SEPARATION AND DIVORCE: DOWER AND CURTESY

REPORT OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

TO

THE GOVERNOR

AND

THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 22

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1974

STAFF

Report

on

SEPARATION AND DIVORCE: DOWER AND CURTESY

of the

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

to the

GOVERNOR AND GENERAL ASSEMBLY

Richmond, Virginia

January, 1974

TO: THE HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

INTRODUCTION

With the promulgation of the Uniform Marriage and Divorce Act by the National Conference of Commissioners on Uniform State Laws, increasing interest has been evidenced in the several states in adopting some form of no-fault divorce law in an effort to decrease the bitterness that adversary proceedings often generate in such proceedings.

In past sessions of the General Assembly, efforts have been made to abolish the common law doctrine of dower and curtesy, as recommended by the Commissioners in the Uniform Probate Code.

With these facts in mind, the General Assembly, at its 1973 Session, adopted House Joint Resolution No. 225. The text of the Resolution follows:

HOUSE JOINT RESOLUTION NO. 225

Directing the Virginia Advisory Legislative Council to study the laws on separation and divorce and dower and curtesy.

Whereas, in many cases, the laws on separation and divorce are harsh and oppressive; and

Whereas, under the present system of divorce where fault on the part of one of the parties, with one exception, must be shown, perjury is encouraged on behalf of the person seeking the divorce; and

Whereas, matrimony is an area where the law is virtually powerless to control behavior, and inquiries into fault merely promote added unhappiness; and

Whereas, the laws of Virginia on separation and divorce should be thoroughly studied; and

Whereas, Virginia law, following the pattern of common law dower and curtesy, provides that a surviving spouse takes a life interest in one-third of all the real estate which a decedent held during his lifetime; and

Whereas, under modern conditions a life estate in real property is not usually the kind of income producing asset needed by a surviving spouse; and

Whereas, the confusion in ownership of property resulting from the existence of the dower and curtesy interests is greater than the benefits derived by a surviving spouse; and

Whereas, it would be inadvisable to abolish dower unless protection of the surviving spouse were assured by other measures and such matters are also worthy of study; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to make a study of all matters relating to separation and divorce and dower and curtesy and other rights of a surviving spouse in the property of a decedent. The Council shall study all aspects of the divorce and separation laws of the Commonwealth with the view toward recommending needed modifications, additions or deletions. With respect to dower and curtesy alternative safeguards to protect a spouse's rights shall be given special consideration. The Council shall study the experience of other states and such other matters as may be pertinent to the study. The Council shall complete its study and report to the Governor and General Assembly no later than November one, nineteen hundred seventy-three.

#

Pursuant to the directive, the Council appointed a committee to conduct an initial study and report to it.

James M. Thomson, of Alexandria, an attorney-at-law, a member of the House of Delegates and of the Council, was selected as Chairman of the Committee to make the preliminary study and report to the Council. The following persons were chosen to serve as members of the Committee with Mr. Thomson: George H. Heilig, Jr., an attorney-at-law, a member of the House of Delegates and Vice-Chairman of the Committee, Norfolk; Mrs. Richard M. Ballard, Jr., a housewife, Richmond; Martin A. Gannon, an attorney-at-law, Alexandria; Frederick T. Gray, an attorney-at-law, and a member of the Senate, Chesterfield; Mrs. Meredith House, a housewife, Richmond; William A. Perkins, Jr., an attorney-at-law, Charlottesville; Mrs. Irene L. Pencoast, Judge of the Juvenile and Relations District Court, Alexandria; Arthur E. Smith, an attorney-at-law, Roanoke; W. Carrington Thompson, Judge of the 30th Judicial Circuit, Chatham; Walter Wadlington, an attorney-at-law and professor of law at the University of Virginia, Charlottesville; and Jerrold G. Weinberg, an attorney-at-law, Norfolk.

The Division of Legislative Services, represented by G. William White, Jr., served as counsel and secretariat to the Committee.

The Committee submitted its report to the Council, and we have reviewed and studied it with care. We now submit the following recommendations and report.

PRELIMINARY STATEMENT

The Council scrutinized the Uniform Marriage and Divorce Act closely. It was felt, however, that the sweeping change inherent in its adoption by the General Assembly would negate the voluminous body of case law in Virginia which is predominently sound, and to which the judiciary and legal profession have become accustomed. The Council feels, therefore, that a more moderate approach to the problems of marriage and divorce should be taken, but at the same time, with the view of enhancing the interest of the Commonwealth in encouraging mature marriages and at the same time, to partially ameliorate the bitterness and hostility of adversary divorce proceeding. In essence, the Council proposes to make getting married in Virginia a little harder, and getting a divorce a little easier.

The Council is also recommending a few other changes, mainly housekeeping ones, in Title 20, of the Code of Virginia.

As to the abolition of the common law doctrine of dower and curtesy the Council advocates the adoption of a middle course. Modification of the existing laws should be made so that certainty as to title of an estate of inheritance will be assured, and the cumbersome procedures now applicable in setting off dower or curtesy will be eliminated in the future.

RECOMMENDATIONS

MARRIAGE

1- It is recommended that the statute which requires that parties applying for a marriage license to be informed if one or both of the parties has syphilis be broadened to require that the information required to be given be made in writing, and in lay terms. This will ensure the transmission of such information to the parties so that a sound value judgement may be made by them as to whether to continue their plans for marriage or not.

2- The parties, rather than the husband, should be charged with the payment of the fee for the celebration of marriage. This is in keeping with the provisions of Article I, Section 11 of the Virginia Constitution.

The fee limitation of ten dollars should be removed. As a matter of practice, this limitation is more observed in its breach, and should be removed.

3- The Council recommends that the statute prohibiting marriage between certain degrees of consanguinity or affinity be streamlined. Accordingly, the adoption of a modified version of the Uniform Act regulating such marriage is recommended. Adopted children are treated as though they were blood relatives under the proposal of the Committee.

However, if a bigamous marriage existed, and the impediment is removed, the parties of such marriage who cohabit after knowledge of the removal of the impediment are lawfully married without further ceremony. This is intended to protect the legitimate interests of a surviving spouse where conflicts may arise over inheritances or other benefits to which such spouse may be otherwise entitled.

Children of prohibited marriages are legitimate, even though such marriages are void ab initio, as commented on throughout this report.

4- (a) It is recommended that marriage within the decree of relationship set out in the preceding paragraph, and marriages of persons under the age of eighteen who have not received parental or judicial permission, as hereinafter discussed, be void, without decree of divorce or

other legal decree. This overrules the case of *Needham vs. Needham*, 183 Va. 681, which held that youthful marriages without parental consent as provided by law, are nonetheless valid. The Council believes that this recommendation, enhances the promotion of healthy marriages.

(b) Marriages entered into when either of the parties was incapable of consenting to the contract of marriage should be voidable, by a decree of nullity. This would include situations in which one of the parties was insane, under the influence of alcohol, drugs or other incapacitating substances.

The Council has not recommended a limitation on the time within which a suit for annulment may be brought. If insanity exists, it is impossible to determine when sanity may be restored. As to other situations, if cohabitation continues after the temporary incapacity is removed, the Council believes that the judiciary is well capable of applying the doctrines of estoppel or laches in doing justice between the parties. Also, proposed § 20-92.1, discussed later, should provide safeguards against inequity.

5- It is recommended that the minimum age at which minors be allowed to marry be sixteen. This should apply to both parties. Persons between the ages of sixteen and eighteen should be required to obtain parental or judicial consent. Otherwise, as previously discussed, the marriage is void. Judicial consent in these cases, is to be obtained from a judge of the juvenile and domestic relations district court having jurisdiction in the circuit where the marriage license is to be issued.

Only in the case of pregnancy, and in circumstances as set out in recommendation 6, would the issuance of a marriage license to a couple where the female is under sixteen be permitted. Even then, parental or judicial consent is required.

6- In a limited number of circumstances, the marriage of a party under the age of sixteen might be permitted. However, the Council feels that such marriages should be severely circumscribed. Therefore, it is recommended that the consent of the judge of the circuit court having jurisdiction over the county or city in which the license is to be issued be obtained. Such consent would be evidenced by court order. No guidelines are established for the court, except for the sound discretion of the judges in permitting such marriages. Marriages entered into without such consent are void, no matter where solemnized.

7- It is recommended that § 20-29, which requires the recordation of out-of-state marriages be repealed. It is doubtful if but a few know of the existence of the statute, probably few, if anybody, observes it, so an unenforced and needless law should be removed from the Code.

ANNULMENT AND DIVORCE

1- The Council recommends that the decree of divorce *a mensa et thoro* (bed and board) be abolished, for the following reasons: (a) The Council is recommending that the fault ground of desertion or cruelty be deleted from the law. Since § 20-95, which provides that the grounds alone shall be grounds for such a decree, it would be inconsistent with the proposals contained herein to allow the statute to stand.

(b) Such divorces are cumbersome, Parties should not be required to submit to two sets of depositions; two decrees of divorce; and the attendant expense involved. Also, it has been the experience of the practicing attorneys participating in this study that a majority of clients do not

understand the purport of such divorce and do not comprehend that they are still bound by the prohibitions of behavior inherent in the marriage contract until the final decree has been entered. The Council feels that the changes recommended will adequately provide for the support and maintenance of a party and the children during a separation, which support and maintenance is probably, after all, the primary reason that people now seek to obtain bed and board divorces.

2- (a) It is recommended that all fault grounds, except adultery, sodomy or buggery, and conviction of a felony, be deleted from the law.

The provisions of § 20-91 (9), which permits divorce after two years separation, should be reduced to one year.

(b) § 20-91 (3), now requires *confinement* in the penitentiary subsequent to marriage as a ground for divorce. This should be amended so as *conviction* of a felony should suffice. In many cases, suspended sentences are given in crimes serious enough to cause the other party to become disillusioned with the marriage and wish to divorce. The Council believes they should have this privilege.

(c) Other grounds for divorce now set out in § 20-91, such as impotency, conviction of an infamous offense, or prostitution, unknown to the other party prior to the marriage, and the like, should be deleted from any aspect of divorce and be put where such situations traditionally belong; in actions for annulment. The grounds of fraud and duress, already grounds for annulment at common law are added to the statute.

3- (a) It is recommended that, upon physical separation of the parties, either, or both of the parties be permitted to immediately file a petition with the court, stating such fact. Upon the filing thereof, the court is required to make a finding of such separation, or continue the case for further hearing not less than one year from the date of separation. If the court, after the expiration of one year, finds that the parties have continuously lived separate and apart, it may enter a decree of divorce.

(b) In the meantime, the court is empowered to make orders respecting temporary alimony, or support and maintenance for a spouse and/or the children, which may be enforced as such orders have always been enforced. The Circuit Court is empowered to refer these matters, pendente lite, to the juvenile and domestic relations district court.

(c) In keeping with Article I, Section 11 of the Constitution, alimony may be awarded a husband by a wife under appropriate circumstances.

DISRUPTION OF MARITAL RELATIONSHIPS

In the 1968 Session of the General Assembly, § 20-37.2 was enacted. The bills, as originally introduced, intended only to abolish the common law civil actions of alienation of affection, breach of promise to marry, criminal conversation and seduction. However, in the legislative process, the action for seduction was retained, and, in addition, a proposal was added providing that persons knowingly causing the disruption of a marital relationship be guilty of a misdemeanor.

This latter provision has come under serious constitutional attack. As was stated by one circuit judge, in declaring its invalidity for vagueness, to define a disruption, the court "would not only be required to bring its lunch, but also its crystal ball." The Council therefore recommends that this provision be deleted from § 20-37.2.

The Council has no strong feeling one way or the other as to the retention of the penalty. However, if the General Assembly believes that criminal sanctions against such conduct should be preserved, legislation is appended which would define such conduct within narrow limits, and be placed in the proper title; Title 18.1.

The Council also feels that the common law civil action for seduction should be abolished as antiquated. To the knowledge of any member of the Council no such action has been brought for years. The criminal penalty against seduction remains.

SEPARATE EQUITABLE ESTATES-DOWER AND CURTESY

1- The Council recommends that any person be permitted to take and hold real estate as his or her separate equitable estate. The reason for the establishment of such estates for the benefit of a wife has not existed for many years; since the enactment of the Married Woman's Act. There appears to be no reason why a man should not be able to deal alone with his own real estate as well as a woman. It is further recommended that if either person holds the real estate in his or her name, or as a partner, it should be conclusively presumed that the holding is a separate equitable estate.

2. (a) The Council recommends that dower and curtesy be treated alike. Therefore, the terms "dower and curtesy" should be construed to be synonymous.

(b) The Council recommends that a surviving spouse inherit real estate in the same manner as personal property. Therefore, instead of the creation of a life estate in one-third of the real estate held by the deceased spouse, the survivor would take a one-third interest in the fee. In this manner, the interest left to the surviving would be certain, instead of being subject to the contingencies of the actuarial tables.

OTHER RECOMMENDATIONS

The Council recommends that the study be continued, and its mission broadened. The Council has not had ample time to consider many aspects of domestic relations law; such as the updating of the Uniform Reciprocal Enforcement of Support Act; a "long arm" provision of service of process in divorce actions; the serious problems presented in the construction of § 20-107, which relates to the powers of the court to decree as to the estates of the parties; and which has been subject to a variety of litigation; and other matters only briefly touched on in the deliberations of the Council.

#

Respectfully submitted,

Lewis A. McMurran, Jr., *Chairman*

Willard J. Moody

Russell M. Carneal

Joseph V. Gartlan, Jr.

Jerry H. Geisler

Arthur R. Giesen, Jr.

Edward E. Lane

C. Hardaway Marks

Stanley A. Owens

William V. Rawlings

D. French Slaughter, Jr.

James M. Thomson

Lawrence Douglas Wilder

Edward E. Willey

A BILL to amend and reenact §§ 20-4, 20-27, 20-48, 20-49, 20-79, 20-91, 20-95, 20-96, 20-100, 20-103, 20-104, 20-105, 20-107 and 20-109.1, as severally amended, of the Code of Virginia; and to further amend the Code of Virginia by adding sections numbered 20-38.1, 20-45.1, 20-89.1, 20-91.1 and 20-92.1; and to repeal §§ 20-29, 20-38, 20-45, 20-89, 20-92, 20-95, 20-101, 20-119, 20-120, 20-121 and 20-121.01, as severally amended, of the Code of Virginia, the amended, new and repealed sections relating to marriage and divorce generally, serological tests; what marriages void or voidable; prohibited marriages; minimum age of marriage with consent of parents; judicial consent in certain cases; annulment of marriages and divorces; to abolish certain grounds for divorce; to provide for certain procedures in certain cases of separations; and to abolish divorce a mensa et thoro; certification and recordation of certain marriages; decree to show race of parties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-4, 20-27, 20-48, 20-49, 20-79, 20-91, 20-96, 20-100, 20-103, 20-104, 20-105, 20-107 and 20-109.1, as severally amended, of the Code of Virginia are amended and reenacted; and that the Code of Virginia is further amended by adding §§ 20-38.1, 20-45.1, 20-89.1, 20-91.1 and 20-92.1, as follows:

§ 20-4. Informing parties of indication of syphilis.—If any such serological test, on being repeated, or the history or physical findings, as to any person, indicate evidence of syphilis, the physician shall in ~~person~~ *writing, in lay language* inform both such person and the other party for whom the marriage license is desired of the result of such test or tests, the nature of the disease and the possibilities of transmitting the disease to the marital partner of such person and to their children, and shall in the statement filed with or transmitted to the State Department of Health ~~state that such has been done~~ *transmit a copy of such writing.*

§ 20-27. Fee for celebrating marriage.—Any person authorized to celebrate the rites of marriage shall be paid by the ~~husband~~ *parties* a fee ~~not to exceed ten dollars in each case.~~

§ 20-38.1. (a) The following marriages are prohibited:

(1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(2) A marriage between an ancestor and descendant, or between a brother and a sister whether the relationship is by the half or the whole blood or by adoption;

(3) A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.

(b) Parties to a marriage prohibited under (a) (1) hereof who cohabit after the removal of the impediment are lawfully married as of the date of the removal of the impediment.

(c) Children born of a prohibited marriage are legitimate.

§ 20-45.1. (a) All marriages which are prohibited by § 20-38.1 or where either or both of the parties are, at the time of the solemnization of the marriage, under the age of eighteen, and have not complied with the provisions of §§ 20-48 and 20-49, are void without any decree of divorce, or other legal process.

(b) All marriages solemnized when either of the parties lacked capacity to consent to the marriage at the time the marriage was solemnized, because of

mental incapacity or infirmity, shall be void from the time they shall be so declared by a decree of divorce or nullity.

§ 20-48. Minimum age of marriage with consent of parents. — The minimum age at which ~~male persons may marry shall be eighteen~~. ~~The minimum age at which female~~ minors may marry, with consent of the parent or guardian, shall be sixteen.

In case of pregnancy when either ~~the female~~ *party* is under sixteen ~~or the male under eighteen~~, the clerk authorized to issue marriage licenses in the county ~~or~~ city wherein the female resides shall issue proper marriage license with the consent of the parent or guardian of the person or persons under the ~~ages~~ *age* aforesaid only upon presentation of a doctor's certificate showing he has examined the female and that she is pregnant, or has been pregnant within nine months previous to such examination, which certificate shall be filed by the clerk, and such marriage consummated under such circumstances shall be valid. If any such person under the age aforesaid be a ward of the State by virtue of having been adjudicated a delinquent, dependent, or neglected child, instead of the consent of the parent or natural guardian there shall be required the consent of the judge ~~or justice~~ having jurisdiction to control the custody of such person; or, if such person so adjudicated shall have been committed to the Board of Welfare and Institutions or to any society, association, or institution approved by it for this purpose, such consent shall be given by some person thereto authorized by the Commissioner of Public Welfare, or by the principal executive officer of such society, association, or institution, as the case may be.

~~Nothing herein contained shall be construed to prevent clerks from issuing a marriage license under circumstances mentioned in § 18.1-45, or to prevent persons under circumstances mentioned therein from marrying~~.

§ 20-49. When consent required and how given.—*Except as provided in § 20-48. If any ~~female~~ person intending to marry be under ~~eighteen~~ sixteen* years of age, and has not been previously married, ~~the consent of the father or mother or guardian of such person, shall be given either personally to the clerk or judge, or in writing subscribed by a witness, who shall make oath before the clerk or judge that the writing was signed or sworn to in his presence by such father, guardian, or mother, as the case may be, or the writing shall be sworn to before a notary public or some person authorized to take acknowledgments to deeds under the laws of this State, which oath shall be properly certified by such officer. If there be no father, guardian, or mother, or if such person be abandoned by her parents~~, the judge of the circuit court of the county~~,~~ or ~~of the corporation court of the~~ city wherein the female resides, either in term or vacation, ~~or the clerk or deputy clerk of such court~~, may, on the application of the person intending to marry, properly certified, *by order* authorize a marriage license to be issued, or issue the same, as the case may be. ~~For the purpose of giving consent under the provisions of this section, an insane father or an insane mother shall be treated as if there were no father or mother, or father and mother, as the case may be~~.

~~If any such female person under eighteen years of age be a ward of the State by virtue of having been adjudicated a delinquent, dependent, or neglected child, the consent required by this section shall be given by the judge or justice having jurisdiction to control the custody of such person; or, if such person so adjudicated shall have been committed to the Board of Welfare and Institutions or to any society, association, or institution approved by it for this purpose, such consent shall be given personally by the Commissioner of Public Welfare or by some person thereto authorized by him, or by the principal executive officer of such society, association, or institution, as the case may be, such authorization to be in writing, attested or sworn to as hereinabove provided~~.

§ 20-79. Effect of divorce proceedings.—(a) In any case where an order has been entered under the provisions of this chapter, directing ~~a husband~~ *any person* to pay any sum or sums of money for the support ~~of his~~ wife *a spouse*, or concerning the care, custody or maintenance of any child, or children, the jurisdiction of the court which entered such order shall cease and its orders become inoperative upon the entry of a decree by the court or the judge thereof in vacation in a suit for divorce instituted in any court of record in this State having jurisdiction thereof, in which decree provision is made for alimony or support money for ~~the wife~~ *such party* or concerning the care, custody or maintenance of a child or children, or concerning any matter provided in a decree in the divorce proceedings in accordance with the provisions of § 20-103.

(b) In any suit for divorce the court in which same is instituted or pending, when either party to the proceedings so requests, shall provide in its decree for the maintenance, support, care or custody of the child or children, alimony if the same be sought, and counsel fees and other costs, if in the judgment of the court any or all of the foregoing should be so decreed.

(c) Provided, that in any suit for divorce or suit for maintenance and support the court may in any decree of divorce ~~a mensa et thoro~~, ~~decree of divorce a vinculo matrimonii~~, final decree for maintenance and support, or subsequent decree in such suit, transfer to the juvenile and domestic relations *district* court, or other appropriate court, all matters pertaining to alimony, maintenance, support, care and custody of the child or children for the enforcement of such decrees, or for the modification or revision thereof as the circumstances may require. All proceedings in such juvenile and domestic relations *district* court shall be in conformity with the provisions of chapter 5 (§ 20-61 et seq.) of Title 20 of this Code, and to the same extent as if the proceedings had originated in such court.

§ 20-89.1. (a) When a marriage is supposed to be void or voidable for any of the causes mentioned either in §§ 20-38.1, 20-43 to 20-45.1, or by virtue of fraud or duress, either party may institute a suit for annulling the same; and upon due proof of the nullity of the marriage, it shall be decreed void by a decree of annulment.

(b) In the case of natural or incurable impotency of body existing at the time of entering into the marriage contract, or when, prior to the marriage, either party, without the knowledge of the other, had been convicted of a felony, or when, at the time of the marriage, the wife, without the knowledge of the husband, was with child by some person other than the husband, or where the husband, without knowledge of the wife, had fathered a child by a woman other than the wife within ten months after the date of the solemnization of the marriage, or where, prior to the marriage, either party had been, without the knowledge of the other, a prostitute, a decree of annulment may be entered upon due proof, on complaint of the party aggrieved; provided, that no such decree shall be entered if the parties had been lawfully married for a period of two years.

(c) A party who, at the time of such marriage as is mentioned in § 20-48, was capable of consenting with a party not so capable, shall not be permitted to institute a suit for the purpose of annulling such marriage.

§ 20-91. Grounds for divorce from bond of matrimony.—A divorce from the bond of matrimony may be decreed:

(1) For adultery, or sodomy or buggery;

(2) ~~For natural or incurable impotency of body existing at the time of entering into the matrimonial contract;~~

(3) Where either of the parties subsequent to the marriage has been

~~sentenced to confinement in the penitentiary of this state or of any other state of the United States or to confinement in a penitentiary of the United States~~, *convicted of a felony* and cohabitation has not been resumed after such ~~confinement~~ *conviction* (in which case no pardon granted to the party so ~~sentenced shall~~ restore such party to his or her conjugal rights); *or*

(4) ~~Where prior to the marriage, either party, without the knowledge of the other, had been convicted of an infamous offense;~~

(5) [Repealed.]

(6) ~~Where either party wilfully deserts or abandons the other for one year such divorce may be decreed to the party abandoned;~~

(7) ~~Where, at the time of the marriage, the wife without the knowledge of the husband was with child by some person other than the husband~~;

(8) ~~Where prior to the marriage the wife had been, without the knowledge of her husband, a prostitute, such divorce may be decreed to the husband; and~~

(9) On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for ~~two years~~ *one year*. A plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground; nor shall it be a bar that either party has been adjudged insane, either before or after such separation has commenced, but at the expiration of ~~two years~~ *one year* from the commencement of such separation, the grounds for divorce shall be deemed to be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian ad litem to represent the insane defendant.

This subsection shall apply whether the separation commenced prior to its enactment or shall commence thereafter. Where otherwise valid, any decree of divorce hereinbefore entered by any court having equity jurisdiction pursuant to this subsection (9), not appealed to the Supreme Court of ~~Appeals~~ *Virginia*, is hereby declared valid according to the terms of said decree notwithstanding the insanity of a party thereto.

A decree of divorce granted pursuant to this subsection (9) shall in no way lessen any obligation a ~~husband~~ *any party* may otherwise have to support ~~his wife~~ *the spouse* unless he shall prove that there exists in ~~his~~ *the* favor *of such person* some other ground of divorce under this section.

§ 20-91.1. (a) Notwithstanding the provisions of § 20-91, if both the parties, by complaint, have stated under oath or affirmation that the parties are living separate and apart, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding as to whether or not the parties are living separate and apart and shall so order, or

(b) If one of the parties has denied under oath or affirmation that the parties are living separate and apart, the court shall:

(1) Make a finding that the parties are living separate and apart and shall so order, or

(2) Continue the matter for further hearing not less than one year after the date of separation. At the adjourned hearing, the court shall make a finding whether or not the parties are, and have been, living separate and apart since the date of the alleged separation.

(c) No final decree shall be entered until the court shall find that the parties have lived separate and apart for a period of one year.

§ 20-92.1. No annulment shall be decreed if it appears that the party applying for such annulment has cohabited with the other after knowledge of the facts giving rise to what otherwise would have been grounds for annulment.

§ 20-96. Jurisdiction of suits for annulment, affirmance or divorce.—The circuit ~~and corporation~~ courts, on the chancery side thereof, ~~and every court of this State exercising chancery jurisdiction~~, shall have jurisdiction of suits for annulling or affirming marriage and for divorces.

§ 20-100. Copy of marriage license, etc., to be filed with bill.—With every bill praying a divorce, ~~whether a mensa et thoro or a vinculo matrimonii,~~ there shall be filed a duly certified copy of the marriage license, with certificate of time and place of marriage by the person who performed the ceremony, if the marriage is alleged to have taken place in this State, except where it is alleged in the bill that such certified copy cannot be obtained, unless the same shall have been lost or destroyed.

In lieu of such certified copy of the marriage license, there may be filed an abstract of the information appearing upon the marriage register of the court from which such marriage license issued, which abstract shall be duly certified by the clerk of such court.

§ 20-103. Court may make orders pending the suit, etc.—*(a)* The court in term or the judge in vacation may, at any time pending the suit, in the discretion of such court or judge, *and considering the equities between the parties*, make any order that may be proper to compel ~~the man~~ *any party to the suit* to pay any sums necessary for the maintenance of the ~~woman~~ *other* and to enable ~~her~~ *such person* to carry on the suit, or to prevent ~~him~~ *such person* from imposing any restraint on ~~her~~ *the* personal liberty *of such person*, or to provide for the custody and maintenance of the minor children of the parties during the pendency of the suit, or to preserve the estate of ~~the man~~ *either party*, so that it be forthcoming to meet any decree which may be made in the suit, or to compel ~~him~~ *either party* to give security to abide such decree.

(b) In the event the suit is brought under the provisions of § 20-91.1, the court may, in its discretion, refer the matter to the appropriate juvenile and domestic relations district court having jurisdiction in the circuit to make such allowances or orders as may be necessary to carry out the provisions of (a) hereof.

§ 20-104. Order of publication against nonresident defendant.—When in a suit for annulment or divorce, ~~either a vinculo matrimonii or a mensa et thoro~~, affidavit shall be filed that the defendant is not a resident of the State of Virginia, or that diligence has been used by or on behalf of the plaintiff to ascertain in what county or corporation such defendant is, without effect, an order of publication shall be entered against such defendant by the court, or by the clerk of the court wherein such suit is pending, either in term time or vacation, which order shall state the object of the suit and the grounds thereof, and the order of publication shall be published as required by law. No depositions in the suit shall be commenced until at least ten days shall have elapsed after the order of publication has been duly published as required by law.

All annulments or divorces heretofore granted in suits in which the defendant was proceeded against by an order of publication which required the defendant to appear within ten days after due publication thereof, and in which depositions were taken less than fifteen days, but not less than ten days, after such due publication and in suits in which the defendant was proceeded against by an order of publication issued on an affidavit that diligence had been used by or on behalf of the plaintiff to ascertain in what county or corporation such defendant was, without effect, or wherein the order of

publication was entered by the court, are hereby validated and declared to be binding upon the parties to such suit, when the other proceedings therein were regular and the annulment or divorce otherwise valid.

§ 20-105. Permissible form for order of publication. — Any order of publication under the provisions of the preceding section may be substantially in the form following:

Virginia: In the.....Court of.....,
....., 19.....

(Here set forth Style of Cause)

IN CHANCERY

The object of this suit is to obtain ~~(a divorce from bed and board)~~ (a divorce from the bond of matrimony ~~)~~ from the defendant on the ground of.....,
(here set forth grounds)
.....
(here set forth other relief prayed for, if any)

An affidavit has been made and filed (that the defendant is not a resident of this State,) (that diligence has been used by or on behalf of plaintiff to ascertain in what county or city the defendant is, without effect,) it is ordered that (he) (she) appear before this court within ten days after due publication of this order and protect (his) (her) interest herein.

An Extract-Teste:

.....p.q.
..... (Clerk)

§ 20-107. Court may decree as to estate and maintenance of parties, and custody of children.—Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, ~~whether from the bond of matrimony or from bed and board~~, and upon decreeing that neither party is entitled to a divorce the court may make such further decree as it shall deem expedient concerning the estate and the maintenance of the parties, or either of them, and the care, custody and maintenance of their minor children, and may determine with which of the parents the children or any of them shall remain, provided, that the court shall have no authority to decree support of children or alimony to continue after the death of the ~~father or husband~~ *person ordered to pay such support or alimony*. The word "estate" as used in this section shall be construed to mean only those rights of the parties created by the marriage in and to the real property of each other, and such rights of either party, in the event of the death of the other, in the distribution of such decedent's estate pursuant to § 64.1-11.

§ 20-109.1. Affirmation, ratification and incorporation in decree of agreement between parties.—Any court may affirm, ratify and incorporate in its decree dissolving a marriage or decree of divorce ~~whether from the bond of matrimony or from bed and board~~, any valid agreement ~~between the parties, or~~ provisions thereof, concerning the conditions of the maintenance of the parties, or either of them and the care, custody and maintenance of their minor children. Where the court affirms, ratifies and incorporates in its decree such agreement or provision thereof, it shall be deemed for all purposes to be a term of the decree, and enforceable in the same manner as any provision of such decree. The provisions of this section shall apply to any decree hereinbefore or hereinafter entered affirming, ratifying and incorporating an agreement as provided herein; provided, however, that if such agreement provides for the maintenance of either of such parties, upon the remarriage of such party the court shall order that such maintenance shall cease as of the date of such marriage, and upon the death of such party the court shall order that no

payment shall be made to the estate of such decedent on account of such provision, unless such agreement otherwise specifically provides in the event of remarriage or death.

2. That §§ 20-29, 20-38, 20-45, 20-89, 20-92, 20-95, 20-101, 20-119, 20-120, 20-121 and 20-121.01, as severally amended, of the Code of Virginia are repealed.

#

A BILL to amend and reenact § 20-37.2 of the Code of Virginia, relating to the abolition of certain common-law actions, so as to abolish the common-law action of seduction therein, and to abolish penalties for certain violations.

Be it enacted by the General Assembly of Virginia:

1. That § 20-37.2 of the Code of Virginia is amended and reenacted as follows:

§ 20-37.2. Action for alienation of affection, breach of promise, criminal conversation or seduction abolished; jurisdiction.—Notwithstanding any other provision of law to the contrary, no civil action shall lie or be maintained in this Satte for alienation of affection, breach of promise to marry, ~~or~~ criminal conversation *or seduction* upon which a cause of action arose or occurred on or after ~~June twenty eight~~ *July one*, nineteen hundred ~~sixty eight~~ *seventy-four*.

~~Any person who shall knowingly cause or contribute to the disruption of a marital relationship shall be guilty of a misdemeanor and punished as provided for in § 18.1-9, and jurisdiction of such offense shall be cognizable under the provisions of § 16.1-158.~~

#

A BILL to amend the Code of Virginia by adding in Article 14 of Chapter 7 of Title 18.1 a section numbered 18.1-417.3, so as to create the criminal offense of disruption of marital relationships; providing penalties for violations.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 14 of Chapter 7 of Title 18.1 a section numbered 18.1-417.3 as follows:

§ 18.1-417.3. (a) "Disruption of a marital relationship" means the disturbance of a viable marriage by a third party by way of persuasion of one spouse to leave the other when no cause exists therefor or by the entry into a sexual relationship by a third party with a spouse.

(b) Any person who shall knowingly cause or contribute to the disruption of a marital relationship shall be guilty of a misdemeanor and punished as provided in § 18.1-9. Jurisdiction of such offense shall be cognizable under the provisions of § 16.1-150.

#

A BILL to amend the Code of Virginia by adding a section numbered 55-51.1, so as to permit all persons to take and hold real estate as a separate equitable estate; to create certain presumptions; and to repeal § 55-47 of the Code of Virginia, relating to separate equitable estates.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 55-51.1 as follows:

§ 55-51.1. (a) Notwithstanding any provision of law, statutory or otherwise, any person may take and hold real estate as a separate equitable estate. They may be created as heretofore and shall be held in all respects according to the provisions of the instrument by which they are created and with all the powers conferred by such instruments. Nothing contained in Chapter 3 of this title shall be construed to prevent the creation of such estates.

(b) It shall be conclusively presumed that when any person shall hold title to an estate in real estate in his sole name, or by inheritance, or as a partner, such estate shall be a separate equitable estate.

2. That § 55-47 of the Code of Virginia is repealed.

#

A BILL to amend the Code of Virginia by adding in Chapter 2 of Title 16.1 a section numbered 64.1-19.01; and to amend and reenact § 64.1-19 of the Code of Virginia, so as to provide how dower and curtesy shall be treated, and to provide what estates shall be created thereby.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 2 of Title 16.1 a section numbered 64.1-19.01, and that § 64.1-19 of the Code of Virginia is amended and reenacted as follows:

§ *64.1-19.01. Where the word "curtesy" shall appear in this chapter or this Code, it shall be taken to be synonomous, with the word "dower" as the same appears in this chapter or this Code, and shall be so construed for all purposes.*

§ 64-1-19. Interest of a surviving spouse.—A surviving spouse shall be entitled to *an* ~~a dower or curtesy~~ interest of one third of *the fee of* all the real estate whereof the deceased spouse ~~or any other to his use~~ was ~~at any time~~ seized, ~~during coverture~~ *or* of an estate of inheritance, *at the time of the death of such spouse,* unless such right shall have been lawfully barred or relinquished *notwithstanding the provisions of § 64.1-1, or of the provisions of any will made by the deceased spouse.*

#

HOUSE JOINT RESOLUTION NO....

Directing the Virginia Advisory Legislative Council to continue its study on separation and divorce; domestic relations; and the laws on dower and curtesy.

Whereas, House Joint Resolution No. 225 of the General Assembly of 1973 directed the Virginia Advisory Legislative Council to make a study and report on the laws on separation and divorce and dower and curtesy; and

Whereas, the Council having made such a study and reported to the Governor and the General Assembly, in addition to a report on the matters assigned it, that additional study should be made, particularly as to all the laws relating to domestic relations; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to continue its study of all matters relating to separation and divorce and dower and curtesy; that its studies should include all matters relating to domestic relations with the view toward recommending needed modifications, additions or deletions. The Council shall study the experiences of other states and such other matters as may be pertinent to the study. The Council shall complete its study and report to the Governor and the General Assembly no later than November one, nineteen hundred seventy-four.

#