

Divorce, Law Prohibiting Marriage After, Repealed.

Section 146 of the Civil Code was repealed by House Bill 142 of the Laws of 1895, though such section was not mentioned in the title of the bill.

Helena, Montana, Sept., 17, 1907.

Hon. Harry L. Wilson,
County Attorney,
Billings, Montana.

Dear Sir:—

Your letter of the 12th inst., relating to the status of Sec. 146 of the Civil Code, received.

You state that you have been advising the clerk of the court to disregard this section in issuing marriage licenses on the ground that

it appeared that it was the intent of the legislature to repeal such section, but that you have noticed where the judges of two district courts have held that such section is in full force and effect, and that you have also been informed that this office has rendered an opinion to the same effect.

The present attorney general has given no opinion construing this law. Attorney General Nolan gave an official opinion in which he held that said section 146 was repealed. His opinion was based upon the authority of the case of *In re Ryan*, 20 Mont. 64, which construed House Bill No. 291, passed by the Fourth Legislative Assembly. Upon examination of that bill we find the title to read as follows:

“House Bill 291.”

“An Act to amend Sections 3310, 3335, 3336, 3342, 3343, 3349, 3357, 3358, 3360, 3361, 3362, 3363, 3380, Subdivision 80 of Section 3390, Section 3382, 3425, 3428, 3429, 3469, 3472, and to repeal Sections 3365, 3403 of the political code and to repeal sections 1 to 22 inclusive of ‘An Act to amend Chap. 32 Fifth Division of the Compiled Statutes of Montana, relating to Municipal Corporations,’ and amendments thereto, approved September 18, 1887, and also amendments thereto, approved March 14, 1889, approved March 7, 1893”. BE IT ENACTED, Etc.,

and that Section 14 of said bill reads as follows:

“That Section 3466 of the Political Code be amended so as to read as follows: (The section being set out in full as amended).

It will be noticed that section 3466 is not mentioned in the title quoted above.

Upon examination of House Bill No. 142 we find that its title reads as follows:

“An act to amend sections 90, 95, 110 and 112 of the Civil Code of the State of Montana”.

That section 2 of said bill reads as follows:

“That section 91 of the Civil Code of the State of Montana is hereby repealed”.

It will be noticed that Section 91 is not mentioned in the title of of said bill.

Said section 146 of the present civil code was numbered section 91 in the original code as submitted by the code commission.

From the above comparison of said House Bills 291 and 142 it is found that in the former they amend a certain section of the codes as submitted by the code commission without referring to such section in the title, while in the latter bill they repeal a certain section of the code as submitted by the code commission without referring to such section in the title.

In the case of *In re Ryan* cited above, the court in construing said bill No. 291, in effect held that such bill was “incidental to the codification and general revision of all the laws in force”, and that it clearly amended said Section 3466, although said section was not mentioned in the title.

In our opinion that decision of the supreme court is directly in point and controlling upon the question of the sufficiency of the repeal of said section 146 of the civil code. In the opinion given by Judge Bourquin we find no reference made to this decision of the supreme court and, apparently, such decision was not called to the court's attention.

We agree with the opinion heretofore given by Attorney General Nolan, and hold that until such time as the supreme court has passed upon the question the clerk of the court should treat such section 146 as having been repealed by House Bill 142 of the Fourth Legislative Assembly.

Yours very truly,

ALBERT J. GALLEN,

Attorney General.