

CHAPTER 143.

MATRIMONIAL CAUSES.

[No. XXXIV of 1916.]

[30th December, 1916.]

PART I.

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

2. Subject to any Ordinance, the Supreme Court (hereafter in this Ordinance called "the Court") shall exercise all jurisdiction in respect of divorces and other matrimonial causes and disputes, and in respect of declarations as to the legitimacy of a child, and as to the validity of any marriage under this or any other Ordinance or under the common law, in as full and complete a manner as it has hitherto exercised jurisdiction in divorce and matrimonial causes under the Roman-Dutch common law, and that jurisdiction shall as far as possible be exercised in the same manner and in accordance with the same principles and rules as jurisdiction in those matters is exercised by the Probate Divorce and Admiralty Division of the High Court of Justice in England, subject to any rules of court made under this Ordinance or the Supreme Court of Judicature Ordinance, or any amending Ordinance, hereafter in this Ordinance called "the rules." Jurisdiction.
Chapter 10.

3.—(1) A decree of judicial separation (which shall have the effect of a divorce a mensa et thoro under the existing law and other legal effect in this Ordinance mentioned), may be obtained, either by the husband or the wife, on the ground of adultery, or cruelty, or desertion without cause for two years and upwards. Decree for
judicial
separation.

(2) Application for restitution of conjugal rights or for judicial separation on any of the grounds aforesaid may be made by either husband or wife by petition to the Court in accordance with the rules, and the Court to which the petition is addressed, on being satisfied that the allegations therein contained are true and that there is no legal

ground why the prayer should not be granted, may decree restitution of conjugal rights or judicial separation accordingly and, where the application is by the wife, may make any order for alimony deemed just.

Order for
protection
of wife's
property :

4.—(1) A wife deserted by her husband may at any time after the desertion, if resident within the colony, apply to a magistrate or to the Court, for an order to protect any money or property she acquires by her own lawful industry, and property of which she becomes possessed, after the desertion, against her husband or his creditors, or any person claiming under him.

(2) The magistrate or the Court, if satisfied of the fact of desertion and that it was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting from her husband and all creditors and persons claiming under him her earnings and property acquired since the commencement of the desertion, and those earnings and property shall belong to the wife as if she were a feme sole :

Proviso.

Provided that—

- (a) the order, if made by a magistrate, shall within ten days after it is made be entered with the registrar of the Court, and the husband, and any creditor or other person claiming under him, may apply to the Court, or to the magistrate by whom the order was made, for its discharge; and
- (b) if the husband or any creditor of, or person claiming under, the husband seizes or continues to hold any property of the wife after notice of the order, he shall be liable at the suit of the wife (which she is hereby empowered to institute) to restore the specific property, and also for a sum equal to double the value of the property so seized or held after the notice.

(3) If an order of protection is made, the wife during the continuance thereof shall be and be deemed to have been, during the desertion of her, in the same position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Ordinance if she obtained a decree of judicial separation.

(4) Where an order of protection has been made the husband or creditor may apply to the Court, or to the magistrate for the time being exercising jurisdiction

in the district in which the order has been made, and the Court, whether it has itself made the order or not, or the magistrate, may discharge the order.

5. Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may at any time thereafter present a petition to the Court, praying for a reversal thereof on the ground that it was obtained in his or her absence, and that there was reasonable ground for the alleged desertion, where desertion was the ground of the decree; and the Court, on being satisfied of the truth of the allegations of the petition, may order the decree to be reversed accordingly; but the reversal shall not prejudice or affect the rights or remedies which any other person would have had if it had not been ordered, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the decree of separation and of the order of reversal.

Reversal of
decree of
judicial
separation.

6. Whenever the Court makes any order for alimony, it may direct the alimony to be paid either to the wife herself or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions to the Court seeming expedient, and may from time to time appoint a new trustee, if for any reason it appears expedient to the Court to do so.

Payment of
alimony to
wife or to her
trustee.

7. In every case of judicial separation the wife, from the date of the decree and whilst the separation continues, shall be considered as a feme sole with respect to property of every description which she acquires or which comes to or devolves upon her; and that property may be disposed of by her in all respect as a feme sole, and on her decease, if she dies intestate, it shall go as it would have gone if her husband had been then dead:

After judicial
separation
wife con-
sidered a
feme sole as
to property
acquired:

Provided, that if the wife should again cohabit with her husband, all the property to which she is entitled when the cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband while separate.

Proviso:

8. In every case of judicial separation the wife whilst so separated shall be considered as a feme sole for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding, and her husband shall

and also for
purposes of
contract and
suing:

not be liable in respect of any engagement or contract she has entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant :

Proviso :

liability of husband for wife's necessities, and exercise of joint power.

Provided that,—

- (a) where upon a judicial separation alimony has been ordered to be paid to the wife and it is not duly paid by the husband, he shall be liable for necessities supplied for her use; and
- (b) nothing shall prevent the wife from joining, at any time during the separation, in the exercise of any joint power given to herself and her husband.

Petition for dissolution of marriage.

9.—(1) Any husband or wife may present a petition to the Court, praying that his or her marriage may be dissolved, on the ground that his wife or her husband has since the solemnisation thereof been guilty of adultery, or malicious desertion with or without adultery.

Chapter 9.

(2) Notwithstanding any provision to the contrary in any previous Ordinance, a petition may be presented under this section notwithstanding that a decree or order for judicial separation has been obtained from the Court or from a court of summary jurisdiction under section forty-one of the Summary Jurisdiction (Magistrates) Ordinance and remains undischarged, but the leave of the Court shall be first obtained.

(3) The Court on the application of a petitioner or respondent under the rules, and after giving both parties an opportunity to be heard by affidavit or otherwise, may make any preliminary order it thinks fit as to the payment of all or part of the costs of proceedings by either party.

Co-respondents.

(4) Upon the petition presented by a husband the petitioner shall make the alleged adulterer a co-respondent thereto, unless on special grounds allowed by the Court he is excused from so doing; and on every petition presented by a wife for dissolution of marriage the Court, if it sees fit, may direct that the person with whom the husband is alleged to have committed adultery be made a co-respondent.

Facts of which Court must satisfy itself.

(5) Upon the petition, it shall be the duty of the Court to satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to or conniving at the adultery or has condoned it, and shall also inquire into any counter-charge made against the petitioner.

10.—(1) If the Court, on the evidence in relation to the petition, is not satisfied that the alleged adultery has been committed, or finds that the petitioner has during the marriage been accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery charged, or that the petition is presented or prosecuted in collusion with either of the respondents, then and in any of those cases the Court shall dismiss the petition.

When Court shall dismiss petition.

(2) If the Court is satisfied on the evidence that the case of the petitioner has been proved, and does not find that the petitioner has been in any manner accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery charged, or that the petition is presented or prosecuted in collusion with either of the respondents, then the Court shall pronounce a decree declaring the marriage to be dissolved:

When Court shall pronounce decree for dissolution of marriage :

Provided that the Court shall not be bound to pronounce the decree if it finds that the petitioner has during the marriage been guilty of adultery, or if the petitioner, in the opinion of the Court, has been guilty of unreasonable delay in presenting or prosecuting the petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery charged, and without reasonable excuse or of wilful neglect or misconduct which has conduced to the adultery.

Proviso.

11. In every case of a petition for a dissolution of marriage the Court if it sees fit may direct all necessary papers in the cause to be sent to the Attorney General, who may appear in person or may instruct counsel to argue before the Court any question in relation to the matter, and which the Court deems it necessary or expedient to have fully argued; and the Attorney General shall be entitled to charge and be re-imbursed the costs of any proceeding in the matter as part of the expenses of his office.

Direction that papers be sent to the Attorney General.

12.—(1) Every decree for a divorce or for nullity of marriage shall be in the first instance a decree nisi, not to be made absolute till after the expiration of a period, not less than six months from the pronouncement thereof by general or special order from time to time directed by the Court; and during that period any person shall be at liberty, in the manner the Court by general or special order in that behalf from time to time directs, to show cause-why the decree should not be made absolute by reason of its having

Decree nisi in the first instance, etc.

been obtained by collusion, or by reason of material facts not brought before the Court. .

(2) On cause being so shown, the Court shall deal with the case by making the decree absolute or by reversing the decree nisi, or by requiring further inquiry, or otherwise as justice may require.

(3) At any time during the progress of the cause or before the decree is made absolute, anyone may give information to the Attorney General of any matter material to the due decision of the cause, who may thereupon take the steps he deems necessary or expedient.

(4) If from that information or otherwise the Attorney General suspects that any parties to the cause are or have been acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case, he may by leave of the Court intervene in the cause, alleging that collusion, and retain counsel and summon witnesses to prove it; and the Court may order the costs of the counsel and witnesses, and otherwise arising from the intervention, to be paid by the parties or any of them it sees fit, including a wife if she has separate property, and if the Attorney General is not thereby fully satisfied his reasonable costs, he shall be entitled to charge and be re-imbursed the difference as part of the expenses of his office.

Intervention
of Attorney
General.

Relief to
respondent
in certain
cases.

13. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of a suit instituted by a husband, of his adultery, cruelty, or desertion, or, in case of a suit instituted by a wife, on the ground of her adultery or cruelty, the Court may in the suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled if he or she had presented a petition seeking that relief.

Maintenance
and alimony:

14.—(1) The Court if it thinks fit, on any decree for dissolution or nullity of marriage, may order that the husband shall to the satisfaction of the Court secure to the wife that gross sum of money or that annual sum of money for any term not exceeding her life which, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it deems reasonable, and for that purpose may refer the matter to the registrar to settle and approve of a proper deed or instrument to be executed by all necessary parties, and the Court if it thinks fit may

suspend the pronouncement of its decree until that deed has been duly executed.

(2) In that case the Court if it thinks fit may make an order on the husband for payment to the wife during their joint lives of any monthly or weekly sum for her maintenance and support the Court thinks reasonable, and that order may be made either in addition to or instead of an order under the preceding sub-section :

Provided that—

Proviso.

(a) if the husband afterwards from any cause becomes unable to make those payments the Court may discharge or modify the order or temporarily suspend it as to the whole or any part of the money so ordered to be paid, and again revive the order wholly or in part as the Court thinks fit; and,

(b) where the Court has made any order mentioned in this sub-section and is satisfied that the means of the husband have increased, the Court if it thinks fit may increase the amount payable under the order.

(3) In any suit for dissolution or nullity of marriage the Court shall have the same power to make interim orders for payment of money, by way of alimony or otherwise, to the wife as it has in a suit instituted for judicial separation.

15. In every case not already provided for by law in which anyone is charged with adultery with any party to a suit, or in which the Court considers, in the interest of anyone not already a party to the suit, that that person should be made a party thereto, the Court if it thinks fit may allow that person to intervene upon any terms the Court thinks just.

Intervention on terms.

16. On any decree for dissolution or nullity of marriage, or judicial separation, the Court, where the marriage has been in community of goods or by ante-nuptial contract, may make any order for the division of the property subject to the community or to the ante-nuptial contract that seems equitable.

Division of property where marriage in community or by ante-nuptial contract.

17.—(1) A husband, either in a petition for dissolution of marriage or for judicial separation, or in a petition limited to this object only, may claim damages from any person on the ground of his having committed adultery

Claim for damages from adulterer.

with the wife of the petitioner; and the petition shall be served on the alleged adulterer and the wife, unless the Court dispenses with that service or directs some other service to be substituted; and in the absence of any rules of court the claim made by the petition shall be heard and tried on the same principles, in the same manner, and subject to the same or the like rules as those petitions are now heard and determined in England, and all the enactments herein contained with reference to the hearing and determination of petitions to the Court, so far as necessary, shall be deemed applicable to the hearing and determination of petitions presented under this enactment.

(2) The damages to be recovered on the petition shall in all cases be fixed by the Court, although the respondents or either of them do not appear; and after judgement has been given the Court shall have power to direct in what manner the damages shall be paid or applied, and to direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife.

Payment of costs by adulterer.

18. 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 adulterer to pay the whole or any part of the costs of the proceedings.

Orders as to custody of children.

19. In any suit or other proceeding for a decree of judicial separation, or nullity of marriage, or dissolution of marriage, the Court may from time to time, before making the final decree, make any interim orders and provisions in the final decree it deems just and proper, with respect to the custody, maintenance and education of the children of the marriage of whose parents is the subject of the suit or other proceeding, and may give any further or other directions it deems advisable as guardian paramount of all infants.

Affidavit in support of petition.

20.—(1) Everyone seeking a decree of nullity of marriage, or of judicial separation, or dissolution of marriage, or in a suit for jactitation of marriage, together with the petition therefor, shall file an affidavit verifying the petition so far as he or she is able to do so, and stating that there is not any collusion or connivance between the deponent and the other party to the marriage.

(2) The petition shall be served on the party to be affected thereby, either within or without his Majesty's dominions, in the manner the Court by any general or special order from time to time directs; but the Court may dispense with the service altogether if it seems necessary or expedient to do so.

Service of
petition.

21. The Court, if it thinks fit, may order the attendance of the petitioner and examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of any petition; but the petitioner shall not be bound to answer any question tending to show that he or she has been guilty of adultery.

Examination
of petitioner.

22. The Court may from time to time adjourn the hearing of a petition and require further evidence thereon, if it sees fit to do so.

Adjourn-
ment.

23. Subject to the rules the witnesses in all proceedings before the Court, where their attendance can be had, shall be sworn and examined orally in open court:

Mode of
taking
evidence :

Provided that parties, except as hereinbefore provided, shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every affidavit shall be, on the application of the opposite party or by direction of the Court, subject to be cross-examined by or on behalf of the opposite party orally in open court, and after the cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom the affidavit was filed.

Proviso.

24. The Court may under its seal issue writs of subpoena ad testificandum or subpoena duces tecum, commanding the attendance of witnesses at the time and place therein expressed; and those writs may be served in any part of the colony; and everyone served with the writ shall be bound to attend and to be sworn and give evidence in obedience thereto, in the same manner as if it had been a writ of subpoena issued in any other cause pending in the Court.

Attendance
of witnesses
in Court.

25. When the time for appealing against a decree for dissolution of marriage has expired and no appeal has been presented against it, or when an appeal has been dismissed, or when as the result of an appeal any marriage

Liberty to
parties to
marry again.

is declared to be dissolved, but not sooner, the respective parties thereto may marry again as if the prior marriage has been dissolved by death.

Periodical payments in lieu of attachment.

26.—(1) Where a petition for restitution of conjugal rights is presented by the wife the Court, at the time of making the decree, or at any time afterwards, may order that in the event of the decree not being obeyed within any time in that behalf limited by the Court the respondent shall make to the petitioner any periodical payments that may be just, and the order may be enforced in the same manner as an order for alimony in a suit for judicial separation.

(2) The Court, if it thinks fit, may order that the husband shall to the satisfaction of the Court secure to the wife those periodical payments and for that purpose may refer the matter to the registrar of the Court to settle and approve of a proper deed or instrument to be executed by all necessary parties.

Settlement of wife's property.

27. Where the petition for restitution of conjugal rights is presented by the husband, if it is made to appear to the Court that the wife is entitled to any property, either in possession or reversion, or is in receipt of profits of trade or earnings, the Court, if it thinks fit, may order a settlement to be made to the satisfaction of the Court of that property, or any part thereof, for the benefit of the petitioner and of the children of the marriage, or either or any of them, or may order that part which the Court thinks reasonable of the profits of trade or earnings to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either of them.

Power to vary orders.

28. The Court may from time to time vary or modify any order for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the order as to the whole or any part of the money so ordered to be paid, and again revive the order wholly or in part, as the Court thinks just.

Non-compliance with decree for restitution deemed to be desertion.

29.—(1) If the respondent fails to obey a decree of the Court for restitution of conjugal rights he or she shall thereupon be deemed to have been guilty of desertion without reasonable cause, and a suit for judicial separation

may be forthwith instituted, and a decree of judicial separation may be pronounced although the period of two years may not have elapsed since the failure to obey the decree for restitution of conjugal rights.

(2) When any husband who has been guilty of desertion by failure on his part to obey a decree for restitution of conjugal rights has also been guilty of adultery, the wife may forthwith present a petition for dissolution of her marriage, and the Court may pronounce a decree nisi for the dissolution of the marriage on the grounds of adultery coupled with desertion. The decree nisi shall not be made absolute until after the expiration of six calendar months from the pronouncement thereof, unless the Court fixes a shorter time.

30. The Court, at any time before final decree on any petition for restitution of conjugal rights, or after final decree if the respondent fails to comply therewith, upon application for that purpose, may make from time to time all the orders and provisions with respect to the custody, maintenance, and education of the children of the petitioner and respondent which might have been made by interim orders during the pendency of a trial for judicial separation between the same parties.

Custody of children.

31. An appeal shall lie from any decision of the Court under this Ordinance in the same manner as from any other decision of the Court.

Appeal.

PART II.

32.—(1) Any natural-born subject of the King, or anyone whose right to be deemed a natural-born subject depends wholly or in part on his legitimacy or on the validity of a marriage, being domiciled in the colony, or claiming any movable or immovable property situate therein, may apply by petition to the Court praying for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring either of the matters aforesaid; and any subject or person aforesaid, being so domiciled or claiming as aforesaid, may in like manner apply to the Court for a decree declaring that his marriage was or is a valid marriage.

Declaration of legitimacy or of validity of marriage.

(2) The Court shall have jurisdiction to hear and determine the application and to make a decree declaratory

of the legitimacy or illegitimacy of that person, or the validity or invalidity of that marriage, as to the Court seems just; and the decree, except as hereinafter mentioned, shall be binding to all intents and purposes on the Crown and on all persons whomsoever.

Declaration of right to be deemed a natural-born subject.

33. Anyone, being so domiciled or claiming as aforesaid, may apply by petition to the Court for a decree declaratory of his right to be deemed a natural-born subject of the King; and the Court shall have jurisdiction to hear and determine the application and to make any decree thereon to the Court seeming just; and where the application last aforesaid is made by the person making an application for a decree declaring his legitimacy or the validity of a marriage, both applications may be included in the same petition; and every decree made by the Court, except as hereinafter mentioned, shall be valid and binding to all intents and purposes upon the Crown and all persons whomsoever.

Affidavit to accompany petition.

34. Every petition under section thirty-two of this Ordinance shall be accompanied by such affidavit verifying the petition and of the absence of collusion as the Court by any general rule directs.

Power to award and enforce payment of costs.

35. In all proceedings under section thirty-three of this Ordinance the Court shall have full power to award and enforce payment of costs to any persons cited, whether they do or do not oppose the declaration sought, if the Court deems it reasonable that those costs shall be paid.

Papers to Attorney General.

36. A copy of every petition under this part of this Ordinance and of the affidavit accompanying it shall, one month at least before the petition is presented or filed, be delivered to the Attorney General, who shall be a respondent upon the hearing thereof and upon every subsequent proceeding relating thereto.

Persons cited to see proceedings.

37. Where an application to the Court is made under this part of this Ordinance, any person or persons besides the Attorney General whom the Court thinks fit shall, subject to the rules, be cited to see proceedings or otherwise summoned in the manner directed by the Court, and may be permitted to become parties to the proceedings and oppose the application.

38. The decree of the Court shall not in any case prejudice anyone unless that person has been cited or made a party to the proceedings, or is the heir-at-law, or next-of-kin, or other real or personal representative of, or derives title under or through, a person so cited or made a party; nor shall the decree prejudice anyone if subsequently proved to have been obtained by fraud or collusion.

Saving of rights.

39. No proceeding to be had under this Ordinance shall affect any final judgement or decree already pronounced or made by a court of competent jurisdictions.

Saving of judgement

40. Rules of court may be made for the purpose of this Ordinance under the Supreme Court of Judicature Ordinance.

Rules of court.
Chapter 10.