

TITLE 5.—OF LAWS AFFECTING THE DOMESTIC RELATIONS.

CHAPTER XXVIII.
OF HUSBAND AND WIFE.

ARTICLE LIII.—MARRIAGE.

§1283. It shall not be lawful for any minister of religion of any sect whatsoever, or any other person, to perform the marriage ceremony within this Kingdom, without first obtaining from the Minister of the Interior a license to celebrate marriage.

RELATING TO MARRIAGE CONTRACTS.

SECTION 1. In order to make valid the marriage contract, it shall be necessary that the respective parties be not to each other within the fourth degree of consanguinity; that the male at the time of contracting the marriage shall be at least seventeen years of age, and the female at least fourteen years of age; that the man shall not at the time have any lawful wife living and that the woman shall not at the time have a lawful husband living; and it shall in no case be lawful for any persons to marry in this Kingdom without a license for that purpose duly obtained from the agent duly appointed to grant licenses to marry.

SECTION 2. The 1284th section of the Civil Code and the XXIV. Chapter of the laws of the year one thousand eight hundred and seventy are hereby repealed.

§1285. The marriage rite may be performed and solemnized by any person duly authorized by law, upon presentation to him

Act
1872,
Chap. XXIII

of a license to marry, as prescribed by the foregoing section ; who may be at liberty to receive the price to be stipulated by the parties, or the gratification tendered to him.

TO FACILITATE THE PROOF OF MARRIAGE.

Act
1864.

SECTION 1. It shall be the duty of every person authorized to solemnize marriage within this Kingdom to make and preserve a record of every marriage by him solemnized, comprising the names of the man and woman married, their place of residence, and the date of their marriage, and to deliver a certificate of such marriage, signed by him, to the parties married.

SECTION 2. Every person authorized to solemnize marriage, who shall neglect to keep a record of any marriage by him solemnized, or to deliver a certificate thereof to the parties married, shall be subject, upon due proof of such neglect before any police or district justice, to a fine of fifty dollars.

SECTION 3. It shall be the duty of every person authorized to solemnize marriage, to deliver to any person requesting the same, a written certificate of any marriage by him solemnized, upon being paid or tendered the sum of fifty cents.

SECTION 4. Any person authorized to solemnize marriage, who shall refuse, upon being paid or tendered the sum of fifty cents, to deliver to any person requesting the same, a certificate of any marriage by him solemnized, shall, upon due proof of such refusal before any police or district justice, be subject to a fine of fifty dollars.

SECTION 5. Upon the death or departure from the country of any person authorized to solemnize marriage, it shall be the duty of his executor, administrator, or other legal representative, to deliver the records of marriages kept by such authorized person to the Minister of the Interior, under a penalty, upon due proof of neglect to make such delivery before any police or district justice, of a fine of one hundred dollars.

SECTION 6. It shall be the duty of the chief clerk of the Department of the Interior, upon being paid or tendered the sum of fifty cents, to deliver to any person requesting the same, a certified copy of any entry found in any record of marriages deposited in said department, under the hand of said clerk and the seal of the department.

§1286. The husband, whether married in pursuance of this article, or heretofore, or whether validly married in this Kingdom or in some other country, and residing in this, shall be accountable in his own property, for all the debts contracted by his wife anterior to, and during marriage; to any of which debts, he may set up the same defense she could have interposed had she remained sole. The husband shall be bound in law to maintain, provide for, and support his wife during marriage, in the same style and manner in which he supports and maintains himself. The husband shall, in virtue of his marriage, and in consideration of the responsibilities imposed on him by law, be the virtual owner, except otherwise stipulated by express marriage contract, of all movable property belonging to his wife anterior to marriage, and of all movable property accruing to her after marriage; over all of which movable property he shall, unless otherwise stipulated by contract, have absolute control for the purposes of sale or otherwise, and the same shall be equally liable with his own for his private debts. The husband shall in virtue of his marriage, unless otherwise stipulated by express contract, have the custody, use and usufruct, rents, issues and profits of all property of a fixed and immovable nature, belonging to his wife before marriage, or accruing to her after marriage; and he may, with her written consent, rent or otherwise dispose of the same for any term not exceeding the term of his natural life: provided, that in case his wife shall first die, the husband legally married as aforesaid, shall cease to have control over the immovable and fixed property of his wife, and the same shall immediately descend to her heirs as if she had died sole, unless there happen to be legitimate issue of the marriage within the age of legal majority; in which case the

Von Hassloch
v. Ward, Ex
3d H.R. 802.

Est. Napu
Zupplien, 3
R. 323.

husband shall continue to enjoy a *curtesy* in said immovable or fixed property, until such issue shall attain majority, when the same shall descend to the heir or heirs of the body of the wife. The immovable and fixed property of the wife shall not be liable to be sold for the payment of the husband's debts, whether contracted in his own behalf solely, or in support of or for the use of his wife after marriage. But such immovable and fixed property may be legally sold on execution to satisfy the debts contracted by the wife before marriage, if no property of the husband be found to satisfy the same.

§1287. The wife, whether married in pursuance of this article or heretofore, or whether validly married in this Kingdom or in some other country, and residing in this, shall be deemed for all civil purposes, to be merged in her husband, and civilly dead. She shall not, without his consent, unless otherwise stipulated by anterior contract, have legal power to make contracts, or to alienate and dispose of property, except as hereinafter provided. She shall not be civilly responsible in any court of justice, without joining her husband in the suit, and she shall in no case be liable to imprisonment in a civil action. The husband shall be personally responsible in damages, for all the tortuous acts of his wife; for assaults, for slanders, for libels, and for consequential injuries done by her to any person or persons in this Kingdom.

§1288. The children of a valid marriage shall be denominated legitimate; and the husband of said marriage shall be liable for their suitable and proper support in all respects, until they severally attain the age of majority, when his liability shall cease for further provision. He shall also be entitled to control and manage his children in all respects during their minority, and require reasonable service at their hands. He shall be the natural guardians of their persons and of their property; he shall be liable in damages for tortuous acts committed by them, and entitled to prosecute and defend all actions at law in which they or their individual property may be concerned.

§1289. Children whose parents shall not have been legally married, in contemplation of this article, shall be denominated

bastards, and shall not be entitled to inherit from their male parents, without express bequest: provided, nevertheless, that the female parent shall be compellable to maintain and support them during minority, and they shall be capable to take by inheritance from the mother, without will.

TO RENDER LEGITIMATE CHILDREN BORN OUT OF WEDLOCK,
WHEN THEIR PARENTS SHALL MARRY SUBSEQUENTLY TO
THEIR BIRTH.

Act
1866.

SECTION 1. All children born out of wedlock, are hereby declared legitimate on the marriage of the parents with each other, and are entitled to the same rights as those born in wedlock.

SECTION 2. This Act shall become a law from and after the date of its passage.

Approved this 24th day of May, A.D. 1866.

§1290. Marriages legal in the country where contracted shall be held legal in the courts of this Kingdom.

§1291. When a male under twenty years of age, or female under eighteen years of age, is to be married, the consent of the parent, guardian or other person having the care and government of such party, if within the Kingdom, shall be first obtained.

§1292. Any justice of the Supreme Judicial Court, or of any circuit court, on application of any married woman, whose husband has absented himself from the Kingdom, abandoning her, and not making sufficient provision for her maintenance, may empower her, during his absence and till his return, in her own name, to make and execute any contract under seal or otherwise.

§1293. She may also be authorized to make sale of any estate, real or personal, of which she is seized or possessed in her own

right, and duly execute all legal instruments necessary for that purpose.

§1294. She may also commence, prosecute, and defend any action in law, or in equity, to final judgment and execution, in like manner as if she were unmarried.

§1295. The Supreme or Circuit Courts may also, on her petition, authorize any person holding money or other personal property, to which the husband is entitled in her right, to pay and deliver the same to the wife; and authorize her to give a discharge for the same, which shall be valid; and to use and dispose of such property, during the absence of her husband, as her own property.

§1296. Upon application, for any of the purposes before mentioned, the justice before granting any of the powers before mentioned, shall order notice to be given by publishing the same for three consecutive weeks in one of the newspapers issued in Honolulu, the last publication of which to be at least three calendar months before the granting of the application.

§1297. All contracts lawfully made by any married woman, by virtue of any power given her as aforesaid, shall be binding on her and her husband, in like manner as if their marriage had taken place after such contracts; and during his absence she shall be liable to be sued thereon, as if she were unmarried; and for all other acts done by her while the power granted to her is continued.

§1298. No suit pending, where the wife shall be a party pursuant to power granted her as before mentioned, shall abate by her husband's return to the Kingdom; but on his application, he may be admitted to prosecute or defend jointly with her, as if their inter-marriage had taken place after the commencement of such suit, but if he shall not be admitted as a party, judgment shall be rendered, and execution issued and enforced by, or against her, in the same manner, as if judgment had been rendered for or against her before their inter-marriage.

TO SECURE MARRIED WOMEN THE BENEFITS OF LIFE
INSURANCE.

Act
1868.

SECTION 1. Any married woman, by herself, and in her name, or in the name of any trustee, with assent of her husband, may cause his life to be insured for any term of time. If she shall survive her husband, the amount of insurance due and payable upon her husband's decease shall be payable to her own use, free from the claims of her husband or his creditors.

SECTION 2. In case the wife shall not be living at the decease of her husband, the amount of such insurance shall be paid to her personal representatives and accounted for as part of her estate, or it may be expressly made payable to any child or children.

SECTION 3. This Act shall not be construed to authorize the payment of a larger annual premium than five hundred dollars out of any property of the husband.

ARTICLE LIV.—OF DOWER.

§1299. Every woman shall be endowed of one-third part of all the lands owned by her husband at any time during marriage, in fee simple, in freehold, or for the term of fifty years or more, so long as twenty-five years of the term remain unexpired, but in no less estate, unless she is lawfully barred thereof; she shall also be entitled, by way of dower, to an absolute property in the one-third part of all his movable effects, in possession, or reducible to possession, at the time of his death, after the payment of all his just debts.

§1300. If a husband seized of lands in fee simple, freehold, or for a term of fifty years, as specified in the preceding section, shall exchange them for other lands, his widow shall not have

dower in both, but shall make her election to be endowed of the lands given, or of those taken in exchange, within six months after the death of her husband, and if such election be not made, she shall take her dower of the lands received in exchange.

§1301. Where any person seized of lands, as aforesaid, shall have executed a mortgage of such lands before marriage, the widow shall, nevertheless, be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

§1302. Where a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.

§1303. Where in such case the mortgagee, or those claiming under him shall, after the death of her husband, cause the land mortgaged to be sold and any surplus shall remain, after the payment of the moneys due on such mortgage, and the costs and charges of the sale, the widow shall be entitled to the interest or income of the one-third part of such surplus, for her life, as her dower.

§1304. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he acquired an absolute estate therein during marriage.

§1305. When a widow is entitled to dower in lands of which her husband died seized, she may continue to occupy the same, with the children or other heirs of the deceased, or to receive one-third part of the rents, issues and profits thereof, so long as the heirs do not object thereto, without having her dower assigned.

§1306. A widow may remain in the house of her husband sixty days after his death, without being chargeable with rent

therefor, and in the mean time she shall have her reasonable sustenance out of his estate.

§1307. In case of divorce, dissolving the marriage contract, for the misconduct of the wife, she shall not be endowed.

§1308. A woman may bar her right of dower, in any estate conveyed by her husband, by joining with him in the deed conveying the same, and therein releasing her claim to dower, or by a separate deed releasing the same, made at the time of the conveyance by her husband, or subsequently.

§1309. A woman may also be barred of her dower in the lands of her husband, by a jointure settled on her with her assent before her marriage, provided such jointure consists of an estate in lands, for the life of the wife at least, to take effect immediately on the death of her husband; her assent to such jointure being expressed, if she be of full age, by her becoming a party to the conveyance by which it is settled, and if she be under age, by her joining with her father or guardian in such conveyance.

§1310. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

§1311. If any such jointure or pecuniary provision in lieu of dower, be made before the marriage, and without the assent of the intended wife, or if it be made after marriage, it shall bar her dower, unless she shall within six months after receiving notice of the death of her husband, and of such jointure or pecuniary provision, make her election to waive such jointure or provision, and to be endowed of the lands of her husband.

§1312. If any provision be made for a widow in the will of her husband, she shall, within six months after probate of the will, make her election or be endowed of his lands; but she shall not be entitled to both, unless it plainly appears by the will to have been the intention of the testator that she should have such provision in addition to her dower.

ARTICLE LV.—OF DIVORCE AND SEPARATION.

§1313. The Supreme Court, any circuit court, or any justice of the Supreme Court at chambers, may, by a sentence of nullity, declare void the marriage contract for either of the following causes, existing at the time of marriage :

1. That the parties were related to each other within the fourth degree of consanguinity.
2. That the parties, or either of them, had not attained the legal age of marriage.
3. That the husband had an undivorced wife living, or the wife had an undivorced husband living, (or that either party being divorced, was the guilty party in such divorce, and that the former husband or wife was then living).
4. That the husband, being a foreigner, had failed to comply with the requirements of the law validating marriages with the female subjects of this Kingdom.
5. That one of the parties was an idiot or lunatic.
6. That one of the parties was impotent or physically incapable of entering into the marriage state.

See §1334 as amended.

Repealed by implication, see amendment to §1284.

§1314. A suit to annul a marriage on the ground that one of the parties was under legal age, may be brought by the parent or guardian entitled to the custody of such minor, or by any person admitted by the court to prosecute as the friend of such minor; but in no case shall such marriage be annulled on the application of a party who was of legal age at the time it was contracted, nor when it shall appear that the parties, after they attained the legal age, had for any time freely cohabited as man and wife.

§1315. A marriage may be declared null on the ground that one of the parties has an undivorced husband or wife living, on the application of either of the parties during the lifetime of the other, or on the application of such former husband or wife.

§1316. Every woman who shall be deceived into contracting an illegal marriage with a man having another wife living, under

the belief that he was an unmarried man, shall be entitled to a just allowance for the support of herself and family out of his property, which she may obtain upon application to any judge of a court of record at chambers: provided, always, that such allowance shall not exceed one-third his real and personal estate.

§1317. The children of such illegal marriage shall be entitled to succeed in the same manner as legitimate children, to all the real and personal estate of both parents in this Kingdom.

§1318. The marriage of an idiot or insane person may be annulled on the application of the sane party, or any relative of the idiot or lunatic, or on application of any person admitted by the court to prosecute as the next friend of the said idiot or lunatic, or upon the application of the lunatic himself after restoration to reason; but in such case, no sentence of nullity shall be pronounced if it shall appear that the parties freely cohabited as husband and wife, after the lunatic was restored to a sound mind.

§1319. Upon the annulment of a marriage on account of non-age, insanity, or idiocy of either party, the issue of the marriage shall be deemed to be in all respects the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

§1320. Upon the annulment of a marriage that is prohibited on account of consanguinity between the parties, (or for a failure on the part of the husband, being a foreigner, to comply with the requirements of the law validating marriage with the female subjects of this Kingdom,) the issue of the marriage shall be illegitimate.

See amendment to §1284.

§1321. A suit to annul the marriage on the ground of the physical incapacity of one of the parties at the time of marriage, shall only be maintained by the injured party, against the party whose incapacity is alleged; and shall in all cases be brought within two years from the solemnization of the marriage.

§1322. No sentence of nullity of marriage shall be pronounced solely on the declarations or confessions of the parties, but the court shall, in all cases, require other satisfactory evidence of the facts on which the allegation of nullity is founded.

RELATING TO DIVORCE.*

SECTION 1. Divorces from the bond of matrimony shall be granted for the causes hereinafter set forth, and no other.

Act
1870,
Chap. XVI.

First—For adultery in either party, or for willful and utter desertion for the term of three years, or when either party is sentenced to imprisonment for life, or for seven years or more, and no pardon granted to a party so sentenced, after divorce for such a cause, shall restore such party to conjugal rights; and when it is shown to the satisfaction of the court that either party has contracted the disease known as Chinese leprosy, and is incapable of cure.

Second—For extreme cruelty, habitual intemperance, or when the husband being of sufficient ability to provide suitable maintenance for his wife, neglects or refuses to do so. But if the party applying for a divorce, shall not insist upon a divorce from the bond of matrimony, a divorce only from bed and board shall be granted, and the relations of the parties after such divorce shall be regulated by existing laws concerning separation.

SECTION 2. Exclusive jurisdiction in matters of divorce is conferred upon the circuit courts of the judicial circuit, in which the parties shall have last lived together as husband and wife; provided that if they shall have last lived together as husband and wife in Oahu, the Supreme Court shall exercise jurisdiction. But all such cases shall be regularly entered on the calendar like other civil actions. No such case shall be heard at chambers, and no consent of parties shall warrant the courts in hearing divorce causes, or any matter connected therewith, except during regular

*This Act was repealed by Ch. LI. of 1874, but the repealing statute was held unconstitutional and void in *Marchant v. Marchant*, 3d H.R., p. 661, and this statute subsequently amended.

sessions in the public court rooms. No divorce shall be granted for any cause, if the parties have not lived together as husband and wife within this Kingdom.

Libels for divorce shall be heard by a justice of the Supreme Court, presiding at a regular term of the Supreme or Circuit Court.

SECTION 3. All proceedings for divorce shall be commenced by libel, to be signed by the libellant, and sworn to, and the same shall set forth the marriage of the parties and the cause of divorce with sufficient particularity to constitute a case for judicial action. Such libels shall be filed in the office of the clerk of the proper court, and upon filing thereof, a writ of summons, with a certified copy of the libel attached, shall be issued returnable at the term of the court next after the day of filing the same. Such process shall be served by delivering the same personally to the respondent; and the court shall not entertain jurisdiction of such libel, unless by consent of the respondent, unless such personal service shall have been completed more than twenty days before the first day of the term, to which the same shall be returnable, except as provided in the following section.

SECTION 4. If personal service shall not have been made as aforesaid, and it appears by return of the officer, that after diligent search the respondent cannot be found, the court, at the return term, shall order that the case stand continued until the next succeeding term, and that in the meanwhile an attested copy of the summons shall be printed in the Government Gazette and Ke Au Okoa at least six times, the last publication to be at least twenty days before the next term of the court, and the court shall direct such further and other notice to be given as the circumstances of the case may require.

SECTION 5. Upon the hearing of every libel for divorce, the court shall require exact legal proof upon every point, notwithstanding the consent of parties; and the admission of the respondent shall not be competent evidence, except to prove the original marriage.

SECTION 6. No divorce for the cause of adultery shall be granted, *First*—Where there is reasonable cause to believe that

As amended
1878,
Chapter XXVI,
Section 1.

As amended
1878,
Chapter XXVI,
Section 2.

the offense has been committed by the procurement or with the connivance of the libellant. *Second*—Where the offense charged has been forgiven by the injured party. Such forgiveness may be shown by express proof, or by the voluntary cohabitation of the parties, with knowledge of the fact. *Third*—Where the libel was not filed within one year after discovery by the libellant of the offense charged. *Fourth*—Where there is reasonable cause to believe that the libellant has been guilty of any act which would entitle the defendant, if innocent, to a divorce.

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

Amendment
1878,
Chapter XXVI,
Section 3.

SECTION 7. If there be any reason to suspect collusion, or that important testimony can be procured which has not been produced, it shall be the duty of the court to continue the cause till the next term, and so from term to term, while such reason for suspicion continues, and the Attorney-General and parties not of record, shall be heard, to establish the fact of collusion or the existence of testimony not produced.

SECTION 8. If, after a full hearing, the court shall be of opinion that a divorce ought to be granted, either from the bonds of matrimony or from bed and board, an absolute decree shall be entered.

As amended.
1878,
Chapter XXVI,
Section 4.

SECTION 9. Repealed by Act of 1878, Chapter XXVI., Sec. 5.

SECTION 10. Whenever it shall be made to appear to the Court, after the filing of any libel, that the wife is under restraint or in destitute circumstances, the court may pass such order to secure her personal liberty and reasonable support, pending the libel, as law and justice may require, and may enforce such orders by summary process. The court may also compel the husband to advance reasonable amounts for the compensation of witnesses and other reasonable expenses of trial to be incurred by the wife.

RELATING TO INTERLOCUTORY ORDERS IN DIVORCE CASES.

Act
1872,
Chap. XVIII.

The several Justices of the Supreme Court, at Chambers, after the filing of any libel for divorce, may pass the orders authorized

by the tenth section of Chapter XVI of the Act of 1870, entitled "An Act relating to Divorce," and such orders may be revised and amended from time to time by said Court, or any Justice thereof, or by any circuit court having jurisdiction of the cause.

SECTION 11. Any party aggrieved by any order or decision of the circuit court, may except thereto, and his exceptions shall be duly noted, and certified to the Supreme Court, and no order or decree for a divorce shall be made absolute, until such exceptions shall have been disposed of. Said exceptions shall be argued and determined in the Supreme Court, sitting in *banco*, and if the court in *banco* shall be of opinion that the order or decision excepted to in said circuit court was erroneous, they shall so certify, and thereupon the case shall be heard anew.

As amended
1878,
Chapter XXVI.
Section 6.

SECTION 12. Sections 1323, 1324 and 1325, of the Civil Code, together with all Acts and parts of Acts authorizing divorce causes to be heard at chambers, and all Acts and parts of Acts inconsistent herewith are repealed.

§1326. A divorce for the cause of adultery committed by the husband shall not affect the legitimacy of the issue of the marriage.

§1327. A divorce for the cause of adultery committed by the wife, shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, shall be tried and determined by the court. In every such case the legitimacy of such children shall be presumed, until the contrary be shown.

§1328. Upon granting a divorce for the adultery or other offense amounting thereto, of the husband, the court may make such further decree or order against the defendant, compelling him to provide for the maintenance of the children of the marriage, and to provide such suitable allowance for the wife, for her support, as the court shall deem just and reasonable, having regard

to the ability of the husband, the character and situation of the parties, and all other circumstances of the case.

§1329. Upon annulling a marriage, or decreeing a divorce, the court may make such further decree as it shall deem expedient, concerning the care, custody, education and maintenance of the minor children of the parties, and determine with which of the parents the children or any of them shall remain; and the court may from time to time afterwards, on the petition of either of the parties, revise and alter such decree concerning the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require.

§1330. When a divorce is decreed for the adultery, or other offense amounting thereto, of the husband, and the wife shall be the owner of real estate, or have in her possession any personal property given to her by her husband, acquired by her own industry, given her by devise or otherwise, or to which she may be entitled by the decease of any relative, all such real and personal property shall be her sole and absolute property.

§1331. When a divorce is decreed for the adultery or other offense amounting thereto, of the wife, the husband shall hold her personal estate for ever, and he shall hold her real estate so long as they shall live; and if he shall survive her, and there shall have been issue of the marriage born alive, he shall hold her real estate for the term of his own life, as a tenant by the curtesy: provided that the court may make such reasonable provision for the divorced wife out of any real estate that may have belonged to her, as it may deem proper.

§1332. A wife divorced for adultery or any other offense amounting thereto, shall not be entitled to dower in her husband's real estate, or any part thereof, nor to any share of his personal estate.

§1333. Whenever the court shall make an order or decree requiring a husband to provide for the care, maintenance, and

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

TO PERMIT DIVORCED PERSONS TO MARRY AGAIN.*

SECTION 1. That Section 1334 of the Civil Code be, and the same is, hereby amended to read as follows, viz :

Act
1886.

§1334. Whenever a marriage shall be dissolved for adultery or other offense amounting thereto, either party to the divorce may marry again at any time.

SECTION 2. Upon the application of any divorced person to any officer authorized to grant marriage licenses for a license to marry again, such officer shall, before granting such person a license to marry, require to be produced before him the original certificate of such person's divorce, or a duly certified copy thereof, under the seal of the court in which the divorce was decreed.

§1335. If any persons, after being divorced for any cause whatever, shall cohabit as husband and wife, they shall be liable to all the penalties provided by the laws against adultery.

P. C.
Chapter XII
Section 12.

*This Act repealed 1870, Chapter X, and the section re-enacted 1876, Chapter XLVIII.

SEPARATION.

§1336. A separation from bed and board forever, or for a limited time, may be decreed by the Supreme Court, any Circuit Court, or any Justice of the Supreme Court at Chambers, for the following causes:

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

§1337. In any suit brought for a separation, the defendant shall be permitted to prove, in his justification, the ill-conduct of the complainant, and on establishing such defense, to the satisfaction of the court, the suit may be dismissed.

§1338. Upon decreeing a separation, the court may make such further decree for the support and maintenance of the wife and her children, by the husband, or out of his property, as may appear just and proper.

§1339. Whenever a decree of separation is granted, the decree shall have the effect, during such separation, to reinstate the wife, whether the wrongdoer or not, in the right to sue or be sued, to alienate and convey property, to make contracts, and to do all other acts as if she were a feme sole.

§1340. Where a decree for a separation forever, or for a limited period, shall have been pronounced, it may be revoked at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and upon their producing satisfactory evidence of their reconciliation.

§1341. Upon the hearing of any petition for a divorce, or separation, the court shall have power, in its discretion, to examine either or both of the parties, upon oath, in order to prevent collusion.

CHAPTER XXIX.

OF GUARDIANS AND WARDS.

§1342. Any judge of the Supreme Court of Law and Equity, when it shall appear to him necessary or convenient, may appoint guardians to minors and others, being inhabitants of or residents in any part of this Kingdom, or who may reside without this Kingdom, and have any estate within the same.

§1343. Any circuit judge of this Kingdom may, when it shall appear to him necessary or convenient, appoint guardians to minors and others, being inhabitants of or residents in the circuit in which he is a judge.

§1344. If the minor is under the age of thirteen years, the judge of probate may nominate and appoint his guardian, and if he is above the age of thirteen years, he may nominate his own guardian, who, if approved of by the judge, shall be appointed accordingly, and if the guardian nominated by such minor shall not be approved by the judge, or if the minor shall reside without the Kingdom, or if after being cited by the judge he shall neglect to nominate a suitable person, the judge may nominate and appoint the guardian, in the same manner as if the minor were under the age of thirteen years.

§1345. Every guardian appointed as aforesaid, shall have the custody and tuition of the minor, and the care and management of his estate, and shall continue in office until the minor shall arrive at the age of twenty years, or until the guardian shall be discharged according to law; provided, however, that the father of the minor, if living, and in case of his death, the mother, while she remains unmarried; being themselves respectively competent to transact their own business, shall be entitled to the custody of the person of the minor, and to the care of his education.

§1346. Every such guardian shall give a bond, with surety or sureties, to the judge of probate, in such sum as the judge shall order, with conditions as follows :

First—To make a true inventory of all the real estate, and all the goods, chattels, rights and credits of the ward, that shall come to his possession or knowledge, and to return the same into the probate court at such times as the judge shall order :

Secondly—To dispose of and manage all such estate and effects according to law, and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the custody, education and maintenance of the ward :

Thirdly—To render an account, on oath, of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within one year after his appointment, and at such other times as the judge of probate shall direct :

Fourthly—At the expiration of his trust, to settle his accounts with the judge of probate, or with the ward, or his legal representatives, and to pay over and deliver all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

§1347. Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for any less time, and every such testamentary guardian shall have the same powers, and shall perform the same duties, with regard to the person and the estate of the ward, as a guardian appointed by the judge of probate.

§1348. Every such testamentary guardian shall give a bond in like manner, and with like condition, as is before required of a guardian appointed by the judge of probate, provided that when the testator, in the will appointing the guardian, shall have ordered or requested that such bond shall not be given, the bond shall not be required, unless from a change in the situation or circumstances of the guardian, or for other sufficient cause, the judge of probate shall think proper to require it.

§1349. Nothing contained in this chapter shall impair or affect the power of any judge of the Supreme Court or Circuit Court to appoint a guardian to defend the interests of any minor impleaded in such court, or interested in any suit or matter there pending, nor their power to appoint or allow any person as next friend for a minor, to commence, prosecute, or defend any suit in his behalf.

§1350. When the relations or friends of any insane person shall apply to any of the judges hereinbefore mentioned, to have a guardian appointed for him, the judge shall cause notice to be given to the supposed insane person, of the time and place appointed for hearing the case, not less than fourteen days before the time so appointed, and if after a full hearing, it shall appear to the judge that the person in question is incapable of taking care of himself, the judge shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

§1351. Every guardian so appointed for an insane person, shall have the care and custody of the person of the ward, and management of all his estate, until the guardian shall be legally discharged, and he shall give a bond to the judge appointing him, in like manner, and with the like condition, as is before prescribed with respect to the guardian of a minor, excepting that the provision relating to the education of the ward, shall be omitted in the condition of the bond.

§1352. When any person by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste, or lessen his estate, as to expose himself or his family to want or suffering, his friends or relations may present a complaint to any of the judges hereinbefore mentioned, setting forth the facts and circumstances of the case, and praying to have a guardian appointed for him.

§1353. The judge shall cause notice to be given to such supposed spendthrift, of the time and place appointed for hearing

the case, not less than fourteen days before the time so appointed; and if, after a full hearing, it shall appear to the judge that the person complained of comes within the description contained in Section 1352, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

§1354. After the order of notice has been issued, the complainants may cause a copy of the complaint, with the order of notice, to be filed in the office of the registrar of conveyances, and if a guardian shall be appointed upon such application, all contracts, excepting for necessaries, and all gifts, sales or transfers, of real or personal estate, made by such spendthrift after such filing of the complaint in the registry of conveyances, and before the termination of the guardianship, shall be null and void.

§1355. When a guardian shall be appointed for an insane person, or spendthrift, the judge shall make an allowance to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the complaint.

§1356. Every guardian, so appointed for a spendthrift, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged, and he shall give bond to the judge appointing him, in like manner and with the like condition, as is before directed with respect to the guardian of an insane person.

§1357. Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, shall pay all just debts due from the ward, out of his personal estate, if sufficient, and if not, out of his real estate, upon obtaining a license for the sale thereof, as hereinafter provided; he shall also settle the accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of any of the judges hereinbefore specified, compound for the same, and give a discharge to the debtor, upon receiving a fair and just dividend of his estate and effects, and he shall appear for and represent his

ward, in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.

§1358. The guardian shall also manage the estate of the ward frugally, and without waste, and apply the income and profits thereof, so far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if the income and profits shall be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family.

§1359. The guardian may join in and assent to a partition of the real estate of the ward, either upon a petition for partition, or otherwise; and he may assign and set out dower in the said estate to any widow entitled thereto, and may appoint an appraiser of real estate on any execution, either against or in favor of his ward.

§1360. Upon the taking of any inventory required by this chapter, the estate and effects comprised therein shall, if the judge deem it necessary, be appraised by from one to three suitable persons, to be appointed and sworn by the judge, and every guardian shall account for and dispose of the personal estate of the ward as directed by the judge.

As amended
1872,
Chapter X.

§1361. When any guardian appointed either by a testator or by any of the judges hereinbefore mentioned, shall become insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, any of said judges, after notice to such guardian, and to all others interested, may remove him; and every guardian may, upon his request, be allowed to resign his trust, when it shall appear to the judge proper to allow the same; and upon every such resignation or removal, and also upon the death of any guardian, the judge of probate may appoint another in his stead.

§1362. The marriage of any female who is under guardianship as a minor, shall operate as a legal discharge to her guardian;

and the guardian of any insane person, or spendthrift, may be discharged by any judge of probate, when it shall appear to him, on the application of the ward, or otherwise, that such guardianship is no longer necessary.

§1363. Any court of probate may require a new bond to be given by any guardian, and may discharge the existing sureties from future responsibility, whenever such court may deem it proper so to do.

§1364. Any bond given by a guardian, may be put in suit by order of a judge of probate, for the use and benefit of the ward, or of any person interested in his estate.

§1365. No action shall be maintained against the sureties in any bond, given by a guardian, unless it be commenced within four years from the time when the guardian shall be discharged, provided that if at the time of such discharge, the person entitled to bring such action shall be out of the Kingdom, the action may be commenced at any time within four years after his return to the Kingdom.

§1366. Upon complaint made to a judge of probate by any guardian, or by the ward, or by any creditor or other person interested in the estate, or by any persons having claims thereto in expectancy as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods or effects of the ward, the judge may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as with persons suspected of concealing, or embezzling, the effects of a deceased testator or intestate.

§1367. When any minor, or other person liable to be put under guardianship, according to the provisions of this chapter, shall reside without this Kingdom, and shall have any estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to any judge of the

Supreme Court of law and equity, and after notice to all persons interested, to be given in such a manner as the judge shall order, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

§1368. Every guardian appointed according to the provisions of the last preceding section, shall have the same powers and duties, with respect to any estate of the ward, that shall be found within the Kingdom, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian, appointed under this chapter.

§1369. Every such guardian shall give bond to the judge appointing him, in like manner and with the like conditions, as is above provided with respect to other guardians; excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardians, shall be confined to such estate and effects as shall come to his hands in this Kingdom, and that the provisions respecting the custody of the ward shall not be applicable, unless the ward shall come to reside within this Kingdom.

§1370. Every guardian shall be allowed the amount of all his reasonable expenses incurred in the execution of his trust, and he shall also have such compensation for his services as the court in which his accounts are settled shall consider to be just and reasonable.

§1371. When an account is rendered by two or more joint guardians, the court may, in its discretion, allow the same, upon the oath of any one of them.

§1372. The words "insane person," are intended to include every idiot, non-compos, lunatic and distracted person, and the word "spendthrift" is intended to include every one who is liable to be put under guardianship, on account of excessive drinking, gaming, idleness or debauchery; and these words shall be so

construed in all the provisions relating to guardians and wards, contained in this or any other statute.

§1373. When the income of the estate of any person under guardianship, whether as a minor, insane person or spendthrift, shall be insufficient to maintain the ward and his family, his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

§1374. When it shall appear, upon the representation of any such guardian, that it would be for the benefit of his ward that his real estate, or any part thereof, should be sold, and the proceeds thereof be put on interest, or invested in some productive stock, his guardian may sell the same accordingly, upon obtaining a license therefor, and proceeding therein as hereinafter provided.

§1375. If the estate is sold for the maintenance of the ward and his family, as provided in Section 1358, the guardian shall apply the proceeds of the sale to that purpose, as far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

§1376. If the estate is sold, in order to put out and invest the proceeds, as provided in Section 1374, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made relating thereto, by the court granting him the license to sell.

§1377. In every case of the sale of real estate, as provided in this chapter, the residue of the proceeds, if any, remaining upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of

among the same persons and in the same proportions as the real estate would have been if it had not been sold.

§1378. Such license, in either of the cases aforesaid, may be granted by any judge of the Supreme Court of law and equity, or by any circuit judge of the island in which the estate intended to be sold lies; but in cases where the ward resides without this Kingdom, such license shall be granted only by a judge of the Supreme Court of law and equity.

§1379. In order to obtain such license, the guardian shall present to the court a petition, setting forth the condition of the estate, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale; and if after a full examination, on the oath of the petitioner, or otherwise, it shall appear to the court, either that it is necessary, or that it would be for the benefit of the ward that the real estate or any part of it should be sold, the court may grant a licence therefor, specifying therein whether the sale is to be made for the maintenance of the ward and his family, or in order that the proceeds may be put out and invested as aforesaid.

§1380. No such license shall be granted until notice by public advertisement or otherwise, as the court shall order, shall have been given to the next of kin of the ward, and to all persons interested in the estate, to appear and show cause why the same should not be granted.

§1381. Every guardian licensed to sell real estate as aforesaid, shall, before the sale, give bond to the judge granting the license, with sufficient surety or sureties, with condition to sell the same in the manner prescribed by the judge, and to account for and dispose of the proceeds of the sale in the manner provided by law.

§1382. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath in substance as follows: That in disposing of the estate which he is licensed to sell,

he will use his best judgment in fixing on the time and place of sale, and that he will exert his utmost endeavors to dispose of the same, in such manner as will be most for the advantage of all persons interested therein.

§1383. He shall also give public notice of time and place of sale, by causing notifications thereof to be posted up in the most public places on the island where the estate to be sold is, and if it be on the island of Oahu, he shall also cause a notice of such sale to be published in such newspaper, as the judge of probate shall order, at least fourteen days previous to the day of sale. And upon return sales shall obtain from the judge of probate an order of confirmation of such sales before making conveyances thereof.

As amended
1874,
Chap. XXXIV.

§1384. A copy of such notification certified by the oath of the guardian, or of the person employed by him to give such notice, being made before any judge of probate, and filed in his office, within one year after the sale, shall be admitted as evidence of the time, place, and manner of giving notice.

§1385. No license granted in pursuance of this chapter shall be in force for more than one year after the time of granting the same.

§1386. When any minor, insane person, or spendthrift, residing without the Kingdom, shall be put under guardianship in the country in which he resides, and shall have no guardian appointed in this Kingdom, the foreign guardian may file an authenticated copy of his appointment in the Supreme Court of law and equity, after which he may be licensed by any judge of the said court, to sell the real estate of the ward, in any part of this Kingdom, in the same manner and on the same terms and conditions as are prescribed in this chapter, in the case of a guardian appointed in this Kingdom, excepting in the particulars hereinafter mentioned.

§1387. Every foreign guardian so licensed to sell real estate, shall take and subscribe the oath required in like case of guardians appointed in this Kingdom, and shall give notice of the time and

place of sale, and conduct the same in the manner prescribed for guardians appointed here, and may perpetuate the evidence of the notice in the same manner.

§1388. All the proceedings required to be had in any probate court in this Kingdom, respecting such sale by a foreign guardian, shall be had in the Supreme Court of law and equity.

§1389. Upon every such sale by a foreign guardian, the proceeds of the sale, or as much thereof as may remain upon the final settlement of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons as the real estate would have been according to the laws of this Kingdom, if it had not been sold; and the foreign guardian shall in every case, before making the sale, give bond, with sufficient surety or sureties, to the judge granting the license to sell, with condition to account for and dispose of the same accordingly.

§1390. If any person shall appear and object to the granting of any license, prayed for under the provisions of this chapter, and if it shall appear to the court or judge that either the petition, or the objection thereto, is unreasonable, they may in their discretion award costs for the party prevailing in the case.

§1391. No action for the recovery of any estate, sold by a guardian under the provisions of this chapter, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship; and no entry shall be made, unless by judgment of law, upon any lands sold as aforesaid, with a view to avoid the sale, after the expiration of the said five years: excepting only that persons out of the Kingdom, and minors and others under any legal disability to sue at the time when the right of action or of entry shall first accrue, may commence their action or make their entry at any time within five years after the removal of the disability, or after their return to this Kingdom.

• §1392. In case of an action relating to any estate sold by a guardian, under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings, provided it shall appear :

First—That the guardian was licensed to make the sale by a judge of competent jurisdiction.

Secondly—That he gave a bond, which was approved by the judge of probate, in case any bond were required by the court upon granting the license.

Thirdly—That he took the oath prescribed in this chapter.

Fourthly—That he gave notice of the time and place of the sale, as prescribed herein.

Fifthly—That the premises were sold accordingly by public auction, and are held by one who purchased them in good faith.

§1393. If in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover compensation therefor in a suit on the guardianship bond, or otherwise, as the case may require.

§1394. If the validity of any sale made by a guardian under the provisions of this chapter shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title, that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings, provided it shall appear that the guardian was licensed to make the sale by a judge of competent jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

§1395. All sales, exchanges, transfers, gifts and conveyances of any estate or portion of an estate, of any ward of this Kingdom, which may have been made by any guardian of such ward, previous to the fourth day of August, A.D. 1851, shall be, and the same are hereby confirmed as legal and valid.

CHAPTER XXX.

OF MASTERS AND SERVANTS.

§1396. There are two kinds of servants in this Kingdom, viz:

1. Apprentices, that is, those engaged to serve any one in order to learn some art, trade, profession, or other employment.
2. Those who engage to serve by the day, week, month, year, or other fixed time, in consideration of certain wages.

P. C.
Ch. LXXVIII

(1)—*Of Apprentices.*

§1397: All minors above the age of ten years, may be bound as apprentices or servants, if females, to the age of eighteen years, or to the time of their marriage within that age; and if males, to the age of twenty years, in the manner following:

1. By the father of such minor; or, if he be dead, or be incompetent so to do from lunacy, idiocy, habitual drunkenness, or other cause, or if he shall have abandoned and neglected to provide for his family, then,
2. By the mother; if the mother be dead, or incompetent, or if she refuse, then,
3. By the guardian of such minor, duly appointed. If such minor have no parent living, or none competent to bind or apprentice him, or her, and there be no guardian, then,
4. By the governor of the island in which such minor shall reside.

§1398. No minor shall be bound as aforesaid, unless by a contract of two parts, signed and delivered by both parties; and one part shall be kept for the use of the minor, by his father, mother, guardian or the governor.

§1399. Every contract for the binding out of any minor as aforesaid, shall contain an agreement on the part of the person to whom such minor shall be bound, that he will cause such minor to be instructed to read and write, and if a male, will cause him to be further instructed in the general rules of arithmetic.

NOTE.—Chapter XXX of the Civil Code, is a re-enactment of the Act of June 21st, 1850, "For the Government of Masters and Servants."

§1400. The age of every minor shall be inserted in the contract, and shall be taken to be the true age, without further proof thereof.

§1401. All considerations of money or other things, paid or allowed by the master, upon any contract of apprenticeship, made in pursuance of the foregoing provisions of this chapter, shall be paid or secured to the sole use of the minor thereby bound.

§1402. Parents, guardians, and the governors of the respective islands, shall enquire into the treatment of minors bound by them respectively, and of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect, misusage, or breach of contract, on the part of their master.

§1403. If any master shall be guilty of any cruelty, misusage, or violation of the terms of the contract, towards any minor so bound, a complaint may be made by the father, mother, guardian, governor, or minor, to any circuit judge or district justice of the island in which said master shall reside, who shall have all the requisite powers for hearing and determining such complaint.

§1404. After a full hearing of the parties, or of the complainant if the master shall neglect to appear after being duly notified, the magistrate, in case the complaint is sustained, may render a judgment that the minor be discharged from his apprenticeship; and for the costs of the suit against the master, and may issue execution accordingly.

§1405. If it shall appear that the complaint was made without any just or reasonable cause, the magistrate may award costs for the master against the complainant, and issue execution accordingly.

§1406. Every master shall moreover be liable, whether such complaint be filed or not, to an action on the contract, for the breach of any covenant on his part therein contained, and all

damages recovered in such action shall be the property of the minor.

§1407. Such action may be brought either by the parent, guardian or governor, or their successors in the trust of the minor, or by the minor himself after the expiration of the term of apprenticeship or service.

§1408. No such action shall be maintained unless it be commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

§1409. If judgment in such action, brought during the term of service or apprenticeship, shall be rendered in favor of the plaintiff, the magistrate may, upon motion of the plaintiff, discharge the minor from his apprenticeship or service.

§1410. If any apprentice or servant bound as aforesaid shall, without just cause, depart from the service of his master, any district or police justice of the Kingdom, upon complaint made under oath by the master, or by any one on his behalf, may issue a warrant to apprehend the apprentice or servant, and bring him before the said justice; and if the complaint shall be supported, the justice shall order the offender to be restored to his master, and he shall be compelled to serve double the time of his absence, unless he shall make satisfaction for the loss and injury sustained by such absence; provided, however, that such additional term of service shall not extend beyond one year, next after the end of the original term of service.

§1411. The justice's warrant, when directed to any officer or other person by name, shall authorize him to convey the offender to the place of residence of the master, although it may be on any other island in the Kingdom.

§1412. All the costs incurred in any such process against a servant or apprentice, shall be paid in the first instance by the

complainant, and if the complaint shall be supported, the master may recover the amount of such costs in an action against the minor, after he shall arrive at full age.

§1413. If any such apprentice or servant shall be guilty of any gross misbehavior, or refusal to do his duty, or willful neglect thereof, his master may make complaint thereof to any circuit judge, police or district justice of the island in which said master shall reside, who shall have all the requisite powers for hearing and determining such complaint.

§1414. After a full hearing of the parties, or of the complainant alone, if the adverse party neglect to appear after being duly notified, the magistrate, in case the complaint is sustained, may render a judgment that the master be discharged from the contract of apprenticeship or service, and for the costs of the suit; such costs to be recovered of the parent or guardian of the minor, if there be one, who executed the contract, and execution therefor may be issued accordingly; and if there be no parent or guardian liable for such costs, the amount thereof may be recovered in an action against the minor, after he shall have arrived at full age.

§1415. No contract of apprenticeship to service, made in pursuance of the foregoing provisions of this chapter, shall bind the minor after the death of his master, but the apprentice or servant shall be thenceforth discharged, and the minor may be bound out anew.

§1416. Any contract of apprenticeship or service, made in pursuance of the foregoing provisions of this chapter, on behalf of a minor, may be made either with a woman or a man, and all the foregoing provisions shall apply as well to mistresses as to masters.

(2)—*Of Contract Labor.*

NOTE.—The following statutes here inserted between Sections 1416 and 1417, amend or qualify portions of this Chapter.

TO REGULATE CONTRACTS BETWEEN MASTERS AND SERVANTS.

SECTION 1. All contracts for service between masters and servants where only one of the parties is a native Hawaiian shall be

written or printed in both the Hawaiian and English languages. No such contract shall have any effect in law when executed in one language only, provided that nothing herein contained shall be held or construed to prevent any such contracts being written or printed in the Hawaiian language only, where both parties thereto are native Hawaiians.

SECTION 2. The Minister of the Interior is hereby authorized to prepare, in both languages, printed forms of contract, as provided for in the foregoing section, in blank, as to place, time of service, wages, name, place where engaged, and place of residence.

FOR THE PROTECTION OF PARTIES TO CONTRACTS AUTHORIZED BY SECTION 1417 OF THE CIVIL CODE.

SECTION 1. Every contract for service authorized by Section 1417 of the Civil Code, shall, in order to its validity, be acknowledged by the master or his duly empowered agent, and the servant, before the agent to take acknowledgments of contracts, as hereinafter provided, and the certificate of acknowledgment shall be substantially as follows:

Island of..... } ss.
Hawaiian Islands.

On this..... day of..... A. D..... personally appeared before me..... master, and..... servant, known to me (or satisfactorily proved to me by the oath of A. B.), to be the persons executing the above contract, and the same having been by me read and explained to them, they severally acknowledged that they understood the same and that they had executed the same voluntarily and upon the terms and conditions therein set forth.

SECTION 2. In order to carry out the provisions of this Act, the Minister of the Interior is hereby authorized to appoint an agent or agents in each elective district of this Kingdom, who shall have the power to take acknowledgments to the contracts authorized by Section 1417 of the Civil Code; provided, however, that such agents shall be authorized to appoint a deputy during their temporary absence from their districts, and the deputy so appointed shall be empowered to perform all the duties of the said

Act
1872,
As amended,
1878,
Chapter XLVI.

agents as prescribed by this Act; and provided further that nothing herein contained shall authorize the appointment of any judge or his deputy, or any storekeeper to such agency.

SECTION 3. The officer taking the acknowledgment shall be entitled to a fee of fifty cents for each contract, to be paid by the master, and no charge shall be made for the certificate of acknowledgment on the copy of the contract furnished the servant; provided, however, that no officer shall take an acknowledgment to any contract in which he is interested.

SECTION 4. The officer before whom the acknowledgment as above provided is taken, shall cause the money advanced to be paid to the servant in his presence, and shall keep an accurate record of the contracts acknowledged before him, which record shall set forth the names and residences of the parties, the date and term of the contract, the amount of advance paid and the wages stipulated for.

SECTION 5. Every contract for service acknowledged in the manner herein above provided, may be read in evidence without further proof, against any party whose identity has been established; but the said certificate of acknowledgment shall not be conclusive, but may be rebutted by competent testimony.

SECTION 6. No fee paid by the master to any agent, runner or middle-man for the purpose of procuring the services of any servant under the provisions of the 1417 section of the Civil Code, shall be charged to such servant or deducted in any way from such servant's wages.

Act
1872,
Chapter XXXI.

TO FURTHER DEFINE THE NATURE AND OBLIGATIONS OF THE
CONTRACTS AUTHORIZED BY SECTIONS 1417 AND 1418 OF THE
CIVIL CODE.

Whereas, the law in relation to masters and servants has been misunderstood in some of its provisions and is wrongly interpreted by many persons; *and*

Whereas, some legislation is necessary in order to prevent such misunderstandings in future and to further define the nature and obligations of the contracts authorized by Sections 1417 and 1418 of the Civil Code ; *therefore*,

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

SECTION 1. No contract of a married woman to serve another shall be valid in law, unless separated from her husband by decree of a court of competent jurisdiction ; and in case any woman shall contract marriage while under contract to serve another, the marriage shall operate to annul said contract of service.

SECTION 2. In all cases when any person under contract to serve another, shall be sentenced by any court to make to his master satisfaction for loss of time by desertion, by working a period of time beyond that contracted for, he shall be paid his wages for such extra time worked at the rate stipulated for in the contract.

SECTION 3. No person bound by contract to serve another shall be held or compelled to work for any period of time beyond the date when the contract shall by its terms expire, in liquidation of any debt or advance made to said laborer during the term agreed for at the time of his engagement, and any clause introduced into the contract which shall contemplate any such service for any such advances shall be held utterly void and of no effect.

SECTION 1. That Section 3 of the said Act shall be and the same is hereby amended, by adding thereto the words, "and no contract for labor hereafter to be made shall be penally enforced if more than fifteen dollars advance shall have been received by the servant, in case the term of such contract shall be not more than one year, or if more than twenty-five dollars advance shall have been received by the servant, in case the term of the contract shall be over one year. Provided, however, that such restrictions shall not apply to contracts made with immigrants where larger advances are required for the payment of expenses incident to the introduction of such immigrants into the Kingdom."

Amendmen
1882,
Chap. XXXII

Approved this 5th day of August, A.D. 1882.

TO PROVIDE FOR THE NUMBER OF HOURS TO CONSTITUTE A DAY'S
LABOR WHERE NOT SPECIFIED BY CONTRACT.

Act
1876,
Chap. XLVII.

In all contracts for service under Section 1417 of the Civil Code, where the number of hours constituting a day's labor shall not be specified, the length of a day's labor shall be held not to exceed nine hours; for all labor in excess of such time the laborers shall be entitled to compensation at not less than the rate of wages agreed upon in the contract.

Stamps are required on contracts between masters and servants
for labor.....\$1 00
If for more than one year, then for each year or part of a year
after the first..... 1 00
(This duty to be charged on each copy, and to be paid by the
employer.)

Extract from
Act relating to
stamp duties,
1876. Ch. LV.

RELEASING ALL PERSONS SERVING UNDER CONTRACTS ON GOV-
ERNMENT HOLIDAYS, AND ON THE DAY OF ELECTION FOR
REPRESENTATIVES.

Act
1878,
Chapter VII.

Whereas, it is proper that the whole nation should observe all Government holidays; *and*

Whereas, it is almost impossible for parties serving under contracts to vote for the Representative they really desire, owing to their being kept at work on the day of election for Representatives; *therefore*,

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled:

SECTION 1. All persons now serving under contracts, or may hereafter serve under contracts, shall, from and after the passage of this Act, be released from labor on all Government holidays gazetted by the Minister of the Interior, and on the days of election for Representatives; nor shall they be detained or made to work on any of such days.

SECTION 2. This Act shall become a law from and after the date of its passage; and all laws and parts of laws conflicting with the provisions of this Act are hereby repealed.

§1417. Any person who has attained the age of twenty years, may bind himself or herself, by written contract, to serve another in any art, trade, profession or other employment, for any term not exceeding five years.

§1418. All engagements of service contracted in a foreign country, to be executed in this, unless the same be in contravention of the laws of this, shall be binding here: provided, however, that all such engagements made for a longer period than ten years, shall be reduced to that limit, to count from the day of the arrival of the person bound, in this Kingdom.

§1419. If any person lawfully bound to service, shall willfully absent himself from such service, without the leave of his master, any district or police justice of the Kingdom, upon complaint made, under oath, by the master, or by any one on his behalf, may issue a warrant to apprehend such person and bring him before the said justice; and if the complaint shall be maintained, the justice shall order such offender to be restored to his master, and he shall be compelled to serve the remainder of the time for which he originally contractēd.

As amended
1882.

Chap. XXVIII.

§1420. If any such person shall refuse to serve according to the provisions of the last section, or the terms of his contract, his master may apply to any district or police justice, where he may reside, who shall be authorized by warrant, or otherwise, to send for the person so refusing, and if such refusal be persisted in, to commit such person to prison, there to remain, at hard labor, until he will consent to serve according to law.

And in case such person so bound as aforesaid shall have returned to the service of such master in and obedience to such order of such justice, and shall again willfully absent himself from such service without the leave of his master, such district or police

Section 1420,
amended in
1860, and further
amended in
1876, and in 1880
by this addi-
tion.

justice may fine such offender not exceeding five dollars for the first offense, and for every subsequent offense thereafter not exceeding ten dollars, and in default of payment thereof such offender shall be imprisoned at hard labor until such fine is paid; and at the expiration of such imprisonment, such justice shall order such offender to be restored to his master to serve for the remainder of such original term of service.

§1421. The justice's warrant or order, mentioned in Section 1419, when directed to any officer or other person by name, shall authorize him to convey the offender to the place of residence of the master, although it may be in some other island of the Kingdom.

§1422. All the costs incurred in any process against a servant, under either the 1419th or 1420th Sections, shall be paid in the first instance by the complainant, and if the complaint shall be sustained, the master shall have judgment and execution therefor against the offending servant.

§1423. It any master shall be guilty of any cruelty, misusage, or violation of any of the terms of the contract, towards any person bound to service either under the 1417th or 1418th sections, such person may make complaint to any district or police justice, who shall summon the parties before him, examine into, hear and determine the complaint, and in all such examinations the complainant shall be a competent witness; and if the complaint shall be sustained, such person shall be discharged from all obligations of service, and the master shall be fined in a sum not less than five, nor more than one hundred dollars, and in default of the payment thereof, be imprisoned at hard labor until the same is paid.

As amended
1872.
Chapter XXIV.

§1424. No contract of service made in pursuance of the 1417th or 1418th sections of this chapter, shall bind the servant after the death of his master: provided, however, that where servants shall be so bound by any company of individuals, the death

of any one partner, or the change of partners, in such company, shall not operate to release such servant from the terms of his contract.

§1425. Nothing in this chapter contained shall be construed to destroy the right of civil action for damages, by the master or servant, for breach of contract.

TO PROVIDE FOR THE SANITARY CONDITION OF DWELLING
HOUSES.

Whereas, on account of the over-crowding of persons in certain localities, it is expedient to provide for the sanitary condition of dwelling-houses and their surroundings, therefore,

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled:

Act
1880,
Chapter III.

SECTION 1. Every house or tenement used or occupied as a dwelling for lodgers or contract laborers shall be kept by its owner in good repair, with the roof water-tight, and shall have the capacity of not less than three hundred cubic feet of space for each adult, or nine hundred cubic feet for one man and woman and two children.

SECTION 2. The yard and grounds about all dwellings shall be well drained and kept free from rubbish of every description, with a closet, or privy, also to be kept in repair by the lodging-house keeper or employer of laborers, for every six adults.

SECTION 3. Every owner or keeper and every other person having the care or management of a lodging-house or of a dwelling for contract laborers, shall at all times when required by the Board of Health or its agents give free access to such house or any part thereof.

SECTION 4. Every lodging-house keeper or employer of laborers who shall fail to comply with the provisions of this Act shall pay a fine not exceeding fifty dollars.

SECTION 5. Every person who shall keep his dwelling in so filthy a state as to be a nuisance or injurious to health, or who shall refuse or neglect to remove any nuisance or substance he may have caused or placed in the vicinity of the dwelling he occupies or any other dwelling, or shall commit any nuisance in any stream or thoroughfare, shall, on conviction, pay a fine not exceeding three dollars, or be imprisoned at hard labor for any term not exceeding thirty days.

SECTION 6. This Act shall take effect ninety days after its passage.

THE KING *vs.* GREENWELL,—1st Haw. Rep. p. 85;

The whipping of servants or laborers is not justifiable under the laws of this Kingdom.

A master may correct his apprentice with due moderation.

IN RE CHRISTOPHER H. LEWERS, PAKALO CHOW AND CHAS. C. HARRIS, Minister of Finance,—3rd Haw. Rep. p. 21;

“Persons coming here from China under contracts for labor made there,” are personally subject to the taxes of this Kingdom.

JOHN H. WOOD *vs.* HOOKINA,—3rd Haw. Rep. p. 102;

In a complaint under the masters and servants law, the masters' books may go in evidence.

Wages must be paid during the *penal service*, and for failure to pay them the contract is broken on the part of the master, and his complaint is dismissed.

The lapse of time is no bar to penal enforcement of a contract of labor.

JOHN H. WOOD *vs.* AFO, ALIAS CHEONG YAN SANG,—3rd Haw. Rep. p. 448;

Lapse of time is not a bar to the penal enforcement of a labor contract, if it result from the servant's own act. (Hartwell J., dissenting.)

A. UNNA *vs.* KEALAUOLA,—3rd Haw. Rep. p. 690;

The true construction of Section 1 of the Act of 13th June, 1868, entitled “An Act to regulate Contracts between Masters

and Servants," is that each version of the contract, Hawaiian and English, must be signed by both parties.

The law does not require, in order to validity of the contract, that the servant be furnished with a copy.

THE OWNERS OF THE WAIHEE PLANTATION vs. KALAPU,—3rd Haw. Rep. p. 760;

A labor contract cannot be enforced against the servant by and in the name of the *owners* of a plantation, they being all different parties from the *owners* with whom the servant contracted.

H. J. COOLIDGE vs. PUAAIKI AND KEA, appeal to the Supreme Court in Banco,—3rd Haw. Rep. p. 810;

A labor contract executed on the part of the master by his wife, who was left as a manager of the plantation in his absence from the Kingdom, although without his authority in writing, binds both parties.

The agent to take acknowledgment having received his appointment in anticipation of the date, when the acknowledgment statute took effect, his acts thereafter are valid.

It will not invalidate a labor contract that it is not precise in terms as to the kind of labor to be performed, and limited as to place.

It is erroneous to bring cases under labor contracts as Crown prosecutions.

KAALAEA PLANTATION vs. BOLABOLA AND 12 OTHERS AND WAILUKU SUGAR CO. vs. PAIA AND JIM BOMBAY,—3rd Haw. Rep. p. 818;

Rulings on Masters and Servants Labor Contracts:

An acknowledgment of contract made prior to the Act of 1876, is good if taken by any officer then authorized to take acknowledgment of deeds.

The *copy* which may be furnished the servant is only required to be a literal transcript of the original including its signatures, and is to be certified by the acknowledging officer without charge and stamped at the expense of the master.

Contracts executed prior to the Stamp Act of 1876 need not be stamped now.

Contracts need not be made in a form prescribed by the Minister of the Interior.

J. NOTT ET AL. *vs.* KANAHELE,—4th Haw. Rep. p.—

When the laborer has executed a contract binding himself to labor for the plaintiffs, and in case of the transfer of their plantation to work for the person to whom such plantation shall be conveyed, he will be held thereby. (Judd J., dissenting.)

TITLE 6.—MISCELLANEOUS LAWS.

CHAPTER XXXI.

OF CORPORATIONS.

§1426. Every corporation created, or to be created in this Kingdom, shall have power: 1st, to have succession by its corporate name for the period limited in its charter, and when no period is limited, perpetually; 2nd, to sue and be sued in any court; 3rd, to make and use a common seal, and alter the same at its pleasure; 4th, to hold, purchase and convey such real and personal estate, and no other, not exceeding the amount limited by its charter, as the purposes of the corporation shall require; 5th, to appoint such subordinate officers and agents as the business of the corporation shall require; 6th, to make by-laws not inconsistent with any existing law, for the management of its property, the election and removal of its officers, the regulation of its affairs, and the transfer of its stock.

§1427. In addition to the powers enumerated in the preceding section, no corporation created under the provisions of this chapter shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated,