

*A. S. Mason, Statute, &c.*  
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THE CODE  
OF  
NORTH CAROLINA,

ENACTED MARCH 2, 1883. X

PREPARED UNDER CHAPTERS 145 AND 315 OF THE  
LAWS OF 1881, AND UNDER CHAPTER 191  
OF THE LAWS OF 1883.

BY

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out issue, his inheritance shall vest in the mother in the same manner as is provided in rule six of this chapter.

Sawyer v. Sawyer, 6 Ired., 407; Ehringhaus v. Coatwright, 8 Ired., 39; Ivey v. Granberry, 66—223; McBryde v. Patterson, 78—412; Powers v. Kite, 83—156.

**Rule 11. Estates for life not devised, to be inheritances. R. C., c. 38, Rule 12.**

Every estate for the life of another, not devised, shall be deemed an inheritance of the deceased owner, within the meaning and operation of this chapter.

McBryde v. Patterson, 78—412.

**Rule 12. Seizin defined. R. C., c. 38, Rule 13.**

Every person, in whom a seizin is required by any of the provisions of this chapter, shall be deemed to have been seized, if he may have had any right, title or interest in the inheritance.

**Rule 13. Issue of certain colored persons to inherit. 1879, c. 73.**

The children of colored parents born at any time before the first day of January, one thousand eight hundred and sixty-eight, of persons living together as man and wife, are hereby declared legitimate children of such parents or either one of them, with all the rights of heirs-at-law and next of kin, with respect to the estate or estates of any such parents, or either one of them.

Sears v. McBride, 70—152.

CHAPTER TWENTY-NINE.

DIVORCE AND ALIMONY.

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**Sec. 1282. Superior court to have jurisdiction. 1868-'9. c. 93, c. 45.**

The superior court shall have jurisdiction on complaints for divorce and alimony, or either.

Irby v. Wilson, 1 D. & B. Eq., 568; Williamson v. Williams, 3 Jon. Eq., 446; Gilmore v. Gilmore, 5 Jon. Eq., 284; Smith v. Morehead, 6 Jon. Eq., 360; Webber v. Webber, 83—280; King v. King, 84—32.

**Sec. 1283. What marriages may be declared void on application of the parties. 1871-'2, c. 193, s. 33.**

The superior court in term time, on application made as by law provided, by either party to a marriage contracted contrary to the prohibitions contained in chapter forty-two, or declared void by said chapter, may declare such marriage void from the beginning, subject, nevertheless, to the proviso contained in said chapter.

**Sec. 1284. What to be declared void at all times. 1871-'2, c. 193, s. 34.**

All marriages between a white person and a negro or Indian, or between a white person and a person of negro

or Indian descent, to the third generation inclusive, shall be absolutely void to all intents and purposes, and shall be so held and declared by every court at all times, whether during the lives or after the deaths of the parties thereto; and it shall not be lawful for the issue of any such marriage to be legitimated to the supposed father.

White v. White, 84—340.

**Sec. 1285. For what causes marriages may be dissolved. 1871-'2, c. 193, s. 35. 1879, c. 132.**

Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of the party injured, made as by law provided, in the following cases:

(1) If either party shall separate from the other and live in adultery.

(2) If the wife shall commit adultery.

(3) If either party at the time of the marriage was and still is naturally impotent.

(4) If the wife at the time of the marriage be pregnant, and the husband be ignorant of the fact of such pregnancy and be not the father of the child with which the wife was pregnant at the time of the marriage.

Long v. Long, 2 Hawks, 189; Collier v. Collier, 1 Dev. Eq., 352; Scroggins v. Scroggins, 3 Dev., 535; Moss v. Moss, 2 Ired., 55; Johnson v. Kincaide, 2 Ired. Eq., 470; Crump v. Morgan, 3 Ired. Eq., 91; Wood v. Wood, 5 Ired., 674; Foy v. Foy, 13 Ired., 90; Smith v. Morehead, 6 Jon. Eq., 360; Edwards v. Edwards, Phil., 534; Barringer v. Barringer, 69—179; Horne v. Horne, 72—530; *Ibid.*, 72—101; Morris v. Morris, 75—168; Long v. Long, 77—304; Manning v. Manning, 79—293; Jones v. Jones, 80—246; Tew v. Tew, 80—316.

**Sec. 1286. What causes sufficient for divorce from bed and board. 1871-'2, c. 193, s. 36.**

The superior court may grant divorces from bed and board on application of the party injured, made as by law provided, in the following cases:

(1) If either party shall abandon his or her family; or,

(2) Shall maliciously turn the other out of doors; or,

(3) Shall by cruel or barbarous treatment endanger the life of the other; or,

(4) Shall offer such indignities to the person of the other as to render his or her condition intolerable and life burdensome; or,

(5) Shall become an habitual drunkard.

McKinnon v. McDonald, 4 Jon. Eq., 1; Little v. Little, 63—23; Davis

v. Davis, 68—180; Smith v. Smith, 72—139; Taylor v. Taylor, 76—433; Miller v. Miller, 78—102; Pain v. Pain, 80—322; McQueen v. McQueen, 82—471; Muse v. Muse, 84—35; White v. White, 84—340; Scoggins v. Scoggins, 85—347.

**Sec. 1287. Affidavit to be filed with complaint; provisos. 1868-'9, c. 93, s. 46. 1869-'70, c. 184.**

The plaintiff in a complaint seeking either divorce or alimony, or both, shall file with his or her complaint an affidavit that the facts set forth in the complaint are true to the best of affiant's knowledge and belief, and that the said complaint is not made out of levity or by collusion between husband and wife; and if for divorce, not for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the complaint; and the plaintiff shall also set forth in such affidavit, either that the facts set forth in the complaint, as grounds for divorce, have existed to his or her knowledge at least six months prior to the filing of the complaint; and that complainant has been a resident of the state for two years next preceding the filing of the complaint; or, if the wife be the plaintiff, that the husband is removing, or about to remove his property and effects from the state, whereby she may be disappointed in her alimony. *Provided*, if any wife shall file in the office of the superior court clerk of the county where she resides an affidavit, setting forth the fact that she intends to file a petition or bring an action for divorce against her husband, and that she has not had knowledge of the facts upon which said petition or action will be based for six months, then and in that case it shall be lawful for such wife to reside separate and apart from her said husband, and to secure for her own use the wages of her own labor during the time she shall so remain separate and apart from her said husband: *Provided further*, that if such wife shall fail to file her petition or bring her action for divorce within thirty days after the six months shall have expired since her knowledge of the facts upon which she intends to file her said petition or bring her said action, then she shall not be entitled any longer to the benefit of this section.

Anonymous, 1 Hay., 347; Spiller v. Spiller, 1 Hay., 482; Whittington v. Whittington, 2 D. & B., 64; Wilson v. Wilson, 2 D. & B., 377; Foy v. Foy, 13 Ired., 90; Schonwald v. Schonwald, 2 Jon. Eq., 367; Gaylord v. Gaylord, 4 Jon. Eq., 74; Everton v. Everton, 5 Jon., 202; Edwards v. Edwards, Phil., 534; State v. Lytle, 64—255; Scroggins v. Scroggins, 80—318; Pain

v. Pain, 80—322; McQueen v. McQueen, 82—471; Scoggins v. Scoggins, 85—347.

**Sec. 1288. Material facts to be tried by a jury; proviso, if for divorce on grounds of pregnancy, either party may testify. 1868-'9, c. 93, s. 47. 1879, c. 132.**

The material facts in every complaint asking for a divorce shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a jury, and on such trial neither the husband or wife shall be a competent witness to prove the adultery of the other, nor shall the admissions of either party be received as evidence to prove such fact. *Provided*, that on the trial of any action for divorce on the ground of the pregnancy of the wife at the time of the marriage, either party may testify as to any facts material to such issue.

Taylor v. Taylor, 76—433; Long v. Long, 77—304; White v. White, 84—340.

**Sec. 1289. Venue in proceedings for divorce. 1871-'2, c. 193, s. 40.**

In all proceedings for divorce, the summons shall be returnable to the court of the county in which the applicant resides.

Schonwald v. Schonwald, 2 Jon. Eq., 367; Smith v. Morehead, 6 Jon. Eq., 360.

**Sec. 1290. Alimony on divorce from bed and board. 1871-'2, c. 193, s. 37.**

When any court shall adjudge any two married persons divorced from bed and board, it may also decree to the party upon whose application such judgment was rendered, such alimony as the circumstances of the several parties may render necessary; which, however, shall not in any case exceed the one third part of the net annual income from the estate, occupation or labor of the party against whom the judgment shall be rendered.

Rogers v. Vines, 6 Ired., 293; Simmons v. Simmons, Phil. Eq., 63; Schonwald v. Schonwald, Phil. Eq., 215; Wood v. Wood, Phil., 538; Little v. Little, 63—22; Sparks v. Sparks, 69—319; Hodges v. Hodges, 82—122.

**Sec. 1291. Alimony *pendente lite*. 1871-'2, c. 193, s. 38. 1883, c. 67.**

If any married woman shall apply to a court for a divorce from the bonds of matrimony, or from bed and

board with her husband, and shall set forth in her complaint such facts, which upon application for alimony shall be found by the judge to be true and to entitle her to the relief demanded in the complaint, and it shall appear to the judge of such court, either in or out of term, by the affidavit of the complainant, or other proof, that she has not sufficient means whereon to subsist during the prosecution of the suit, and to defray the necessary and proper expenses thereof, the judge may order the husband to pay her such alimony during the pendency of the suit as shall appear to him just and proper, having regard to the circumstances of the parties; and such order may be modified or vacated at any time, on the application of either party or of any one interested: *Provided*, that no order allowing alimony *pendente lite* shall be made unless the husband shall have had five days' notice thereof, and in all cases of application for alimony *pendente lite* under this or the succeeding section, whether in or out of term, it shall be admissible for the husband to be heard by affidavit in reply or answer to the allegations of the complaint. *Provided further*, that if the husband shall have abandoned his wife and left the state, or shall be in parts unknown, or shall be about to remove or dispose of his property for the purpose of defeating the claim of his wife, no notice shall be necessary.

Earp v. Earp, 1 Jon. Eq., 118; Gaylord v. Gaylord, 4 Jon. Eq., 74; Everton v. Everton, 5 Jon., 202; Shearin v. Shearin, 5 Jon. Eq., 233; Lynch v. Lynch, Phil. Eq., 46; Simmons v. Simmons, Phil. Eq., 63; Schonwald v. Schonwald, Phil. Eq., 215; Wood v. Wood, Phil., 538; Little v. Little, 63—22; Sparks v. Sparks, 69—319; Miller v. Miller, 75—70; Webber v. Webber, 79—572; Scroggins v. Scroggins, 80—318; Pain v. Pain, 80—322; Hodges v. Hodges, 82—122; Reeves v. Reeves, 82—348; Muse v. Muse, 84—35.

**Sec. 1292. When wife not suing for divorce is entitled to alimony. 1871-'2, c. 193, s. 39.**

If any husband shall separate himself from his wife and fail to provide her with the necessary subsistence according to his means and condition in life, or if he shall be a drunkard or spendthrift, the wife may apply for a special proceeding to the judge of the superior court for the county in which he resides, to have a reasonable subsistence secured to her and to the children of the marriage from the estate of her husband, and it shall be lawful for such judge to cause the husband to secure so much of his estate as may be proper according to his condition and circumstances, for the benefit of his said wife and

children, having regard also to the separate estate of the wife.

Joyner v. Joyner, 6 Jun., 322; Hodges v. Hodges, 82—122; Reeves v. Reeves, 82—348.

**Sec. 1293. Court, power to issue writ where real estate is assigned. 1868-'9, c. 123, s. 1.**

In all cases in which the court shall grant alimony by the assignment of real estate, the court shall have power to issue a writ of possession when necessary in the judgment of the court to do so.

**Sec. 1294. Security for costs on application for divorce or alimony. 1871-'2, c. 193, s. 41.**

It shall not be necessary for either party to a proceeding for divorce or alimony to give any undertaking to the other party to secure such costs as such other party may recover. The judge of the court in which any such proceeding is pending, both before and after judgment therein, may at any time in his discretion, make any order respecting the payment of such costs as may be incurred by the wife, either by the husband or by her from her separate estate.

**Sec. 1295. Consequences of a divorce *a vinculo* on the personal relations of the parties. 1871-'2, c. 193, s. 43.**

After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine, and either party may marry again: *Provided*, that no judgment of divorce shall render illegitimate any children *in esse*, or begotten of the body of the wife during coverture.

**Sec. 1296. Consequences of divorce upon the right to the custody of the children. 1871-'2, c. 193, s. 46.**

After the filing of a complaint in any proceeding for divorce, whether from the bonds of matrimony, or from bed and board, both before and after final judgment therein, it shall be lawful for the judge of the court, in which such application is or was pending, to make such orders respecting the care, custody, tuition and maintenance of the children of the marriage as may be proper, and from time to time to modify or vacate such orders: *Provided*, that no order respecting the children shall be made on the application of either party without five days' notice to the other party, unless it shall appear that the party having the possession or control of such children

has removed or is about to remove the children, or himself, beyond the jurisdiction of the court.

## CHAPTER THIRTY.

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