaves her husband for cruelty, which she reasonably believes makes further residence with him unsafe, is not chargeable with desertion, but *he* is: *Id.*

Where a husband and wife left his farm and went to reside with her parents, and afterwards separated, but proofs fail to show he went away intending to desert her, no case of desertion is made out: *Dashback v. Dashback*, 62 Mich. 322.

Desertion by wife in another state need not continue two years after husband's removal to Michigan to entitle him to divorce, nor need he have resided here two years before filing his bill: *Colburn v. Colburn*, 70 Mich. 647.

In this case the decree below, adjudging defendant guilty of desertion, is held to have been fully warranted, and is affirmed: *Rathbun v. Rathbun*, 76 Mich. 462.

Where after living peaceably with her husband for 35 years, a wife left her home and went to California and remained, the husband made no effort to induce the wife to return, his bill for divorce on the grounds of desertion is properly dismissed: *Wright v. Wright*, 80 Mich. 572.

Divorce, as for desertion, was granted a husband where his wife had left him against his protest, and in response to peremptory demands he had made provision for her and she had given him a release of claims on his property; and where, also, the parties were old and had been married only a month, and though there was no evidence of collusion, the case was undefended: *Stoffer v. Stoffer*, 50 Mich. 491.

SUBDIVISION 5.—*Habitual drunkard.*—One who has the habit of indulging in intoxicating liquors so firmly fixed that he becomes intoxicated as often as the temptation is presented by his being in the vicinity where they are sold, is an habitual drunkard within the meaning of this section: *Magahay v. Magahay*, 35 Mich. 210. To bring a case within this statute the defendant must have become an habitual drunkard after marriage: *Porritt v. Porritt*, 16 Mich. 141-2. Or, at least, the fact must have been kept concealed from the complainant: *Id.*

The facts, even if true, that a wife is shown by the testimony not to be of the most refined character, and that she has not always been truly ladylike in her behavior, but at times, when in anger, has been guilty of profanity, and has not remonstrated with her husband as she ought, or rebuked him for using liquor to excess, furnish no adequate excuse for the abuse which he is shown to have heaped upon her in his drunken moods, which have been too frequent not to be habitual: *Berryman v. Berryman*, 59 Mich. 605.

Occasional intoxication is not habitual drunkenness in a woman any more than it is in a man: *Meathe v. Meathe*, 83 Mich. 150.

SUBDIVISION 6.—A decree of divorce obtained by one party in another state against the other residing here, whether valid or void, is cause for granting a divorce to the party residing here: *Wright v. Wright*, 24 Mich. 180.

The circuit courts may, in their discretion, 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 another state, and may order the payment of alimony as in other cases: *Van Inwagen v. Van Inwagen*, 86 Mich. 333.

Where a divorce is sought by the wife on other grounds than the granting of a prior divorce to the husband in another state, which fact he sets up in a cross-bill in bar to the relief sought, the complainant is not required to answer such new matter, nor is the court ousted of the jurisdiction to decree the payment of temporary alimony: *Id.*

§ 6229. *Extreme cruelty.*—This grievance, when a cause for divorce, must be of a most aggravating nature, entirely subverting the family relations by rendering the association intolerable: *Cooper v. Cooper*, 17 Mich. 210. It is not confined to personal violence, or threats of bodily harm: *Id.; Chaffee v. Chaffee*, 15 Mich. 186-7.

A long and continuous course of conduct which, without the fault of the other party, results in making the marriage relation unendurable, and in driving the latter from the home of the offender, is extreme cruelty: *Briggs v. Briggs*, 20 Mich. 45-6. So is the persistent circulation of false and slanderous reports derogatory to the wife's character for chastity: *Goodman v. Goodman*, 26 Mich. 417. And so is a wife's habitual

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. (*See notes.*)

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and persistent treatment of her husband in an offensive and opprobrious manner, accusing him in public and private of infamous conduct in violation of his marriage obligations, and calling him by vile and vulgar epithets, etc., *Whitmore v. Whitmore*, 49 Mich. 417. So is consorting with and showing or expressing preference for persons of loose morals and unchaste character of the opposite sex: *McClung v. McClung*, 40 Mich. 493. And so is the communication of a venereal disease: *Canfield v. Canfield*, 34 Mich. 519; *Holthoefer v. Holthoefer*, 47 Mich. 260. But the fact that a wife of unimpeached chastity is found to have such a disease, is not sufficient evidence that it was communicated by her husband: *Id.*

Profane, obscene and insulting language, habitually indulged in towards a wife of refined feelings and sensitive nature, may be carried so far as to amount to extreme cruelty: *Bennett v. Bennett*, 24 Mich. 484-5. See *Briggs v. Briggs*, 20 Mich. 45-6; *Goodman v. Goodman*, 26 Mich. 417; *Palmer v. Palmer*, 45 Mich. 150; 54 Mich. 492; *Whitacre v. Whitacre*, 64 Mich. 232.

A single act of causeless violence is not sufficient: *Briggs v. Briggs, supra.* Nor are mutual wranglings and exhibitions of unruly temper: *Cooper v. Cooper*, 17 Mich. 210; *Johnson v. Johnson*, 49 Mich. 639; *Morrison v. Morrison*, 64 Mich. 53. Acts not amounting to: See *Soper v. Soper*, 29 Mich. 305; *Cox v. Cox*, 35 Mich. 461; *Lapp v. Lapp*, 43 Mich. 287. As to when vile and indecent language will not amount to: *Briggs v. Briggs*, 20 Mich. 43; *Holmes v. Holmes*, 44 Mich. 555. As to harsh language and recriminatory charges: See *Bishop v. Bishop*, 17 Mich. 211. Neglect to look after household affairs: *Bennett v. Bennett*, 24 Mich. 484. And as to cruelty towards the children and other members of the household: *Chaffee v. Chaffee*, 15 Mich. 186-7. A husband cannot complain of cruelty when he is at the same time denying to his wife all consideration due to her as such: *Holmes v. Holmes*, 44 Mich. 555. Nor can either complain of violence in their quarrels, from which one suffers as much as the other: *Soper v. Soper*, 29 Mich. 305. And See *Hoff v. Hoff*, 48 Mich. 281; *Minde v. Minde*, 65 Mich. 633.

It is extreme cruelty to turn a wife and her daughter out of doors without cause, and to make their separation the condition of taking the wife back again: *Friend v. Friend.* 53 Mich. 543.

It is extreme cruelty for a husband to wantonly neglect his wife in critical illness and to address her at such times in harsh and brutal language: *Hoyt v. Hoyt*, 56 Mich. 50.

Mere irascibility and harshness are no ground for divorce, especially when purposely provoked by tantalizing conduct: *German v. German*, 57 Mich. 256.

When specific acts of cruelty are not specified in the bill, no proof of such cruelty is admissible: *Dashback v. Dashback*, 62 Mich. 322.

In case the court find the charges of cruelty made in the bill substantiated by the evidence, and grant complainant the relief prayed for: *Taylor v. Taylor*, 73 Mich. 266.

When the husband deeds the homestead to his wife, and she refuses to cohabit, and finally drives him from the house and then rents it, a case of extreme cruelty exists: *Menzer v. Menzer*, 83 Mich. 319.

It is extreme cruelty for the husband to compel his wife to do more work than she is capable of performing: *De Zwaan v. De Zwaan*, 91 Mich. 279.

As to what constitutes condonation: *Runkle v. Runkle*, 96 Mich. 493.

Where a bill for divorce charges both extreme cruelty and adultery, collusion cannot be inferred from the filing of a stipulation striking the latter charge therefrom: *Holcomb v. Holcomb*, 100 Mich. 421.

Where husband and wife lived together a few days after bill filed by husband, and then separated, the wife filing answer, charging drunkenness and cruelty, *held*, that the court did not lose jurisdiction by the subsequent cohabitation, nor was it a bar to divorce for cruelty: *Tackaberry v. Tackaberry*, 101 Mich. 102.

Pleadings and proofs.—The specific acts of cruelty relied upon as cause for divorce, should be distinctly set forth in the bill. And must be proved as alleged. But evidence of cruelty is not confined to the acts charged; others tending to characterize those alleged, may be shown: *Briggs v. Briggs*, 20 Mich. 41; *Bennett v. Bennett*, 24 Mich. 482.

A party coming into a court of equity, and asking to be released from the bonds of matrimony and its obligations, must come with clean hands, and must keep them clean, so far as relates to the procurement of testimony to make out his case: *Van Voorhis v. Van Voorhis*, 94 Mich. 60.

Failure to support.—In a bill for a limited divorce on the ground of refusal to support, an allegation charging the defendant with "inhuman and cruel treatment," and that "he had grossly, wantonly and cruelly refused and neglected to provide a suitable maintenance," etc., sets forth the cause with sufficient particularity. In such a case, it is not necessary to aver any cruel treatment, except what is involved in the gross, wanton and cruel neglect and refusal to support the wife, the defendant being of sufficient ability, etc. Under such averments, all those facts and circumstances tending to show that the refusal and neglect were gross, wanton and cruel, are admissible in evidence: *Brown v. Brown*, 22 Mich. 242.

As to what acts will warrant a wife in leaving her husband and claiming support elsewhere: See *Brown v. Brown*, 22 Mich. 242; *Randall v. Randall*, 37 Mich. 574.

Willingness to support his wife in his own home, is no defense to her right to have support elsewhere, when his treatment of her is such as to render it unsafe and improper for her to reside and cohabit with him: *Brown v. Brown*, 22 Mich. 242.

Divorce from bond of matrimony, for same causes.

§ 6230. SEC. 8. A divorce from the bond 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. (*See notes.*)

In what cases divorce not to be granted.

§ 6231. *Am. P. A. 1887, Act 137; 1895, Act 202.* SEC. 9. No divorce shall be granted unless the parties exhibiting the petition or bill of complaint therefor shall have resided in this State one year immediately preceding the time of exhibiting such petition or bill, or unless the marriage was solemnized in this State, and the complainant shall have resided in this State from the time of such marriage to the time of exhibiting the petition or bill; and when the causes for divorce occurred out of this State, no divorce shall be granted unless the complainant or defendant shall have resided within this State two years next preceding the filing of the petition or bill, and no proofs or testimony shall be taken in any cause until four months after the filing of such petition or bill for divorce, except where the cause for divorce is desertion, or when the testimony is taken conditionally for the purpose of perpetuating such testimony, nor shall any decree of divorce be granted in any case unless the defendant be domiciled within this State or shall have been domiciled herein at the time the cause for divorce arose, or unless the defendant shall have been personally served with process in this State, or with copy of the order of publication in said cause, or has voluntarily appeared in such action or proceeding. Where the defendant shall not be domiciled in this State or shall not have been domiciled herein at the time the cause of action arose, the plaintiff must prove either that the parties have lived together in this State as husband and wife or that the plaintiff has in good faith resided in this State for at least one year next preceding the commencement of the proceeding. (*See notes.*)

As to time of residence in the State.

In case persons domiciled out of State.

A husband's obligation to support his wife, is to support her in his own family, and not elsewhere, unless his conduct towards her is such as to make it unsafe for her to live and cohabit with him: *Randall v. Randall*, 37 Mich. 563. And her coextensive obligation is to render family services: *Id.* And the wife's right is to be supported in her husband's domicil unless she has lost it by her misbehavior: *Snyder v. People*, 26 Mich. 109.

As to failure to support, see *Chaffee v. Chaffee*, 15 Mich. 187.

An absolute divorce will be granted wife where proof shows the husband of "sufficient ability" to maintain her, but grossly and wantonly fails to do so: *Dashback v. Dashback*, 62 Mich. 322; *Whitacre v. Whitacre*, 64 Mich. 232.

Habits of frugality not constituting failure to support: *Runkle v. Runkle*, 96 Mich. 493.

Decree of separation.—As to decreeing a separation from bed and board, upon a bill for divorce from the bonds of matrimony: See *Sawyer v. Sawyer*, Walk. Ch. 53; *Skillman v. Skillman*, 18 Mich. 458.

§ 6230. The court, on review of the testimony, changed the decree of the circuit court for a separation from bed and board for two years, to an absolute one from the bonds of matrimony: *Burlage v. Burlage*, 65 Mich. 624.

The decree below, dismissing bill, was reversed and absolute divorce granted, on ground of cruelty: *Thompson v. Thompson*, 79 Mich. 124.

§ 6231. R. S. 1838, p. 337, sec. 6; Laws of 1842, Act 72, p. 116; 1844, Act 60, p. 74: *Emmons v. Emmons*, Walk. Ch. 532, and § 6228, and note.

Where complainant avers she has been a resident of this state "for more than one year immediately preceding the filing of her bill of complaint," and a plea has been entered, but the averment has not been demurred to, the court has jurisdiction while the case is pending, and may grant and enforce temporary alimony: *Filer v. Filer*, 77 Mich. 469.

Time of taking proofs and testimony in any divorce suit: *Daly v. Hosmer*, 102 Mich. 393.

§ 6232. *Am. 1887, Act 137.* SEC. 10. 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. (*See notes.*)

Idem.

Oath of complainant.

§ 6233. SEC. 11. 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.

Bill or petition by wife in her own name; answer without oath.

§ 6234. SEC. 12. 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. (*See notes.*)

Suits, how conducted.

§ 6232. *Collusion.*—The bill must allege on oath that the causes for divorce were not committed with the consent, connivance, privity or procurement of the complainant, etc. Chancery Rule 95; *Briggs v. Briggs*, 20 Mich. 40. Hence, if any fact is introduced into the bill by way of amendment, the bill must be again sworn to, to meet this requirement: *Id.* Or the amendment must be verified the same as the bill: *Green v. Green*, 26 Mich. 437.

As to collusion: See *Sawyer v. Sawyer*, Walk. Ch. p. 52; *Emmons v. Emmons*, *Id.*, 532. If collusion appears, a decree must be denied: *People v. Dawell*, 25 Mich. 258; *Porritt v. Porritt*, 18 Mich. 425-6. Entering into arrangements and understandings between the parties to secure a divorce, immediately after the filing of the bill, is collusive and an attempted fraud upon the law: *Briggs v. Briggs*, 20 Mich. 45. Defendant's appearance entered for the purpose of enabling the complainant to obtain a decree speedily, is evidence of collusion: *People v. Dawell*, 25 Mich. 248, 253. Cohabitation during the progress of proceedings for divorce, indicates collusion: *Porritt v. Porritt*, 18 Mich. 425-6. If an answer is withdrawn, no decree should be granted without satisfactory evidence that the withdrawal was voluntary and not collusive: *Leavitt v. Leavitt*, 13 Mich. 455.

A party to a divorce suit is not estopped as to the main issue by a decree entered by his own procurement, since collusive divorces are unlawful: *Friend v. Friend*, 53 Mich. 543.

An agreement to accept $5 for all claims and alimony is collusive: *Thompson v. Thompson*, 70 Mich. 62.

This section, 6232, is based on public policy, which forbids annulment of the marriage contract by agreement of the parties: *Id.*

Requirement of oath denying collusion is mandatory: *Ayres v. Gartner*, 90 Mich. 380.

When mandamus will issue to dismiss a bill for want of oath denying collusion: *Id.*

Where original bill is verified, objection that amendment is not verified, is without force: *Tackaberry v. Tackaberry*, 101 Mich. 102.

Objection on appeal that answer to cross-bill is not sworn to, is too late: *Id.*

Where a bill for divorce charges both extreme cruelty and adultery, collusion cannot be inferred from the filing of a stipulation striking the latter charge therefrom: *Holcomb v. Holcomb*, 100 Mich. 421.

An answer in a divorce suit, in the nature of a cross-bill filed under chancery rule No. 123, must be verified in order to authorize a decree for the defendant, but, if not, it may be amended, where the proof shows an absence of collusion: *Harrison v. Harrison*, 94 Mich. 559.

Amendment to verification to answer so as to negative the existence of collusion, is within the discretion of the court: *Daly v. Hosmer*, 102 Mich. 392.

When a decree is granted upon a bill denying collusion, a subsequent bill by the same complainant to set aside that decree for collusion, will not be entertained: *Simmons v. Simmons*, 47 Mich. 253.

But a decree is not to be treated as void on the ground of collusion, until reversed: *People v. Dawell*, 25 Mich. 249.

Equally guilty, etc.—Where both parties are guilty of such conduct as is cause for divorce, neither should be allowed a decree: *Hoff v. Hoff*, 48 Mich. 281.

§ 6234. *Sawyer v. Sawyer*, Walk. Ch. 48.

Practice.—A divorce bill cannot be amended by substituting a prayer that the marriage be annulled: *Schafberg v. Schafberg*, 52 Mich. 429.

Proofs bearing on the question of permanent alimony ought not to be taken until it has been determined by the court whether a divorce shall be decreed: *Rea v. Rea*, 53 Mich. 40.

Court may require husband to pay expenses.

Costs.

§ 6235. SEC. 13. 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. (*See notes.*)

Where a divorce bill does not ask for alimony and the decree does not award it, a motion to amend the decree by adding a reference to a circuit court commissioner to take proofs as to alimony, is properly denied as neither pleadings nor decree contain anything to which the subject matter of the motion is germane; the proper remedy in chancery, if there is any, is by supplemental bill in the nature of a bill of review: *Jordan v. Jordan*, 53 Mich. 551.

Appeal lies from an order in a divorce suit overruling a plea of no marriage: *Cross v. Cross*, 54 Mich. 115.

Where a plea is overruled with leave to answer within a limited time, it seems that taking an appeal before the expiration of that period may be treated as an election to stand by the plea, and the appeal may be sustained accordingly: *Id.*

The death of the complainant in divorce extinguishes the suit and the whole ground of action: *Zoellner v. Zoellner*, 46 Mich. 511.

An unexcused delay of nine years, and until after the death of the other party, in attacking a decree of divorce, is fatal to a proceeding to set it aside for the purpose of obtaining an interest in decedent's estate: *Id.*

Where no relief is sought not dependent on divorce there can be no decree after death has separated the parties: *Wilson v. Wilson*, 73 Mich. 620.

The dismissal of a bill for divorce on the ground of the illegality of the marriage sought to be dissolved cannot affect the right of the complainant to file a second bill for the dissolution of a later legal marriage: *Filer v. Filer*, 77 Mich. 469.

The failure of a complainant to appeal from a decree dismissing her bill for divorce will not preclude her from resisting the claim of the defendant to a decree declaring the marriage void for fraud practiced upon him, he having prayed for such affirmative relief in his answer: *Nadra v. Nadra*, 79 Mich. 591.

Case remanded to adduce proofs as to defendant's and complainant's property: *Reynolds v. Reynolds*, 92 Mich. 104.

A party coming into a court of equity, and asking to be released from the bonds of matrimony and its obligations, must come with clean hands, and must keep them clean, so far as relates to the procurement of testimony to make out his case: *Van Voorhis v. Van Voorhis*, 94 Mich. 60.

A second wife, who becomes such in reliance upon a decree of divorce granted her husband, is entitled to notice of a petition by the first wife to vacate the decree: *Carlisle v. Carlisle*, 96 Mich. 128.

Where original bill is verified, objection that amendment, filed by stipulation, is not so sworn to, is without force: *Tackaberry v. Tackaberry*, 101 Mich. 102.

Objection first made on appeal that answer to cross-bill is not sworn to is too late: *Id.*

§ 6235. *Temporary alimony—expense money, etc.*—If a wife has no means of her own, to support herself and defray the expenses of carrying on, or defending a suit for divorce, and her husband has property, the court will order him to advance suitable sums to her for those purposes: *Story v. Story*, Walk. Ch. 421; *Goldsmith v. Goldsmith*, 6 Mich. 285. This section makes no mention of temporary alimony, but so far as the statute goes, it is only confirmatory of the common law which was acted on by our courts before there was any statute on the subject: *Goldsmith v. Goldsmith, supra.* The right to grant temporary alimony has always been recognized in divorce suits when the circumstances required it. And whether this § 6235 would include advances for support, or must be strictly confined to legal expenses, is not important, as such allowances have always been upheld when necessary to prevent a failure of justice: *Haines v. Haines*, 35 Mich. 143-4.

But an allowance will not be made to a wife where the bill does not bring her within any recognized equity: *Lapp v. Lapp*, 43 Mich. 287. Nor will temporary alimony and expense money be ordered unless it is shown by the bill, or by petition, that she has no property and that her husband has: *Ross v. Ross*, 47 Mich. 185; *Story v. Story*, Walk. Ch. 421. There is no presumption in Michigan that a wife has no property of her own: *Ross v. Ross, supra.*

Affidavits denying the cause alleged, or defense set up by the wife, will not prevent an allowance. But they should be received to aid the court in the exercise of its discretion as to the amount of the allowance: *Story v. Story*, Walk. Ch. 421-2.

Merely technical irregularities in the proceedings of the complainant in a divorce suit will not excuse non-compliance with and order to pay temporary alimony, or defeat its enforcement: *Froman v. Froman*, 53 Mich. 581.

Temporary alimony is properly allowed even where the wife has independent property of her own, if in her application therefor she shows what her property is, and that her income from it is insufficient for her support: *Rose v. Rose*, 53 Mich. 585.

An allowance of temporary alimony is not assignable, and it is against public policy for the wife to bargain it away in advance of receiving it: *Jordan v. Westerman*, 62 Mich. 170.

An order allowing complainant $8 per week as temporary alimony is held a reasonable one: *Potts v. Potts*, 68 Mich. 492.

The possession by a wife of non-productive property, as cited in *Ross v. Griffin*, 53 Mich. 8, will not prevent the allowance of temporary alimony: *Id.*

§ 6236. SEC. 14. 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

Court may prohibit restraint of liberty of wife.

Where a husband informs his wife that he will not pay temporary alimony awarded her by the court, a formal demand on her part is unnecessary to lay the foundation for contempt proceedings: *Id.*

Pending a decision as to the sufficiency of a plea of a prior adjudication, filed by a husband to a bill for divorce, the court has jurisdiction of the matter of allowance of temporary alimony: *Filer v. Filer*, 77 Mich. 469.

Where a bill for divorce alleges a marriage out of the state, and acts of cruelty immediately following such marriage, without locating the place and where the cause of divorce occurred or inflection of dates, the court has a right to grant temporary alimony while the case is pending: *Id.*

Case remanded for determination of alimony and expenses: *Reynolds v. Reynolds*, 92 Mich. 104.

The amount of the allowances and expense money must be confined to what is reasonably necessary in each case: *Haines v. Haines*, 35 Mich. 144. When a husband's means are not sufficient to maintain his wife and family without the assistance of their labor, she should not receive an allowance so large as to enable her to live in idleness: *Brown v. Brown*, 22 Mich. 242.

Reference may be made to a commissioner to ascertain and report as to the amount of a suitable allowance: *Story v. Story*, Walk. Ch. 421.

The decision of the trial court as to the amount of temporary alimony to be allowed in a divorce suit, should be conclusive unless the discretion of the court in making the allowance has been abused: *Froman v. Froman*, 53 Mich. 581.

The amount of temporary alimony to be allowed must be left to the discretion of the trial court, and the order therefor is not subject to appeal unless such discretion has been abused: *Rose v. Rose*, 53 Mich. 585; *Rossman v. Rossman*, 62 Mich. 429.

A married woman may make herself chargeable with the value of services rendered, by an attorney, upon her employment to secure a divorce from her husband, and the husband is not liable for such services: *Wolcott v. Patterson*, 100 Mich. 227.

On appeal.—Temporary alimony and expense money may be continued, or allowed to the wife up to the final determination of the cause on appeal: *Bishop v. Bishop*, 17 Mich. 211. Allowed on appeal: See *Goldsmith v. Goldsmith*, 6 Mich. 285; *Chaffee v. Chaffee*, 14 Mich. 463; *Skillman v. Skillman*, 18 Mich. 458; *Cooper v. Cooper*, 17 Mich. 205, 211; *McClung v. McClung*, 40 Mich. 498–9. And damages may be allowed for vexatious delays in paying it: *Id.* And see, in case of an appeal by the wife from a decree obtained by her deceased husband: *Shafer v. Shafer*, 30 Mich. 163. The allowance made at circuit for support, will not be increased in the supreme court without additional evidence: *Goodman v. Goodman*, 26 Mich. 417.

But alimony pending an appeal is not a matter of course, nor of right, and will not be granted on the wife's appeal without showing that the appeal is reasonable and in good faith, and that an allowance is necessary to prevent a failure of justice and to prevent her from suffering: *Ziegenfuss v. Ziegenfuss*, 21 Mich. 414; *Holthoefer v. Holthoefer*, 47 Mich. 643. And may be regulated according to the behavior of the parties: *Hoff v. Hoff*, 48 Mich. 281. Or discontinued for the misconduct of the wife: *Goldsmith v. Goldsmith*, 6 Mich. 285.

Costs of appeal allowed to wife, where husband was granted a divorce and had $25,000 in property and wife was without means: *Van Voorhis v. Van Voorhis*, 90 Mich. 276.

Allowance of costs in the supreme court: See *Chaffee v. Chaffee*, 14 Mich. 463; *Skillman v. Skillman*, 18 Mich. 458; *Lapham v. Lapham*, 40 Mich. 527; *Stevens v. Stevens*, 49 Mich. 504.

Costs in equity are not of absolute right; and in dismissing a divorce bill filed by a woman who could not prove a marriage, but with whom defendant had lived in intimate relations, both parties were left to pay their own costs: *Cross v. Cross*, 55 Mich. 280.

Costs were withheld from both parties on reversing a decree for divorce against a husband, where the latter had already been put to great expense: *German v. German*, 57 Mich. 257.

No solicitor's fees beyond what had been previously allowed was included in the costs awarded complainant in divorce, upon reversing a decree dismissing her bill on demurrer, and directing it to be answered: *Van Driele v. Van Driele*, 58 Mich. 273.

Appeal from allowance of temporary alimony.—The allowance of temporary alimony and expense money at the circuit, being discretionary, an appeal does not lie therefrom: *Haines v. Haines*, 35 Mich. 144; *Lapham v. Lapham*, 40 Mich. 527; *Cooper v. Mayhew*, 40 Mich. 528; *Ross v. Ross*, 47 Mich. 185.

Execution—costs.—The issue of execution authorized by this § 6235, is only for the collection of costs—such costs are decreed: *Haines v Haines*, 35 Mich. 145.

Payment of temporary alimony and expense money can be enforced only by process as for contempt: *Haines v. Haines*, 35 Mich. 145. These allowances do not come within the language of the § 6235, covering costs, and cannot therefore be collected by execution: *Id.*; *North v. North*, 39 Mich. 67; *Palmer v. Palmer*, 45 Mich. 152. See *Peltier v. Peltier*, Har. Ch. 28.

A defendant cannot be committed for contempt under § 7260, upon an *ex parte* showing of his non-performance of an order for the payment of temporary alimony and expense money. He must have an opportunity to be heard in his defense: *Stellar v. Stellar*, 25 Mich. 159. And cannot be committed unless there has been a demand of payment and refusal to pay: *Brown v. Brown*, 22 Mich. 299.

An order of commitment for non-payment is appealable: *Ross v. Ross*, 47 Mich. 185. And it seems that such an order cannot be maintained if it was granted without a proper showing that the wife had no means of her own: *Id.* But the regularity of a committal for contempt in refusing to pay alimony will not be reviewed collaterally on an application for a writ of *habeas corpus*, if regular on its face: *Matter of Bissell*, 40 Mich. 63.

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.

Care and maintenance of children during pendency of suit.

§ 6237. SEC. 15. 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.

Order in relation to care, etc., of children on final decree.

§ 6238. SEC. 16. 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. (*See notes.*)

Decree may be revised, and new decree made.

§ 6239. SEC. 17. 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. (*See notes.*)

When wife entitled to her real estate.

§ 6240. SEC. 18. 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. (*See notes.*)

Restoration of personal estate to wife.

§ 6241. SEC. 19. 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. (*See notes.*)

Trustees, when may be appointed.

§ 6242. SEC. 20. Upon every divorce for adultery committed by the husband, and upon every divorce from bed and

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§ 6238. Upon a decree granted to the wife on the ground of cruelty, she is *prima facie* entitled to the custody of the children of tender age: *Klein v. Klein* 47 Mich. 518. See § 6294.

Although the children may remain with the mother, the father's legal duty to them is to provide for their support; and as against the public and the children, he cannot throw off this duty: *Courtright v. Courtright*, 40 Mich. 633.

Where a divorced woman, to whom the care, management, and maintenance of a daughter was decreed, remarried; the second husband is not liable for support of the child, nor could the wife make a contract with her second husband which would bind its father for the support of the child: *Johnson v. Onsted*, 74 Mich. 437.

§ 6239. Divorced wife awarded the custody of her infant daughter because the father failed in his agreement, made before divorce granted, to properly care for her: *Flory v. Ostrom*, 92 Mich. 622.

§ 6240. See *Johnson v. Johnson*, Walk. Ch. 313, and § 6287.

A husband and wife take as tenants by *entirety*, and not as *joint tenants*, under a joint deed to both; and the estate thus created, with the attendant right of survivorship, is not affected by a decree of divorce: *Lewis's Appeal*, 85 Mich. 340.

§ 6241. *Harrison v. Harrison*, 49 Mich. 240.

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.

Duties of trustees, their bonds.

§ 6243. SEC. 21. 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.

Husband may be required to disclose on oath.

§ 6244. SEC. 22. 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.

Court may further decree alimony.

§ 6245. *Am. 1877, Act 91.* SEC. 23. 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. (*See notes.*)

§ 6245. See *Sawyer v. Sawyer*, Walk. Ch., 53, and Laws of 1843, Act 6, p. 7, subsequently enacted. Practice in awarding alimony: *Briggs v. Briggs*, 20 Mich. 46.

A decree for alimony vests no *absolute* right in the wife thereto: *Perkins v. Perkins*, 10 Mich. 425.

A bill for alimony merely, cannot be maintained: *Peltier v. Peltier*, Har. Ch. 19. Courts of equity have no inherent power, as such, to decree permanent alimony at all. The power is statutory and incident to the jurisdiction over applications for divorce. The statute prescribes the entire powers and regulations on the subject: *Perkins v. Perkins*, 16 Mich. 167.

A recent statute, Act 152 of the Laws of 1873, seems now to provide for filing a bill for alimony and support merely, in certain cases of desertion and neglect by the husband. See the act, §§ 6291-3.

A gross sum for alimony may be decreed: *Hamilton v. Hamilton*, 37 Mich. 606-8; *Taylor v. Gladwin*, 40 Mich. 234-5. And should be awarded in gross in preference to an annuity when there is reason to apprehend vexatious delays in payment of the latter: *McClung v. McClung*, 40 Mich. 498. When a gross sum is awarded, if the husband's property consists wholly in lands, it seems that he may be given his election to pay in money, or in lands to be set off under the supervision of a commissioner and confirmed by the court: *Hamilton v. Hamilton, supra.*

As to the amount of the allowance when in gross, see *Hamilton v. Hamilton, supra.* When a husband's property and income are not sufficient to maintain his wife and family without the aid of their labor, she will not be entitled to an allowance so large as to enable her to live without exertion on her own part: *Brown v. Brown*, 22 Mich. 242.

When wife entitled to dower.

§ 6246. *Am. S. L. 1850, Act 165.* SEC. 24. 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. (*See notes.*)

SEC. 25 and 26. *Repealed P. A. 1877, Act 39, Sec. 1.*

Security for payment of alimony.

§ 6247. *Am. S. L. 1865, Act 255; P. A. 1877, Act 44.* SEC. 27. In all cases where alimony or other allowance shall be 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 decree, and upon the neglect or

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As to an allowance when the defendant has previously obtained a divorce in another state: *Wright v. Wright*, 24 Mich. 180.

Alimony refused, where it appeared that the wife had already received from her husband a substantially due share of his property: *Stevens v. Stevens*, 49 Mich. 504.

An allowance of alimony can be questioned only on appeal, and not collaterally: *Taylor v. Gladwin*, 40 Mich. 232.

But it seems that a personal decree for alimony against a non-resident defendant who has not been served with process, and has not appeared in the suit, is of no effect: See *Lawrence v. Fellows*, Walk. Ch. 468; *Outhwite v. Porter*, 13 Mich. 540; *McEwan v. Zimmer*, 38 Mich. 765; *Booth v. Conn., etc., Ins. Co.*, 43 Mich. 299.

Where a divorce bill does not ask for alimony and the decree does not award it, a motion to amend the decree by adding a reference to a circuit court commissioner to take proofs as to alimony, is properly denied, as neither pleadings nor decree contain anything to which the subject matter of the motion is germane; the proper remedy in chancery, if there is any, is by supplemental bill in the nature of a bill of review: *Jordan v. Jordan*, 53 Mich. 550.

An allowance of temporary alimony is not assignable, and it is against public policy for the wife to bargain it away in advance of receiving it: *Jordan v. Westerman*, 62 Mich. 170.

A suit for divorce is not a proper proceeding in which to secure an accounting for the wife's property, which was her separate estate: *Peck v. Peck*, 66 Mich. 586; *Letts v. Letts*, 73 Mich. 139.

§ 6246. A woman who obtains a divorce cannot be deprived, without her consent, of her right of dower: *Friend v. Friend*, 53 Mich. 543.

"Extreme cruelty" is such misconduct as is contemplated by § 6246, and entitles a wife to dower in the lands of her husband on securing a divorce from him on that ground: *Rea v. Rea*, 63 Mich. 257.

In *Rea v. Rea*, 53 Mich. 40, the alimony awarded the plaintiff was not intended to and did not interfere with her dower right in her husband's lands. A mortgage given on said real estate by the husband, to raise money to pay alimony, cannot be deducted from the value of said premises: *Id.*

The right of a divorced wife to dower must be governed, as far as practicable, by the same rules and proceedings as if the husband were dead: *Id.*

A wife who has obtained a divorce for adultery can thereafter maintain ejectment for dower in the lands of her husband, whether he be living or dead: *Percival v. Percival*, 56 Mich. 297.

The right of a divorced woman to dower becomes vested as soon as decree becomes final. *Id.* See *Orth v. Orth*, 69 Mich. 158.

A wife entitled to dower on a divorce from her husband, is entitled to dower in the surplus arising upon a foreclosure sale under a mortgage executed prior to their marriage: *Bowles v. Hoard*, 71 Mich. 150.

Consent decree a bar to any claim by the wife to dower. See *Owen v. Yale*, 75 Mich. 256.

§ 6247. This section applies to permanent alimony only: *Palmer v. Palmer*, 45 Mich. 152.

Previous to the amendment of 1877 to this section, it was held that the court could not decree a lien on real estate for the payment of alimony: *Perkins v. Perkins*, 16 Mich. 162. As to the mode of enforcing payment, see *Id.* 167-8.

Where a decree giving the wife one-third of her husband's property for alimony permitted him to discharge it by setting off to her $10,000 in land, it was held that the lands should be estimated to her according to the value as shown by the proofs in the case, and not by a subsequent enhanced valuation: *McClung v. McClung*, 42 Mich. 53.

Payment of permanent alimony is to be enforced by execution: *Taylor v. Gladwin*, 40 Mich. 232. So, where after a divorce granted, a subsequent order is made for the payment of an allowance for the support of children, it is to be enforced by execution, and not by process as for contempt; *North v. North*, 39 Mich. 67.

Proofs bearing on the question of permanent alimony ought not to be taken until it has been determined by the court whether a divorce shall be decreed: *Rea v. Rea*, 53 Mich. 40.

It seems that the injunction prohibiting a defendant in divorce from mortgaging his property, does not restrain him from mortgaging real estate aside from his homestead for the purpose of raising money to pay alimony: *Froman v. Froman*, 53 Mich. 581.

refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, the court may award execution for the collection of the same, or the court may sequester his real and personal estate, and may appoint a receiver thereof, and cause such personal estates and the rents and profits of such real estate to be applied to the payment thereof; and in case the real estate of the husband shall consist wholly or in part of wild and uncultivated lands, or any other unproductive estate, the court shall have power in its discretion to provide for the payment of such alimony or other allowance, by the sale of such lands or estate in such manner as the court shall direct; and that any circuit court in chancery shall have authority to review any decree of said court allowing alimony, on petition of either party, and may alter or amend such decree whenever such court shall from evidence become satisfied that any error occurred in estimating the amount of the property, at the date of such decree, of the husband decreed to pay alimony, and for any cause arising after the date of such decree. (*See notes.*)

Sale of real estate for payment of alimony.

Review of decree.

§ 6248. SEC. 28. 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. (*See notes.*)

Court may alter decree for alimony, etc., on petition.

An order for the payment of alimony is not such original process as need be served within the territorial limits over which a municipal court has jurisdiction: *Edison v. Edison*, 56 Mich. 185.

A decree for alimony by a court with jurisdiction, cannot, if not appealed from, be impeached in a proceeding to reach the proceeds of goods fraudulently transferred by the defendant: *Reeg v. Burnham*, 55 Mich. 40; *Storrs v. Storrs*, 58 Mich. 55.

Where the testimony shows a defendant to be worth from $10,000 to $15,000, which complainant helped to accumulate, *held*, that the sum of $4,500 awarded to her as permanent alimony was not excessive: *Berryman v. Berryman*, 59 Mich. 606.

Alimony awarded plaintiff in the case of *Rea v. Rea*, 53 Mich. 40, was not intended to and did not interfere with her dower right in her husband's lands. A mortgage given on real estate by the husband to raise money to pay alimony cannot be deducted from the premises before the assignment of such dower: *Rea v. Rea*, 63 Mich. 257.

Where the proofs show that, at about the time a bill for divorce was filed, the husband was the owner of several parcels of land of considerable value, and was possessed of considerable personal property, and of an interest in his father's estate, worth at least $7,000, an award of $2,000 permanent alimony is reasonable: *Reed v. Reed*, 86 Mich. 600.

§ 6248. *Modifying decree as to allowance, etc.:* See *Brown v. Brown*, 22 Mich. 246; *Perkins v. Perkins*, 10 Mich. 426.

This section authorizes the court to change a decree for alimony only on new facts thereafter transpiring, and when they are of such a character as to make it necessary to suit the new state of facts. It was not designed to affect the right of appeal, or to give the court power to review, reverse or modify its own decrees: *Perkins v. Perkins*, 12 Mich. 456; *Jordan v. Westerman*, 62 Mich. 179.

A decree awarding the custody of a child to its mother, and a weekly allowance for its support, will not be subsequently modified upon a state of facts existing at the time of rendering the decree and then known to the petitioning party. Nor will it be changed when no new facts or change of circumstances upon which to found such alteration are set forth: *Chandler v. Chandler*, 24 Mich. 176.

An order opening a decree for permanent alimony for review and modification, is interlocutory and not appealable: *Perkins v. Perkins*, 10 Mich. 425. But an order or decree made under the provisions of this § 6248, modifying the original decree, is final and appealable: *Chandler v. Chandler*, 24 Mich. 176.

Legitimacy of children in case of adultery.

§ 6249. SEC. 29. A divorce for the cause of adultery committed by the wife, shall not effect 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.

Legitimacy of cases of non-age, etc.

§ 6250. SEC. 30. 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.

Legitimacy in case of former husband or wife living.

§ 6251. SEC. 31. 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.

§ 6252. SEC. 32. *Repealed P. A. 1883, Act 24.*

Cohabitation after divorce, how punished.

§ 6253. SEC. 33. 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.

Who may exhibit bill to annul marriage, in case of non-age.

§ 6254. *Am. S. L. 1847, Act 105; 1848, Act 150.* SEC. 34. 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. (*See notes.*)

In case of idiot or lunatic, who may exhibit bill.

§ 6255. SEC. 35. 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. (*See notes.*)

When lunatic may exhibit bill, and when nullity not to be decreed.

§ 6256. SEC. 36. The marriage of a lunatic may be also declared void, upon the application of the lunatic, after the restoration of reason; but, in such case, no sentence or 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.

When nullity not to be decreed in case of force or fraud.

§ 6257. SEC. 37. No marriage shall be annulled on the ground of force or fraud, if it shall appear that, at any time

§ 6254. See §§ 6209, 6224: *People v. Slack*, 15 Mich. 201.
§ 6255. Insanity as a cause, etc., *Teft v. Teft*, 3 Mich. 68.
§ 6257. See §§ 6224, 6225, 6234: *Leavitt v. Leavitt*, 13 Mich. 457.
A bill to annul a marriage for gross duress was sustained where the marriage had never been recognized and complainant was an unworldly youth of eighteen whom defendant had brought before a justice on a charge of bastardy and who, though protesting his innocence, had been frightened by the justice into a marriage on the spot: *Smith v. Smith*, 51 Mich. 607.
In construing § 6257 of How. Stat., see *Sissung v. Sissung*, 65 Mich. 168.

before the commencement of the suit, there was a voluntary cohabitation of the parties as husband and wife. (*See notes.*)

§ 6258. SEC. 38. 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. Issue of marriage annulled on account of force or fraud.

§ 6259. SEC. 39. 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. For physical incapacity, suit to be brought within two years.

§ 6260. *Am. P. A. 1883, Act 155.* SEC. 40 [39]. 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. (*See notes.*) Decree not to be made on confession. Parties may testify. Proviso.

§ 6261. SEC. 41. 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: In case of adultery, court may deny divorce in certain cases.

First, When the offense shall appear to have been committed by the procurement, or with the connivance of the complainant; As to connivance.

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; As to cohabitation.

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. (*See notes.*) Time suit to be brought.

§ 6260. Not granted on confessions merely: *Sawyer v. Sawyer*, Walk. Ch. 52-3. But confessions, when corroborated, may be received: *Id.* See also *Dawson v. Dawson*, 18 Mich. 335. Nor by consent: *Robinson v. Robinson*, 16 Mich. 79; without evidence: *Id.* Uncorroborated declarations and confessions of a *particeps criminis*, not sufficient: *Emmons v. Emmons*, Walk. Ch. 534.

As to evidence, See § 6228, subdivision 1, note. Testimony drawn out by leading questions, unsatisfactory: *Richards v. Richards*, 48 Mich. 530. See also chancery rule 99, and prior to the amendment of 1883 to this § 6260, *Hamilton v. Hamilton*, 37 Mich. 605-6; *Stuart v. Stuart*, 47 Mich. 556.

The guardian of an infant defendant in bill to annul a marriage, cannot bind her by his admission that she procured the marriage by fraud: *Cooper v. Mayhew*, 40 Mich. 528.

Physicians cannot testify in a divorce suit to what they have found out by compulsory examination of a party thereto: *Page v. Page*, 51 Mich. 89.

A circuit court commissioner, in taking the testimony of parties to a divorce suit, can refuse to take anything which is grossly improper if he is left to act in the absence of the judge: *Id.*

Where the record in a divorce suit contained evidence that was grossly improper and ought, in the discretion of the trial judge, to have been rejected, it was stricken out by the supreme court and the case was heard on what remained: *Id.*

A woman claiming to be married, and seeking a divorce, cannot be examined as a party except in open court, without defendant's consent, whether she is really his wife or not: *Cross v. Cross*, 55 Mich. 280.

§ 6261. Condonation of the alleged cause of divorce, defeats it: *Porritt v. Porritt*, 18 Mich. 425-6.

SUBDIVISION 3.—Eighteen years' delay in suing a husband for support, where the wife is living apart from him, is fatal to the suit, even if the wife originally left him for cause: *Reed v. Reed*, 52 Mich. 117.

Court may decree support, though divorce from bed and board be not decreed.

§ 6262. SEC. 42. 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. (*See notes.*)

Decrees for divorce from bed and board may be revoked.

§ 6263. SEC. 43. 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.

When certain questions shall be asked in taking testimony.

§ 6263*a*. *Added 1887, Act 137.* SEC. 44. 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 question [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.

What bill of complaint shall set forth.

§ 6263*b*. *Added Id.* SEC. 45. Every bill of complaint filed shall set forth the names and ages of all children of the marriage, and when there are children under fourteen years of age a copy of subpœna 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 interests of said children or the public good so require, he shall introduce evidence and appear at the hearing and oppose the granting of a decree of divorce. For every case which the prosecuting attorney contests 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

In case of children under 14, prosecuting attorney to appear for.

Compensation of prosecuting attorney.

Proviso.

§ 6262. Equity has no jurisdiction in case of a bill filed for alimony merely: *Peltier v. Peltier*, Har. Ch. 19. See §§ 6291-3.

As to allowing alimony where a divorce *a mensa* is denied. See *Chaffee v. Chaffee*, 15 Mich. 184; *Skillman v. Skillman*, 18 Mich. 458; *Cooper v. Cooper*, 17 Mich. 205; *Bishop v. Bishop*, 17 Mich. 211.

A bill for the support of the wife, separate from the husband, will only be sustained when the reasons for it are imperative. If from the evidence the court is satisfied the difficulties between the parties are not serious, the bill will be dismissed, especially where there are young children for whom they ought to provide a home: *Davison v. Davison*, 46 Mich. 151.

§ 6263*b*. As to duties of prosecuting attorney, where there are children under fourteen years of age, and payment of fee therefor: See *Willcox v. Hosmer*, 83 Mich. 1.

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. (*See notes.*)

§ 6263c. *Added Id.* SEC. 46. 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.

Court may fix the time in which remarriage shall not take place.

Proviso as to limit of time and penalty for violation.

SUGGESTIONS TO JUSTICES OF THE PEACE AND MINISTERS OF THE GOSPEL IN REGARD TO THE SOLEMNIZATION AND RETURN OF MARRIAGES IN MICHIGAN.

A thorough knowledge of the law concerning the solemnization and return of marriages in Michiagn is necessary for the proper performance of the duties of persons authorized to solemnize marriages. The following remarks call attention to some of the more important features of the law, which, as shown by experience, are most likely to be disregarded.

Jurisdiction. While any minister of the gospel who has been ordained according to the usages of his denomination, and whether a resident of the State or not, has the right to solemnize marriages in any part of the State, it should be remembered that justices of the peace can exercise such power only in the counties in which they were chosen.

No marriage ceremony should under any circumstances be performed without a license, properly issued by the county clerk. It is necessary also that the license be issued by the clerk of the county in which either the man or the woman resides, or, in the case of non-residents, by the clerk of the county in which the marriage is performed. The penalty for performing a marriage ceremony without the warrant of a properly issued license is a fine of one hundred dollars, or, in default of payment thereof, imprisonment in the county jail for a term of ninety days. The license to marry can only be procured from the several county clerks, but the affidavit necessary to procure the same may be made before any person authorized to administer oaths, and blank affidavits can be had from any county clerk or from the office of the Secretary of State.

No marriage should be performed in which either of the parties is under legal age. The legal age of marriage is for males *eighteen* (18) years, and for females *sixteen* (16) years. Marriages in which one or both of the parties are below legal age are not necessarily void, but are voidable, and the clergyman or magistrate who performs the ceremony in such a case is, upon conviction, liable to imprisonment in the county jail for not more than one year, to a fine of not less than fifty nor more than five hundred dollars, or to both such fine and imprisonment. County clerks are instructed not to issue licenses to persons under the legal age, but occasionally such licenses are issued. The clergyman or magistrate to whom they are presented should refuse to perform the ceremony, since the county clerk cannot authorize him to perform an unlawful act. Neither is the consent of a parent or guardian to the marriage of a female under eighteen years of age, as required by public acts eighteen hun-

dred ninety-five, act two hundred forty-three, to be taken as consent to the performance of a marriage ceremony in which the bride is not of the full age of sixteen years. Such parental consent applies only to females between the ages of sixteen and eighteen years.

The consent of a parent or of the legal guardian must have been filed with the county clerk if the bride be under the age of eighteen years. A place is now provided on each license for the insertion of a statement by the county clerk to the effect that the law has been complied with in this respect.

Return duplicate certificates promptly to the county clerk within ten days after the ceremony, as required by law. Neglect to do so renders the clergyman or magistrate offending liable to a fine of not to exceed one hundred dollars, or to ninety days imprisonment, or to both fine and imprisonment. Persons married should take pains to ascertain, by inquiry at the county clerk's office within a reasonable time, that the person who performed the ceremony has complied with the law.

Be particular to require the signatures and places of residence of two (2) witnesses, and also to sign your proper official title, as clergyman, or justice of the peace, in certifying to the performance of the ceremony.

Copies of the pamphlet containing the laws relating to marriage can be obtained by application at the office of the Secretary of State.