

107
PUBLIC LAWS

OF THE

STATE OF NORTH CAROLINA.

PASSED BY THE

GENERAL ASSEMBLY

AT ITS

SESSION 1871-72

HELD IN THE

CITY OF RALEIGH, ON THE TWENTIETH DAY OF DECEMBER, 1871.

TO WHICH ARE PREFIXED

REGISTER OF STATE OFFICERS, MEMBERS OF THE GENERAL ASSEMBLY,
JUDICIARY, AND A LIST OF COMMISSIONERS OF AFFIDAVITS.

PUBLISHED BY AUTHORITY.

RALEIGH:

THEO. N. RAMSAY, STATE PRINTER AND BINDER

1872.

CHAPTER CXIII.

AN ACT CONCERNING MARRIAGES, MARRIAGE SETTLEMENTS AND
THE CONTRACTS OF MARRIED WOMEN.SECTION 1. *Who may contract a marriage:*

Marriageable ages

The General Assembly of North Carolina do enact, All unmarried male persons of sixteen years, or upwards, of age, and all unmarried females of fourteen years, or upwards, of age, may lawfully marry, except as hereinafter forbidden. (Revised Code, chapter sixty-eight, section fourteen.)

SEC. 2. *Who may not:*

When marriages are void.

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, or between any two persons nearer of kin than first cousins, or between a male person under sixteen years of age and any female, or between a female person under fourteen years of age and any male, or between persons either of whom has a husband or wife living at the time of such marriage, or between persons either of whom is at the time thereof physically impotent, or is incapable of contracting from want of will or understanding, shall be void: *Provided,* That no marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties for any of the causes stated in this section, except for that one of the parties was a white person and the other a negro or Indian, or of negro or Indian descent to the third generation inclusive, and for bigamy. (Id. s. 7, 8, 9.)

Proviso.

SEC. 3. *What necessary to a valid marriage:*

Validity of marriage.

The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, or of a justice of

the peace, and the consequent declaration by such minister or officer that such persons are man and wife, shall be a valid and sufficient marriage: *Provided,* That the law as now existing, chapter sixty-eight, section three, revised code of North Carolina, allowing marriages among the society of friends according to a form and custom peculiar to themselves, shall not be repealed or interfered with by the provisions of this or any other section of this act.

Proviso.

SEC. 4. *Ministers, &c., not to celebrate marriage unless a license be delivered:*

No minister or officer mentioned in the next preceding section shall perform a ceremony of marriage between any two persons, or shall declare them to be man and wife, until there shall be delivered to him a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage is intended to take place, or by his lawful deputy.

License required.

Register of Deeds may sign license.

SEC. 5. *License, when to be issued by register of deeds:*

Every register of deeds shall, upon application, issue a license for the marriage of any two persons: *Provided,* It shall appear probable to him that there is no legal impediment to such marriage: *Provided, nevertheless,* That where either parties to the proposed marriage shall be under eighteen years of age, and shall reside with the father, or mother, or uncle or aunt, or brother, or elder sister, or shall reside at a school or be an orphan, and reside with a guardian, the register shall not issue a license for such marriage until the consent in writing of the relation with whom such infant resides, or if he or she resides at a school, if the person by whom said infant was placed at school, and under whose custody and control he or she is, shall be delivered to him, and such written consent shall be filed by and preserved the register.

Licenses granted when no legal impediment is in the way.

Proviso.

Consent of relation in writing necessary for issuing license.

SEC. 6. *Form of license:*

License shall be in the following or some equivalent form: "To any ordained minister of any religious denomi-

Particulars of form.

Particulars of form.

nation, or to any justice of the peace, for ——— county.”
 A. B. having applied to me for a license for the marriage of C. D., (the name of the man to be written in full) of (here state his residence,) aged ——— years, (color as the case may be) the son of (here state the father and mother, if known, state whether they are living or dead, and their residence, if known; if any of these facts are not known, so state”) and E. F. (write the name of the woman in full) of (here state her residence) aged (here state the number of) years, color (as the case may be) the daughter of (here state the names and residence of the parents, if known, as is required above with respect to the man.) If either of the parties shall be under eighteen years of age, the license shall here contain the following: “And the written consent of G. H., father (or mother, &c., as the case may be) to the proposed marriage having been filed with me”) and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within one year from the date thereof, to celebrate the proposed marriage at any place within the said county. You are required within two months after you shall have celebrated such marriage, to return this license to me, at my office, with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars to the use of any person who shall sue for the same. Issued this ——— day of ———, 187—.

L. M.

Register of Deeds for ——— County.

Penalty.

Certificate of marriage.

Certificate to be filled up and signed by the minister or officer celebrating the marriage, and also to be signed by one or more witnesses present at the marriage, who will add to their names their places of residence: “I, N. O., an ordained minister of (here state to what religious denomination, or justice of the peace as the case may be) united in matrimony (here name the parties,) the parties licensed above on the ——— day of ——— 187—, at the house of P. R., in

(here name the town, if any, the township and county) according to law.

N. O.

Witnesses present at the marriage:

S. T. of (here give the residence.)

SEC. 7. Penalty on register for issuing license unlawfully:

Every register of deeds who shall knowingly or without reasonable inquiry issue a license for the marriage of any two persons to which there is any lawful impediment, or where either of the persons is under the age of eighteen years, without the consent required by section five of this act, shall forfeit and pay two hundred dollars to any person who shall sue for the same.

Marriage licenses unlawfully issued considered a penalty.

SEC. 8. Penalty on minister or officer marrying without a license:

Every minister or officer mentioned in section three of this act, who shall marry any couple without a license being first delivered to him, as required by this act, or after the expiration of such license, or who shall fail to return such license to the register of deeds within two months after any marriage celebrated by virtue thereof, with the certificate appended thereto duly filled up and signed, shall forfeit and pay two hundred dollars to any person who shall sue therefor, and shall also be deemed guilty of a misdemeanor.

Penalty on Minister or officer marrying without license.

SEC. 9. Register of deeds to keep a book of marriages:

Every register of deeds shall keep a book (which shall be furnished on demand by the county commissioners of his county) on the first page of which shall be written or printed: “Record of marriage licenses and of the returns thereto, for the county of —, from the — day of —, 187—, to the — day of —, 18—, both inclusive.” In said book shall be entered, alphabetically, according to the names of the proposed husbands, the substance of each marriage license and of the return thereupon, as follows: The book shall be divided by lines with columns which shall be prop-

Register of deeds required to record marriages.

Manner of recording marriage

erly headed, and in the first of these, beginning on the left, shall be put the date of issue of the license; in the second, the name in full of the intended husband, with his residence; in the third, his age; in the fourth, his color; in the fifth, the name in full of the intended wife, with her residence; in the sixth, her age; in the seventh, her color; in the eighth, the name and title of the minister or officer who celebrated the marriage; in the ninth the day of the celebration; in the tenth, the place of the celebration; in the eleventh, the names of all or at least three of the witnesses who signed the return as present at the celebration. The original license and return thereto, shall be filed and preserved.

SEC. 10. *Penalty on register for failure to record license and return:*

Failure to record a penalty.

Any register of deeds who shall fail to record, in the manner above prescribed, the substance of any marriage license issued by him, or who shall fail to record, in the manner above prescribed, the substance of any return made thereon, within ten days after such return made, shall forfeit and pay two hundred dollars to any person who shall sue for the same.

SEC. 11. *Marriage settlements void as to existing creditors:*

When contracts or settlements are void.

Every contract and settlement of property made by any man and woman, in consideration of a marriage between them, for the benefit of such man or woman, or of their issue, whether the same be made before or after the marriage, shall be void as against creditors of the parties making the same respectively, existing at the time of such marriage, if the same is ante-nuptial, or at the time of making such contract or settlement, if the same is post-nuptial.

SEC. 12. *Marriage settlements void except from registration:*

Registration an exception.

Every such contract and settlement of property shall be void as against the creditors of or purchasers from the hus-

band and wife respectively, as to any lands, tenements or hereditaments, and chattels real, conveyed or agreed to be conveyed thereby, except from the registration thereof in the county in which such lands, tenements and hereditaments or chattels real lie, and as to any personal property conveyed or agreed to be conveyed thereby, except from the registration in the county in which such husband and wife at the marriage, or at the making thereof, if after the marriage, shall reside.

EFFECT OF MARRIAGE UPON THE LIABILITY OF THE HUSBAND AND WIFE UPON HER CONTRACTS BEFORE MARRIAGE.

SEC. 13. *Husband does not become liable:*

No man by marriage shall incur any liability for any debts owing, or contracts made, or for wrongs done by his wife before the marriage.

When husband not liable.

SEC. 14. *The liability of the wife continues:*

The liability of a *feme sole* for any debts owing, or contracts made, or damages incurred by her before her marriage shall not be impaired or altered by such marriage.

Wife's debts incurred before marriage to continue.

SEC. 15. *In actions against wife, copy of summons to be served on husband:*

In all actions brought against a married woman who is not a free trader, (as hereinafter provided for,) a copy of the summons shall be served upon the husband also, and on the motion to the court in which the action is pending, he may be allowed, with her consent, to defend the same in her name and behalf, but no judgment shall be given against him, upon any liability claimed against her arising before the marriage or upon any contract made by her alone after her marriage.

Summons of wife to be served on husband.

Judgment not rendered against husband.

SEC. 16. *Husband may be ordered to pay costs or discharged from defence:*

Whenever any husband shall be allowed to defend for his wife, he may be ordered to pay costs for any misconduct,

Husband may be discharged from defence.

and may be discharged from the conduct of her defence, if it shall appear to the court, that his defence is not *bona fide* in her interest.

WHAT CONTRACTS A MARRIED WOMAN MAY MAKE WITH STRANGERS.

SEC. 17. *Not capable of contracting without her husband, unless a free trader :*

Husband's written consent necessary for wife to make certain contracts.

No woman during her coverture shall be capable of making any contract to effect her real or personal estate, except for her necessary personal expenses, or for the support of the family, or such as may be necessary in order to pay her debts existing before marriage, without the written consent of her husband, unless she be a free trader, as hereinafter allowed.

SEC. 18. *A married woman may become a free trader :*

Qualification for becoming a free trader.

Every married woman of the age of twenty-one years or upwards, with the consent of her husband, may become a free trader in the manner following :

SEC. 19. *How :*

First : By ante-nuptial contracts, proved and registered as hereinafter required ; or,

Secondly : She and her husband shall sign a writing in the following or some equivalent form :

Written form of free traders.

“ A. B., of the age of twenty-one years or upwards, wife of C. D., of ——— county, with his consent, testified by his signature hereto, enters herself as a free trader from the date of the registration hereof.

(Signed)

A. B.,
C. D.

Witness : E. F.

Registered this — day of ———, 187—.

The said writing, may be proved by the subscribing witness, or acknowledged by the parties before any officer

authorized to take the probate of deeds, and shall be filed and registered in the office of the register of deeds for the county in which the woman proposes to have her principal or only place of business.

SEC. 20. *A free trader from date of registration :*

From the time of the registration of the writing mentioned in the next preceding section, the married woman therein mentioned, shall be a free trader, and authorized to contract and deal, as if she were a *feme sole*.

Wife a free trader from date of registration.

SEC. 21. *Copy from register's books evidence :*

A copy of such writing, duly proved and registered, and certified by the register of the county in which the same is registered, shall be admissible in evidence as certified copies of registered deeds are, or may be allowed to be.

Evidence given.

SEC. 22. *How she may cease to be a free trader :*

The right of a married woman to act as a free trader may be ended at any time by an entry by her, or by her attorney, in the margin of the registration of the writing above mentioned, to the effect that from the date of such marginal entry, she ceases so to act, and by publication to that effect weekly, for three weeks, in some newspaper published in the county in which she had her principal or only place of business, or if there shall be none so published, then in any other convenient newspaper. But such entry and publication shall not impair any liabilities incurred previously thereto, nor prevent such married woman from becoming liable afterwards to any person whom she may fraudulently induce to deal with her as a free trader.

Wife may cease to be a free trader by making marginal entry on the register book.

Public notification given.

SEC. 23. *Woman living separate from her husband, a free trader :*

Every woman who shall be living separate from her husband, either under a judgment of divorce *a mense et thoro*, or from the bonds of matrimony, by a competent court, or under a deed of separation, executed by said husband and

Woman can be free trader though separate from husband.

ceeding the date of a summons issued against him in an action for such income, or next preceeding her death.

WHAT ESTATE THE HUSBAND, UPON THE DEATH OF THE WIFE, SHALL HAVE IN HER REAL ESTATE.

SEC. 30. *Husband tenant by the courtesy :*

Tenant by Courtesy.

Every man who hath married, or shall marry a woman, and by her have issue born alive, shall after her death, he surviving, be entitled to an estate as tenant by the courtesy during his life, in all the lands, tenements, and hereditaments, whereof his said wife was feneficially seized in deed during the coverture, wherein the said issue was capable of inheriting, whether the said seizing was of a legal or of equitable estate.

SEC. 31. *Power of married women to make a will :*

Right of married woman to bequeath her estate.

Every married woman shall have power to devise and bequeath her real and personal estate, as if she were a *feme sole*; and her will shall be proved as is required of other wills: *Provided, nevertheless,* That no will made by any married woman, shall be held to deprive her husband, surviving, of his estate in her real property, as tenant by the courtesy, as defined in the next preceding section.

Proviso.

SEC. 32. *How the personal estate of a married woman intestate shall be distributed :*

Husband to administer on the estate of a wife who dies intestate.

If any married woman shall die wholly or partially intestate, the surviving husband shall be entitled to administer on her personal estate, and shall hold the same, subject to the claims of her creditors and others having rightful demands against her, to his own use. If the husband shall die after his wife, but before administering, his executor or administrator or assignee shall receive the personal property of the said wife, as a part of the estate of the husband, subject as aforesaid.

DIVORCE.

SEC. 33. *What marriages may be declared void on application of the parties :*

The superior courts in term time, on application made as by law provided, by either party to a marriage contracted contrary to the prohibitions in section two (2) of this act, or declared void by said section, may declare such marriage void from the beginning, subject nevertheless to the proviso contained in said section two (2).

When marriages declared void.

SEC. 34. *What to be declared void at all times :*

All marriages between a white person and a negro, or indian, or between a white person and a 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.

Marriages which are null and void.

Offspring not legitimized.

SEC. 35. *For what causes marriage may be dissolved :*

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

Laws of divorce.

- 1st. If either party shall separate from the other and live in adultery;
- 2d. If the wife shall commit adultery;
- 3d. That either party at the time of the marriage was and still is naturally impotent.

SEC. 36. *What cause sufficient for divorce from bed and board :*

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

Causes of divorce.

- 1st. If either party shall abandon his or her family; or,
- 2d. Shall maliciously turn the other out of doors; or,

3d. Shall by cruel or barbarous treatment endanger the life of the other; or,

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

5th. Shall become an habitual drunkard.

SEC. 37. *Alimony on divorce from bed and board:*

Alimony.

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 case exceed the one-third part of the net annual income from the estate, occupation, or labors of the party against whom the judgment shall be rendered.

SEC. 38. *Alimony pendente lite:*

Husband to pay alimony during suit.

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, as if true, will entitle her to the relief demanded, 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 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.

Proviso.

Further proviso.

Amended by ch. 67 Laws 1880.

SEC. 39. *When wife not seeking for divorce is entitled to alimony:*

If any husband shall separate himself from his wife and fail to provide for 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.

Husband to support wife when separated.

SEC. 40. *Venue in proceedings for divorce:*

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

Summons returnable.

SEC. 41. *Security for costs on application for divorce or alimony:*

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 payment 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.

Judge of Court to make orders respecting payment of costs.

SEC. 42. *Consequences of a divorce, a vinculo on the property of the parties:*

When a marriage shall be dissolved for any of the causes set forth in section thirty-five of this act, the party adjudged guilty of such cause, shall thereby lose all his or her right to an estate by the courtesy, or dower, and all right to any year's provision or distributive share in the personal pro-

Loss of property adjusted to the guilty party.

party of the other, and all right to administer on the estate of the other and every right and estate in the real or personal estate of the other party, which by settlement before or after marriage, was settled upon such party in consideration of the marriage only.

SEC. 43. *Consequences of a divorce, a vinculo on the personal relations of the parties :*

Divorce annuls all marriage rights.

Proviso.

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 born of the body of the wife during coverture.

SEC. 44. *Consequences of an elopement with an adulterer, &c.*

Right of dower lost.

If any married woman shall elope with an adulterer, she shall thereby lose all right to dower in the lands and tenements of her husband, and also, all right to a year's provision, and to a distributive share from the personal property of her husband, and also, all right and estate in the property of her husband, settled upon her upon the sole consideration of the marriage, before or after marriage; any such elopement may be pleaded in bar of any action, or proceeding, for the recovery of such rights or estates: *Provided*, The husband shall have commenced an action for divorce during his lifetime.

Proviso.

SEC. 45. *Consequences of a husband separating from his wife, and living in adultery :*

Husband separating himself from wife loses all right and estate as tenant by courtesy.

If any husband shall separate himself from his wife and live in adultery, he shall lose all his right and estate as tenant by the courtesy in the lands, tenements and hereditaments of his wife, and also all his right and estate of whatever character, in and to her personal property, as administrator, or otherwise; and also any right and estate in the property of his wife, which may have been settled upon

him solely in consideration of the marriage, by any settlement before or after marriage; and such separation, and living in adultery, may be pleaded in bar of any action or proceeding for the recovery of such rights or estates: *Pro-* Proviso.
vided, The wife has commenced an action for divorce in his lifetime.

SEC. 46. *Consequences of divorce upon the right to the custody of the children :*

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. Proviso.

SEC. 47.

This act shall be in force from the first day of July, one thousand eight hundred and seventy-two. When act to be force.

Ratified the 12th day of February, A. D. 1872.

CHAPTER CXCIV.

AN ACT MAKING INDICTABLE THE FELLING OF TREES INTO NEUSE RIVER.

SECTION 1. *The General Assembly of North Carolina do enact*, That it shall not be lawful for any person to fell or cause to fall any tree into Neuse river, and if any person Felling trees a misdemeanor.