

Divorce.

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I. Jurisdiction of the court of chancery.

An act concerning divorces.

R. S. 922.

Revision—Approved March 27, 1874.

P. L. 1857, p. 399.  
" 1871, p. 15.

1. [Amended by Sec. 39, *post.*]

II. Causes for divorce.

2. That divorces from the bond of matrimony shall be decreed where either of the parties had another wife or husband living at the time of such second or other marriage, (a) and that all marriages, where either of the parties shall have a former husband or wife living at the time of such marriage, shall be invalid from the beginning and absolutely void, (b) and the issue thereof shall be deemed to be illegitimate, and subject to all the legal disabilities of such issue.

Divorce decreed where either of parties had another husband or wife living.  
R. S. 922, § 3.  
Issue illegitimate.

3. [Amended by Sec. 40, *post.*]

4. That divorces from the bond of matrimony may be decreed in case the parties, or either of them, were, at the time of such marriage, physically and incurably impotent, (c) and all marriages in such case shall be invalid from the beginning and absolutely void.

For impotency.  
Revision.  
P. L. 1857, p. 399.

5. [Amended by Sec. 42, *post.*]

(a) See *Zule v. Zule*, Sax. 96. *Lindsay v. Lindsay*, 15 *Stew.* 151.  
(b) Where a first marriage is void, owing to the fact that one of the parties had a spouse living at the time of its celebration, the validity of a second marriage is not impaired thereby, though there has been no decree annulling it. *Dare v. Dare*, 7 *Dick.* 195.

(c) Before the enacting of this section a marriage could not be annulled for impotence. *Anonymous*, 9 *C. E. Gr.* 13. Where a wife is at an advanced stage of life an order for inspection will be denied in consideration of the wife's age. *Shafte v. Shafte*, 1 *Stew.* 34. See *A. B. v. C. B.*, 7 *Stew.* 43. *Gulick v. Gulick*, 12 *Vr.* 13.

## III. Procedure and practice.

Process and  
answer.  
R. S. 922, § 2.

6. That the like process and course of practice and procedure shall be had and pursued in all such causes as are usually had and pursued in other causes on the equity side of the said court, except that the answer of defendants shall not be under oath. (a)

Suits by petition.  
Ib., § 12.

7. That all suits in the court of chancery for divorces, may be commenced by filing a petition (b) with the clerk of the court; which petition shall plainly and fully state the cause or causes of the application for such divorce and the relief prayed; and the complainant shall make his or her oath or affirmation to be annexed to said petition, that his or her complaint is not made by any collusion between him or her and the defendant, for the purpose of dissolving their marriage, but in truth and good faith for the cause or causes set forth in the petition.

By whom citation,  
&c., served.  
Ib., § 14.

8. [Amended by Sec. 35, *post.*]  
9. That it shall be the duty of the sheriff or coroner, as the case may require, of any county in this state, to whom any such citation and certified copy of the petition shall be directed or delivered, to serve the same, and to make return of the said citation at the time and place therein mentioned, which shall be filed by the clerk.

How served.  
Ib., § 15.

10. That every such citation shall be served either by delivering to the defendant a copy thereof, together with a certified copy of the petition, or by leaving the said copies at his or her dwelling-house or usual place of abode, at least twenty entire days before its return. (c)

Proceedings, after  
citation returned  
served.

11. That on a citation being returned "served" or "cited" by the sheriff or coroner, as the case may require, the defendant shall, on the day mentioned therein for him or her to answer the said petition, or within three days thereafter, file his or her answer to the said petition, unless the court shall grant the defendant further time for that purpose; which answer shall plainly and fully set forth the cause or causes of his or her defense, and shall be signed by the defendant, but not sworn to; after which without any replication or further pleadings or rule, the parties shall proceed to take their evidence as in other cases in the court of chancery, so that the cause may be heard at the next stated term thereafter, unless the court, for good cause and upon such terms as shall be considered by the court just and reasonable, shall think proper to put off the hearing thereof to another term. (d)

Answer.  
Ib., § 16.

12. That if a defendant upon the citation being returned "served" or "cited" as aforesaid, shall not file his or her answer to the petition within the time limited by this act or granted by the court, the court may make an order that the petitioner proceed to take depositions and other evidence to substantiate and prove the allegations in the petition, and to bring on the hearing of the cause *ex parte*.

If no answer,  
order for proofs.  
Ib., § 17.

13. That in case a petition as aforesaid shall be filed, and it shall be made to appear by affidavit or otherwise, to the satisfaction of the chancellor, that such defendant is out of this state, or cannot upon due inquiry be found therein, or that he or she conceals himself or herself within this state, the chancellor may thereupon, by order, direct such defendant to answer the said petition, at a certain day therein named, not less than two nor more than six months from the date of such order, which order shall, within twenty days thereafter, be served on such defendant, by delivery of a copy thereof to him or her, or by leaving it at his or her dwelling-house or usual place of abode, or be published in one of the newspapers printed in this state, and designated in such order, and continued therein

Order for publica-  
tion if defendant  
absent.  
Ib., § 18.

(a) The answer, although sworn to, cannot be considered as evidence for any purpose. *Müller v. Müller*, Sax. 386. S. C. 1 Gr. Ch. 140. *Bray v. Bray*, 2 Hal. Ch. 27. *Anthony v. Anthony*, 3 Stock. 70. *Tomkins v. Tomkins*, cited in Sax. 388.

(b) Where the marriage is not one declared originally void by the statute, and the case is one which cannot be considered within its provisions, as included in the term *void*, the suit must be by bill. *Seah v. Seah*, 3 C. E. Gr. 145.

(c) An acknowledgment of service of a copy of the citation is not evidence of a legal service to give the court jurisdiction;

there should be evidence of a service of a copy of the petition also. *Stone v. Stone*, 10 C. E. Gr. 445.

(d) The admissions of an answer to a petition for divorce or account of adultery (the statute providing that such answer must not be sworn to) are not, in an undefended suit, evidence sufficient to establish either the marriage, residence or guilt of the parties. *Schmidt v. Schmidt*, 2 Steu. 498. In actions for divorce, the court cannot give the defendant the benefit of any defense not set up in his or her answer. *Fuller v. Fuller*, 14 Steu. 198.

for four weeks successively, at least once in every week, and shall be published in such other manner as the particular circumstances of the case may require, if in the opinion of the chancellor any other or further publication shall be necessary, and in case such defendant shall not file his or her answer within the time so limited, or within some further time, to be allowed by the chancellor, on proof of due service or publication of said order the court may order and direct the petitioner to produce depositions or other evidence to substantiate and prove the allegations in the petition, and the said petitioner may then proceed ex parte, and bring on the hearing of said cause.

14. That no petition, citation, answer, or other proceedings in any suit commenced by petition, as aforesaid, shall be set aside or otherwise annulled or made void for any defect in matter of form, or for any mistake or omission not affecting the real merits of the cause, and the chancellor may permit either party to amend his or her petition, answer or other proceedings in the cause, either in matters of form or substance, and proceed to give judgment according to the merits of the case.

No proceeding by petition void for defect of form. *Ib.*, § 19.

15. That in all cases where the proceedings shall be commenced by petition, as aforesaid, it shall and may be lawful for the chancellor, where not otherwise herein directed, to proceed as directed and allowed by this act in other cases and to make such decree as authorized in such cases, which decree shall be carried into effect in the manner herein directed and provided for, and the court is hereby invested with all powers necessary to the conducting and finally determining such cases, according to the true intent and meaning of this act. (a)

Decree and how executed. *Ib.*, § 20.

16. That when any cause shall be finally determined, which shall be commenced by petition, as aforesaid, the clerk of the court of chancery shall enter or enroll together, in order, the petition, answer, decretal orders, reports and final decree in such cause, in his book of decrees, which enrollment shall be signed as is authorized and required in other cases.

Enrollment. *Ib.*, § 21.

17. That there shall be allowed in the taxation of costs, for the petition, the sum of one dollar; for the answer, the sum of one dollar; to the clerk, for the citation and certified copy of the petition, seventy-five cents; to the sheriff, for serving and returning the citation, one dollar and fifty cents; and to the examiner, for taking the examination of every witness, for each sheet, ten cents, and for certifying every exhibit shown to a witness, ten cents; and that no other or greater fees shall be allowed for the said services.

Fees. *Ib.*, § 22.

18. That if, in the opinion of the chancellor, any matter of fact shall render the intervention of a jury necessary in any suit or proceeding for a divorce, then the court of chancery is hereby authorized to direct an issue for the trial of the same in the supreme court, or in one of the circuit courts.

When issue ordered. *Ib.*, § 23.

#### IV. Alimony and maintenance.

19. That when a divorce shall be decreed, it shall and may be lawful for the court of chancery to take such order touching the alimony and maintenance of the wife, (b) and also touching the care and maintenance of the

Of alimony and maintenance. *Ib.*, § 9.

(a) A decree of this court for a divorce *a mensa et thoro*, directing an annuity to be paid to the wife, and that it should be a lien from its date upon the husband's lands, is not a judgment so as to bind the lands as against strangers, unless an abstract of it is filed in the office of the clerk of the supreme court. *Vreeland v. Jacobus*, 4 C. E. Gr. 231.

(b) In fixing the amount of alimony the character and condition, as well as the amount of the husband's estate, will be considered. *Richmond v. Richmond*, 1 Gr. Ch. 90. *Close v. Close*, 10 C. E. Gr. 434. *Boyce v. Boyce*, 12 C. E. Gr. 433. And also the wife's pecuniary circumstances. *Marker v. Marker*, 3 Stock. 258. A gross sum may be decreed to be paid, or a certain part of the husband's property conveyed or transferred in full discharge of all future claims and demands of the wife. *Calame v. Calame*, 9 C. E. Gr. 440, 10 C. E. Gr. 548. An application to increase or diminish the amount may be made by petition. *Richmond v. Richmond*, 1 Gr. Ch. 90. *Shover v. Shover*, 2 Beas. 261, 2 C. E. Gr. 85. The burden of proof is on the petitioner. *Walling v. Walling*, 1 C. E. Gr. 389. It may be referred to a master to ascertain the facts, both as to the application and proper amount, or, if all the circumstances are before the court, it may be disposed of without such reference. *Ib.* *Cory v. Cory*, 3 Stock. 400. Alimony will be denied where a divorce has already

been obtained in another state. *Karrigan v. Karrigan*, 2 McCart. 146. *Nichols v. Nichols*, 10 C. E. Gr. 60. In the allowance of permanent alimony to a wife after divorce, the business capability of the husband may be taken into account. *Holmes v. Holmes*, 2 Stew. 9. A decree for divorce obtained by a husband on the ground of adultery, was opened on the ground of surprise and fraud, and the wife allowed to answer and defend. While the suit was in progress, temporary alimony was granted to the wife. The husband then applied to dismiss his bill. The wife opposed and filed a petition for permanent alimony, which was allowed. *Held*, that the court had the power to grant the wife permanent alimony. *Butler v. Butler*, 11 Stew. 628. After the testimony in a divorce suit had been taken, and the pleadings and proofs submitted to the court for final determination, the complainant may be allowed to amend her bill and to submit further evidence so as to obtain a decree for permanent alimony in case she ultimately succeeds in obtaining a decree for divorce. *Miller v. Miller*, 13 Stew. 476. There must be cogent reasons to induce the court to reduce the amount of permanent alimony, for the payment of which security has been given, especially where the wife is unable to do anything towards her support. *Barrett v. Barrett*, 14 Stew. 139.

children, or any of them, (a) by the said husband, as from the circumstances of the parties and the nature of the case shall be fit, reasonable and just; and in case the wife is the complainant, to order the defendant to give reasonable security for such alimony and maintenance; and upon his neglect or refusal to give such reasonable security as shall be required of him, or upon default of him and his surety, if any there be, to pay or provide such alimony and maintenance, to award and issue process for the immediate sequestration of the defendant's personal estate, and the rents and profits of his real estate, and to appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied towards such maintenance and allowance, or to such maintenance and allowance as to the said court shall from time to time seem reasonable and just, or to enforce the performance of the said decree or orders by such other lawful ways and means as is usual, and according to the course and practice or the court of chancery. (b)

Sequestration of estate.

When husband compelled to support wife.  
Ib., § 10.

20. That in case a husband, without any justifiable cause, shall abandon his wife or separate himself from her, and refuse or neglect to maintain and provide for her, it shall and may be lawful for the court of chancery to decree and order such suitable support and maintenance, to be paid and provided by the said husband for the wife and her children, or any of them, by that marriage, or out of his property, and for such time as the nature of the case and the circumstances of the parties render suitable and proper in the opinion of the court, and to compel the defendant to give reasonable security for such maintenance and allowance, and from time to time to make such further orders touching the same as shall be just and equitable, and to enforce such decree and orders in the manner mentioned in the last preceding section of this act; but during the time such maintenance shall be allowed by the decree or sentence of the court, the husband shall not be chargeable with her debts. (c)

Security for costs required.  
Ib., § 11.

21. That in any such suit as is mentioned in the last preceding section, it shall and may be lawful for the chancellor, if applied for before answer

(a) The allowance will be according to the condition in life of the father. *Richmond v. Richmond*, 1 Gr. Ch. 90. *Valentine v. Valentine*, 4 Hal. Ch. 219. *Snover v. Snover*, 2 Beas. 261, 2 C. E. Gr. 85. No allowance will be made where the children are grown up. *Amos v. Amos*, 3 Gr. Ch. 171. See *Walling v. Walling*, 1 C. E. Gr. 389.

(b) The allowance may be declared to be a lien on the husband's real estate in this state, and he may also be required to give security for its punctual payment. *Snover v. Snover*, 2 Beas. 261. *Holmes v. Holmes*, 2 Steu. 9. See *Richmond v. Richmond*, 1 Gr. Ch. 90. Effect of sequestration. *Vreeland v. Jacobus*, 4 C. E. Gr. 231. An injunction to restrain the husband from alienating his property will not be granted upon the mere apprehension of an abandonment. *Anshutz v. Anshutz*, 1 C. E. Gr. 162. Alimony which accrues after the docketing of the decree allowing it, in the supreme court, becomes a lien on the lands of the defendant as fast as it becomes due. *Stoy v. Stoy*, 14 Steu. 370. A decree for alimony made in New York will not be established as a lien upon lands in New Jersey. *Bullock v. Bullock*, 6 Dick. 444; affirmed, 7 Dick. 561. An action at law, however, may be maintained upon such decree. *Bullock v. Bullock*, 28 Vr.

(c) Both the abandonment and refusal to support must be charged and proved. *Anshutz v. Anshutz*, 1 C. E. Gr. 162. *Walling v. Walling*, 1 C. E. Gr. 389. A mere allegation that the husband does not "provide his wife with support," is insufficient. *Davis v. Davis*, 4 C. E. Gr. 180. The allowance will be made if he treated his wife with extreme cruelty and drove her from his house under a menace that he would kill her. *Maas v. Maas*, 7 Steu. 118. The allowance will be made to the wife although she leaves her husband without cause, if she returns and he refuses to provide for her. *Cory v. Cory*, 3 Stock. 400. *Begbie v. Begbie*, 3 Hal. Ch. 98. *Martin v. Martin*, 4 Hal. Ch. 563. Where the wife leaves the husband and goes and continues to reside elsewhere, it is *prima facie* abandonment by her, and she must show clearly that her going away was compulsory. *Starkey v. Starkey*, 6 C. E. Gr. 155. The court has no power to decree alimony, except as incident to divorce and under this section. *Yule v. Yule*, 2 Stock. 138. *Anshutz v. Anshutz*, 1 C. E. Gr. 162. See *Melony v. Melony*, cited in Sax. 389. It may be allowed although the parties are living apart under articles of separation. *Miller v. Miller*, Sax. 386. *Moore v. Moore*, 1 C. E. Gr. 278. See *Dixon v. Dixon*, 8 C. E. Gr. 316, 9 C. E. Gr. 133. *Emery v. Neighbor*, 2 Hal. 142. If a husband, who has ample means, takes his wife to a retired country tavern against her wishes, and leaves her there without notice or knowledge by her of the place to which he has gone, or whether he has made any provision for her support there or elsewhere, it is an abandonment. *Boyce v. Boyce*, 8 C. E. Gr. 337, 9 C. E. Gr. 588. A bill filed to obtain a divorce *a mensa et thoro*, on account of

the refusal of the husband to maintain the wife, though it presented no ground of divorce, was, nevertheless, sustained under section 20 as a bill for support. *Cray v. Cray*, 5 Steu. 25. A denial of a marriage *de jure*, because complainant had another wife living when she married defendant, accompanied with an admission of a marriage *de facto*, presents a proper case for allowing alimony *pendente lite*. But such alimony was refused where the defendant swore, and his oath was not overcome, that he left complainant with her consent and at her request, and he otherwise met the allegations of the bill with his answer and affidavits. *Id.* Alimony and counsel fees were originally allowed in divorce suits, because the wife was without other means of support or of obtaining money necessary to defray her expenses of the suit. *Westerfield v. Westerfield*, 9 Steu. 195. When the wife has sufficient separate property, the reason for giving her either temporary alimony or money to defray her expenses in the suit does not exist, and she is not entitled to either. *Id.* A wife is not obliged to stay under her husband's roof with his prostitute, and if she leaves his house for that reason, and he refuses to support her, she is entitled to a decree against him for alimony under section 20. *Weigand v. Weigand*, 14 Steu. 208. Where a wife, who has lived away from her husband for more than three years, files a bill against him for support and maintenance, upon the ground of his constructive abandonment of her, and his refusal and neglect to provide for her, the husband will be permitted, not only by answer to deny the abandonment, but by cross-bill to ask for a divorce from his wife because of her desertion of him. *Harrison v. Harrison*, 1 Dick. 75. *Elliott v. Elliott*, 3 Dick. 231. An order for alimony and counsel fees *pendente lite* can only be made in favor of a person appearing to be the wife of the other party to the suit. *Freeman v. Freeman*, 4 Dick. 102. The court, in deciding whether an order for alimony and counsel fees shall be made or not, must, as in other cases, proceed only upon legal evidence. *Id.* A husband who, without justifiable cause, separates himself from his wife and neglects to provide for her such a support and maintenance as this court shall adjudge "that the nature of the case and the circumstances of the parties render suitable and proper," is guilty of "refusing and neglecting to maintain and provide for her," in the sense in which those words are used in section 20. *O'Brien v. O'Brien*, 4 Dick. 436. Alimony *pendente lite* may be allowed to the wife. *Vreeland v. Vreeland*, 3 C. E. Gr. 43. *Paterson v. Paterson*, 1 Hal. Ch. 389. *Disborough v. Disborough*, 6 Dick. 306. But it will not be if there is no foundation for the bill. *Dougherty v. Dougherty*, 4 Hal. Ch. 540. *Applegate v. Applegate*, 18 Steu. 116. See *Martin v. Martin*, 4 Hal. Ch. 563. For allowance or refusal of costs and counsel fees on an application for alimony, see *ante*, p. 392, note (c).

filed, to order a bond to be given in one hundred dollars, by one or more sufficient freeholders, with condition to pay such costs as shall or may be awarded by the court to be paid to the defendant. (a)

**V. Custody and maintenance of minor children.**

**22.** That the court of chancery may, on application of either party in a suit for divorce, make such order, concerning the care and custody of the minor children of the parties, during the pendency of the suit, as shall be deemed expedient and for the benefit of the children. (b)

Court may control custody of minor children, pendente lite. P. L. 1871, p 15, § 1.

**23.** That upon a decree of nullity or divorce, the court may make such further decree or order as may be deemed expedient, concerning the care, custody and maintenance of the minor children of the parties, and determine with which of the parents the children, or any of them, shall remain ; and may also from time to time afterwards, on the petition of either of the parents, revise and alter such decree or order, and make a new decree or order, as the circumstances of the parents and the benefit of the children shall require.

After decree of divorce, may make further decree as to custody. *Ib.*, § 2.

**24.** That after a divorce decreed in any other state or country, if minor children of the marriage are inhabitants of this state, the court of chancery, on the petition of either parent, or of a next friend in behalf of the children, such notice being given to both parents as the court shall direct, may make such decree concerning their care, custody, education and maintenance as if the divorce had been obtained in this state.

Also after divorce decreed in another state. *Ib.*, § 3.

**25.** That when the court of chancery has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated or living separate, and such children are natives of this state, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order ; the court, upon application of any person in behalf of such minors, may require such security and issue such writs and processes as shall be deemed proper to effect the purposes of this and the preceding sections.

When children of parents divorced shall not be removed from this state. *Ib.*, § 4.

**26.** That when the parents of minor children live separately, the court of chancery, upon petition of either parent, shall have the same power to make decrees or orders concerning their care, custody, education and maintenance as concerning children whose parents are divorced.

Control over children of parents living separately. *Ib.*, § 5.

**27.** That in making an order or decree relative to the custody of the children pending a controversy between their parents, or in regard to their final possession, the rights of both parents, in the absence of misconduct, shall be held to be equal, and the happiness and welfare of the children shall determine the custody or possession. (c)

Rights of parents to be equal. *Ib.*, § 6.

**28.** That the said court may make the necessary orders and decrees, from time to time, in relation to such custody or possession.

Power of court as to custody. *Ib.*, § 7.

**29.** That in case of a death of the parent to whom the care and custody of the minor children shall be awarded by the court of chancery, on account of the misconduct or incapacity of the other parent, or when the parents are living separately, in case of the death of the parent in whose custody the children actually are, no award as to the custody of such children having been made, the care and custody of such minor children shall not revert to the surviving parent without a decree of said court to that effect ; and the said court shall have the right, upon petition of a next friend on behalf of the children, to appoint such friend or other suitable person,

On death of parent awarded custody, not to revert to surviving parent. *Ib.*, § 8.

Guardian may be appointed.

(a) Query—Whether this is imperative. *Ballentine v. Ballentine*, 1 *Hal. Ch.* 519.

(b) Where a separation for three years was decreed on evidence of extreme cruelty, the child, being of tender years, was committed to the custody of the mother. *Clutch v. Clutch*, *Sax.* 474. A child five years old was ordered to be given up to the father four years after a separation and allowance for support. *Valentine v. Valentine*, 4 *Hal. Ch.* 219. Other cases where the father was decreed to retain the children. *State v. Stipall*, 2 *Zab.* 286. *Magee v. Holland*, 3 *Dutch.* 86. *Bennet v. Bennet*, 2 *Beas.*

114. *State, Baird v. Torrey*, 3 *C. E. Gr.* 194; modified in 4 *C. E. Gr.* 481. Custody awarded to the mother. *Thomas v. Thomas*, 5 *C. E. Gr.* 97. *Noel v. Noel*, 9 *C. E. Gr.* 137. See *Landis v. Landis*, 10 *Vt.* 274.

(c) A decree of divorce for cruelty, granted in this court on the application of a wife who had previously separated from her husband, was reversed by the court of appeals. Held, that her refusal to return to her husband was not "misconduct" within the meaning of the act. *State, English v. English*, 4 *Stew.* 513; affirmed, 5 *Stew.* 738.

guardian of such minor children, and shall have the right to remove such guardian, and to appoint a new guardian or guardians, and to make such orders, from time to time, as the circumstances of the case and the benefit of the children shall require.

### VI. Miscellaneous provisions.

Collusion of parties.  
R. S. 922, § 5.

**30.** That if it appear to the court that the adultery complained of shall have been occasioned by the collusion of the parties, and done with an intention to procure a divorce, or that the complainant was consenting thereto, (a) or that both parties have been guilty of adultery, (b) then no divorce shall be decreed.

When cohabiting after divorce, incest.  
Ib., § 6.

**31.** That if any persons, who shall be divorced on account of their being within the prohibited degrees, shall, after such divorce, cohabit together, such persons so offending shall be liable to all the pains and penalties provided by the then existing laws against incest.

When punished as adultery.  
Ib., § 7.

**32.** That if any person shall cohabit or live together in the same house, after a divorce for the cause of adultery or prior marriage, such person so offending shall be liable to all the pains and penalties provided by the laws against adultery.

Suit in forma pauperis.  
Ib., § 24.

**33.** That whenever any poor person shall have cause of suit under this act, and shall make an affidavit or affirmation that he or she is not worth one hundred dollars clear estate, the chancellor may, at his discretion, assign to such poor person a solicitor and counsel learned in the law, to prosecute the said cause, who, together with all other officers, shall perform their respective duties therein without fee or reward. (c)

### VII. Supplements.

#### Supplement.

Approved March 21, 1878.

P. L. 1878, p. 165.

Fees of examiners for taking examinations.

**34. SEC. 1.** That hereafter the fees of examiners in chancery for taking examinations of witnesses on applications for divorce, shall be the same as the fees provided for the same service in other cases. (1)

#### Amendatory act.

Approved March 27, 1878.

P. L. 1878, p. 192.

Citation and copy of petition served.

**35. SEC. 1.** That section eight of the act entitled "An act concerning divorces" [Revision], approved March twenty-seventh, eighteen hundred and seventy-four, which reads as follows [see Rev. p. 316], be and the same is hereby amended to read as follows:

[Upon filing the said petition, the clerk shall, if required, make out a certified copy thereof, to be served on the defendant, and issue a citation under the seal of the court, for the defendant to answer the said petition on or before such day as shall be mentioned for that purpose in the said citation, which may be any day, either in term time or vacation, not less than thirty days subsequent to the date of issuing the said writ; such citation shall bear date the day of issuing thereof, and be tested in the name of the chancellor.]

(a) If a husband connives at adultery by his wife with one person, he will be deemed to assent to it with others and will not be entitled to a divorce for such or any other subsequent act of adultery. *Hedden v. Hedden*, 6 C. E. Gr. 61. A husband who seduces his wife before marriage, and after marriage sees her in a situation of temptation and does nothing to rescue her, and she yields, will be understood as having assented to her adultery. *Cane v. Cane*, 12 Stew. 148. A husband who consents to the adultery of his wife is not entitled to a divorce. *Woodward v. Woodward*, 14 Stew. 214. And a husband who endeavors to procure his wife to be lured into the commission of adultery will be regarded as consenting to all subsequent acts of adultery which she may commit. *Ib.*

(b) What proof of adultery to bar a divorce is required. *Reid v. Reid*, 6 C. E. Gr. 331. An act of adultery which has been forgiven for years is not sufficient. *Jones v. Jones*, 3 C. E. Gr. 33. A man who himself has been guilty of ante-nuptial incontinence with the woman whom he afterwards marries, is not entitled to a divorce because she happened to have been pregnant by another at the time of his own transgression, concerning which she deceives him. *States v. States*, 10 Stew. 195.

(c) Would this section include defendants also? See *Pickle v. Pickle*, Hal. Dig. 241, § 14. In a proper case, the court of chancery may dispauper a petitioner who is proceeding *in forma pauperis*, under its previous order for a divorce, and order him to pay alimony to his wife. *Moon v. Moon*, 16 Stew. 408.

(1) See RULES OF CHANCERY, Sec. 47, and P. L. 1893, p. 198, *post*, title FEES AND COSTS.

Supplement.

Approved May 11, 1886. P. L. 1886, p. 345.

**36. SEC. 1.** That the court of chancery shall have jurisdiction of all cases of divorce in case of adultery committed out of this state, where the complainant or defendant was or shall have been a resident of this state for three years next preceding the time when said bill was or shall hereafter be filed.

Jurisdiction in cases of adultery committed out of state.

Supplement.

Approved April 1, 1887. P. L. 1887, p. 132.

**37. SEC. 1.** That willful and obstinate desertion shall be regarded, held and construed by the courts of this state having cognizance of causes of divorce, to be "continued" within the meaning of the third section of the act to which this act is a supplement, notwithstanding that after such desertion has or shall have begun, the deserting party has or shall have been imprisoned in this or any other state or country upon conviction by due process of law for a crime, misdemeanor or offense, not political, committed in this or any other state or country; *provided*, that such desertion has continued or shall have continued without interruption a sufficient length of time after such deserting party's discharge from such imprisonment, to make up, when added to the period of uninterrupted desertion prior to such imprisonment, the full period of three years. (a)

What to be held and construed as willful and obstinate desertion.

Proviso.

**38. SEC. 2.** That this act shall not apply to actions for divorce for the cause of desertion now pending in any of the courts of this state.

Act not to apply to actions now pending.

Amendatory act.

Approved March 7, 1889. P. L. 1889, p. 48.

**39. SEC. 1.** That section one of said act, which said section now reads as follows [see Rev. p. 314], be and the same is hereby amended so that henceforth the said section shall read as follows, to wit:

[That the court of chancery shall have jurisdiction of all causes of divorce and of alimony or maintenance, by this act directed and allowed; *provided*, the parties complainant and defendant, or either of them, were or shall be inhabitants of this state at the time of the injury, desertion or neglect complained of, or where the marriage shall have been solemnized or taken place within this state, and the complainant shall have been an actual resident in the state at the time of the injury, desertion or neglect complained of and at the time of exhibiting the bill; or where the adultery was committed in this state, and the parties complainant and defendant, or either of them, reside in this state at the time of exhibiting the bill; or where the complainant or defendant shall be a resident of this state at the time of filing the bill of complaint, and the complainant or defendant shall have been a resident of this state for the term of two years, during which such desertion shall have continued; (b) *provided*, such complainant shall make his or her oath or affirmation, to be annexed to the bill of complaint, that his or her complaint is not made by any collusion between him or her and the defendant, for the purpose of dissolving their marriage, but in truth and good faith, for the causes set forth in the bill of complaint.]

Court of chancery to have jurisdiction of all causes of divorce, alimony or maintenance.

Proviso.

(a) See *Wolf v. Wolf*, 11 *Stew.* 128.

(b) The residence required by the statute to give the court jurisdiction means fixed domicile or permanent home. *Coddington v. Coddington*, 5 *C. E. Gr.* 268. The requirement that a party shall be an inhabitant or resident of the state at the time of the desertion, refers to the whole period during which the desertion must have continued, and not to the mere commencement or act of desertion. *Ib.* The residence requisite to give jurisdiction must be continuous. *Sanders v. Sanders*, 2 *Stew.* 410. *Yates v. Yates*, 2 *Beas.* 280. *Brown v. Brown*, 2 *McCart.* 499, reversing *S. C.*, 1 *McCart.* 78. *Goldbeck v. Goldbeck*, 3 *C. E. Gr.* 42. When the evidence shows that both parties have resided in this state for the time requisite to confer jurisdiction, and that they also resided here when the petition was filed, the petition may be amended so as to state these facts, if omitted. *Barrett v. Barrett*, 10 *Stew.* 29. The petitioner, to entitle himself to a decree, where the only ground of jurisdic-

tion is that he is a resident of this state when he brought his suit, must prove that fact by clear and convincing evidence. If the evidence leaves it in serious doubt, the court will refuse to act. *Firth v. Firth*, 5 *Dick.* 137. Where adultery is the ground, a divorce will be refused to a citizen of another state bringing his effects into this, obviously to procure such divorce, and immediately commencing suit for that purpose, although the charge be clearly proved. *Winship v. Winship*, 1 *C. E. Gr.* 107. *Query*—Whether desertion for three years by complainant, and before any adultery proved against defendant, would bar complainant. *Hedden v. Hedden*, 6 *C. E. Gr.* 61. See *Adams v. Adams*, 2 *C. E. Gr.* 324. An incurable impotence existing at the time of the marriage, is a continuing injury, and gives jurisdiction, although neither of the parties was an inhabitant of the state when the marriage was contracted. *A. B. v. C. D.*, 7 *Stew.* 43.

P. L. 1890, p. 34.

## Amendatory act.

Approved March 5, 1890.

**40. SEC. 1.** That section three of said act be and the same is hereby amended to read as follows :

Causes for which divorces may be decreed.

[That divorces from the bonds of matrimony may be decreed in case the parties are within the degrees prohibited by law, (a) and in case of adultery (b) in either of the parties, and also for willful, continued and obstinate desertion for the term of two years ;(c) but the decree or sentence of divorce in such cases shall not render illegitimate the issue of any marriages so dissolved.] (d)

Act to apply to certain cases.

**41. SEC. 2.** That this act shall apply to all cases in which a bill or petition has been filed since March seventh, one thousand eight hundred and eighty-nine, or shall hereafter be filed.

P. L. 1891, p. 76.

## Supplement.

Approved March 4, 1891.

**42. SEC. 1.** That the fifth section of the act entitled "An act concerning divorces" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four, be amended so as to read as follows :

(u) A marriage between a man and a woman related within the degrees prohibited by law is not void, but voidable, and until dissolved by a court of competent jurisdiction must, in all collateral proceedings, be treated as valid. *Boylan v. Deintzer*, 18 *Stew.* 485.

(v) Charges of adultery and cruelty cannot be united in the same bill. *Decamp v. Decamp*, 1 *Gr. Ch.* 294. *Snover v. Snover*, 2 *Stock.* 261. What allegations in a bill for adultery as to time, place, &c., are sufficient. *Clutch v. Clutch*, *Sac.* 474. *Marsh v. Marsh*, 1 *C. E. Gr.* 391. *Mills v. Mills*, 3 *C. E. Gr.* 444. *Miller v. Miller*, 5 *C. E. Gr.* 216. *Goodwin v. Goodwin*, 8 *C. E. Gr.* 210. *Noel v. Noel*, 9 *C. E. Gr.* 137. *Scheffing v. Scheffing*, 17 *Stew.* 438. See RULES OF CHANCERY, Sec. 163. How recrimination must be set up and proved. *Jones v. Jones*, 3 *C. E. Gr.* 33. *Flavell v. Flavell*, 5 *C. E. Gr.* 211, 7 *C. E. Gr.* 599. *Reed v. Reed*, 6 *C. E. Gr.* 331. *Fuller v. Fuller*, 14 *Stew.* 198. A bill for discovery whether the defendant has not committed adultery, with whom and at what time and place, &c., cannot be sustained. *Marsh v. Marsh*, 1 *C. E. Gr.* 391. To prove adultery by circumstances, a criminal desire and an opportunity to gratify must be shown. Where these both occur, guilt is presumed. *Black v. Black*, 3 *Stew.* 228. If the circumstances in proof taken singly and together, admit of two interpretations, that which favors innocence should be adopted. *Hartzig v. Hartzig*, 7 *Stew.* 328. A confession of adultery, written by the wife in the presence and under the eye of the husband, is presumed to be procured by his coercion and not sufficient to support charge of adultery. *Summerbell v. Summerbell*, 10 *Stew.* 603. The visit by a married woman to a brothel will, unless satisfactorily explained, justify the presumption that she went there for a criminal purpose. *Cane v. Cane*, 12 *Stew.* 148. No evidence, however, if wife is decoyed there by husband. *Id.* Evidence in particular cases sufficient to sustain the charge of adultery. *Day v. Day*, 3 *Gr. Ch.* 444. *Broyn v. Bray*, 2 *Hal. Ch.* 628. *Adams v. Adams*, 2 *C. E. Gr.* 324. *Jones v. Jones*, 2 *C. E. Gr.* 357. *Flanel v. Flanel*, 5 *C. E. Gr.* 211, 7 *C. E. Gr.* 599. *Derby v. Derby*, 6 *C. E. Gr.* 37. *Marsh v. Marsh*, 1 *Stew.* 198. *Paul v. Paul*, 10 *Stew.* 23. What evidence is insufficient. *Clutch v. Clutch*, *Sac.* 474. *Miller v. Miller*, 1 *Gr. Ch.* 189. *Cummins v. Cummins*, 2 *McCart.* 138. *Mount v. Mount*, 2 *McCart.* 162. *Berkmans v. Berkman*, 1 *C. E. Gr.* 122, 2 *C. E. Gr.* 453. *Reid v. Reid*, 2 *C. E. Gr.* 101. *Clare v. Clare*, 4 *C. E. Gr.* 87. *Larrison v. Larrison*, 5 *C. E. Gr.* 100. *Miller v. Miller*, 5 *C. E. Gr.* 216. *Hedden v. Hedden*, 6 *C. E. Gr.* 61. *Mayer v. Mayer*, 6 *C. E. Gr.* 246. *Reid v. Reid*, 6 *C. E. Gr.* 331. *Franz v. Franz*, 5 *Stew.* 483. *Whitnack v. Whitnack*, 9 *Stew.* 475. *Fuller v. Fuller*, 14 *Stew.* 460. *Osborn v. Osborn*, 17 *Stew.* 237. Judgment should never be pronounced on doubtful proofs. *Marsh v. Marsh*, 1 *Stew.* 196. In a suit for adultery, neither husband nor wife is a competent witness to disprove the charge. *Marsh v. Marsh*, 2 *Stew.* 286. In adultery, evidence of accused parties, as a general rule, entitled to little weight, yet, in a doubtful case, of sufficient weight to defeat divorce. *Culver v. Culver*, 11 *Stew.* 163. *Scheffing v. Scheffing*, 17 *Stew.* 438. What variance between the allegations and proofs is fatal. *Zule v. Zule*, *Sac.* 96. *Moore v. Moore*, 1 *C. E. Gr.* 275. *Mills v. Mills*, 3 *C. E. Gr.* 444. *Miller v. Miller*, 5 *C. E. Gr.* 216. *Prince v. Prince*, 10 *C. E. Gr.* 310. What proof of the marriage is necessary. *Goldbeck v. Goldbeck*, 5 *C. E. Gr.* 42. *Clark v. Clark*, 7 *Dick.* 650. See *Vreeland v. Vreeland*, 3 *C. E. Gr.* 43. *Condonation. Hal. Dig.* 386, § 2. *Marsh v. Marsh*, 2 *Beas.* 281. *Stevens v. Stevens*, 1 *McCart.* 374. *Jones v. Jones*, 3 *C. E. Gr.* 33. *Hedden v. Hedden*, 6 *C. E. Gr.* 61. *Reid v. Reid*, 6 *C. E. Gr.* 333. *Shackleton v. Shackleton*, 3 *Dick.* 364. To enable a defendant to avail himself of condonation as a defense to a suit, he must set it up by plea or answer. *Warner v. Warner*, 4 *Stew.* 225. If omitted by mistake, may be interposed by supplemental answer, on terms. *Id.* The injured party must have reasonable knowledge of the offense of the guilty party to establish condonation. *Graham v. Graham*, 5 *Dick.* 701. Where condonation is interposed as a defense, petitioner may file supplemental petition charging adultery subsequent to alleged condonation. *Lutz v. Lutz*, 7 *Dick.* 241. Rights and duties of the parties while the suit is pending. *Marsh v. Marsh*, 1 *McCart.* 315. *Cummins v. Cummins*, 2 *McCart.* 138. *Chapman v. Chapman*, 10 *C. E. Gr.* 394.

Adultery committed at any time before final decree is pronounced constitutes a perfect bar to plaintiff's action. *Fuller v. Fuller*, 14 *Stew.* 198. Failure to call paramour, who was within reach of process, corroborative of other testimony as to guilt. *Bibby v. Bibby*, 6 *Stew.* 56. A decree for a divorce obtained in another state before a court of competent jurisdiction, although procured by collusion, binds the parties. *Kirrihan v. Kirrihan*, 2 *McCart.* 146. *Nichols v. Nichols*, 10 *C. E. Gr.* 60. See *Hedden v. Hedden*, 6 *C. E. Gr.* 61. A decree in a divorce suit will have no extra-territorial effect when the defendant is domiciled in another state, and is not served with process nor with notice of the proceedings. *Doughty v. Doughty*, 12 *C. E. Gr.* 315; affirmed, 1 *Stew.* 581. *Flower v. Flower*, 15 *Stew.* 152.

(c) Mere separation does not constitute desertion. *Lewis v. Lewis*, 2 *Hal. Ch.* 22. *Marker v. Marker*, 3 *Stock.* 258. *Jennings v. Jennings*, 2 *Beas.* 38. *Cook v. Cook*, 2 *Beas.* 263. *Marsh v. Marsh*, 1 *McCart.* 315. *Rogers v. Rogers*, 3 *C. E. Gr.* 445. *Test v. Test*, 4 *C. E. Gr.* 342. *Laing v. Laing*, 6 *C. E. Gr.* 248. *Woodworth v. Woodworth*, 6 *C. E. Gr.* 251. *Drake v. Drake*, *Hal. Dig.* 385. What constitutes, and is sufficient proof of desertion. *Miller v. Miller*, *Sac.* 386. *Begbie v. Begbie*, 3 *Hal. Ch.* 98. *Martin v. Martin*, 4 *Hal. Ch.* 563. *Marker v. Marker*, 3 *Stock.* 258. *Anshutz v. Anshutz*, 1 *C. E. Gr.* 162. *Palmer v. Palmer*, 7 *C. E. Gr.* 83. *Brinkerhoff v. Brinkerhoff*, 2 *Stew.* 137. *Schanck v. Schanck*, 8 *Stew.* 363. *Hooper v. Hooper*, 7 *Stew.* 93. *Williams v. Williams*, 8 *Stew.* 382. *Sargent v. Sargent*, 9 *Stew.* 644, reversing *S. C.*, 6 *Stew.* 204. *Barrett v. Barrett*, 10 *Stew.* 29. See RULES OF CHANCERY, Sec. 164. What is not a desertion or evidence thereof. *Ford v. Ford*, 2 *Hal. Ch.* 542. *Cory v. Cory*, 3 *Stock.* 400. *Conger v. Conger*, 2 *Beas.* 288. *Goldbeck v. Goldbeck*, 3 *C. E. Gr.* 42. *Reid v. Reid*, 6 *C. E. Gr.* 331. *Cornish v. Cornish*, 8 *C. E. Gr.* 208. *Leaning v. Leaning*, 10 *C. E. Gr.* 241. *Bowley v. Bowley*, 10 *C. E. Gr.* 408, 570. *Stone v. Stone*, 10 *C. E. Gr.* 445. *Driver v. Driver*, 1 *Stew.* 898. *Rittenhouse v. Rittenhouse*, 2 *Stew.* 374. *Mayer v. Mayer*, 3 *Stew.* 411. *Kestler v. Kestler*, 4 *Stew.* 197. *Cass v. Cass*, 4 *Stew.* 628. *Trall v. Trall*, 5 *Stew.* 231. *Sandford v. Sandford*, 5 *Stew.* 420. *Bourquin v. Bourquin*, 6 *Stew.* 7. *Hankinson v. Hankinson*, 6 *Stew.* 68. *Belden v. Belden*, 6 *Stew.* 94. *Reece v. Reece*, 7 *Stew.* 32. *Pimley v. Pimley*, 8 *Stew.* 18. *Johnson v. Johnson*, 8 *Stew.* 20. *Grant v. Grant*, 9 *Stew.* 502. *Newing v. Newing*, 18 *Stew.* 498. *Herold v. Herold*, 2 *Dick.* 210. *Broom v. Broom*, 2 *Dick.* 215. *Costill v. Costill*, 2 *Dick.* 346. *Chipchase v. Chipchase*, 3 *Dick.* 549. *Stiles v. Stiles*, 7 *Dick.* 446. Desertion brought about by the misconduct of the husband cannot be made the ground of divorce on his application. *Meldowney v. Meldowney*, 12 *C. E. Gr.* 328. *Taylor v. Taylor*, 1 *Stew.* 207. Mere failure by a husband to furnish a wife with sufficient support is not a ground of divorce, nor will he be considered a deserter if she leaves him for that cause. *Skean v. Skean*, 6 *Stew.* 148. Absence of a husband from a wife while confined in the state prison is not "willful, continued and obstinate desertion" to entitle her to a divorce. *Wolf v. Wolf*, 11 *Stew.* 128. More than the unsupported testimony of the petitioner is necessary to prove the desertion. *Pullen v. Pullen*, 2 *Stew.* 541. *Sandford v. Sandford*, 5 *Stew.* 420. *McShane v. McShane*, 18 *Stew.* 341. *Costill v. Costill*, 2 *Dick.* 316. If a husband treats his wife with such extreme and persistent cruelty that her existence is rendered intolerable and her life endangered, and she for that reason separates herself from him, such treatment on his part amounts to desertion by him. *McVicker v. McVicker*, 1 *Dick.* 490. See, also, *Laing v. Laing*, 6 *C. E. Gr.* 249. *Palmer v. Palmer*, 7 *C. E. Gr.* 83. *Skean v. Skean*, 6 *Stew.* 148. A husband has the right to choose the place of residence of his family. Repeated refusal by a wife to live with her husband in the place of residence chosen by him, without a justifying cause, constitutes desertion. *Hunt v. Hunt*, 2 *Stew.* 98. Where a wife continues to live with her husband and perform her household duties, but withdraws from sexual intercourse with him, she does not willfully, continued and obstinately desert him. *Anonymous*, 7 *Dick.* 349.

(d) A divorce from the bond of matrimony puts an end to any right which either has acquired in the property of the other by the marriage, unless its effect is restrained by statute. *American Legion of Honor v. Smith*, 18 *Stew.* 466.

[That for desertion, adultery, or extreme cruelty in either of the parties, committed or that may be committed, the court of chancery may decree a divorce from the bed and board forever thereafter, or in the case of extreme cruelty, for a limited time, as shall seem just and reasonable, (a) but in every such case, except for extreme cruelty, the party applying shall prove that he or she has conscientious scruples against applying for a divorce from the bond of matrimony; when such proof has been made, the court, in case it shall deem it just so to do, may also decree that the guilty party shall forfeit all right to dower, curtesy and administration of or participation in the property or estate of the party in whose favor the decree is entered.] (b)

Court of chancery may decree a limited divorce for extreme cruelty, adultery or desertion.

(a) What constitutes extreme cruelty. *Clutch v. Clutch*, 3 Sax. 474. *Graeven v. Graeven*, 1 Gr. Ch. 459. *Cook v. Cook*, 3 Stock. 195. *Anshutz v. Anshutz*, 1 C. E. Gr. 162. *Moore v. Moore*, 1 C. E. Gr. 275. *Fisher v. Fisher*, 3 C. E. Gr. 300. *Davis v. Davis*, 4 C. E. Gr. 180. *Thomas v. Thomas*, 5 C. E. Gr. 97. *Laing v. Laing*, 6 C. E. Gr. 248. *Close v. Close*, 10 C. E. Gr. 528. *Cook v. Cook*, 5 Stew. 475. See *Amos v. Amos*, 3 Gr. Ch. 171. A divorce a mensa et thoro, for extreme cruelty, will be granted where there is a gross abuse of marital rights. *English v. English*, 12 C. E. Gr. 579. A separation is not decreed as a punishment for past misconduct only, but mainly as a protection against future probable acts of cruelty, this probability being based upon the former conduct and the character and disposition of the parties. *Id.* Where there is no reasonable apprehension of a continuance of such cruelty, such divorce will not be granted. *Id.* The words "extreme cruelty," in our act concerning divorces, are not stronger in meaning than the term *sevitia*, derived from the

civil law. *Smith v. Smith*, 13 Stew. 586. A charge of incest, made by a husband against his wife, persisted in without cause, attended with slight acts of violence, jealous watchings, suspicious conduct and reasonable apprehension of bodily harm, is good ground for judicial separation from bed and board. *Id.* It is not a good defense to such complaint that the husband appears to be under an insane delusion, where there is not general insanity or dementia. *Id.* See *O'Neill v. O'Neill*, 3 Stew. 119. What not sufficient ground to sustain a divorce for cruelty. *Coles v. Coles*, 5 Stew. 547. *Chadwick v. Chadwick*, 7 Dick. 539. Refusal of a husband to live with his wife is not extreme cruelty, in the absence of proof that it has had, or tends to have, a serious effect on her health. *Burton v. Burton*, 7 Dick. 215. (b) As to effect of a decree for divorce a mensa et thoro where the common law is in force. *American Legion of Honor v. Smith*, 13 Stew. 466.

## Dower.

1. Widow, of what endowed.
2. Her quarantine.
3. May sue for dower.
4. Writ, when to abate.
5. Land lost by covin or default no bar.
6. Rule as to widows and heirs.
7. When heir not bound.
8. Plea and default.
9. Which courts have cognizance of dower.
10. Jointure to bar dower.
11. But not if evicted.
12. When jointure may be waived.
13. Shall not have both.
14. Dower barred by adultery.
15. Or by consent to ravisher.
16. Devise of lands a bar unless dissent filed.
17. Amended by section 27.

18. Notice to be given.
19. Commissioners' report.
20. Appeal to surrogate-general.
21. Where lands in several counties.
22. Fees.
23. Costs taxed, apportioned and paid.
24. When quarantine to cease.
25. Wife of trustee not to have dower in the trust estate.
26. Purchaser may have dower portion of lands set off.
27. Proceedings to assign dower.
28. Chancellor may direct release of inchoate right of dower of person mentally incapacitated.
29. Application to be by petition. Reference, &c.
30. Chancellor may direct release of right of dower of person mentally incapacitated.
31. Application to be by petition. Reference, &c.

### An act relative to dower.

Approved April 16, 1846.

R. S. 71.

P. L. 1870, p. 22.

1. That the widow, whether alien (a) or not, of any person dying intestate or otherwise, shall be endowed, for the term of her natural life, of the one full and equal third part of all the lands, tenements and other real estate, (b)

Widow, of what endowed.

(a) A widow may have dower in lands purchased by her husband while an alien enemy, if he retain such lands until after the act of January 22d, 1817, confirming the title of such purchasers. *Yeo v. Mercereau*, 3 Har. 387. See *Kemp v. Kennedy*, Pet. C. C. 30. Before the passage of this act (1799, Pat. 343), the alienism of the husband could be pleaded in abatement. *Coxe v. Gulick*, 5 Hal. 328.

(b) A widow is entitled to dower in wild or unimproved lands. *Brown v. Richards*, 2 C. E. Gr. 32. *Doughty v. Doughty*, 2 C. E. Gr. 38. In the excess of partnership real estate, over and above what may be required for the payment of partnership debts. *Uhler v. Sample*, 5 C. E. Gr. 289. In an estate of her husband defeasible on his death without issue. *Kennedy v. Kennedy*, 5 Dutch. 185. So, in an estate determinable on a brother of the husband becoming *compos mentis*; although the husband died before such brother. *Jackson v. Berry*, 3 Hal. 241. In mines and quarries actually opened and worked during her husband's lifetime. *Reed v. Reed*, 1 C. E. Gr. 249. Where executors were ordered to sell lands for the payment of debts, in the excess beyond what was required for that purpose. *Cook v. Cook*, 5 C. E. Gr. 375. Where lands are not devised to the executors, but a simple power of sale given, the widow of a son dying before such sale is entitled to dower. *Romaine v. Hendrickson*, 9 C. E. Gr. 232. *Aliter* where the executors are ordered to sell and divide the proceeds. *Berrien v. Berrien*, 3 Gr. Ch. 37. After a partition she can only receive her dower in the share allotted to

her husband, and not in his undivided portion of the whole. *Lloyd v. Conover*, 1 Dutch. 47. Nor in a moiety. *Osborn v. Rogers*, 4 C. E. Gr. 429. It may be recovered in parcels of the several tenants in possession. *Sip v. Lawback*, 2 Har. 442. *Matter of Ann Garrison*, 2 McCart. 393. *Macknet v. Macknet*, 9 C. E. Gr. 449. Or she may claim one-third of the whole estate, at her election. *Leard v. Wilson*, Pen. \*284. *Den v. Miller*, 1 South. \*321. See *Hautenback v. Cronkright*, 8 C. E. Gr. 407. So, where a husband and wife executed a bond and mortgage and the obligee purchased the land covered by the mortgage under an execution and sale on a judgment obtained on his bond. *Harrison v. Eldridge*, 2 Hal. 392. So, dower is paramount to a title obtained by a sale for the debts of the husband. *Hyatt v. Ackerson*, 2 Gr. 584. *Chiswell v. Morris*, 1 McCart. 101. And paramount to a judgment obtained for a legacy, in lands charged in the hands of the devisee with the payment of such legacy. *Lloyd v. Conover*, 1 Dutch. 47. See *Hayes v. Whittall*, 2 Beas. 241. And to a sale by order of the orphans' court, to pay debts. *Sip v. Lawback*, 2 Har. 443. But see *Thompson v. Egbert*, 2 Har. 459. The widow is entitled to dower in an equity of redemption. *Montgomery v. Bruere*, 2 South. \*865(a). *Thompson v. Boyd*, 1 Zab. 58, 2 Zab. 548. *Hartshorne v. Hartshorne*, 1 Gr. Ch. 349. *Hinchman v. Stiles*, 1 Stock. 361, 454. *Opdyke v. Bartles*, 3 Stock. 133. Where the legal title of the husband in the equity of redemption has been obtained by the mortgagee, see *Chiswell v. Morris*, 1 McCart. 101. *Eldridge v. Eldridge*, 1 McCart. 185.