

The TABLE of Degrees of CONSANGUINITY and AFFINITY is as follows:

| Degrees of Consanguinity.            | Degrees of Affinity.                        | Degrees of Consanguinity.       | Degrees of Affinity.                      |
|--------------------------------------|---|---------------------------------|---|
| A man may not marry                  | A man may not marry                         | A woman may not marry           | A woman may not marry                     |
| His Mother.                          | His Father's Wife.                          | Her Father.                     | Her Mother's Husband.                     |
| His Father's Sister.                 | His Son's Wife.                             | Her Father's Brother.           | Her Daughter's Husband.                   |
| His Mother's Sister.                 | His Son's Daughter.                         | Her Mother's Brother.           | Her Husband's Son.                        |
| His Sister.                          | His Wife's Daughter.                        | Her Brother.                    | The Son of her Husband's Son or Daughter. |
| His Daughter.                        | The Daughter of his wife's son or Daughter. | Her Son.                        |   |
| The Daughter of his Son or Daughter. |   | The Son of her Son or Daughter. |   |

Passed in 1705.—Recorded A. vol. I, page 146. (r)

(r) See an act against clandestine relating to divorces, (post. chap. 1176,) marriages, ant. chap. 109; and an act and the next act, chap. 122.

## CHAPTER CXXII.

### An ACT against adultery and fornication.

FOR the preservation of virtue, chastity and purity, amongst the inhabitants of this province, and prevention of the heinous sins of adultery and fornication, *Be it enacted*, That if any person or persons shall commit adultery, and be thereof legally convict, such person or persons shall, for the first offence, receive on his or her bare back twenty-one lashes, well laid on, at the common whipping-post, and suffer imprisonment for one whole year, at hard labour, or be fined fifty pounds, one half to the use of the Governor, and the other half to the use of the poor, at the election of the party offending: And the injured husband or wife shall have a bill of divorce from board and bed, granted him or her by the Governor or Lieutenant Governor for the time being, if required within one year after conviction. And if such person or persons shall offend a second time, and shall again be thereof convicted, such person or persons shall receive on his or her bare back twenty-one lashes, at the common whipping-post, and be imprisoned seven years at hard labour, or pay one hundred pounds as aforesaid: And for the third, and every offence after, the same punishment, and be branded on the forehead with the letter A.

Penalty on committing adultery.

II. *And be it further enacted*, That if any person or persons shall commit fornication, and be thereof legally convicted, such person or persons shall receive twenty-one lashes on his or her bare back, well laid on, at the common whipping-post, or otherwise shall forfeit and pay to the Proprietary and Governor, for the support of the government of this province, and defraying the contingent charges thereof, the sum of ten pounds, at the election of such person so convicted as aforesaid.

On fornication.

III. *And be it further enacted*, That any single or unmarried woman, having a child born of her body, the same shall be sufficient proof of fornication.

What shall be proof of fornication.

1705. cient proof to convict such single or unmarried woman of fornication; and the man, by such woman charged to be the father of such child, shall be the reputed father; and she persisting in the said charge in the time of her extremity of labour, or afterwards in open court, upon the trial of such person so charged, the same shall be given in evidence, in order to convict such person of fornication.

What of adultery.

IV. *And be it further enacted*, That if any married woman within this province shall be convicted of having a child born of her body, in the absence of her husband, and shall not be able, by credible evidence, to prove that her husband has cohabited or been in company with her, or has been in some of the Queen's colonies or plantations in this continent, betwixt the easternmost parts of New-England and the southernmost part of North-Carolina, within twelve months next before the birth of such child, such woman shall be punished as an adulteress.

Fornication where punished.

V. *And be it further enacted*, That if any unmarried woman, absenting herself from the place where she usually lived, shall come into any county within this government, and there bear a bastard child, she shall be liable to be punished in the county where the said child is born, as she should or might have been, had the child been there begotten. And whosoever, within this government, shall knowingly entertain or shelter any such woman, without giving notice thereof to some one Justice of the Peace, within three days after her coming into his or her house to lodge, shall forfeit five pounds for every such offence.

Execution against a married woman, where to be stayed.

VI. *Provided always*, That the judgment or sentence against such married woman shall not be put in execution, till after the expiration of twelve months next after such her conviction, and she shall remain in prison during that time, unless she give security to abide the judgment. And in case her husband shall within the said term come and declare, that he had cohabited with his wife within the said term of twelve months next before the birth of the said child, and own and declare himself to be the father thereof, execution shall be stopped, and the woman discharged.

A servant woman having a bastard child shall serve a further term.

VII. *And be it further enacted*, That if any single woman, being a servant by indenture or covenant, have a bastard child within the time of her servitude, she shall serve such further time, beyond the term in her indenture or covenant mentioned, as the Justices of the Peace, in their Quarter Sessions, shall think fit, as a compensation to her master or mistress for the loss and damage they had sustained, by reason of her bearing such bastard in the time of her servitude; *Provided* it be not more than two years, nor less than one.

VIII. *And be it further enacted*, That every person, being legally convict to be the reputed father of a bastard child, shall give security to the court, town or place, where such child was born, to perform such order for the maintenance of such child, as the Justices of the Peace, in their sessions, shall direct and appoint. (s)

Passed in 1705.—Recorded A. vol. I. page 147.

(s) By the 7th section of the supplement to the penal laws of the State, passed Sept. 23d, 1791, (post. chap. 1572,) so much of the act in the text, as declares that whipping, imprisonment at hard labour, or branding, shall or may be a part of the sentence, on conviction of adultery, is repealed; and in all

cases of conviction for adultery, a fine not exceeding fifty pounds shall be imposed, and in addition thereto the offender shall be imprisoned for any time not exceeding 12, nor less than 3 months.

By a supplement to this act, passed 21st March, 1772, (post. chap. 662) the moiety of all fines imposed on persons convicted of adultery, shall be to and for the use of the Governor, and the other moiety to the overseers of the poor of the city, district or township, where the offender shall reside at the time of committing the fact, for the use of the poor thereof. And by the act of January 28th, 1777, passed in consequence of the revolution, and change of government, all fines, &c. granted to the Governor, by any laws in force, and revived by that act, are declared to be for the use of the State, and to be paid into the State treasury.

With respect to incestuous adultery, see the preceding act against incest.

By the 4th section of the act concerning divorces and alimony, passed 19th Sept'r, 1785, (post. chap. 1176,) the proceedings to obtain a divorce are regulated, which supersedes the power in the act in the text. And by the same act, it is declared, that if either husband or wife marry again, on rumour of the death of the other party, who has been absent for two years, he or she shall not be liable to the pains of adultery, &c. and see the note to the next following act against bigamy.

The punishment of whipping is also taken away by the 4th section of the act to reform the penal laws of the State, passed April 5th, 1790, (post. chap. 1505.) See the note to the act against defacers of charters, ante. pa. 4, (chap. 16.)

By the 6th section of the act entitled "A supplement to the penal laws of the State," passed Sept'r 23d, 1791, (post. chap. 1572,) reciting, That whereas it sometimes happens that bastard children, begotten out of the State, are born within the State, and others begotten within one of the counties of the State are born in another county, and difficul-

ties had arisen about the place of trial; and it is reasonable and just that the reputed fathers of bastard children should be at the expense of their maintenance; it is enacted, that in the latter case, the prosecution of the reputed father shall be in the county where the bastard child shall be born, and the like sentence passed as if the bastard child had been begotten within the same county; and in the former case, to wit, of a bastard child begotten out of the State, and born within the State, the like sentence shall be passed, except in the imposition of a fine, or corporal punishment in lieu thereof, which part of the sentence shall be omitted.

By the second section of an act entitled "A supplement to sundry penal laws of this Commonwealth," passed March 21st, 1806, (post. chap. 2687,) in all cases where, by law, a fixed or specific fine is affixed to the commission of any crime, the court is authorized to sentence the offender to pay such fine as the Court in its discretion may judge right; *Provided*, the same shall not exceed the fine heretofore affixed by law.

*Respublica v. Roberts.*

Indictment for adultery. The woman was married; but the indictment did not state the defendant to be so; and in fact he was not. The Court, after consideration, delivered an unanimous opinion, that under the act of Assembly of 1705, and the uniform practice of 85 years (a practice, which, though it does not make the law, must be strong evidence of what the law is,) the indictment could not be supported on the charge of adultery: but that the judgment, for fornication only, must be pronounced against the defendant. April term, 1791, in Sup. Court. 2 Dallas, 124.

On a conviction of bastardy, the uniform practice has been, to make an allowance for lying-in expenses, and a gross sum for the support of the child from its birth to the time of judgment. And where the person who has borne these expenses is dead, the money may be well awarded to his representatives. MSS. Reports, Sup. Court.

1705.

## CHAPTER CXXIII.

### *An ACT against bigamy.*

*BE it enacted*, That whosoever shall be convicted of having two wives or two husbands, at one and the same time, shall be whipped on his or her bare back thirty-nine lashes, and be imprisoned during life at hard labour, and the second marriage shall be

Penalty on bigamy.