

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and is found by me to be a true and correctly printed copy of the said Bill.

W. A. ETHERIDGE,
Clerk of Councils.

Ref. TRE/10/9.

Matrimonial Causes Ordinance

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Assented to in Her Majesty's name this 6th day of August 1979.

J. R. W. PARKER,
Governor.

LS



No. 14

1979

Colony of the Falkland Islands

IN THE TWENTY-EIGHTH YEAR OF THE REIGN OF
Her Majesty Queen Elizabeth II.

JAMES ROLAND WALTER PARKER, C.M.G., O.B.E.
Governor.

An Ordinance

To make further and better provision in
respect of the law governing matrimonial causes
and of matters incidental thereto or connected
therewith.

(22nd August 1979)

Date of commencement.

ENACTED by the Legislature of the Colony of the Falkland
Islands, as follows —

Enacting clause.

PART I

PRELIMINARY

1. This Ordinance may be cited as the Matrimonial Causes
Ordinance 1979, and shall come into operation on the 22nd day of
August 1979.

Short title and commence-
ment.

2. (1) In this Ordinance, unless the context otherwise
requires —

Interpretation.
1973 c. 18 s. 52

“adopted” means adopted in pursuance of an adoption order
made under any enactment in force in the Colony at any time
relating to the adoption of children;

“child”, in relation to one or both of the parties to a marriage,
includes an illegitimate or adopted child of that party or, as
the case may be, of both parties;

“child of the family”, in relation to the parties to a marriage,
means —

- (a) a child of both of those parties; and
- (b) any other child who has been treated by both of those
parties as a child of their family;

"court" means the Supreme Court;
"custody", in relation to a child, includes access to the child;
"education" includes training;
"the Proctor" means the Chief Secretary.

(2) In this Ordinance —

- (a) references to financial provision orders, periodical payments and secured periodical payments orders and orders for the payment of a lump sum, and references to property adjustment orders, shall be construed in accordance with section 24 below; and
- (b) references to orders for maintenance pending suit and to interim orders for maintenance shall be construed respectively in accordance with section 25 and section 30 (5) below.

(3) For the avoidance of doubt it is hereby declared that references in this Ordinance to remarriage include references to a marriage which is by law void or voidable.

PART II

DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

JURISDICTION OF COURT

3. (1) The court shall have jurisdiction in —

- (a) proceedings for divorce, judicial separation or nullity of marriage; and
- (b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 22 below.

(2) The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) either of the parties to the marriage —

- (a) is domiciled in the Colony on the date when the proceedings are begun; or
- (b) was habitually resident in the Colony throughout the period of one year ending with that date.

(3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if) either of the parties to the marriage —

- (a) is domiciled in the Colony on the date when the proceedings are begun; or
- (b) was habitually resident in the Colony throughout the period of one year ending with that date; or
- (c) died before that date and either —
 - (i) was at death domiciled in the Colony; or
 - (ii) had been habitually resident in the Colony throughout the period of one year ending with the date of death.

(4) The court shall have jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved if (and only if) the petitioner —

- (a) is domiciled in the Colony on the date when the proceedings are begun; or
- (b) was habitually resident in the Colony throughout the period of one year ending with that date.

DIVORCE

4. (1) Subject to section 6 below, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say —

- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Ordinance referred to as "two years' separation") and the respondent consents to a decree being granted;
- (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Ordinance referred to as "five years' separation").

(3) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.

(4) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (2) above, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to sections 6 (3) and 8 below, grant a decree of divorce.

(5) Every decree of divorce shall in the first instance be a decree nisi and shall not be made absolute before the expiration of six months from its grant unless the court by general orders from time to time fixes a shorter period, or unless in any particular case the court from time to time by special order fixes a shorter period than the period otherwise applicable for the time being by virtue of this subsection.

5. (1) One party to a marriage shall not be entitled to rely for the purposes of section 4 (2) (a) above on adultery committed by the other if, after it became known to him that the other had committed that adultery, the parties have lived with each other for a period exceeding, or periods together exceeding six months.

(2) Where the parties to a marriage have lived with each other after it became known to one party that the other had committed adultery, but subsection (1) above does not apply, in any proceedings for divorce in which the petitioner relies on that adultery the fact that the parties have lived with each other after that time shall be disregarded in determining for the purposes of section 4 (2) (a) above whether the petitioner finds it intolerable to live with the respondent.

(3) Where in any proceedings for divorce the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of section 4 (2) (b) above whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.

(4) For the purposes of section 4 (2) (c) above the court may treat a period of desertion as having continued at a time when the

Jurisdiction of court.
1973 c. 45 s. 5

Divorce on breakdown of
marriage.
1973 c. 18 s. 1

Supplemental provisions
as to facts raising pre-
sumption of breakdown.
1973 c. 18 s. 2

deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

(5) In considering for the purposes of section 4 (2) above whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

(6) For the purposes of section 4 (2) (d) and (e) above and this section a husband and wife shall be treated as living apart unless they are living with each other in the same household, and references in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

(7) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of section 4 (2) (d) above the petitioner alleges that the respondent consents to a decree being granted the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

6. (1) Subject to subsection (2) below, no petition for divorce shall be presented to the court before the expiration of the period of three years from the date of marriage (hereafter in this section referred to as "the specified period").

(2) The judge may, on an application made to him allow the presentation of a petition for divorce within the specified period on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent; but in determining the application the judge shall have regard to the interests of any child of the family and to the question whether there is reasonable probability of a reconciliation between the parties during the specified period.

(3) If it appears to the court, at the hearing of a petition for divorce presented in pursuance of leave granted under subsection (2) above, that the leave was obtained by the petitioner by any misrepresentation or concealment of the nature of the case, the court may —

- (a) dismiss the petition, without prejudice to any petition which may be brought after the expiration of the specified period upon the same facts, or substantially the same facts, as those proved in support of the dismissed petition; or
- (b) if it grants a decree, direct that no application to make the decree absolute shall be made during the specified period.

(4) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which occurred before the expiration of the specified period.

7. (1) A person shall not be prevented from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation or an order under, or having effect as if made under, the Matrimonial Proceedings (Court of Summary Jurisdiction) Ordinance 1967.

(2) On a petition for divorce in such a case as is mentioned in subsection (1) above, the court may treat the decree or order as sufficient proof of any adultery, desertion or other fact by reference to which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.

(3) Where a petition for divorce in such a case follows a decree of judicial separation or an order containing a provision exempting one party to the marriage from the obligation to cohabit with the other, for the purposes of that petition a period of desertion immediately preceding the institution of the proceedings for the decree or order shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

8. (1) The respondent to a petition for divorce in which the petitioner alleges five years' separation may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then —

- (a) if the court finds that the petitioner is entitled to rely in support of his petition on the fact of five years' separation and makes no such finding as to any other fact mentioned in section 4 (2) above, and
- (b) if apart from this section the court would grant a decree on the petition,

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(3) For the purposes of this section hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage was not dissolved.

9. If at any stage of proceedings for divorce it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation.

The power conferred by the foregoing provision is additional to any other power of the court to adjourn proceedings.

10. Provision may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated, or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

11. (1) In the case of a petition for divorce —

- (a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Proctor, who shall argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued;

Refusal of decree in five year separation cases on grounds of grave hardship to respondent.

1973 c. 18 s. 5

Provision to encourage reconciliation.

1973 c. 18 s. 6 (2)

Consideration by the court of certain agreements or arrangements.

1973 c. 18 s. 7

Intervention of Proctor.

1973 c. 18 s. 8

Restriction on petitions for divorce within three years of marriage.

1973 c. 18 s. 3

Divorce not precluded by previous judicial separation.

1973 c. 18 s. 4

10 of 1967.

- (b) any person may at any time during the progress of the proceedings or before the decree nisi is made absolute give information to the Proctor on any matter material to the due decision of the case, and the Proctor may thereupon take such steps as he considers necessary or expedient.

(2) Where the Proctor intervenes or shows cause against a decree nisi in any proceedings for divorce, the court may make such order as may be just as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of those parties by reason of his so doing.

12. (1) Where a decree of divorce has been granted but not made absolute, then, without prejudice to section 11 above, any person (excluding a party to the proceedings other than the Proctor) may show cause why the decree should not be made absolute by reason of material facts not having been brought before the court; and in such a case the court may —

- (a) notwithstanding anything in section 4 (5) above (but subject to sections 13 (2) to (4) and 44 below) make the decree absolute; or
(b) rescind the decree; or
(c) require further inquiry; or
(d) otherwise deal with the case as it thinks fit.

(2) Where a decree of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in paragraphs (a) to (d) of subsection (1) above.

13. (1) Where in any case the court has granted a decree of divorce on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' separation coupled with the respondent's consent to a decree being granted and has made no such finding as to any other fact mentioned in section 4 (2) above, the court may, on an application made by the respondent at any time before the decree is made absolute, rescind the decree if it is satisfied that the petitioner misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to give his consent.

(2) The following provisions of this section apply where —

- (a) the respondent to a petition for divorce in which the petitioner alleged two years' separation or five years' separation coupled, in the former case, with the respondent's consent to a decree being granted, has applied to the court for consideration under subsection (3) below of his financial position after the divorce; and
(b) the court has granted a decree on the petition on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' or five years' separation (as the case may be) and has made no such findings as to any other fact mentioned in section 4 (2) above.

(3) The court hearing an application by the respondent under subsection (2) above shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and,

subject to subsection (4) below, the court shall not make the decree absolute unless it is satisfied —

- (a) that the petitioner should not be required to make any financial provision for the respondent, or
(b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.

(4) The court may if it thinks fit make the decree absolute notwithstanding the requirements of subsection (3) above if—

- (a) it appears that there are circumstances making it desirable that the decree should be made absolute without delay, and
(b) the court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the court may approve.

NULLITY

14. A marriage celebrated after the commencement of this Ordinance shall be void on the following grounds only, that is to say —

- (a) that it is not a valid marriage under the provisions of the Marriage Ordinance (that is to say where —
(i) the parties are within the prohibited degrees of relationship;
(ii) either party is under the age of sixteen; or
(iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage);
(b) that at the time of the marriage either party was already lawfully married;
(c) that the parties are not respectively male and female.
(d) in the case of a polygamous marriage entered into outside the Colony, that either party was at the time of the marriage domiciled in the Colony.

For the purposes of paragraph (d) of this section a marriage may be polygamous although at its inception neither party has any spouse additional to the other.

15. A marriage celebrated after the commencement of this Ordinance shall be voidable on the following grounds only, that is to say —

- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
(b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
(c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
(d) that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental derangement within the meaning of the Mental Health Ordinance of such a kind or to such an extent as to be unfitted for marriage;
(e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
(f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.

16. (1) The court shall not, in proceedings instituted after the commencement of this Ordinance, grant a decree of nullity on the

Proceedings after decree nisi: general powers of court.

1973 c. 18 s. 9

Proceedings after decree nisi: special protection for respondent in separation cases.

1973 c. 18 s. 10

Grounds on which a marriage is void.

1973 c. 18 s. 11

Cap. 43

Grounds on which a marriage is voidable.

1973 c. 18 s. 12

Cap. 46

Bars to relief where marriage is voidable.

1973 c. 18 s. 13

ground that a marriage is voidable if the respondent satisfies the court —

- (a) that the petitioner, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and
- (b) that it would be unjust to the respondent to grant the decree;

(2) Without prejudice to subsection (1) above, the court shall not grant a decree of nullity by virtue of section 15 above on the grounds mentioned in paragraph (c), (d), (e) or (f) of that section unless it is satisfied that proceedings were instituted within three years from the date of the marriage.

(3) Without prejudice to subsections (1) and (2) above, the court shall not grant a decree of nullity by virtue of section 15 above on the grounds mentioned in paragraph (e) or (f) of that section unless it is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.

17. (1) Where, apart from this Ordinance, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside the Colony, nothing in section 14, 15 or 16 (1) above shall —

- (a) preclude the determination of that matter as aforesaid; or
- (b) require the application to the marriage of the grounds or bar there mentioned except so far as applicable in accordance with those rules.

(2) In the case of a marriage which purports to have been celebrated under the Foreign Marriage Acts 1892 to 1947 or has taken place outside the Colony and purports to be a marriage under common law, section 14 above is without prejudice to any ground on which the marriage may be void under those Acts or, as the case may be, by virtue of the rules governing the celebration of marriages outside the Colony under common law.

18. Sections 4 (5), 11 and 12 above shall apply in relation to proceedings for nullity of marriage as if for any reference in those provisions to divorce there were substituted a reference to nullity of marriage.

19. A decree of nullity granted after the commencement of this Ordinance in respect of a voidable marriage shall operate to annul the marriage only as respects any time after the decree has been made absolute, and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time.

OTHER MATRIMONIAL SUITS

20. (1) A petition for judicial separation may be presented to the court by either party to a marriage on the ground that any such fact as is mentioned in section 4 (2) above exists, and the provisions of section 5 above shall apply accordingly for the purposes of a petition for judicial separation alleging any such fact, as they apply in relation to a petition for divorce alleging that fact.

(2) On a petition for judicial separation it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent, but the court shall not be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in section 4 (2) above it shall, subject to section 44 below, grant a decree of judicial separation.

(3) Sections 9 and 10 above shall apply for the purpose of encouraging the reconciliation of parties to proceedings for judicial

separation and of enabling the parties to a marriage to refer to the court for its opinion an agreement or arrangement relevant to actual or contemplated proceedings for judicial separation, as they apply in relation to proceedings for divorce.

21. (1) Where the court grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(2) If while a decree of judicial separation is in force and the separation is continuing either of the parties to the marriage dies intestate as respects all or any of his or her real or personal property, the property as respects which he or she died intestate shall devolve as if the other party to the marriage had then been dead.

(3) Notwithstanding anything in section 4 (1) (a) of the Matrimonial Proceedings (Court of Summary Jurisdiction) Ordinance 1967, a provision in force under an order made, or having effect as if made, under that section exempting one party to a marriage from the obligation to cohabit with the other shall not have effect as a decree of judicial separation for the purposes of subsection (2) above.

22. (1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court may, if satisfied that such reasonable grounds exist, grant a decree of presumption of death and dissolution of the marriage.

(2) In any proceedings under this section the fact that for a period of seven years or more the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead until the contrary is proved.

(3) Sections 4 (5), 11 and 12 above shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

(4) It is hereby declared that neither collusion nor any other conduct on the part of the petitioner which has at any time been a bar to relief in matrimonial proceedings constitutes a bar to the grant of a decree under this section.

GENERAL

23. If in any proceedings for divorce the respondent alleges and proves any such fact as is mentioned in subsection (2) of section 4 above (treating the respondent as the petitioner and the petitioner as the respondent for the purpose of that subsection) the court may give to the respondent the relief to which he would have been entitled if he had presented a petition seeking that relief.

PART III

FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

FINANCIAL PROVISION AND PROPERTY ADJUSTMENT ORDERS

24. (1) The financial provision orders for the purposes of this Ordinance are the orders for periodical or lump sum provision available (subject to the provisions of this Ordinance) under section 26 below for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation and under section 30 (6) below on proof of neglect by one party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family, that is to say —

- (a) any order for periodical payments in favour of a party to a

Effects of judicial separation.
1973 c. 18 s. 18

10 of 1967.

Presumption of death and dissolution of marriage.
1973 c. 18 s. 19

Relief for respondent in divorce proceedings.
1973 c. 18 s. 20

Financial provision and property adjustment orders.
1973 c. 18 s. 21

Foreign marriages.
1973 c. 18 s. 14

Application of ss. 4 (5), 11 and 12 to nullity proceedings.
1973 c. 18 s. 15

Effect of decree of nullity in case of voidable marriage.
1973 c. 18 s. 16

Judicial separation.
1973 c. 18 s. 17

marriage under section 26 (1) (a) or 30 (6) (a) or in favour of a child of the family under section 26 (1) (d), (2) or (4) or 30 (6) (d);

- (b) any order for secured periodical payments in favour of a party to a marriage under section 26 (1) (b) or 30 (6) (b) or in favour of a child of the family under section 26 (1) (e), (2) or (4) or 30 (6) (e); and
- (c) any order for lump sum provision in favour of a party to a marriage under section 26 (1) (c) or 30 (6) (c) or in favour of a child of the family under section 26 (1) (f), (2) or (4) or 30 (6) (f),

and references in this Ordinance to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or some of the financial provisions orders requiring the sort of financial provision in question according as the context of each reference may require.

(2) The property adjustment orders for the purposes of this Ordinance are the orders dealing with the property rights available (subject to the provisions of this Ordinance) under section 27 below for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say —

- (a) any order under subsection (1) (a) of that section for a transfer of property;
- (b) any order under subsection (1) (b) of that section for a settlement of property; and
- (c) any order under subsection (1) (c) or (d) of that section for a variation of settlement.

ANCILLARY RELIEF IN CONNECTION WITH DIVORCE PROCEEDINGS, ETC.

Maintenance pending suit.
1973 c. 18 s. 22

25. On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

Financial provision orders
in connection with divorce
proceedings, etc.
1973 c. 18 s. 23

26. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;
- (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;
- (e) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;

- (f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph (d), (e) or (f) above, to the restrictions imposed by section 32 (1) and (3) below on the making of financial provision orders in favour of children who have attained the age of twenty-one.

(2) The court may also, subject to those restrictions, make any one or more of the orders mentioned in subsection (1) (d), (e) and (f) above —

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree; and
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(3) Without prejudice to the generality of subsection (1) (c) or (f) above —

- (a) an order under this section that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section in his or her favour;
- (b) an order under this section for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section in his favour to be met; and
- (c) an order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(4) The power of the court under subsection (1) or (2) (a) above to make an order in favour of a child of the family shall be exercisable from time to time; and where the court makes an order in favour of a child under subsection (2) (b) above, it may from time to time, subject to the restrictions mentioned in subsection (1) above, make a further order in his favour of any of the kinds mentioned in subsection (1) (d), (e) or (f) above.

(5) Without prejudice to the power to give a direction under section 33 below for the settlement of an instrument by the Registrar of the Supreme Court where an order is made under subsection (1) (a), (b) or (c) above on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

27. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first mentioned party is entitled, either in possession or reversion;

Property adjustment
orders in connection with
divorce proceedings, etc.
1973 c. 18 s. 24

- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement,

subject, however, in the case of an order under paragraph (a) above, to the restrictions imposed by section 32 (1) and (3) below on the making of orders for a transfer of property in favour of children who have attained the age of twenty-one.

(2) The court may make an order under subsection (1) (c) above notwithstanding that there are no children of the family.

(3) Without prejudice to the power to give a direction under section 33 below for the settlement of an instrument by the Registrar of the Supreme Court, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

28. (1) It shall be the duty of the court in deciding whether to exercise its powers under section 26 (1) (a), (b) or (c) or 27 above in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say —

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

(2) Without prejudice to subsection (3) below, it shall be the duty of the court in deciding whether to exercise its powers under section 26 (1) (d), (e) or (f), (2) or (4) or 27 above in relation to a child circumstances of the case including the following matters, that is to say —

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the breakdown of the marriage;
- (e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

and so to exercise those powers as to place the child, so far as it is practicable and having regard to the considerations mentioned in relation to the parties to the marriage in paragraph (a) and (b) of subsection (1) above, just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

(3) It shall be the duty of the court in deciding whether to exercise its powers under section 26 (1) (d), (e) or (f), (2) or (4) or 27 above against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case) —

- (a) to whether that party had assumed any responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility;
- (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
- (c) to the liability of any other person to maintain the child.

29. (1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2) below, proceedings for maintenance pending suit under section 25 above, for a financial provision order under section 26 above, or for a property adjustment order may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition.

(2) Rules of court may provide, in such cases as may be prescribed by the rules —

- (a) that application of any such relief as is mentioned in subsection (1) above shall be made in the petition or answer; and
- (b) that applications for any such relief which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court.

FINANCIAL PROVISION IN CASE OF NEGLECT TO MAINTAIN

30. (1) Either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section referred to as the respondent) —

- (a) being the husband, has wilfully neglected —
 - (i) to provide reasonable maintenance for the applicant, or
 - (ii) to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies;
- (b) being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance —
 - (i) for the applicant in a case where, by reason of the impairment of the applicant's earning capacity through

Matters to which court is to have regard in deciding how to exercise its powers under ss. 26 and 27.

1973 c. 18 s. 25

Commencement of proceedings for ancillary relief.

1973 c. 18 s. 26

Financial provision orders, etc., in case of neglect by party to marriage to maintain other party or child of the family.

1973 c. 18 s. 27

age, illness or disability of mind or body, and having regard to any resources of the applicant and the respondent respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute, or

(ii) for any child of the family to whom this section applies.

(2) The court shall not entertain an application under this section unless—

- (a) the applicant or the respondent is domiciled in the Colony on the date of the application; or
- (b) the applicant has been habitually resident there throughout the period of one year ending with that date; or
- (c) the respondent is resident there on that date.

(3) This section applies to any child of the family for whose maintenance it is reasonable in all the circumstances to expect the respondent to provide or towards whose maintenance it is reasonable in all the circumstances to expect the respondent to make a proper contribution.

(4) Where the child of the family to whom the application under this section relates is not the child of the respondent, then, in deciding—

- (a) whether the respondent has been guilty of wilful neglect to provide, or to make a proper contribution towards, reasonable maintenance for the child, and
- (b) what order, if any, to make under this section in favour of the child,

the court shall have regard to the matters mentioned in section 28 (3) above.

(5) Where on application under this section it appears to the court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the court may make an interim order for maintenance, that is to say, an order requiring the respondent to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable.

(6) Where on an application under this section the applicant satisfies the court of any ground mentioned in subsection (1) above, the court may make such one or more of the following orders as it thinks just, that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments, for such term, as may be specified in the order;
- (b) an order that the respondent shall secure to the applicant to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (c) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child, to whom the application relates, or to that child, such periodical payments, for such term, as may be so specified;
- (e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (f) an order that the respondent shall pay to such person as

may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph (d), (e) or (f) above, to the restriction imposed by section 32 (1) and (3) below on the making of financial provision orders in favour of children who have attained the age of eighteen.

(7) Without prejudice to the generality of subsection (6) (c) or (f) above, an order under this section for the payment of a lump sum—

- (a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met;
- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(8) For the purpose of proceedings on an application under this section adultery which has been condoned shall not be capable of being revived, and any presumption of condonation which arises from the continuance or resumption of marital intercourse may be rebutted by evidence sufficient to negative the necessary intent.

ADDITIONAL PROVISIONS WITH RESPECT TO FINANCIAL PROVISION AND PROPERTY ADJUSTMENT ORDERS

31. (1) The term to be specified in a periodical payments or secured periodical payments order in favour of a party to a marriage shall be such term as the court thinks fit, subject to the following limits, that is to say—

- (a) in the case of a periodical payments order, the term shall begin not earlier than the date of the making of an application for the order and shall be so defined as not to extend beyond the death of either of the parties to the marriage, or, where the order is made on or after the grant of a decree of divorce or nullity of marriage, the remarriage of the party in whose favour the order is made; and
- (b) in the case of a secured periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death or, where the order is made on or after the grant of a decree, the remarriage of the party in whose favour the order is made.

(2) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made otherwise than on or after the grant of a decree of divorce or nullity of marriage, and the marriage in question is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of that party, except in relation to any arrears due under it on the date of the remarriage.

(3) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply, by reference to the grant of that decree, for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage.

32. (1) Subject of subsection (3) below, no financial provision order and no order for a transfer of property under section 27 (1) (a) above shall be made in favour of a child who has attained the age of eighteen.

Duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage.

1973 c. 18 s. 28

Duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour.

1973 c. 18 s. 29

(2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date but —

- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of section 2 of the Education Ordinance 1967) unless the court thinks it right in the circumstances of the case to specify a later date; and
 - (b) shall not in any event, subject to subsection (3) below, extend beyond the date of the child's eighteenth birthday.
- (3) Subsection (1) above, and paragraph (b) of subsection (2), shall not apply in the case of a child, if it appears to the court that —
- (a) the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
 - (b) there are special circumstances which justify the making of an order without complying with either or both of these provisions.
- (4) Any periodical payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of the death.

33. Where the court decides to make a financial provision order requiring any payments to be secured or a property adjustment order —

- (a) it may direct that the matter be referred to the Registrar of the Supreme Court for him to settle a proper instrument to be executed by all necessary parties; and
- (b) where the order is to be made in proceedings for divorce, nullity of marriage or judicial separation it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

VARIATION, DISCHARGE AND ENFORCEMENT OF CERTAIN ORDERS, ETC.

34. (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section, the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This section applies to the following orders, that is to say —

- (a) any order for maintenance pending suit and any interim order for maintenance;
- (b) any periodical payments order;
- (c) any secured periodical payments order;
- (d) any order made by virtue of section 26 (3) (c) or 30 (7) (b) above (provision for payment of a lump sum by instalments);
- (e) any order for a settlement of property under section 27 (1) (b) or for a variation of settlement under section 27 (1) (c) or (d) above, being an order made on or after the grant of a decree of judicial separation.

(3) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(4) The court shall not exercise the powers conferred by this section in relation to an order for a settlement under section 27 (1) (b) or for a variation of settlement under section 27 (1) (c) or (d) above except on an application made in proceedings —

- (a) for the rescission of the decree of judicial separation by reference to which the order was made, or
- (b) for the dissolution of the marriage in question.

(5) No property adjustment order shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under section 26 above, and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under section 26 or under section 30 above).

(6) Where the person liable to make payments under a secured periodical payments order has died, an application under this section relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates and, where the party against whom that order was made has died, the changed circumstances resulting from his or her death.

(8) The personal representative of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (6) above on the ground that they ought to have taken into account the possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(9) In considering for the purposes of subsection (6) above the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

35. (1) A person shall not be entitled to enforce through the court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of that court if those arrears become due more than twelve months before proceedings to enforce the payment of them are begun.

(2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as the court thinks proper, or may remit the payment of the arrears or of any part thereof.

Direction for settlement of instrument for securing payments or effecting property adjustment.

1973 c. 18 s. 30

Variation, discharge, etc., of certain orders for financial relief.

1973 c. 18 s. 31

Payment of certain arrears unenforceable without the leave of the court.

1973 c. 18 s. 32

(3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

36. (1) Where on an application made under this section in relation to an order to which this section applies it appears to the court that by reason of —

- (a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made, or
- (b) the changed circumstances resulting from the death of the person so liable,

the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

(2) This section applies to the following orders, that is to say —

- (a) any order for maintenance pending suit and any interim order for maintenance;
- (b) any periodical payments order; and
- (c) any secured periodical payments order.

(3) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.

(4) An application under this section may be made in proceedings in the court for —

- (a) the variation or discharge of the order to which this section applies, or
- (b) leave to enforce, or the enforcement of, the payment of arrears under that order.

(5) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

MAINTENANCE AGREEMENTS

37. (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to the court for an order containing financial arrangements, then —

- (a) that provision shall be void; but
- (b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to sections 38 and 39 below), be binding on the parties to the agreement.

(2) In this section and in section 38 below —

“Maintenance agreement” means any agreement in writing made, whether before or after the commencement of this Ordinance, between the parties to a marriage, being —

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or

- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

“financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family.

38. (1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in the Colony, then, subject to subsection (3) below, either party may apply to the court for an order under this section.

(2) If the court is satisfied either —

- (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements, or
- (b) that the agreement does not contain proper financial arrangements with respect to any child of the family,

then subject to subsections (3), (4) and (5) below, the court may by order make such alterations in the agreement —

- (i) by varying or revoking any financial arrangements contained in it, or
- (ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to the court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in section 28 (3) above; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) Where the court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the agreement as altered by the order shall be such term as the court may specify, subject to the following limits, that is to say —

- (a) where the payments will not be secured, the term shall be so defined as not to extend beyond the death of either of the parties to the agreement or the remarriage of the party to whom the payments are to be made;
- (b) where the payments will be secured, the term shall be so defined as not to extend beyond the death or remarriage of that party.

(4) Where the court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be

made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments, or as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of section 32 (2) and (3) above as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.

(5) For the avoidance of doubt it is hereby declared that nothing in this section or in section 37 above affects any power of the court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Ordinance) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

39. (1) Where a maintenance agreement within the meaning of section 37 above provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in the Colony, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3) below, apply to the court for an order under section 38 above.

(2) An application under this section shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.

(3) If a maintenance agreement is altered by the court on an application made in pursuance of subsection (1) above, the like consequences shall ensue as if the alteration has been made immediately before the death by agreement between the parties and for valuable consideration.

(4) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (2) above on the ground that they ought to have taken into account the possibility that the court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

MISCELLANEOUS AND SUPPLEMENTAL

40. (1) For the purposes of this section "financial relief" means relief under any of the provisions of sections 25, 26, 27, 30, 34 (except subsection (5)) and 38 above, and any reference in this section to defeating a person's claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.

(2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person —

(a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;

(b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;

(c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) above by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;

and an application for the purposes of paragraph (b) above shall be made in the proceedings for the financial relief in question.

(3) Where the court makes an order under subsection (2) (b) or (c) above setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

(4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) is a reviewable disposition for the purposes of subsections (2) (b) and (c) above unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief.

(5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied —

(a) in a case falling within subsection (2) (a) or (b) above, that the disposition or other dealing would (apart from this section) have the consequence, or

(b) in a case falling within subsection (2) (c) above, that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief.

(6) In this section "disposition" does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.

(7) The provisions of this section shall not apply to a disposition made more than three years before the commencement of this Ordinance.

41. (1) Where —

(a) a periodical payments or secured periodical payments order in favour of a party to a marriage (hereafter in this section referred to as "a payments order") has ceased to have effect by reason of the remarriage of that party, and

(b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage in the mistaken belief that the order was still subsisting,

the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising

Alteration of agreements
by court after death of
one party.

1973 c. 18 s. 36 (1) (4)
(6)

Avoidance of transactions
intended to prevent or
reduce financial relief.

1973 c. 18 s. 37

Orders for repayment in
certain cases of sums
paid after cessation of
order by reason of
remarriage.

1973 c. 18 s. 38

out of the circumstances mentioned in paragraphs (a) and (b) above against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this section.

(2) On an application under this section the court may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1) (b) above or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) An application under this section may be made in proceedings in the court for leave to enforce, or the enforcement of, payment of arrears under the order in question.

(4) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(5) No officer of the court to whom payments under an order to which this section applies are required to be made shall be liable for any act done by him in pursuance of the order after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it, if, but only if, the act was one which he would have been under a duty to do had the order not ceased to have effect as aforesaid and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the order or the personal representatives of either of those persons.

42. The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that settlement or transfer from being a settlement of property to which section 42 (1) of the Bankruptcy Act 1914 (avoidance of certain settlements) applies.

43. Where the court makes an order under this part of this Ordinance requiring payments (including a lump sum payment) to be made, or property to be transferred to a party to a marriage and the court is satisfied that the person in whose favour an order is made is incapable, by reason of mental derangement within the meaning of the Mental Treatment Ordinance, of managing and administering his or her property and affairs then, the court may order the payments to be made, or as the case may be, the property to be transferred, to such persons having charge of that person as the court may direct.

PART IV

PROTECTION, CUSTODY, ETC., OF CHILDREN

44. (1) The court shall not make absolute a decree of divorce or of nullity of marriage, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied —

- (a) that for the purposes of this section there are no children of the family to whom this section applies; or
- (b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that —
 - (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or
 - (ii) it is impracticable for the party or parties appearing before the court to make any such arrangements; or
- (c) that there are circumstances making it desirable that the

decree should be made absolute or should be granted, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b) above.

(2) The court shall not make an order declaring that it is satisfied as mentioned in subsection (1) (c) above unless it has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children named in the order before the court within a specified time.

(3) If the court makes absolute a decree of divorce or of nullity of marriage, or grants a decree of judicial separation, without having made an order under subsection (1) above the decree shall be void but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by subsections (1) and (2) above were not fulfilled.

(4) If the court refuses to make an order under subsection (1) above in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on an application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that subsection.

(5) This section applies to the following children of the family, that is to say —

- (a) any minor child of the family who at the date of the order under subsection (1) above is —
 - (i) under the age of fifteen, or
 - (ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and
- (b) any other child of the family to whom the court by an order under that subsection directs that this section shall apply;

and the court may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this section should apply to him.

(6) In this section "welfare", in relation to a child, includes the custody and education of the child and financial provision for him.

45. (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen —

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal;

and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of court.

(2) Where the court makes an order under section 30 above, the court shall also have power to make such order as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this subsection and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.

Settlement, etc., made in compliance with a property adjustment order may be avoided on bankruptcy of settler.
1973 c. 18 s. 39

Payments, etc., under order made in favour of persons suffering from mental derangement.
1973 c. 18 s. 40

(Cap. 46)

Restrictions on decrees for dissolution, annulment or separation affecting children.
1973 c. 18 s. 41

Orders for custody and education of children in cases of divorce, etc., and for custody in cases of neglect.
1973 c. 18 s. 42

(3) Where the court grants or makes absolute a decree of divorce or grants a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.

(4) Where a decree of divorce or of judicial separation contains such a declaration as is mentioned in subsection (3) above, then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

(5) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.

(6) The power of the court under subsection (1)(a) or (2) above to make an order with respect to a child shall be exercisable from time to time; and where the court makes an order under subsection (1)(b) above with respect to a child it may from time to time until that child attains the age of eighteen make a further order with respect to his custody and education.

(7) The court shall have power to vary or discharge an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

46. (1) Where the court has jurisdiction by virtue of this Part of this Ordinance to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parties of the marriage, the court may if it thinks fit make an order committing the care of the child to any other person.

(2) While an order made by virtue of this section is in force with respect to a child, the child shall continue in the care of the other person notwithstanding any claim by a parent or other person.

(3) An order made by virtue of this section shall cease to have effect as respects any child when he becomes eighteen, and the court shall not make an order committing a child to the care of any other person under this section after he has become seventeen.

47. (1) Where the court has jurisdiction by virtue of this Part of this Ordinance to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of an independent person.

(2) Where a child is under the supervision of an independent person in pursuance of this section the jurisdiction possessed by the court to vary any financial provision order in the child's favour or any order made with respect to his custody or education under this Part of this Ordinance shall, subject to any rules of court, be exercisable at the instance of the court.

(3) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.

PART V

RECOGNITION OF OVERSEAS DIVORCES AND LEGAL SEPARATIONS

48. Sections 49 to 51 shall have effect, subject to section 54 below, as respects the recognition in the Colony of the validity of

overseas divorces and legal separations, that is to say, divorces and legal separations which —

- (a) have been obtained by means of judicial or other proceedings in any country outside the Colony; and
- (b) are effective under the law of that country.

49. (1) The validity of an overseas divorce or legal separation shall be recognised if, at the date of the institution of the proceedings in the country in which it was obtained —

- (a) either spouse was habitually resident in that country; or
- (b) either spouse was a national of that country.

(2) In relation to a country the law of which uses the concept of domicile as a ground of jurisdiction in matters of divorce or legal separation, subsection (1)(a) of this section shall have effect as if the reference to habitual residence included a reference to domicile within the meaning of that law.

(3) In relation to a country comprising territories in which different systems of law are in force in matters of divorce or legal separation, the foregoing provisions of this section (except those relating to nationality) shall have effect as if each territory were a separate country.

50. (1) Where there have been cross-proceedings, the validity of an overseas divorce or legal separation obtained either in the original proceedings or in the cross-proceedings shall be recognised if the requirements of paragraph (a) or (b) of section 49 (1) above, are satisfied in relation to the date of the institution either of the original proceedings or of the cross-proceedings.

(2) Where a legal separation the validity of which is entitled to recognition by virtue of the provisions of section 49 above or of subsection (1) of this section is converted, in the country in which it was obtained, into a divorce, the validity of the divorce shall be recognised whether or not it would itself be entitled to recognition by virtue of those provisions.

51. (1) For the purpose of deciding whether an overseas divorce or legal separation is entitled to recognition by virtue of this Part, any finding of fact made (whether expressly or by implication) in the proceedings by means of which the divorce or legal separation was obtained and on the basis of which jurisdiction was assumed in those proceedings shall —

- (a) if both spouses took part in the proceedings, be conclusive evidence of the fact found; and
- (b) in any other case, be sufficient proof of that fact unless the contrary is shown.

(2) In this section "finding of fact" includes a finding that either spouse was habitually resident or domiciled in, or a national of, the country in which the divorce or legal separation was obtained; and for the purpose of subsection (1)(a) of this section, a spouse who has appeared in judicial proceedings shall be treated as having taken part in them.

52. (1) In this section "the common law rules" means the rules of law relating to the recognition of divorces or legal separations obtained in the country of the spouses' domicile or obtained elsewhere and recognised as valid in that country.

(2) In any circumstances in which the validity of a divorce or legal separation obtained in a country outside the Colony would be recognised by virtue only of the common law rules if either —

- (a) the spouses had at the material time both been domiciled in that country; or

Grounds for recognition.
1971 c. 53 s. 3

Cross-proceedings and
divorce following legal
separation.
1971 c. 53 s. 4

Proof of facts relevant to
recognition.
1971 c. 53 s. 5

Existing common law and
statutory rules.
1971 c. 53 s. 6

Power to commit children
to care of other person.
1973 c. 18 s. 43

Power to provide for
supervision of children.
1973 c. 18 s. 44

Recognition in the Colony
of overseas divorces and
legal separations.
1971 c. 53 s. 2

(b) the divorce or separation were recognised as valid under the law of the spouses' domicile,
its validity shall also be recognised if subsection (3) below is satisfied in relation to it.

(3) This subsection is satisfied in relation to a divorce or legal separation obtained in a country outside the Colony if either —

- (a) one of the spouses was at the material time domiciled in that country and the divorce or separation was recognised as valid under the law of the domicile of the other spouse; or
- (b) neither of the spouses having been domiciled in that country at the material time, the divorce or separation was recognised as valid under the law of the domicile of each of the spouses respectively.

(4) For any purpose of subsection (2) or (3) above "the material time", in relation to a divorce or legal separation, means the time of the institution of proceedings in the country in which it was obtained.

(5) Sections 48 to 51 above are without prejudice to the recognition of the validity of divorces and legal separations obtained outside the Colony by virtue of the common law rules (as extended by this section), or of any enactment other than this Ordinance; but, subject to this section, no divorce or legal separation so obtained shall be recognised as valid in the Colony except as provided by those sections.

53. Where the validity of a divorce obtained in any country is entitled to recognition by virtue of sections 48 to 51 or section 52 (2) above, or by virtue of any rule or enactment preserved by section 52 (5) above, neither spouse shall be precluded from re-marrying in the Colony on the ground that the validity of the divorce would not be recognised in any other country.

54. (1) The validity of a divorce or legal separation obtained outside the Colony shall not be recognised in the Colony if it was granted or obtained at a time when, according to the law of the Colony (including its rule of private international law and the provisions of this Part), there was no subsisting marriage between the parties.

(2) Subject to subsection (1) of this section, recognition by virtue of sections 48 to 51 or section 52 (2) above, or of any rule preserved by section 52 (5) thereof of the validity of a divorce or legal separation obtained outside the Colony may be refused if, and only if —

- (a) it was obtained by one spouse —
 - (i) without such steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or
 - (ii) without the other spouse having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to the matters aforesaid, he should reasonably have been given; or

(b) its recognition would manifestly be contrary to public policy.

(3) Nothing in this Part shall be construed as requiring the recognition of any findings of fault made in any proceedings for divorce or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

55. (1) In this Part, "country" includes a colony or other dependent territory of the United Kingdom but for the purposes of this Part a person shall be treated as a national of such a colony or dependent territory only if it has a law of citizenship or nationality separate from that of the United Kingdom and he is a citizen or national of that colony or dependent territory under that law.

(2) The provisions of this Part relating to overseas divorces and legal separations and other divorces and legal separations obtained outside the Colony apply to a divorce or legal separation obtained before the commencement of this Ordinance as well as to one obtained on or after that date and, in the case of a divorce or legal separation obtained before that date —

- (a) require, or, as the case may be, preclude, the recognition of its validity in relation to any time before that date as well as in relation to any subsequent time; but
- (b) do not affect any property rights to which any person became entitled before that date or apply where the question of the validity of the divorce or legal separation has been decided by the court before that date.

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

56. (1) Any person who is a British subject, or whose right to be deemed a British subject depends wholly or in part on his legitimacy or on the validity of any marriage, may, if he is domiciled in the Colony or claims any real or personal estate situate in the Colony, apply by petition to the court for a decree declaring that he is the legitimate child of his parents, or that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.

(2) Any person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may apply by petition to the court in the manner prescribed by rules of court, for a decree declaring that he or his parent or remoter ancestor, as the case may be, became or has become a legitimated person.

In this subsection "legitimated person" means a person legitimated by the Legitimacy Act 1926, and includes a person recognised under section 8 of that Act as legitimated.

(3) Any person who is domiciled in the Colony or claims any real or personal estate situate in the Colony may apply to the court for a decree declaring his right to be deemed a British subject.

(4) Applications to the court under the preceding provisions of this section may be included in the same petition, and on any application under the preceding provisions of this section the court shall make such decree as it thinks just, and the decree shall be binding on Her Majesty and all other persons whatsoever, so however that the decree shall not prejudice any person —

- (a) if it is subsequently proved to have been obtained by fraud or collusion; or
- (b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party.

(5) A copy of every application under this section and of any affidavit accompanying it shall be delivered to the Chief Secretary at least one month before the application is made, and the Chief Secretary shall be a respondent on the hearing of the application and on any subsequent proceedings relating thereto.

(6) Where any application is made under this section, such persons as the court hearing the application thinks fit, shall, subject to rules of court, be given notice of the application in the manner

Interpretation and transitional provisions.
1971 c. 53 s. 10 (3) & (4)

Declaration of legitimacy, etc.
1973 c. 18 s. 45

Non-recognition of divorce by third country no bar to remarriage.
1971 c. 53 s. 7

Exceptions from recognition.
1971 c. 53 s. 8

prescribed by rules of court, and any such persons may be permitted to become parties to the proceedings and to oppose the application.

(7) No proceedings under this section shall affect any final judgment or decree already pronounced or made by the court.

(8) The court may direct that the whole or any part of the proceedings shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the court otherwise directs.

Evidence.
1973 c. 18 s. 48

57. (1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

(2) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the judge is satisfied that in the interests of justice any such evidence ought to be heard in open court.

Parties to proceedings
under this Ordinance.
1973 c. 18 s. 49

58. (1) Where in a petition for divorce or judicial separation, or in any other pleading praying for either form of relief, one party to a marriage alleges that the other has committed adultery, he or she shall make the person alleged to have committed adultery with the other party to the marriage a party to the proceedings unless excused by the court on special grounds from doing so.

(2) Rules of court may, either generally or in such cases as may be prescribed by the rules, exclude the application of subsection (1) above where the person alleged to have committed adultery with the other party to the marriage is not named in the petition or other pleading.

(3) Where in pursuance of subsection (1) above a person is made a party to proceedings for divorce or judicial separation, the court may, if after the close of the evidence on the part of the person making the allegation of adultery it is of opinion that there is not sufficient evidence against the person so made a party, dismiss him or her from the suit.

(4) Rules of court may make provision, in cases not falling within subsection (1) above, with respect to the joinder as parties to proceedings under this Ordinance of persons involved in allegations of adultery or other improper conduct made in those proceedings, and with respect to the dismissal from such proceedings of any parties so joined; and rules of court made by virtue of this subsection may make different provision for different cases.

(5) In every case in which adultery with any party to a suit is alleged against any person not made a party to the suit or in which the court considers, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the court may if it thinks fit allow that person to intervene upon such terms, if any, as the court thinks just.

Matrimonial causes rules.

59. The Governor in Council may make rules for the better carrying out of the purposes and provisions of this Ordinance and in particular, but without prejudice, may make rules —

- (a) as to all matters of procedure under this Ordinance;
- (b) prescribing the forms to be used under this Ordinance;
- (c) with regard to any matter as to which rules may be made under this Ordinance;
- (d) prescribing the fees and costs to be paid, charged or allowed under this Ordinance.

60. The Matrimonial Causes Ordinance is repealed.

Repeal.
Cap. 44.
Transitional provisions
and savings.
Cap. 44.

61. Without prejudice to the provisions of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals) nothing in the repeal made by this Ordinance shall affect any application made, proceeding begun, or made or deemed to have been made, or direction given or deemed to have been given, under any provisions of the Matrimonial Causes Ordinance repealed by this Ordinance, and subject to the provisions of this Ordinance —

- (a) every such application or proceeding which is pending at the commencement of this Ordinance shall have effect as if made or begun under the corresponding provision of this Ordinance; and
- (b) every such order or direction shall, if in force at the commencement of this Ordinance, continue in force.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and is found by me to be a true and correctly printed copy of the said Bill.

W. A. ETHERIDGE,
Clerk of Councils.

Ref. LEG/10/25.