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CHAPTER 65.

OF MARRIAGE.

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Marriage a civil contract.

SEC. 1. Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential.

Who shall be capable of contracting marriage.

SEC. 2. Every male person who shall have attained the full age of eighteen years, and every female who shall have attained the full age of fifteen years, shall be capable in law of contracting marriage, if otherwise competent.

Who shall not marry or intermarry.

SEC. 3. No marriage shall be contracted whilst either of the parties has a husband or wife living, nor between parties who are nearer of kin than first cousins, computing by the rules of the civil law, whether the half or the whole blood.

Marriages by whom solemnized.

SEC. 4. Marriages may be solemnized by any justice of the peace in the county in which he is elected; and they may be solemnized throughout the territory, by any judge of a court of record, and by an ordained minister of the gospel, in regular communion with any religious society.

Ministers to file copy of credentials, &c.

SEC. 5. Ministers of the gospel, before they shall be authorized to perform the marriage rite, shall file a copy of their credentials of ordination with the clerk of the district court of some county in this territory, who shall record the same and give a certificate thereof; and the place where such credentials are recorded, shall be indorsed upon each certificate of marriage, granted by any minister and recorded with the same.

One of parties to be examined on oath before marriage.

SEC. 6. All judges, justices of the peace, and ministers of the gospel, may before solemnizing any marriage, examine at least one of the parties on oath, which oath they are hereby authorized to administer, as to the legality of such intended marriage; and in no case shall such judge, justice or minister, solemnize a marriage, unless he is satisfied from such examination that there is no legal impediment thereto.

When consent of parent or guardian necessary to marriage of a minor, &c.

SEC. 7. If any person intending to marry shall be under the age of twenty-one years, if a male, or under the age of eighteen, if a female, and shall not have had a former wife or husband, the consent in person, or in writing, of the parent or guardian, having the custody of such

minor, if he or she have either a parent or guardian living in this territory, shall first be given to the person solemnizing the marriage, before such marriage shall take place; and if such consent is in writing, it shall be signed by the parent or guardian, and attested by two witnesses.

SEC. 8. In the solemnization of marriage, no particular form shall be required, except that the parties shall declare, in the presence of the judge, minister, or magistrate, and the attending witnesses, that they take each other as husband and wife; and in every case, there shall be at least two witnesses present, besides the person performing the ceremony.

No particular form required; two witnesses necessary.

SEC. 9. Whenever a marriage shall have been solemnized, the person solemnizing the same, shall give to each of the parties, if requested, a certificate thereof, specifying therein the names and residence of the parties, and of at least two of the witnesses present, and the time and place of such marriage, and also stating therein that he had examined on oath, one or both of the parties, and found no legal impediment to their marriage, and, where the consent of the parent or guardian is necessary, stating that the same was duly given.

When certificate of marriage to be given, and what to contain.

SEC. 10. Every person solemnizing a marriage, shall make a record thereof, and within one month after such marriage, shall make and deliver to the clerk of the district court, of the county where the marriage took place, a certificate, under his hand, containing the particulars mentioned in the preceding section.

Record to be made, and certificate delivered to clerk of circuit court.

SEC. 11. All such certificates shall be filed and recorded by the said clerk, in a book to be kept by him for that purpose; and for recording the same, such clerk shall receive a fee of twenty-five cents from the person solemnizing the marriage, who shall be entitled to receive the same from the parties before the marriage.

Clerk to file and record certificate; his fees.

SEC. 12. Every person solemnizing a marriage, who shall neglect to make and deliver to the clerk, a certificate thereof within the time above specified, shall forfeit for such neglect, a sum not less than twenty-five nor more than one hundred dollars; and every clerk who shall neglect to record such certificate so delivered, shall forfeit the like penalty.

Forfeiture for neglect to make and deliver, or to record certificate.

SEC. 13. If any person authorized by law to join persons in marriage, shall knowingly solemnize any marriage contrary to the provisions of this chapter, or shall wilfully make any false certificate of any marriage or pretended marriage, he shall forfeit for every such offence a sum not exceeding five hundred dollars, or may be imprisoned not exceeding one year.

Penalty for solemnizing marriage contrary to law, and for making false certificate.

SEC. 14. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing of any legal impediment to the proposed marriage, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not more than one year, or by a fine not less than fifty nor more than five hundred dollars, or by both such fine and imprisonment in the discretion of the court.

Penalty on persons undertaking to marry who are not authorized, &c.

SEC. 15. No marriage solemnized before any person professing to be a judge, justice of the peace, or minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority in such supposed judge, justice or minister, provided the marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

When marriage not void, though the person officiating is not authorized.

SEC. 16. All marriages solemnized among the people called friends or quakers, in the form heretofore practiced and in use in their meetings, shall be good and valid, and shall not be construed as affected by any of the foregoing provisions in this chapter; and the clerk of the

Marriages among friends or quakers.

meeting in which such marriage shall be solemnized, shall, within one month after every such marriage, deliver a certificate of the same to the clerk of the district court of the county where such marriage took place, on penalty of forfeiting fifty dollars, which certificate shall be filed and recorded by such clerk; and if such marriage do not take place in such meeting, such certificate shall be signed by the parties and at least six witnesses present, and filed and recorded as above provided, under a like penalty upon such parties.

Certificates of marriage, and the record thereof, to be evidence.

SEC. 17. The original certificates and records of marriage, made by the judge, justice, or minister, as prescribed in this chapter, and the record thereof by the clerk of the district court, or a copy of such record duly certified by such clerk, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

Illegitimate children legitimized by marriage of parents.

SEC. 18. Illegitimate children become legitimized by the subsequent marriage of their parents with each other.

Marriages not solemnized as required in this chapter when valid.

SEC. 19. Marriages contracted with the consent of the parties, when the residence of the parties is remote from any person duly authorized to solemnize marriage, in any other manner than is herein prescribed, shall be valid: *Provided*, That no legal impediment shall exist thereto; such contracts shall be made in writing, duly attested, and shall be recorded in the office of the clerk of the district court in the proper county, within sixty days from the execution of the same.

CHAPTER 66.

OF DIVORCE.

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6. When marriage shall not be declared void.
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