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Chapter 11: Domestic Relations and Persons

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C H A P T E R 11

Domestic Relations and Persons

WILLIAM J. GREENLER, JR.

This chapter has been subdivided into six topics: (1) marriage; (2) divorce; (3) support of dependents; (4) adoptions and placement of children; (5) parent and child; and (6) guardians and conservators. The choice and sequence of these topics are based more on logical division of the general subject than upon the relative importance of the matters discussed. Hence the chapter will begin with some material which is by no means of arresting importance, under "marriage," whereas the most important and controversial material presented by the legislation and decisions of the survey year will be found in the section on adoptions midway through the chapter, wherein the now famous *Goldman* cases are treated. It is hoped that the arrangement adopted will be best suited to this volume as a work of reference and also as the first of a series wherein the same arrangement may be followed year after year.

A. MARRIAGE

§11.1. Application of the two-year prohibition against remarriage of a libelee. The familiar statutes prohibiting a libelee in a Massachusetts divorce from remarrying for two years after the decree absolute,¹ and providing that a person residing in this state and intending to continue to reside here shall be subject to the prohibition even when he contracts a marriage in another state,² were again applied in the case of *Sweeney v. Kennard*,³ decided on July 1, 1954.

One of the questions raised therein was the validity of the marriage of Byron and Mae Horne, upon which depended the right of Mae's estate to inherit as the widow of Byron. Byron's former wife had divorced him in Massachusetts by a decree which became absolute on December 17, 1914. He married Mae in New York on December 30, 1914, where both described themselves in the application for their

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§11.1. ¹ G.L., c. 208, §24.

² G.L., c. 207, §10.

³ 1954 Mass. Adv. Sh. 603, 120 N.E.2d 910.

license as residents of Massachusetts. They made their home thereafter in New Hampshire until 1917, but within a few weeks after the two years had expired they returned to Massachusetts to live.⁴ The Probate Court granted a decree holding, by necessary implication, that the marriage was valid. On appeal the Supreme Judicial Court, reiterating the familiar principle that the finding implies all subsidiary findings permissible upon the evidence to support it,⁵ held that the Probate Court must have found that the parties did not intend to continue to reside in Massachusetts and that the evidence did not require a contrary finding.

The *Sweeney* case is disappointing in its lack of discussion of the question of change of residence. The record, of course, contained no declarations of intention or the like, but presented the sole question whether remaining outside the state boundary for a period just long enough to cover the prohibition would, of itself, create an inference that the parties intended to continue to reside here. The court, in substance, says that such an inference is not *required*. Whether such an inference would be *permitted* is, of course, not decided.

Although the case of *Barnard v. Barnard*,⁶ another important decision of the survey year, will be considered under the section relative to divorce,⁷ the question of domicile raised therein was very similar to that in the *Sweeney* case. In the *Barnard* case a husband left a wife in Massachusetts and established residence in Nevada "for the sole purpose" of obtaining a divorce, as found by the Probate Court. After the minimum period he brought the action and obtained an uncontested decree. Thereafter he returned, not to Massachusetts but to a nearby town in New Hampshire, where he claimed his residence. However, he continued to maintain his office in Newburyport, commuting back and forth across the state line. The Court held there was no error in the finding that there never was a domicile in Nevada and that the divorce was invalid.

The cases are, of course, not inconsistent: first, because the *Barnard* case does not infer that there was still a domicile in Massachusetts, but only that there was not one in Nevada; and second, because in each case the Court merely held that the evidence did not require a finding different from that of the lower court. Considered together, however, they indicate that questions of residence and domicile are largely factual, and neither case warrants our drawing too broad a rule of law therefrom.

§11.2. Impounding of certain marital records. General Laws, Chapter 46, Section 2A was amended¹ to provide that notices of inten-

⁴ This does not appear clearly in the opinion, but is obtained from the record. The question of residence as reported here was much more clearly and squarely raised by the record and briefs than would appear from the reported decision.

⁵ See *Williams v. Howard*, 1953 Mass. Adv. Sh. 589, 112 N.E.2d 247, and cases cited.

⁶ 1954 Mass. Adv. Sh. 519, 120 N.E.2d 187.

⁷ Section 11.4 *infra*.

§11.2. ¹ Acts of 1954, c. 324.

tion of marriage and marriage records of illegitimate persons be permitted to be inspected, and copies thereof furnished, only upon "proper judicial order" or upon request of the person himself or his attorney, parent, guardian or conservator. A person whose official duties entitled him to the information, in the opinion of the town clerk or state secretary, as the case may be, may be permitted to examine such records; but no provision is made for such person to receive copies.

B. DIVORCE

§11.3. Divorce grounds: Cruel and abusive treatment. Further indication of what seems to be a stiffening attitude on the part of the Court toward divorce may be found in *Adams v. Adams*, decided on April 8, 1954.¹ In that case the principal facts found were that the libelant and libelee were married in 1947 and lived together in Massachusetts until 1951, during which time they had trouble over religion. The libelee on several occasions insulted the libelant with an offensive name pertaining to her religion. It was also found that between 1951 and 1952 the libelant secured employment in New York, returning only occasionally; that the libelant claimed that her husband paid more attention to his motorcycle than to her; that upon her last return here she found that the libelee had rented the house; that this resulted in a quarrel in which, she claimed, he slapped, kicked, and beat her; that the libelant then returned to New York, where she stayed; and that she had never been in fear of her husband. The Probate Court found no cruel and abusive treatment and dismissed the plea for divorce.² This action was upheld on appeal.

The stiffening attitude alluded to in the preceding paragraph, which may be the beginning of a trend, first appeared in *Sylvester v. Sylvester*, decided in 1953.³ In that case there was evidence that the libelant, the husband, was a writer; that his wife on one occasion slammed the kitchen door and broke the glass; that she tore the sleeves out of his shirt; that there were almost continual quarrels, which the libelant believed were deliberately conceived to prevent him from pursuing his employment, and which he said affected him mentally so that his income was substantially reduced; and that on one occasion she kicked him. The Court held that the evidence did not warrant a finding of cruel and abusive treatment and reversed a decree of divorce.

For at least ten years prior to the *Sylvester* case, the Court's tendency had been, almost without exception, to favor the granting of a divorce

§11.3. ¹ 1954 Mass. Adv. Sh. 383, 118 N.E.2d 759.

² The decree was as follows: "After hearing, it appearing to the court that the allegations of said libel are not sustained and that said divorce should not be granted, it is decreed that said libel be continued on the docket; that the said libelee . . . be given the custody of . . . their minor child; and that said libellant be permitted to see and take said child at reasonable times, until the further order of the court."

³ 330 Mass. 397, 113 N.E.2d 830.

wherever possible, and whereas it was not uncommon to hold plainly wrong a decree denying a divorce,⁴ it was very rare to reverse a decree granting a divorce.

It seems probable that the *Sylvester* case, and perhaps even the *Adams* case, would have been decided differently a few years ago. If there is truly a reversed trend, there may be many interesting decisions in the near future.

§11.4. Migratory divorces: Jurisdiction. In *Barnard v. Barnard*,¹ the Court was faced with a difficult case in the area of migratory divorce. In an action in the Probate Court by W against H for separate support, alleging failure to provide and desertion, it appeared that H left her in April, 1953, and had not returned; that he brought a Massachusetts divorce which was dismissed without prejudice; that H went to Nevada on May 30, 1953, and on July 13 brought a libel there, which W did not contest and which resulted in a decree of divorce on August 18, 1953; that H immediately returned to the neighborhood of Newburyport, their former home, living across the state line in New Hampshire and traveling every day to his old place of business in Newburyport. The probate judge granted a decree for separate support, and this was affirmed on appeal. The Supreme Judicial Court restated that the decree of separate support could not stand if the prior divorce in Nevada were valid,² thus squarely raising the issue. The treatment of the issue of domicile, however, is abruptly brief and not at all helpful. Although affirming that "a State cannot validly grant a divorce unless one of the spouses is domiciled within its borders,"³ and citing *Heard v. Heard*,⁴ upon which the appellant relied heavily, the Court, without even specifically distinguishing the *Heard* case, bluntly concluded that "there was no error in the finding that the husband never intended to acquire a domicile in Nevada and never did acquire one."⁵ The appellant had argued in the Probate Court, and in his brief on appeal,⁶ that the husband had left with the intention of never returning to live in Massachusetts, and had not returned; that since he had abandoned his Massachusetts domicile, very little was required to set up a new one, and his physical presence in Nevada, even though temporary, was enough to

⁴ See, for instance, on cruel and abusive treatment, *Mooney v. Mooney*, 317 Mass. 433, 58 N.E.2d 748 (1944) (holding a single act of cruelty enough in the circumstances); *Brown v. Brown*, 323 Mass. 332, 81 N.E.2d 820 (1948) ("sensual" conduct between libelee and her own father, which upset libelant and caused him loss of weight, was held to require a decree of divorce). For opinions in cases involving other grounds or issues, but indicating the philosophy of the Court, compare *Reddington v. Reddington*, 317 Mass. 760, 59 N.E.2d 775, 159 A.L.R. 1448 (1945), and *Hartwell v. Hartwell*, 318 Mass. 355, 61 N.E.2d 537 (1945).

§11.4. ¹ 1954 Mass. Adv. Sh. 519, 120 N.E.2d 187; see also Section 11.1 *supra*.

² 1954 Mass. Adv. Sh. at 520, 120 N.E.2d at 188. See *Welker v. Welker*, 325 Mass. 738, 743, 92 N.E.2d 373, 376 (1950).

³ 1954 Mass. Adv. Sh. at 520, 120 N.E.2d at 188.

⁴ 323 Mass. 357, 82 N.E.2d 219 (1948).

⁵ 1954 Mass. Adv. Sh. at 521, 120 N.E.2d at 189.

⁶ Brief for Respondent, p. 9.

§11.6

constitute a new domicile there. The Court apparently was not impressed.

In the *Heard* case it appeared that the libelant went to Nevada for the purpose of obtaining a divorce, just as in the *Barnard* case. However, in the *Heard* case there had been a home of some degree of permanency established and retained in Nevada, and the libelant never returned to the East. The Court in that case reversed the lower court and held it plainly wrong in finding that there was no bona fide domicile in Nevada, even though a domicile was established for the sole purpose of obtaining a divorce.⁷ However, it is only on the basis of the degree of permanency, or apparent permanency, of the Nevada home that the two cases can be distinguished. In both, the libelant never returned to *live* in Massachusetts (although in the *Barnard* case he did business here); and if the purpose, which was admittedly to obtain a divorce which could not be obtained in accordance with Massachusetts law, did not vitiate the domicile in the *Heard* case, surely it should not in the *Barnard* case. It is disappointing that the Court in the latter case did not see fit to discuss the question and the distinction, which it apparently felt was valid, at greater length.

C. SUPPORT OF DEPENDENTS

§11.5. **Support of dependents: Background.** An amended Chapter 273A,¹ effective October 1, 1954, was designed to transfer jurisdiction of all cases in this category to the District Courts and, in certain respects, to facilitate the procedure involved. The original law, passed in 1951, gave jurisdiction to the Probate Courts.² Briefly, the procedure established under the old law and continued under the new provides that where a person who has a duty of support owed to another (whether wife, child, or parent) resides in another jurisdiction which also has enacted a similar law,³ the obligee may start proceedings for support where he or she is domiciled. The proceedings are then certified to the state where the obligor is domiciled and that state proceeds to obtain jurisdiction of the respondent and to enforce the duty.

§11.6. **Support of dependents: Experience under prior law.** The experience of the fourteen Probate Courts under prior law was characterized by an amazing amount of variation in interpretation of the law and in methods of handling cases. Where the law provided that the district attorney be "notified," the response of the various district at-

⁷ The provisions of G.L., c. 208, §39, to the effect that a divorce obtained in another jurisdiction for the purpose of evading our law will not be recognized, are greatly limited by this and similar decisions. If an actual domicile exists where the divorce is obtained, it must be recognized, notwithstanding the libelant's purpose and this statute.

§11.5. ¹ Acts of 1954, c. 556.

² Acts of 1951, c. 657.

³ Latest information indicates that forty-six states and several territories and possessions have adopted substantially similar laws.

torneys varied from assigning a special assistant to the prosecution of the cases to complete indifference. Where the district attorney did not take an active part, the Probate Courts appointed a local attorney to act for the petitioner; his compensation was of course contingent upon the success attained in finding the respondent and compelling payments. Since the Probate Courts have no probation department, orders had to be enforced by contempt proceedings; and where the district attorney took no part, the procedure was burdensome and ineffective. In at least one Probate Court, the register of probate himself started proceedings for contempt, apparently on the theory that because the respondent was ordered to make the payments to him he became the obligee. Since this amounts to a clerk of court in his official capacity becoming a party to litigation in his own court, it created an anomalous situation which does not seem required by the language of the law. Where a Probate Court to which a case had been referred discovered that the respondent was in fact within the jurisdiction of another Probate Court, the question arose whether direct transfer could be made. Some felt that it could, under the general statute relative to transfer of jurisdiction;¹ others insisted that the case be returned to the state of its origin and a new referral made from there. Although in some counties the over-all success was fairly good, in most it was unsatisfactory.

§11.7. Uniform Reciprocal Enforcement of Support Act: Main provisions. Although the new amendment rewrites most of the chapter,¹ the actual changes, other than the transfer of jurisdiction to the District Courts, are minor. The scope and purpose of the proceedings are the same as heretofore. The basic procedures are the same, including the filing of the petition in the court of the initiating state; the certificate of its judge stating that it appears there may be a duty of support; the forwarding of certified copies of the petition, of the certificate, and of the law itself; and the proceedings in the responding state. Costs are reduced to \$3 for entry plus, where Massachusetts is the responding state, \$2 for service of process.² The court of the responding state has power to appoint counsel to represent the petitioner and assess his compensation against the respondent.

There are two important changes: first, a probation officer may be assigned to the case who will handle the payments and see to the enforcement of any order; and second, provision is made for direct transfer to another District Court when it is discovered that the respondent is in the other district. The first should remove the cause of most of the inefficiency and delay experienced heretofore, and should of itself afford sufficient improvement to justify the change. The second will remove any question as to jurisdiction such as was indicated above.³

§11.6. ¹ G.L., c. 215, §8A.

§11.7. ¹ G.L., c. 273A, inserted by Acts of 1954, c. 556.

² G.L., c. 262, §§2 and 8, as amended by Acts of 1954, c. 556, §§5 and 6. The former law provided an entry fee of \$4 plus, where Massachusetts was the responding state, a deposit in an amount to be set by the Probate Court to cover costs of service.

³ See Section 11.6 *supra*.

Cases in Probate Courts under the old law are transferred to the District Court of appropriate jurisdiction as of October 1, 1954, except that any case which has been heard by the Probate Court, but not decided, will remain in probate until final decree is entered and will then be transferred.⁴

There is provision for appeal on questions of law to the appellate division of the District Court.⁵

D. ADOPTIONS AND PLACEMENT OF CHILDREN

§11.8. **Adoptions: Background problems.** Within recent years much public attention has been focused upon the knotty problems arising in connection with adoptions of children, principally adoptions by strangers to the blood. Racial and religious problems have aggravated the difficulties and made more delicate their solution. Also, there has come to light a widespread traffic in child placement for hire, and in Massachusetts and New York both doctors and lawyers have been prosecuted for illicitly arranging placements and adoptions. In spite of the fact that the Division of Child Guardianship in the State Department of Public Welfare has been given broad power to supervise placement of children, and in spite of the fact that stringent criminal laws regulate such placements and penalize unauthorized placements, the fact remains that many illicit placements are made, presumably for hire, and the only persons who could give evidence to convict the guilty are unwilling to do so for obvious reasons.

§11.9. **Adoptions: The 1950 law.** In 1950 the legislature attempted to strengthen the law in several respects, principally by enacting a provision¹ requiring that the religion of the child be protected by placing the child with foster parents of the same religion "where practicable." In case of diversity, the child's religion was deemed to be that of its mother. The court could allow an adoption involving diversity of religion where it deemed this to be for the best interests of the child, but where it did so the court was required to file a memorandum of the facts involved in its decision as part of the minutes of the proceeding.

The test of this law came in the *Gally* case.² In a split decision involving the adoption of a Catholic child by Jewish foster parents with the consent of the natural mother, the majority held that it was not shown on the record to be "practicable" to place the child with Catholic foster parents because it was not made to appear that any such people were ready and willing — and of course, able and suitable — to adopt this particular child. A forceful dissenting opinion was submitted by Justice Ronan, presenting the arguments which have since met legislative favor. Both opinions are worth a second reading. Whatever may

⁴ Acts of 1954, c. 556, §8.

⁵ Id. §9.

§11.9. ¹ Acts of 1950, c. 737, §3, amending G.L., c. 210, §5B.

² *Petition of Gally*, 329 Mass. 143, 107 N.E.2d 21 (1952).

be the merits of each opinion, the decision of the majority made it clear that the 1950 law had not accomplished its intended result.

§11.10. **Adoptions: The Goldman cases.**¹ In 1953, not long after the *Gally* case, the question was again presented to a Probate Court in even more striking form, accompanied by even more publicity. Twins of Catholic parentage were given over by their mother to Jewish foster parents, under circumstances which did not appear clear, chiefly because the mother took no part after having placed the children. It was brought out in evidence before the Probate Court that the Jewish couple were warned by their attorney that there was doubt that they could adopt the children because of the 1950 statute establishing a policy against a change of religion, but they were convinced that once they had had the children for a while no judge would take them away. The Probate Court appointed a guardian ad litem to represent the interests of the children, and he appeared in opposition to the adoption when the case came to hearing. The guardian ad litem produced in evidence that many fine homes were available in the vicinity in which Catholic couples were waiting for children such as these to adopt, and that if the children were removed from the Goldman home they could be placed in any one of a number of suitable Catholic homes immediately. This was frankly intended to counter the reasoning of the majority in the *Gally* case that these facts did not appear, and therefore that the placement of the child with persons of the same religion was not shown to be "practicable." The probate judge found in part that the Goldmans were substantial people, maintaining a good home financially, and in short that the adoption was a good one apart from the racial² and religious aspects; but that the children could be placed with parents of their own religion and that therefore the statute had not been complied with and the adoption should not be granted. The line was again squarely drawn.

After holding the case under advisement for a relatively long time, the Supreme Judicial Court on September 27, 1954, affirmed the decision of the Probate Court. In a very lucid and readable opinion, Chief Justice Qua pointed out that the judge had, in effect, found that it was "practicable" to place the children with Catholic foster parents, and that the children's mother was still a Catholic even though she had not lived up to the ideals of her religion; that the finding was warranted by the evidence and should not be overturned on the supposition, unsupported by any evidence, that the mother might not consent to an adoption by other people than these petitioners.

The Court upheld the constitutionality of the statute, rejecting both the argument that it violated the provisions regarding freedom of religion and the contention that it interfered with the mother's right to determine her child's religion. The Court observed that "the principle

§11.10. ¹ Petitions of Goldman, 1954 Mass. Adv. Sh. 745, 121 N.E.2d 843.

² It was found that the twins were blond and blue-eyed and that the petitioners had dark complexions and dark hair, and that there was an obvious racial diversity, 1954 Mass. Adv. Sh. 745, 746, 121 N.E.2d 843, 844.

that children should, in general, be adopted within the faith of their natural parents has received widespread approval,"³ and that most of our states have statutes similar to the Massachusetts law. Steps have been taken to appeal the decision to the United States Supreme Court on constitutional grounds.

§11.11. Adoptions: The new law. The 1954 law,¹ which resulted from the foregoing background, and which was enacted while the *Goldman* cases were pending before the Supreme Judicial Court, inserts a new Section 2A in Chapter 210 of the General Laws. It provides that no decree for adoption of a child under fourteen shall be entered unless the "petitioner"² is a blood relative or a stepparent of the child, or was nominated in the will of a deceased parent of the child to be guardian or adoptive parent, or unless the placement was made or the petition for adoption approved by the Department of Public Welfare or an agency authorized by the Department for the purpose.

Provision is made for any petitioner, aggrieved by the *arbitrary* refusal of the Department or an agency to approve a petition, to apply for a review by an advisory board of the Department set up in another new law;³ and an adverse finding of the advisory board may be appealed to the Probate Court in which the petition is pending, "which shall review the action of the department or agency and shall make final determination as to the approval" by the board.⁴

There is also added to Section 5A of Chapter 210 a provision that after the report of the Department in regard to a pending adoption has been filed, the court may, where it is deemed in the best interests of the child, order its removal from the adoptive home and appoint a guardian⁵ to have custody and provide for its future care.

§11.12. Adoptions: Comments on the new law. The most casual analysis of the new law evokes the observation that the State Department of Public Welfare and the social agencies approved by it are given broad power. This was, of course, desired by both social and religious authorities as the law was being conceived and sponsored. Except in cases of relatives, stepparents, and testamentary nominations, where the law does not apply, the Department or an approved agency can effectively prevent a decree of adoption unless its action is shown to be "arbitrary." This provision would have settled the *Goldman* case, for the Department and a local agency both disapproved of the adoption of the children.

* 1954 Mass. Adv. Sh. 745, 750, 121 N.E.2d 843, 846.

§11.11. ¹ Acts of 1954, c. 649, approved June 10, 1954.

² *Id.* §1.

³ Acts of 1954, c. 646; see Section 11.13 *infra*.

⁴ This will undoubtedly raise the question whether "review" is limited to the record of the hearing before the advisory board, or whether additional evidence will be received.

⁵ Acts of 1954, c. 649, §2. The guardian must be a relative or a person designated by the Department or an authorized agency. Before removal, notice and a hearing are required.

The principal power of the Department and such agencies, however, is largely negative, or preventive. Approval of the Department or agency does not by any means require that the court grant the adoption. The older provisions of Chapter 210 are still in effect, and, in substance, require the court to find that the adoption is for the best interests of the child under all the circumstances.

To the same degree as the "veto" power of the Department and approved agencies is extended, so also is their responsibility. The success of the new law in its application and administration will depend largely upon the discretion and judgment exercised by the personnel of these agencies.

§11.13. Child protection law: General revision enacted. Along with the new adoption law discussed in the immediately preceding sections, and enacted on the same day, was a rather lengthy and comprehensive revision of the child care and protection law.¹ Its policies stem from the same problems as prompted the adoption law: namely, to regulate further the placement of nonrelatives, to prevent trafficking in placements and adoptions for hire or reward, and to give greater protection to the physical, cultural, and particularly the religious well-being of children. To this end various provisions appear including a partial reorganization of the Department of Public Welfare. Without enumerating every section, some of which are of little import, the following will summarize the more important provisions.

§11.14. Child protection law: Specific provisions. After preliminary statements of policy and definitions, Sections 4-13 of the new law proceed with strict regulation of "independent foster homes for children." A person is maintaining such a home if he, not being a relative by blood or by marriage or the legal guardian of the child, takes into his care a child under sixteen for "hire, gain, or reward."¹ The maintenance of an independent foster home as so defined requires a permit from the Department of Public Welfare. Further, no person other than a parent is permitted to place a child under sixteen of whom he is not the legal guardian with any person not a relative by blood or marriage for the purpose of giving the child a home or for board or for adoption. It is noteworthy that this sentence contains no mention of gain or reward: it is a flat prohibition.

The Department is given power to visit and in some cases is required to visit children in foster homes. Agents of the Department are authorized to remove children subject to the foregoing provisions where, in the judgment of the Department the welfare of the child or its protection from neglect or abuse requires its removal, and they may apply for a warrant to enter, investigate, and remove as aforesaid to a court "having jurisdiction." It is not clearly defined what court "has jurisdiction." Probate Courts have jurisdiction of adoption; District Courts have jurisdiction of several branches of the law relative to

§11.13. ¹ Acts of 1954, c. 646, amending G.L., c. 119, §§1-51 inclusive.

§11.14. ¹ Acts of 1954, c. 646, §1(4).

neglect of family, juvenile cases, and the like. In Section 24 the Boston Juvenile Court and the District Courts, juvenile sessions, are given jurisdiction to commit children to the care of the Department.

Sections 14 to 22, inclusive, regulate agencies providing foster care for children, and their licensing and control by the Department. The pattern is similar to that of the provisions regarding independent foster homes. Section 23 gives the Department power, and in certain cases the duty, to accept children for foster care, and to seek guardianship of any minor who is without proper guardianship, including rights of custody.

Sections 24 to 31, inclusive, provide for commitment to the care of the Department by the juvenile sessions of the District Courts, or the Boston Juvenile Court, of children found without proper care and discipline, and to assess the persons responsible for payment for their care and support.

Sections 32 and 33 provide that the children shall be placed (with certain exceptions in extraordinary cases) in private families; and that the right of the parents to have the child brought up in their religion and the "right"² of the child to be brought up in the religion of its parents shall be protected.

The remaining sections regulate abandonment and interstate traffic in children, and make miscellaneous provisions complementing the foregoing.

§11.15. Advisory board within the Department of Public Welfare. The same act¹ sets up an advisory board in the Department consisting of fifteen members; five members are required to be women, and five shall be "persons with special experience and interest in child welfare," who shall constitute a special advisory subcommittee.²

E. PARENT AND CHILD

§11.16. Criminal neglect of children. The statute punishing abandonment and neglect of minor children was broadened and strengthened by 1954 legislation.¹ The law applies to any husband or father, to a mother, to a guardian with custody or any "custodian"; and it penalizes not only desertion, abandonment, and neglect, but also failing to provide proper "physical, educational, or moral care and guidance" and permitting a child to "grow up under conditions . . . damaging to the child's sound character development," and failing "to provide proper attention for said child."

² The law speaks of the "right" of the child being denied to the parents, even though the latter are both deceased. Although the natural right of a child to the religion of its parents may be clear, at least morally speaking, it is difficult to follow how a right of one person can be denied to another, especially when that latter person is deceased.

§11.15. ¹ Acts of 1954, c. 646, §2, amending G.L., c. 18, §2.

² For further discussion of the new board, see Section 19.4 *infra*.

§11.16. ¹ Acts of 1954, c. 539, amending G.L., c. 273, §1.

§11.17. **Blood tests to determine paternity.** Legislation approved March 23, 1954,¹ for the first time in this Commonwealth gives official recognition to the value of blood tests in questions of paternity. By this law, the defendant in a proceeding to determine paternity has a right to request that a serology test be performed on the mother, child, and himself by a physician designated by the court. Refusal of the parties to submit to the test may be used against them, "unless the court, for good cause, otherwise orders." The results may be admissible in evidence, but *only* in case of definite *exclusion* of the defendant as the father.

F. GUARDIANS AND CONSERVATORS

§11.18. **Removal of guardian and appointment of successor.** Legislation in 1954 provided that upon removal of a guardian or conservator (as well as other fiduciaries) the Probate Court may, if the petition for removal contains a prayer therefor, appoint a successor in the same decree without a separate petition for appointment.¹

Heretofore there has sometimes been an unavoidable hiatus between a removal and the appointment of a successor to fill the vacancy, as, for instance, where the appointment requires notice (citation). It is obvious that this can be undesirable, particularly in the case of guardians and conservators of insane or incompetent persons needing personal care. The new statute is designed to avoid this, by including the removal and the filling of the vacancy in one petition, one notice (citation), and one decree.

§11.19. **Powers of temporary conservator.** In 1954 new legislation¹ provided that a temporary conservator shall have the same powers as a permanent conservator and shall continue to have such powers pending an appeal, unless otherwise ordered, until the appointment of a permanent conservator or until the trust is legally terminated. The provisions regarding temporary conservators are thus made parallel with those already in effect regarding temporary guardians.

§11.17. ¹ Acts of 1954, c. 232, inserting new §12A in G.L., c. 273.

§11.18. ¹ Acts of 1954, c. 478, §2.

§11.19. ¹ Acts of 1954, c. 330.