

CHAPTER 166.

MATRIMONIAL CAUSES.

ARRANGEMENT OF SECTIONS.

PART I.

SECTION.

1. Short title.
2. (1) Jurisdiction.
(2) Extension of jurisdiction.
3. Decree of judicial separation.
4. Order for protection of wife's property.
5. Reversal of decree of judicial separation.
6. Payment of alimony to wife or to her trustee.
7. Property acquired by wife after judicial separation.
8. Husband's liability for necessaries.
9. (1) Petition for dissolution of marriage.
(2) Definition of "care and treatment" in relation to insanity.
(5) Co-respondents.
(6) Facts of which court must satisfy itself.
10. (1) When court shall dismiss petition.
(2) When court shall pronounce decree for dissolution of marriage.
11. Direction that papers be sent to the Attorney General.
12. (1) Decree *nisi* in the first instance, etc.
(5) Intervention of Attorney General.
13. Relief to respondent in certain cases.
14. Maintenance and alimony.
15. Intervention on terms.
16. Division of property where marriage in community or by antenuptial contract.
17. Claim for damages from adulterer.
18. Payment of costs by adulterer.
19. Orders as to custody of children.
20. (1) Affidavit in support of petition.
(2) Service of petition.
21. Examination of petitioner.
22. Adjournment.
23. Mode of taking evidence.
24. Attendance of witnesses in court.
25. Liberty to parties to marry again.
26. Periodical payments in lieu of attachment.
27. Settlement of wife's property.
28. Power to vary orders.
29. Non-compliance with decree for restitution deemed to be desertion.
30. Custody of children.
31. Appeal.

PART II.

32. Declaration of legitimacy or of validity of marriage.
33. Declaration of right to be deemed a natural-born subject.
34. Affidavit to accompany petition.
35. Power to award and enforce payment of costs.
36. Papers to Attorney General.

37. Persons cited to see proceedings.
 38. Saving of rights.
 39. Saving of judgment.
 40. Rules of court.

CHAPTER 166.

MATRIMONIAL CAUSES.

[30TH DECEMBER, 1916.]

PART I.

- Short title 1. This Ordinance may be cited as the Matrimonial Causes Ordinance.
- Jurisdiction. 2. (1) 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 Ordinance, or any amending Ordinance, hereafter in this Ordinance called "the rules."
- Cap. 7. * (2) Anything in the provisions of subsection (1) of this section to the contrary notwithstanding, the Court shall have jurisdiction to hear and determine any petition for divorce presented by a wife on the ground of malicious desertion where the petitioner was, immediately before the marriage, domiciled in the Colony.
- Extension of jurisdiction. 1 of 1951, s. 4. 34 of 1951, s. 2. * (2) Anything in the provisions of subsection (1) of this section to the contrary notwithstanding, the Court shall have jurisdiction to hear and determine any petition for divorce presented by a wife on the ground of malicious desertion where the petitioner was, immediately before the marriage, domiciled in the Colony.
- Decree of judicial separation. 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,

*This subsection came into force on the 24th March, 1951.

either by the husband or the wife, on the ground of adultery, or cruelty, or desertion without cause for two years and upwards.

(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.

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.

Order for protection of wife's property.

(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 *femme sole*:

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.

Reversal of
decree of
judicial
separation.

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.

Payment of
alimony to
wife or to
her trustee.

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.

Property
acquired by
wife after
judicial
separation.
45 of 1952.

7. In every case of judicial separation as from the date of the decree and so long as the separation continues, any property which is acquired by or devolves upon the wife shall not be affected by any restraint upon anticipation attached to the enjoyment by the wife of any property under any settlement, agreement for a settlement, will, or other instrument; and if she dies intestate such property shall devolve as if her husband had been then dead.

Husband's
liability for
necessaries.
45 of 1952.

8. In every case of judicial separation if alimony has been ordered to be paid and has not been duly paid by the husband he shall be liable for necessaries supplied for the use of the wife.

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

Petition for dissolution of marriage. 1 of 1951, s.2.

(a) has since the celebration of the marriage been guilty of adultery or malicious desertion with or without adultery; or

(b) has since the celebration of the marriage treated the petitioner with cruelty; or

(c) is 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.

(2) For the purposes of subsection (1) of this section a person of unsound mind shall be deemed to be under care and treatment—

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

(a) while he is detained in the Mental Hospital under the provisions of section 12 or section 13 of the Mental Hospital Ordinance; or

Cap. 140.

(b) during such time as he is receiving treatment as a voluntary patient in the Mental Hospital under the provisions of section 14 of the Mental Hospital Ordinance; or

(c) is being dealt with as a lunatic under the provisions of section 179 of the Criminal Law (Procedure) Ordinance.

Cap. 11.

(3) 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 42 of the Summary Jurisdiction (Magistrates) Ordinance and remains undischarged, but the leave of the Court shall be first obtained.

Cap. 12.

(4) 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 if it thinks fit as to the payment of all or part of the costs of proceedings by either party.

(5) 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.

Co-respondents.

Facts of which Court must satisfy itself.

(6) 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.

When Court shall dismiss petition.

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 pronounce decree for dissolution of marriage.

(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:

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.

Direction that papers be sent to the Attorney General.

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.

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

Decree *nisi*
in the first
instance, etc.
1 of 1951,
s. 5.

(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) Where a decree *nisi* has been obtained, whether before or after the coming into force* of this subsection, and no application for the decree to be made absolute has been made by the party who obtained the decree, then at any time after the expiration of three weeks from the earliest date on which that party could have made such an application, the party against whom the decree *nisi* has been granted shall be at liberty to apply to the Court, and the Court shall, on such application, have power to make the decree absolute, reverse the decree *nisi*, require further inquiry or otherwise deal with the case as the Court thinks fit.

1 of 1951,
s. 5.

(4) 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.

(5) 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 reimbursed the difference as part of the expenses of his office.

Intervention
of Attorney
General.

*24th March, 1951.

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 subsection:

Provided that—

(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 subsection 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.

Intervention on terms.

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.

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 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.

Claim for damages from adulterer.

(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 judgment 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.

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.

Payment of costs by adulterer.

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,

Orders as to custody of children.

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.

Service of petition.

(2) The petition shall be served on the party to be affected thereby, either within or without Her 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.

Examination of petitioner.

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.

Adjournment.

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.

Mode of taking evidence.

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:

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.

Attendance of witnesses in Court.

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.

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

Liberty to parties to marry again.

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.

Periodical payments in lieu of attachment.

(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.

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.

Settlement of wife's property.

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.

Power to vary orders.

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.

1 of 1951, s. 6.

(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.

Custody of children.

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.

Appeal.

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.

PART II.

Declaration of legitimacy or of validity of marriage.

32. (1) Any natural-born subject of the Queen, 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.

(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.

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 Queen; 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.

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

34. Every petition under section 32 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.

Affidavit to accompany petition.

35. In all proceedings under section 33 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.

Power to award and enforce payment of costs.

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.

Papers to Attorney General.

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.

Persons cited to see proceedings.

Saving of
rights.

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
judgment.

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

Rules of
court.
Cap. 7.

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