

CHAPTER 268

THE MATRIMONIAL CAUSES ACT

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Section

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MATRIMONIAL CAUSES

(20th December, 1948.)

1/1948.
S.R.O. 22/1956.
10/1957.

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

2. (1) No petition for divorce shall be presented to the High Court (in this Act referred to as "the Court") unless at the date of the presentation of the petition three years have passed since the date of the marriage: **Restriction on petitions for divorce during first three years after 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 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.

(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.

Grounds for
petition for
divorce.

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

(a) has since the celebration of the 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 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 this section, a person of unsound mind shall be deemed to be under care and treatment—

(a) while he is detained or in charge of a licensee in pursuance of an adjudication that he is a person of unsound mind and a proper subject of confinement or while he is detained in custody by order of the Court in any mental hospital under the provisions of the Mental Treatment Act;

(b) while he is detained in pursuance of an inquisition, and not otherwise.

Cap. 274.

Provision as to
making adulterer
co-respondent.

4. (1) On a petition for divorce presented by the husband or in the answer of a husband praying for divorce the petitioner or respondent, as the case may be, shall make the alleged adulterer a co-respondent unless he is excused by the Court on special grounds from so doing.

(2) On a petition for divorce presented by the wife the Court may, if it thinks fit, direct that the person with whom the husband is alleged to have committed adultery be made a respondent.

5. (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.

Duty of Court on presentation of petition for divorce.

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

- (i) the case for the petition 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 the respondent or either of the respondents;

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 during the marriage been guilty of adultery or if, in the opinion of the Court, the petitioner has been guilty—

(a) of unreasonable delay in presenting or prosecuting the petition; or

(b) of cruelty towards the other party to the marriage;

(c) where the ground of the petition is adultery or cruelty, of having without reasonable excuse deserted, or having without reasonable excuse wilfully separated himself or herself from, the other party before the adultery or cruelty complained of; or

(d) where the ground of the petition is adultery or unsoundness of mind or desertion, of such wilful neglect or misconduct as has conduced to the adultery or unsoundness of mind or desertion.

Dismissal of
respondent or co-
respondent from

6. In any case in which, on the petition of a husband for divorce, the alleged adulterer is made a co-respondent or in which, on the petition of a wife for divorce, 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 on the part of 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.

Relief to
respondent on
petition for
divorce.

7. If in any proceedings for divorce the respondent opposes the relief sought, in the case of proceedings instituted by the husband, on the ground of his adultery, cruelty or desertion, or, in the case of proceedings instituted by the wife, on the ground of her adultery, cruelty or desertion, the Court may give to the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief.

Duties of
Queen's Proctor.

8. (1) In the case of any petition for divorce or for nullity of marriage—

(a) the Court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Queen's Proctor, who shall argue before the Court any question in relation to the matter which the Court deems to be necessary or expedient to have fully argued, and the Queen's Proctor shall be entitled to charge the costs of the proceedings as part of the expenses of his office;

(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 Queen's Proctor of any matter material to the due decision of the case, and the Queen's Proctor may thereupon take such steps as he considers necessary or expedient;

(c) if in consequence of any such information or otherwise the Queen's Proctor suspects that any parties to the petition are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, after obtaining the leave of the Court, intervene and retain counsel and subpoena witnesses to prove the alleged collusion.

(2) In this section "Queen's Proctor" means the Attorney-General.

9. (1) Where the Queen's Proctor intervenes or shows cause against a decree nisi in any proceedings for divorce or for nullity of marriage, the Court may make such order 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 the said parties by reason of his so doing, as may seem just.

Provisions as to costs where Queen's Proctor intervenes or shows cause.

(2) So far as the reasonable costs incurred by the Queen's Proctor in so intervening or showing cause are not fully satisfied by any order made under this section for the payment of his costs, he shall be entitled to charge the difference as part of the expenses of his office, and the Accountant General may, if he thinks fit, order that any costs which under any order made by the Court under this section the Queen's Proctor pays to any parties shall be deemed to be part of the expenses of his office.

10. (1) Every decree for a divorce or for nullity of marriage shall, in the first instance, be a decree nisi not to be made absolute until after the expiration of six months from the pronouncing thereof, unless the Court by general or special order from time to time fixes a shorter time.

Decree nisi for divorce or nullity of marriage.

(2) After the pronouncing of the decree nisi and before the decree is made absolute, any person may, in the prescribed manner, show cause why the decree should not be made absolute by reason of the decree having been obtained by collusion or by reason of material facts not having been brought before the court, and in any such case the court may make the decree absolute, reverse the decree nisi, require further inquiry or otherwise deal with the case as the Court thinks fit.

(3) Where a decree nisi has been obtained whether before or after the passing of this Act, 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 months 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.

Re-marriage of divorced persons.

11. As soon as any decree for divorce is made absolute, either of the parties to the marriage may, if there is no right of appeal against the decree absolute, marry again as if the prior marriage had been dissolved by death or, if there is such a right of appeal, may so marry again, if no appeal is presented against the decree, as soon as the time for appealing has expired, or, if an appeal is so presented, as soon as the appeal has been dismissed:

Provided that it shall not be lawful for a man to marry the sister or half-sister of his divorced wife or of his wife by whom he has been divorced during the life-time of the wife, or the divorced wife of his brother or half-brother or the wife of his brother or half-brother who has divorced his brother during the lifetime of the brother or half-brother.

Decree of judicial separation.

20 & 21 Vict. c. 85.

12. (1) A petition for judicial separation may be presented to the Court either by the husband or the wife on any grounds on which a petition for divorce might have been presented, or on the ground of failure to comply with a decree for restitution of conjugal rights or on any ground on which a decree for divorce *a mensa et thoro* might have been pronounced immediately before the commencement of the Matrimonial Causes Act, 1857, and the foregoing provisions of this Act relating to the duty of the Court on the presentation of a petition for divorce, and the circumstances in which such a petition shall or may be granted or dismissed, shall apply in like manner to a petition for judicial separation.

(2) Where the Court in accordance with the said provisions grants a decree of judicial separation, it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(3) The Court may, on the application by petition of the husband or wife against whom a decree for judicial separation has been made, and on being satisfied that the allegations contained in the petition are true, reverse the decree at any time after the making thereof, on the ground that it was obtained in the absence of the person making the

application, or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.

(4) The reversal of a decree for judicial separation shall not affect the rights or remedies which any other person would have had if the decree had not been reversed in respect of any debts, contracts or acts of the wife incurred, entered into or done between the date of the decree and of the reversal thereof.

13. (1) A person shall not be prevented from presenting a petition for divorce, or the Court from pronouncing a decree of divorce, by reason only that the petitioner has at any time been granted a judicial separation or an order under section 121 of the Magistrate's Code of Procedure Act upon the same or substantially the same facts as those proved in support of the petition for divorce.

Divorce proceedings after grant of judicial separation or other relief. Cap. 255.

(2) On any such petition for divorce, the Court may treat the decree of judicial separation or the said order as sufficient proof of the adultery, desertion, or other ground on which it was granted, but the Court shall not pronounce a decree of divorce without receiving evidence from the petitioner.

(3) For the purposes of any petition for divorce, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation or an order under the said Act having the effect of such a decree shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce.

14. A petition for restitution of conjugal rights may be presented to the Court either by the husband or the wife, and the Court, on being satisfied that the allegations contained in the petition are true, and that there is no legal ground why a decree for restitution of conjugal rights should not be granted, may make the decree accordingly.

Decree for restitution of conjugal rights.

15. (1) A decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is by the wife the Court, at the time of making the decree

Periodical payments in lieu of attachment.

or at any time afterwards, may, in the event of the decree not being complied with within any time in that behalf limited by the Court, order the respondent to make to the petitioner such periodical payments as may be just, and the order may be enforced in the same manner as an order for alimony in proceedings for judicial separation.

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

**New grounds for
decree of nullity.**

16. (1) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall be voidable on the ground—

(a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or

(b) that either party to the marriage was at the time of the marriage of unsound mind or subject to recurrent fits of insanity or epilepsy; or

(c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner:

Provided that, in the cases specified in paragraphs (b), (c) and (d), 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; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

(2) Any child born of a marriage avoided pursuant to paragraphs (b) or (c) of the last foregoing subsection shall be a legitimate child of the parties thereto notwithstanding that the marriage is so avoided.

(3) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

17. (1) A husband may, on a petition for divorce or for judicial separation or for damages only, claim damages from any person on the ground of adultery with the wife of the petitioner. **Damages.**

(2) A claim for damages on the ground of adultery shall, subject to the provisions of any enactment relating to trial by jury in the Court, be tried on the same principles and in the same manner as actions for criminal conversation were tried immediately before the commencement of the Matrimonial Causes Act, 1857, and the provisions of this Act with reference to the hearing and decision of petitions shall so far as may be necessary apply to the hearing and decision of petitions on which damages are claimed. **20 & 21 Vict. c. 85.**

(3) The Court may direct in what manner the damages recovered on any such petition are to be paid or applied, and may direct the whole or any part of the damages to be settled for the benefit of the children, if any, of the marriage, or as a provision for the maintenance of the wife.

18. (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 dissolution of the marriage. **Proceedings for decree of presumption of death and dissolution of marriage.**

(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 until the contrary is proved.

(3) Sections 8 to 11 inclusive shall apply to a petition and a decree under this section as they apply to a petitioner for divorce and a decree of divorce respectively.

Jurisdiction in case of husband's change of domicile.

19. Where a wife has been deserted by her husband, or where her husband has been deported from Antigua and Barbuda under any law for the time being in force relating to the deportation of aliens, and the husband was immediately before the desertion or deportation domiciled in Antigua and Barbuda, the Court shall have jurisdiction for the purpose of any proceedings under this Act, notwithstanding that the husband has changed his domicile since the desertion or deportation.

Wife's property in case of judicial separation.

20. (1) In every case of judicial separation—

(a) the wife shall, as from the date of the decree and so long as the separation continues, be considered as a *feme* sole with respect to any property which she may acquire or which may devolve upon her, and any such property may be disposed of by her in all respects as a *feme* sole and if she dies intestate shall devolve as if her husband had been then dead; and

(b) the wife shall, during the separation, be considered as a *feme* sole for the purpose of contract and wrongs and injuries, and of suing and being sued, and the husband shall not be liable in respect of her contracts or for any wrongful act of omission by her or for any costs she incurs as plaintiff or defendant:

Provided that—

- (i) where on any judicial separation 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;
- (ii) if the wife returns to cohabitation with her husband, any property to which she is entitled at the date of her return shall, subject to any agreement in writing made between herself and her husband while separate, be her separate property;
- (iii) nothing in this section shall prevent the wife from joining at any time during the separa-

tion in the exercise of any joint power given to herself and her husband.

(2) In any case where the decree for judicial separation is obtained by the wife, any property to which she is entitled for an estate in remainder or reversion at the date of the decree, and any property to which she becomes entitled as executrix, administratrix, or trustee after the date of the decree, shall be deemed to be property to which this section applies, and for the purpose aforesaid the death of the testator or intestate shall be deemed to be the date when the wife became entitled as executrix or administratrix.

21. (1) Where a wife obtains a decree for judicial separation, the decree shall, so far as may be necessary for the protection of any person dealing with the wife, be valid and effectual until discharged, and the discharge or variation of the decree shall not affect any rights or remedies which any person would have had, if the decree had not been discharged or varied, in respect of any debts, contracts or acts of the wife incurred, entered into or done during the period between the date of the decree and the discharge or variation thereof. **Protection of third parties.**

(2) Any person who, in reliance on any such decree as aforesaid, makes any payment to or permits any transfer or act to be made or done by the wife, shall, notwithstanding the subsequent discharge or variation of the decree, or the fact that the separation has ceased or has been discontinued, be protected and indemnified in the same way in all respects as if at the time of the payment, transfer or other act the decree were valid and still subsisting without variation in full force and effect, or the separation had not ceased or been discontinued, as the case may be, unless at that time that person had notice of the discharge or variation of the decree or that the separation had ceased or been discontinued.

22. (1) The Court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life, as having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the Court may deem to be reasonable, and the Court **Alimony.**

may for that purpose order that it shall be referred to counsel to settle and approve a proper deed or instrument, to be executed by all the necessary parties, and may, if it thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.

(2) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (1), direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the court may think reasonable:

Provided that—

(a) if the husband, after any such order has been made, becomes from any cause unable to make the payments, the Court may discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part as the Court thinks fit; and

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

(3) On any petition for divorce or nullity of marriage the Court shall have the same power to make interim orders for the payment of money by way of alimony or otherwise to the wife as the Court has in proceedings for judicial separation.

(4) Where any decree for restitution of conjugal rights or judicial separation is made on the application of the wife, the Court may make such order for alimony as the Court thinks just.

(5) In all cases where the Court makes an order for alimony, the Court may direct the alimony to be paid either to the wife or to a trustee approved by the Court on her behalf, and may impose such terms or restrictions as the Court thinks expedient, and may from time to time appoint

a new trustee if for any reason it appears to the Court expedient so to do.

23. (1) If it appears to the Court in any case in which the Court pronounces a decree for divorce or for judicial separation by reason of the adultery, desertion, or cruelty of the wife that the wife is entitled to any property either in possession or reversion, the Court may, if it thinks fit, order such settlement as it thinks reasonable to be made of the property, or any part thereof, for the benefit of the innocent party, and of the children of the marriage or any or either of them.

Power of Court to order settlement of wife's property.

Any instrument made under any order of the Court made under this section shall be valid and effectual, notwithstanding the existence of coverture at the time of the execution thereof.

(2) Where the application for restitution of conjugal rights is by the husband, and it appears to the Court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the Court may, if it thinks fit, order a settlement to be made to the satisfaction of the Court of the 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 such part of the profits of trade or earnings, as the Court thinks reasonable, 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 or any of them.

24. The Court may after pronouncing a decree for divorce or for nullity of marriage enquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or any part of the property settled either for the benefit of the children of the marriage or of the parties to the marriage, as the Court thinks fit, and the Court may exercise the powers conferred by this section notwithstanding that there are no children of the marriage.

Power of Court to make orders as to application of settled property.

Custody of children.

25. (1) In any proceedings for divorce or nullity of marriage or judicial separation, the Court may from time to time, either before or by or after the final decree, make such provision as appears just with respect to the custody, maintenance and education of the children, the marriage of whose parents is the subject of the proceedings, or, if it thinks fit, direct proper proceedings to be taken for placing the children under the protection of the Court.

(2) On an application made in that behalf the Court may, at any time before final decree, in any proceedings for restitution of conjugal rights, or, if the respondent fails to comply therewith, after final decree, make from time to time all such orders and provisions with respect to the custody, maintenance and education of the children of the petitioner and respondent as might have been made by interim orders if proceedings for judicial separation had been pending between the same parties.

(3) The Court may, if it thinks fit, on any decree of divorce or nullity of marriage, order the husband, or (in the case of a petition for divorce by the wife on the ground of her husband's insanity) order the wife, to secure for the benefit of the children such gross sum of money or annual sum of money as the Court may deem reasonable, and the Court may for that purpose order that it shall be referred to counsel to settle and approve a proper deed or instrument to be executed by all necessary parties:

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 twenty-one years of age.

Commencement of proceedings as to maintenance, settlement of property, &c.

26. (1) When a petition for divorce or nullity of marriage has been presented, proceedings under sections 22, 23 or 24 or subsection (3) of section 25 may, subject to and in accordance with the rules of court, be commenced at any time after the presentation of the petition:

Provided that no order under any of the said sections or under the said subsection (other than an interim order for the payment of alimony under section 22) shall be made unless and until a decree nisi has been pronounced, and no such order, save in so far as it relates to the preparation, execution, or approval of a deed or instrument and no set-

tlement made in pursuance of any such order shall take effect unless and until the decree is made absolute.

(2) The said section 22 shall apply in any case where a petition for divorce or judicial separation is presented by the wife on the ground of her husband's insanity as if for the references to the husband there were substituted references to the wife, and for the references to the wife there were substituted references to the husband, and in any such case and in any case where a petition for divorce, nullity, or judicial separation, is presented by the husband on the ground of his wife's insanity or mental deficiency, the Court may order the payments of alimony or maintenance under the said section to be made to such persons having charge of the respondent as the Court may direct.

27. The Court may from time to time vary or modify any order for the periodical payment of money made under the provisions of this Act relating to matrimonial causes and matters 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 ordered to be paid, and subsequently revive it wholly or in part, as the Court thinks just. **Power to vary orders.**

28. In every case in which any person is charged with adultery with any party to a suit or in which the Court may consider, 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. **Power to allow intervention on terms.**

29. (1) Notwithstanding any rule of law, the evidence of a husband or a wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period. **Evidence.**

(2) Notwithstanding anything in this section or any rule of law, a husband or wife shall not be compellable in any proceedings to give evidence of the matters aforesaid.

(3) The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings,

but no witness in any such proceedings, whether a party thereto or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery.

(4) 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 interest of justice any such evidence ought to be heard in open court.
