

## CHAPTER 44.

## MATRIMONIAL CAUSES.

1 of 1940.  
12 of 1940.

AN ORDINANCE TO AMEND THE LAW RELATING TO DIVORCE.

[22nd May, 1940.]

Short title.

1. This Ordinance may be cited as the Matrimonial Causes Ordinance.

Jurisdiction.

2. (1) The Supreme Court (hereinafter called "the Court") shall have jurisdiction to make decrees of divorce, of nullity of marriage and of judicial separation in accordance with the provisions of this Ordinance.

(2) Such jurisdiction shall extend—

(a) in proceedings for divorce and nullity of marriage, to cases in which the parties to the marriage are domiciled in the Colony;

(b) in proceedings for judicial separation, to cases in which the parties to the marriage are domiciled or resident in the Colony at the time of the institution of the suit.

(3) In the exercise of such jurisdiction the Court shall, subject to the provisions of this Ordinance, act and give relief on principles which in the opinion of the Court are as nearly as may be conformable to the principles on which the High Court of Justice in England acts and gives relief in matrimonial causes.

## DISSOLUTION OF MARRIAGE.

Restriction  
on petitions  
for divorce  
during first  
three years  
after  
marriage.

3. (1) No petition for divorce shall be presented to the Court unless at the date of the presentation of the petition three years have passed since the date of the marriage:

Provided that a judge of the Court may, upon application being made to him in accordance with rules of court, allow a petition to be presented before three years have passed on

[*Note.* This Ordinance is declared to be in force in the Dependencies by the Application of Colony Laws Ordinance, Cap. 1 (D.S.), and has applied in the Dependencies since 1st July, 1947.]



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 if it appears to the court at the hearing of the petition, that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree nisi, do so subject to the condition that no application to make the decree absolute shall be made until after the expiration of three years from the date of the marriage, or may dismiss the petition, without prejudice to any petition which may be brought after the expiration of the said three years upon the same, or substantially the same, facts as those proved in support of the petition so dismissed. 12 of 1940.

(2) In determining any application under this section for leave to present a petition before the expiration of three years from the date of the marriage, the judge shall have regard to the interests of any children of the marriage and to the question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said three years.

(3) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which have occurred before the expiration of three years from the date of the marriage.

4. A petition for divorce may be presented to the Court either by the husband or wife on the ground that the respondent—

Grounds of  
petition for  
divorce.

- (a) has since the celebration of marriage committed adultery; or
- (b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or
- (c) has since the celebration of the marriage treated the petitioner with cruelty; or
- (d) is to the satisfaction of the Court incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition;

and by the wife on the ground that her husband has since the celebration of the marriage been guilty of rape, sodomy or bestiality.



Definition of  
"care and  
treatment"  
in relation to  
insanity.  
Chapter 46.

5. For the purposes of the preceding section a person of unsound mind shall be deemed to be under care and treatment while he is detained in pursuance of any order made under the provisions of the Mental Treatment Ordinance.

Duty of  
Court on  
presentation  
of petition  
for divorce

6. (1) 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 and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties and also to inquire into any countercharge which is made against the petitioner.

(2) If the Court is satisfied on the evidence that—

- (i) the case for the petitioner has been proved; and
- (ii) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to, or connived at, or condoned the adultery, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty; and
- (iii) the petition is not presented or prosecuted in collusion with either the respondent or the co-respondent;

the Court shall pronounce a decree of divorce, but if the Court is not satisfied with respect to any of the aforesaid matters it shall dismiss the petition:

Provided that the Court shall not be bound to pronounce a decree of divorce and may dismiss the petition if it finds that the petitioner has been guilty of unreasonable delay in presenting or prosecuting the petition, or during the marriage been guilty of adultery, or where the ground of the petition is adultery or unsoundness of mind or desertion the petitioner has been guilty of such wilful neglect or misconduct as has conduced to the adultery or unsoundness of mind or desertion.

Husband  
may claim  
damages  
from adult-  
er.

7. (1) Any husband may, either in a petition for divorce or for judicial separation, or in a petition to the Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.



(2) Such petition shall be served on the alleged adulterer and the wife, unless the Court dispenses with such service or directs some other service to be substituted.

(3) The damages to be recovered on any such petition shall be ascertained by the Court, although the respondents or either of them may not appear.

(4) After the decision has been given the Court may direct in what manner such damages shall be paid or applied.

8. (1) Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceedings. Costs against co-respondent.

(2) The co-respondent shall not be ordered to pay the petitioner's costs

(a) if the respondent was at the time of the adultery living apart from her husband and leading the life of a prostitute; or

(b) if the co-respondent had not at the time of the adultery reason to believe the respondent to be a married woman.

9. In any suit instituted for divorce in which on the petition of a husband the alleged adulterer is made a co-respondent, or in which on the petition of a wife the person with whom the husband is alleged to have committed adultery is made a respondent, the Court may, after the close of the evidence for the petitioner, direct the co-respondent or the respondent, as the case may be, to be dismissed from the proceedings if the Court is of opinion that there is not sufficient evidence against him or her. Dismissal of co-respondent or respondent from proceedings.

10. In any suit instituted for divorce if the respondent opposes the relief sought on the ground of the adultery, cruelty or desertion without reasonable excuse of the petitioner, the Court may in such suit give the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief. Grant of relief to respondent if petition opposed.



## NULLITY OF MARRIAGE.

Petition for  
nullity of  
marriage.

11. Any husband or wife may present a petition to the Court praying that his or her marriage may be declared null and void.

Grounds of  
decree.

12. (1) Such decree may be made on any of the following grounds:

- (a) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- (b) that the parties are within the prohibited degrees of consanguinity or affinity, whether natural or legal;
- (c) that the former husband or wife of either party was living at the time of the marriage and the marriage with such former husband or wife was then in force;
- (d) that the consent of either party to the marriage was obtained by force or fraud in any case in which the marriage might be annulled by the law of England;
- (e) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage;
- (f) that either party was of unsound mind at the time of the marriage;
- (g) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form;
- (h) that the respondent was at the time of the marriage pregnant by some person other than the petitioner;
- (j) that the marriage is invalid by the law of the Colony:

Provided that in the cases specified in paragraphs (f), (g) and (h) of this subsection the Court shall not grant a decree, unless it is satisfied—

- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (ii) that proceedings were instituted within a year from the date of the marriage;
- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the grounds for a decree;



(2) Any child born of a marriage avoided pursuant to sections (d), (f) or (g) of the last foregoing subsection shall be a legitimate child of the parties thereto notwithstanding that the marriage is so avoided and any child born of a marriage avoided pursuant to section (c) shall be a legitimate child of the parties where it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, notwithstanding that the marriage is so avoided.

### DECREE ABSOLUTE.

13. (1) A decree of divorce or nullity of marriage may be made absolute after the expiration of such time, not less than three months from the pronouncing thereof, as is prescribed or as is fixed by the Court in any suit.

When decree is to be made absolute.

(2) During that period any person may in such manner as is prescribed or as is directed by the Court in any suit, show cause why the decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

(3) On cause being so shown the Court shall make the decree absolute, or reverse the decree nisi, or require further inquiry, or otherwise deal with the case as justice demands.

(4) The Court may order the costs arising from such cause being shown to be paid by such parties, or such one or more of them including a wife if she has separate property, as it thinks fit.

(5) When a decree nisi has been made and the petitioner fails to move within a reasonable time to have such decree made absolute, the Court may dismiss the suit.

### PRESUMPTION OF DEATH.

14. (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, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of divorce.

Proceedings for decree of presumption of death and divorce.



(2) In any such proceedings the fact that for a period of seven years or upwards 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 he or she is dead unless the contrary be proved.

### JUDICIAL SEPARATION.

Grounds for  
judicial sep-  
aration.

15. The Court may make a decree of judicial separation on the petition of either the husband or the wife on any ground upon which it may make a decree of divorce.

Property of  
wife after  
judicial  
separation.

16. (1) The property of a wife who at the time of her death is judicially separated from her husband shall in case she dies intestate devolve as if her husband had been then dead.

(2) Where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife and the same is not duly paid by the husband he shall be liable for necessities supplied for her use.

(3) Nothing in this section shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power held by herself and her husband.

Power to re-  
verse a  
decree.

17. The Court shall have power on due cause being shown to reverse a decree of judicial separation.

### ALIMONY.

Alimony  
*pendente lite*.

18. (1) In any suit under this Ordinance the wife may present a petition for alimony pending the suit.

(2) Such petition shall be served on the husband and the Court may make such order on the husband for payment to the wife of alimony as it deems just.

Permanent  
alimony.

19. The Court may, if it shall see fit, on any decree absolute for divorce or for nullity of marriage or on any decree of judicial separation obtained by the wife order that the husband shall secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding



her life, as, having regard to her fortune, if any, to the ability of the husband, and to the conduct of the parties, it shall deem reasonable, or the Court may make an Order on the husband for the payment to the wife during their joint lives of such monthly or weekly sum for her maintenance and support as the Court may think reasonable:

Provided always that if the husband shall from any cause become unable to make such payments, it shall be lawful for the Court to discharge or modify the Order or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same Order wholly or in part, as to the Court shall deem fit.

#### CUSTODY OF CHILDREN.

20. The Court after a final decree of judicial separation, nullity of marriage, or divorce, may, upon application by petition for this purpose, make from time to time all such orders and provisions with respect to the custody, maintenance and education of the children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the Court, as the Court shall see fit: Custody of children.

Provided that the term for which any sum of money is secured for the benefit of a child shall not extend beyond the date when the child will attain 21 years of age.

#### PROCEDURE.

21. Subject to the provisions herein all proceedings under this Ordinance shall be regulated by the Administration of Justice Ordinance. Procedure.  
Chapter 3.

22. The whole or any part of any proceeding under this Ordinance may be heard, if the Court thinks fit, within closed doors. Sittings in camera.