
LEGISLATURE OF PENNSYLVANIA.

FILE OF THE HOUSE OF REPRESENTATIVES.**No. 1064** **Session of**
1919.

INTRODUCED BY MR. MILNER, MARCH 24, 1919.

REFERRED TO COMMITTEE ON JUDICIARY GENERAL,
MARCH 25, 1919.

AN ACT

To amend section two of an act approved the thirteenth day of March one thousand eight hundred and fifteen (Pamphlet Laws one hundred and fifty) entitled "An act concerning divorces" as amended by changing the time for making service of the subpoena upon the respondent and validating divorces heretofore granted where service was made personally at any time before the return day or where a return of non est inventus has been sworn to at any time prior to the return day

1 *Section 1 Be it enacted by the Senate and House of Repre-*
2 *sentatives of the Commonwealth of Pennsylvania in General Assembly*
3 *met and it is hereby enacted by the authority of the same That*
4 *section two of an act approved the thirteenth day of*
5 *March one thousand eight hundred and fifteen (Pamphlet*
6 *Laws one hundred and fifty) entitled "An act concerning*
7 *divorces" as amended by an act approved the first day*
8 *of June one thousand nine hundred and fifteen (Pamphlet*

1 Laws six hundred and seventy-four) entitled "An act to
2 amend an act approved the thirteenth day of March one
3 thousand eight hundred and fifteen entitled 'An act con-
4 cerning divorces' as amended" which reads as follows

5 "Section 2 And be it further enacted by the author-
6 ity aforesaid That if any person hath been or shall be
7 injured as aforesaid the husband or the wife may exhibit
8 his or her petition or libel to the judges of the court
9 of common pleas of the proper county where the injured
10 party resides in term time or to one of the judges of
11 the same court in the vacation at least thirty days be-
12 fore the next term setting forth therein particularly and
13 specially the cause of his or her complaint and shall
14 together with such petition or libel also exhibit an affi-
15 davit on oath or affirmation taken before one of the
16 same judges or any person in the county legally author-
17 ized to take acknowledgments that the facts contained in
18 the said petition or libel are true to the best of his
19 or her knowledge and belief and that the said complaint
20 is not made out of levity or by collusion between the
21 said husband and wife and for the mere purpose of
22 being freed and separated from each other but in sin-
23 cerity and truth for the causes mentioned in the said
24 petition or libel and thereon a subpoena shall issue
25 from the said court signed by one of the judges thereof
26 directed to the party so complained against commanding
27 him or her to appear at the next or any subsequent
28 court of common pleas to answer the said petition or
29 libel and upon due proof at the return of the said

1 subpoena that the same shall have been served personally
2 upon the said party wherever found or that a copy had
3 been given to him or her fifteen days before the return
4 of the same the said court shall and may make such
5 preparatory rules and orders in the cause that the same
6 may be brought to a hearing and determined at the
7 term to which said process may be returnable or after-
8 wards at which hearing the court may determine the
9 same ex parte if necessary but either of the parties
10 who shall desire any matter of fact that is affirmed by
11 the one and denied by the other to be tried by a
12 jury may take a rule upon the opposite party to be al-
13 lowed by a judge of the court of common pleas to
14 show cause why the issues of fact set forth in the
15 said rule shall not be tried by a jury which said rule
16 shall be served upon the opposite party or his or her
17 counsel Upon the return of said rule after hearing the
18 court may discharge it or make it absolute or frame is-
19 sues itself and only the issues as ordered by the court
20 shall be tried accordingly but such rule shall not be
21 made absolute when in the opinion of the court a trial
22 by a jury cannot be had without prejudice to public
23 morals When neither of the parties takes a rule as
24 aforesaid or when after hearing the rule is discharged
25 the court may proceed to hear the cause or may upon
26 motion of either party appoint a master to take the
27 testimony and return the same to the court together with
28 a report of the proceedings had before him and his
29 opinion of the case and may upon the application of

1 either party and upon such terms as it may order au-
2 thorize and direct the master to take testimony of wit-
3 nesses in any other country State or territory subject to
4 the jurisdiction of the United States or in any foreign
5 country And the said court shall have power to adopt
6 rules regulating the proceedings before the master and fix-
7 ing his fees" is hereby further amended to read as fol-
8 lows

9 Section 2 And be it further enacted by the author-
10 ity aforesaid That if any person hath been or shall be
11 injured as aforesaid the husband or the wife may ex-
12 hibit his or her petition or libel to the judges of the
13 court of common pleas of the proper county where the
14 injured party resides in term time or to one of the
15 judges of the same court in the vacation at least thirty
16 days before the next term setting forth therein particu-
17 larly and specially the cause of his or her complaint
18 and shall together with such petition or libel also exhibit
19 an affidavit on oath or affirmation taken before one of
20 the same judges or any person in the county legally
21 authorized to take acknowledgments that the facts contained
22 in the said petition or libel are true to the best of
23 his or her knowledge and belief and that the said com-
24 plaint is not made out of levity or by collusion be-
25 tween the said husband and wife and for the mere
26 purpose of being freed and separated from each other
27 but in sincerity and truth for the causes mentioned in
28 the said petition or libel and thereupon a subpoena shall
29 issue from the said court signed by one of the judges

1 thereof directed to the party so complained against com-
2 manding him or her to appear at the next or any
3 subsequent court of common pleas to answer the said
4 petition or libel and upon due proof at the return of
5 the said subpoena that the same shall have been served
6 personally upon the said party wherever found or that
7 a copy had been given to him or her on or before
8 the return day of the same the said court shall and
9 may make such preparatory rules and orders in the
10 cause that the same may be brought to a hearing and
11 determined at the term to which said process may be
12 returnable or afterwards at which hearing the court may
13 determine the same ex parte if necessary but either of
14 the parties who shall desire any matter of fact that is
15 affirmed by the one and denied by the other to be
16 tried by a jury may take a rule upon the opposite
17 party to be allowed by a judge of the court of com-
18 mon pleas to show cause why the issues of fact set
19 forth in the said rule shall not be tried by a jury
20 which said rule shall be served upon the opposite party
21 or his or her counsel Upon the return of said rule
22 after hearing the court may discharge it or make it
23 absolute or frame issues itself and only the issues as
24 ordered by the court shall be tried accordingly but such
25 rule shall not be made absolute when in the opinion
26 of the court a trial by a jury cannot be had without
27 prejudice to public morals When neither of the parties
28 takes a rule as aforesaid or when after hearing the
29 rule is discharged the court may proceed to hear the

1 cause or may upon motion of either party appoint a
2 master to take the testimony and return the same to
3 the court together with a report of the proceedings had
4 before him and his opinion of the case and may upon
5 the application of either party and upon such terms as
6 it may order authorize and direct the master to take
7 testimony of witnesses in any other country State or
8 territory subject to the jurisdiction of the United States
9 or in any foreign country And the said court shall
10 have power to adopt rules regulating the proceedings be-
11 fore the master and fixing his fees

12 Whenever heretofore any subpoena in divorce has been
13 regularly issued according to law and the sheriff of the
14 proper county has served such subpoena personally on the
15 respondent therein any time prior to the return day
16 thereof or whenever the sheriff of the proper county
17 has at any time prior to such return day made oath
18 to a return of non est inventus to such subpoena
19 whether such sworn return be filed with the prothonotary
20 before or after such return day in all such cases such
21 personal service shall be deemed lawful and valid and
22 such return of non est inventus and all proceedings in
23 divorce otherwise valid in law based on such service or
24 such return are hereby validated and made good in law