Common law marriage and its development in the United States

Koegel Otto Erwin
Title: Common law marriage and its development in the United States

Author: Koegel Otto Erwin

This is an exact replica of a book. The book reprint was manually improved by a team of professionals, as opposed to automatic/OCR processes used by some companies. However, the book may still have imperfections such as missing pages, poor pictures, errant marks, etc. that were a part of the original text. We appreciate your understanding of the imperfections which can not be improved, and hope you will enjoy reading this book.
COMMON LAW MARRIAGE
AND ITS DEVELOPMENT
IN THE UNITED STATES

By

OTTO E. KOEGEL, D.C.L.

Associate Counsel, United States Veterans' Bureau, Professor of Domestic
Relations, National University Law School, Member of the Central
Committee on Hereditary Defectives in the United States of
the Second International Congress of Eugenics, Mem-
ber of the Committee on Marriage Laws of
the American Association for Organizing
Family Social Work, etc.

JOHN BYRNE & COMPANY
LAW PUBLISHERS AND BOOKSELLERS
WASHINGTON, 1922
Copyright, 1922

By

OTTO ERWIN KOEGEL
To
Honorable Charles F. Cramer, Esquire,
General Counsel U. S. Veterans' Bureau and Special Assistant to the Attorney General of the United States,
"A man among men,"
this work is affectionately dedicated
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introductory</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Chapter I</td>
<td>Marriage Prior to The Council of Trent (1563)</td>
<td>11</td>
</tr>
<tr>
<td>Chapter II</td>
<td>The Council of Trent</td>
<td>22</td>
</tr>
<tr>
<td>Chapter III</td>
<td>The English Marriage Act of 1753</td>
<td>27</td>
</tr>
<tr>
<td>Chapter IV</td>
<td>The Great Controversy in England in the Nineteenth Century</td>
<td>37</td>
</tr>
<tr>
<td>Chapter V</td>
<td>Marriage in the American Colonies</td>
<td>54</td>
</tr>
<tr>
<td>Chapter VI</td>
<td>Early American decisions for and Against Common Law Marriage</td>
<td>76</td>
</tr>
<tr>
<td>Chapter VII</td>
<td>Chancellor Kent’s Dicta, and the Development of Common Law Marriage</td>
<td>79</td>
</tr>
<tr>
<td>Chapter VIII</td>
<td>The Present State of the Law on the Subject</td>
<td>105</td>
</tr>
<tr>
<td>Chapter IX</td>
<td>Tabular Analysis and Conclusion</td>
<td>161</td>
</tr>
<tr>
<td>Index</td>
<td></td>
<td>177</td>
</tr>
</tbody>
</table>
INTRODUCTORY

The development of marriage as a social institution is a subject which raises some of the most perplexing problems of the whole wide field of anthropology and sociology. Whether “the first blessing God gave to man was society, and that society was a marriage and that marriage was confederate by God Himself and hallowed by a blessing,”1 or whether “marriage and agnatic relationship belong to comparatively recent times”;2 are questions with which the law is not greatly concerned.

Again, the strictly legal aspects of marriage cover a wide area in the field of jurisprudence. Our present concern, however, is only with the legal effect of informal or irregular marriages by the common law of England and the development of that law in the United States.

Common law marriage may be defined as a marriage which does not depend for its validity upon any religious or civil ceremony but is created by the consent of the parties as any other contract. The term “common law marriage,” however, is not strictly an accurate one. Some writers on the subject prefer not to call it by that name, and some of those that do, make apologies for it.

---

1Bishop Jeremy Taylor’s Works, Ed. 1848, p. 207 (Sermon on the Marriage Ring). “‘Marriage was not originated by human law. When God created Eve, she was a wife of Adam; they then and there occupied the status of husband to wife and wife to husband.’” Grigsby v. Rieb, 105 Tex. 597 (1913) “‘Marriage was first instituted by God Himself in paradise between Adam and Eve,’ says a writer on Canon Law in 1734. (Aylliffe, Parergon Juria Canonici Anglicani, p. 359.)

2McLennan, Primitive Marriage, Reprinted in Studies in Ancient History, p. 87 (Macmillan Co. 1886).
INTRODUCTORY.

At the same time the term is used by practically all at the bar, and there is no escape from it. In this discussion the term "common law marriage" will be used in two senses: One, an informal marriage recognized by the common law of England; Two, an informal marriage recognized by the law of a particular State.

There is no exhaustive treatise on the subject of common law marriage in the United States. Indeed, there is nothing on the subject except such brief discussions as are contained in works on Matrimonial Institutions, Domestic Relations, Marriage and Divorce, and a few rather copious notes in the reports.3 Because of the lack of any adequate treatment of the subject, the Bureau of War Risk Insurance was recently obliged to compile a digest of the laws and decisions of the several states on common law marriage for use in connection with hundreds of claims founded on alleged common law marriages.4 That compilation is extremely brief and was never intended as a treatise on common law marriage. The bibliography of the subject chiefly consists of some thirty-five articles in legal periodicals (only a very few of which exceed one page in length), the brief statements in works on Marriage and Domestic Relations, and the decisions of the courts.

This work is not intended to be a complete treatise on the subject. Its purpose is to show the development of common law marriages in the United States and the present state of the law on the subject in this country. Among the facts shown in this work are the following:

---

4See Bibliography.