

MATRIMONIAL CAUSES ORDINANCE, 1941. ⁽¹⁾

No. 12 of 1941.

An Ordinance relating to Divorce and Matrimonial Causes.

BE it ordained by the Legislative Council for the Territory of Papua, in pursuance of the powers conferred by the *Papua Act, 1905-1940*, as follows:—

1. This Ordinance may be cited as the *Matrimonial Causes Ordinance, 1941*, and shall come into operation on a day to be fixed by Proclamation published in the *Gazette*.⁽¹⁾ Short title and commencement.

2. *The Matrimonial Causes Jurisdiction Ordinance of 1910* is repealed. Repeal.

3. This Ordinance is divided into parts as follows:— Division of Ordinance.

Part I.—Preliminary.

Part II.—Jurisdiction.

Part III.—Sittings of Court.

Part IV.—Divorce Judicial Separation and Other Relief.

Part V.—Adulterers.

Part VI.—Intervention.

Part VII.—Maintenance and Children.

Part VIII.—Property Settlements and Like Matters.

Part IX.—Transactions to Defeat Claims.

Part X.—Appeals.

Part XI.—Miscellaneous.

PART I.—PRELIMINARY.

4. In this Ordinance unless the context or subject matter otherwise indicates:— Interpretation.

(1) Particulars of this Ordinance are as follows:—

Date of reservation by Administrator.	Date on which assent of Gov.-Gen. in Council published in Papua <i>Govt. Gaz.</i>	Date on which came into operation.
17.7.1941	5.11.1941	Not yet proclaimed to come into operation.

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“Claim” includes a counterclaim.

“Court” means the Supreme Court of the Territory in its Matrimonial Causes Jurisdiction.

“Crown Law Officer” means Crown Law Officer for the Territory of Papua.

“Defendant” includes a plaintiff against whom there is a counter-claim.

“Matrimonial action” means all proceedings instituted in the Supreme Court of the Territory in its Matrimonial Causes Jurisdiction.

“Plaintiff” includes a defendant counterclaiming.

“Prescribed” includes prescribed by Rules of Court made under this Ordinance.

“Registrar” means Registrar of the Supreme Court.

PART II.—JURISDICTION.

Jurisdiction.

5. —(1.) There shall be vested in the Supreme Court jurisdiction in respect of divorces *a mensa et thoro* suits of nullity of marriage suits for dissolution of marriage suits for restitution of conjugal rights suits for jactitation of marriage and in all causes suits and matters matrimonial (except in respect of marriage licences).

(2.) The said jurisdiction shall be the Matrimonial Causes Jurisdiction of the Supreme Court and the said jurisdiction and all powers and authorities conferred by this Ordinance may be exercised in like manner as the other powers jurisdictions and authorities given to or vested in the Supreme Court.

(3.) The said jurisdiction shall except as herein otherwise provided be exercised by a Judge of the Supreme Court.

Principles to be followed.

6. In all suits and proceedings other than proceedings to dissolve any marriage the Court shall proceed and act and give relief on principles and rules which in the opinion of the Court shall be as nearly as may be conformable to the principles and rules on which the Ecclesiastical Courts of England acted and gave relief prior to the *Imperial Matrimonial Causes Act, 1857*, but subject to the provisions of this Ordinance and to the rules and orders made under this Ordinance.

PART III.—SITTINGS OF COURT.

Sittings of Court.

7. The Court shall hold its Sittings at Port Moresby or at such other places as a Judge may from time to time direct.

Sittings in Chambers.

8. The Judge may sit in Chambers for the despatch of such part of the business of the Court as can in his opinion with

advantage to the parties be heard in Chambers and such sittings in Chambers shall from time to time be appointed by the Judge.

9. The Judge when so sitting in Chambers shall have and exercise the same powers and jurisdiction in respect of the business to be brought before him as if sitting in open Court.

Powers of
Judge in
Chambers.

10. The Court may on the application of either husband or wife or at its own discretion hear try and determine any matrimonial action in Chambers and may at all times in any such action whether heard and tried in Chambers or in Court make an order forbidding the publication of any report or account of the evidence or other proceedings therein either as to the whole or portion thereof and the breach of any such order or any colourable or attempted evasion thereof may be dealt with as for contempt of Court.

Publication of
evidence, etc.

PART IV.—DIVORCE JUDICIAL SEPARATION AND OTHER RELIEF.

11. Any married person domiciled in the Territory may claim an order for divorce upon any of the following grounds existing or occurring after the marriage:—

Grounds for
divorce.

- (a) Adultery;
- (b) Habitual cruelty for one year and upwards immediately preceding the commencement of the action;
- (c) Desertion for three years and upwards immediately preceding the commencement of the action without reasonable excuse;
- (d) Habitual drunkenness for three years and upwards immediately preceding the commencement of the action coupled with—
 - (i) if the husband is the defendant—habitually leaving wife without sufficient means of support;
 - (ii) if the wife is the defendant—habitual neglect of her domestic duties;
- (e) Imprisonment for the three years immediately preceding the commencement of the action under a commuted sentence for a capital crime or under a sentence of at least seven years;
- (f) A conviction during the year immediately preceding the commencement of the action for having attempted to murder or having assaulted with intent to inflict grievous bodily harm upon or caused grievous bodily harm to the other party;
- (g) If the husband is the defendant—frequent convictions within the five years preceding the commencement of

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the action the sentences for which aggregate three years together with habitually leaving his wife without sufficient means of support;

- (h) Sodomy rape or bestiality;
- (i) Confinement in any Institution under any law of the Territory or elsewhere relating to the confinement of mental defectives during the five years immediately preceding the commencement of the action:

Provided it is proved that it is improbable that the defendant will recover;

- (j) If the husband is the defendant habitual and wilful failure during the five years preceding the commencement of the action to pay the maintenance for his wife which he has been ordered to pay by an order of any Court or has agreed to pay pursuant to any instrument providing for any separation between him and his wife.

Grounds for
judicial
separation.

12. Any married person domiciled in the Territory may claim an order for judicial separation on any of the following grounds existing or occurring after the marriage:—

- (a) Adultery;
- (b) Cruelty;
- (c) Desertion for two years and upwards preceding the commencement of the action;
- (d) Failure to comply with an order for restitution of conjugal rights;
- (e) Any ground for which a decree for divorce *a mensa et thoro* might have been pronounced prior to the *Imperial Matrimonial Causes Act, 1857*.

Retrospective
operation.

13. An order may be made under either of the two preceding sections notwithstanding that the acts or circumstances constituting the grounds therefor commenced or took place before the commencement of this Ordinance or outside the Territory.

Effect of an
Order for judicial
separation.

14. An order for judicial separation under this Ordinance shall have the same force and effect as a decree for divorce *a mensa et thoro* prior to the *Imperial Matrimonial Causes Act, 1857*.

Restitution of
conjugal rights
and nullity.

15.—(1.) Proceedings for restitution of conjugal rights and nullity of marriage and all other proceedings invoking the jurisdiction of the Court shall be brought except as otherwise provided by action under this Ordinance.

(2.) In addition to any other grounds on which a marriage is by law voidable a marriage shall be voidable on the ground that the defendant was at the time of the marriage pregnant by some person other than the plaintiff:

Provided that—

- (a) the plaintiff was at the time ignorant of the facts alleged;
- (b) the proceedings were instituted within a year from the date of the marriage;
- (c) that marital intercourse with the consent of the plaintiff has not taken place since the discovery by the plaintiff of the existence of the grounds set out in this subsection.

16. Upon the hearing the Court shall as far as possible satisfy itself that there is no reason why the relief sought should not be granted. Duty of Court at hearing.

17. No order shall be made if—

- (a) the plaintiff has condoned been accessory to or connived at all the grounds proved; Absolute bars.
- (b) there has been collusion by the plaintiff in bringing or prosecuting the action;
- (c) the plaintiff in the opinion of the Court resorted to the Territory for the purposes of instituting the action.

18.—(1.) The Court may refuse to make an order if the plaintiff has been guilty of— Discretionary bars.

- (a) adultery not condoned;
- (b) unreasonable delay;
- (c) cruelty;
- (d) habits or conduct inducing or contributing to the existence of the ground relied upon;
- (e) desertion before the commencement or happening of the said ground;
- (f) wilful neglect or misconduct conducing to the existence of the said ground.

(2.) When an order for divorce is claimed on the ground set out in Paragraph (i) of Section Eleven hereof the Court may refuse to make the order until the Plaintiff has made to the satisfaction of the Court proper provision for the maintenance of the defendant.

19. Subject to the two preceding sections the Court on being satisfied as to the existence of any ground shall make the order or the order *nisi* claimed as the case may be. Duty of Court to make order.

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Alteration of claim.

20. If in an action for divorce a ground is proved sufficient to justify an order for divorce the plaintiff shall not obtain an order for judicial separation.

Order nisi.

21. Every order for divorce or nullity of marriage shall in the first instance be an order *nisi* not to be made absolute until the expiration of six months or such shorter time as the order *nisi* directs.

Decree absolute.

22.—(1.) After the expiration of the time limited in the order *nisi* the plaintiff may request the Registrar in writing that the order may be made absolute

(2.) Upon receipt of such request in writing the Registrar shall if there is nothing in opposition to the final order issue under his hand the order absolute.

(3.) If within one month of the expiration of the time limited in the order *nisi* the plaintiff makes no application to have the order made absolute the defendant may in like manner apply in that behalf.

Remarriage—
Registrar's
notice as to.

23. The Registrar shall endorse upon every order *nisi* a notice that the parties thereto if they remarry before the decree is made absolute will be guilty of bigamy.

Remarriage.

24. Upon the making of the order absolute as set forth in Section Twenty-two of this Ordinance the parties may remarry as if the marriage had been dissolved by death:

Provided that no officiating Minister shall be compelled to solemnize the marriage of any person whose former marriage was dissolved on the ground of his or her adultery.

Abolition of attachment.

25. An order for restitution of conjugal rights shall not be enforceable by attachment but disobedience shall from the date of the making of the order constitute desertion.

PART V.—ADULTERERS.

Joinder of adulterer.

26. If there is a claim by either party to the marriage for damages or costs against an adulterer the latter shall be made a defendant in the action but not otherwise.

Notice and intervention by adulterer.

27. In every other case unless an order to the contrary is made a person (other than a party to the marriage) charged with adultery shall be served with a notice in the form prescribed by the rules that the charge has been made and that person shall be entitled to intervene in the action.

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28. Either party to a marriage may in an action claiming an order for divorce or judicial separation but not otherwise claim damages from any person on the ground of adultery (not condoned) with the other party to the marriage. Damages.

29. The action for criminal conversation is abolished but the principles relating thereto shall be applicable to the said claim for damages. Action of criminal conversation abolished.

30. The Court may direct in what manner the damages awarded shall be paid or applied and that they shall be settled as it thinks proper for the benefit of the wife or of any child of hers. Application of damages.

PART VI.—INTERVENTION.

31. The Crown Law Officer shall be entitled to intervene and contest or argue any question arising in any action if the Court requests him so to do. Intervention by Crown Law Officer at request of Court.

32. At any time prior to the making of a final order or order absolute the Crown Law Officer shall be entitled to intervene in any action if he files an affidavit that he has reason to believe that there are relevant matters which have not been or may not be but which ought to be made known to the Court. Intervention in other cases.

33. At any time during the period mentioned in the preceding section the Court may make an order entitling any person to intervene if in the opinion of the Court he may be able to prove facts relevant to the action which have not been or may not be but which ought to be made known to the Court. Intervention by other persons.

34. Any person intervening under this part of this Ordinance shall be deemed a Defendant in the action with rights duties and liabilities of a Defendant. Position of Intervener.

PART VII.—MAINTENANCE AND CHILDREN.

35. In any action the Court may make such order as it thinks proper as regards the custody education and maintenance of and access to the children of the marriage which is the subject of the action and may direct proper proceedings to be taken for placing such children under the protection of the Court. Custody.

36. A child adopted by the husband and wife or either of them under any law relating to the adoption of children whether such law be a law of the Territory or elsewhere shall be deemed to be a child of the marriage provided such child is within the jurisdiction. Adopted child.

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Maintenance.

37.—(1.) The Court in any action may make any order which it thinks proper for the maintenance of one party to the marriage by the other party and may make an order in favour of a guilty party.

(2.) In making any such order the Court shall have regard to the means of the husband and the wife and to the conduct of the parties.

Powers of Court
as to
maintenance.

38. The Court in exercising its power under this Part may—

- (a) order that a gross or a weekly monthly yearly or any other periodic sum shall be paid or secured;
- (b) order that any necessary deed or instrument should be executed and that such documents of title should be produced or such other things be done as are necessary to enable an order to be effectively carried out or to provide security for the due performance of any order;
- (c) order that payments should be made to the wife or to a trustee to be appointed or to any public body;
- (d) make a permanent order or an order pending the disposal of the action or for a fixed term or until some future event occurs or for a life or during joint lives or until further order;
- (e) impose terms and conditions and suspend any final order or order *nisi* until compliance with an order under this part;
- (f) discharge or modify any order under this part or suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event;
- (g) revive any order wholly or in part;
- (h) increase or decrease the amount payable under any order;
- (i) make any other order (whether of the same nature as those mentioned in the preceding paragraphs or not and whether or not it is in accordance with the practice prior to the passing of this Ordinance) which it thinks necessary to do justice;
- (j) deal with any two or more of the matters mentioned in this section in the same order;
- (k) include its order under this part in an order *nisi* order absolute or final order or may make an order under this part at any time before or after the final order or order absolute.

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39.—(1.) All orders made by the Court in any action or proceeding instituted under the authority of this Ordinance may be enforced and put in execution in like manner as the other judgments orders and decrees of the Supreme Court may be now enforced and put in execution. Enforcement of orders.

(2.) The Court may enforce by attachment any order made by it for payment of costs or of any sum due in respect of alimony or maintenance of children. Attachment.

PART VIII.—PROPERTY SETTLEMENTS AND LIKE MATTERS.

40.—(1.) Upon the making of an order for judicial separation and for so long as the separation continues— Effect of judicial separation.

- (a) the wife shall be considered as a single woman for the purpose of contracts wrongs and injuries and with respect to any property which she acquires or which devolves upon her;
- (b) such property may be disposed of by her as a single woman and shall upon intestacy devolve as if her husband had predeceased her;
- (c) the husband shall not be liable in respect of any act or omission of the wife.

(2.) Subject to any arrangement in writing made between the wife and her husband while separate any property to which the wife is entitled at the date of her return to cohabitation with her husband shall be her separate property.

(3.) Nothing in this section 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.

(4.) Where the order 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 order and any property to which she becomes entitled as executrix administratrix or trustee after the date of the order shall be deemed to be property to which this section applies and for the purposes aforesaid the death of the testator or intestate shall be deemed to be the date when the wife became entitled as executrix or administratrix.

41.—(1.) Until an order for judicial separation is discharged it shall protect any person having any transaction with the wife. Protection to third parties.

(2.) The discharge or variation of such an order shall not affect the position of a person who has had any transaction with the wife prior to the discharge or variation.

(3.) Neither the discharge nor the variation of such an order nor the cessation of the separation shall affect the position of a

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person who subsequently has any transaction with the wife in reliance upon such order and without notice of the discharge or variation of it or the cessation of separation.

Power as to
variation of
settlements.

42. Upon the application of either party to the marriage whether plaintiff or defendant the Court after final order or order absolute may make such orders as it thinks proper with reference to the application of the whole or part of the property dealt with by ante-nuptial or post-nuptial settlements on the parties either for the benefit of the children or of the parties or any of them and in relation thereto may exercise any of the powers of the Court under Part VII. which are applicable.

PART IX.—TRANACTIONS TO DEFEAT CLAIMS.

Transactions
to defeat claims.

43.—(1.) The Court may set aside or restrain the making of any instrument or sale by or on behalf of or by direction or in the interest of a party if it is made or intended to be made to defeat an existing or anticipated order for costs damages or maintenance.

(2.) The Court may order that any money or real or personal property dealt with by such instrument or sale may be taken in execution or charged with the payment of such sums for costs damages or maintenance as the Court directs or that the proceeds of a sale shall be paid into Court to abide its order.

(3.) The Court shall have regard to the interests of and shall make any order proper for the protection of a *bona fide* purchaser or other person interested.

(4.) A party or any one acting in collusion with a party may be ordered to pay the costs of any other party or of a *bona fide* purchaser of and incidental to such instrument or sale and of the setting aside or restraining thereof.

PART X.—APPEALS.

Appeals.

44. Any party dissatisfied with any decree order judgment or decision of the Court may appeal therefrom to the High Court of Australia in the manner and subject to the procedure and rules provided under *The Appeal Ordinance of 1909* for appeals in civil matters.

PART XI.—MISCELLANEOUS.

Procedure.

45. Proceedings under this Ordinance shall not be instituted by petition but shall be commenced by writ of summons which shall be accompanied by a statement of claim containing such particulars as may be prescribed and shall be conducted in accordance with Rules of Court governing the practice and procedure under this

Ordinance. If in any proceedings circumstances arise not provided for or if there is any doubt or dispute as to the proper procedure to be followed the Judge may direct what shall be done in the particular instance or that the procedure already adopted shall be deemed proper and his directions shall be of the same validity as if incorporated in this Ordinance.

46. In any proceedings under this Ordinance either party to a marriage may give evidence proving or tending to prove that the said parties did not have sexual relations with each other at any particular time notwithstanding that such evidence would show or tend to show that any child born to the wife during the marriage was illegitimate.

Evidence of non-access.

47.—(1.) When desertion constitutes a ground for relief a wife shall not be deemed to have lost her domicile by reason of her husband acquiring a new domicile since the commencement of the desertion.

Retention of domicile by wife.

(2.) Where a wife living in the Territory commences an action for divorce upon any ground and has been living in the Territory not less than three years immediately preceding such commencement and has such intention of residing in the Territory as would constitute domicile in the Territory in the case of a single woman and has lived apart from her husband not less than three years she shall be deemed domiciled in the Territory.

48. Notwithstanding anything in this Ordinance contained no suit or other proceeding for nullity of marriage dissolution of marriage judicial separation or restitution of conjugal rights shall be instituted or maintainable by or against any person who is an aboriginal native of New Guinea and whose marriage is the subject of such suit or other proceeding.

No suit to be instituted by or against an aboriginal native of New Guinea.

The term "aboriginal native" of New Guinea means any aboriginal native of the Island of New Guinea or any island adjacent thereto and also any aboriginal native of Australia or any island adjacent thereto and also any aboriginal native of any island in the Pacific Ocean or of any of the East Indian Islands or of Malaysia and also any person who is wholly or partly descended from any aboriginal native as aforesaid.

49. The Court may under its seal issue writs of subpoena or subpoena *duces tecum* commanding the attendance of witnesses at such time and place as shall be therein expressed and such writs may be served in any part of the said Territory and every person served with such writ shall be bound to attend and to be sworn or to make a solemn declaration and give evidence in obedience thereto.

Enforcing attendance of witnesses.

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Costs
discretionary.

50. On the hearing of any action proceeding or matter under this Ordinance the Court may make such order as to costs as may seem just.

Rules.

51.—(1.) A Judge may make general rules of Court⁽²⁾ for regulating the practice and procedure under this Ordinance for fixing and regulating the fees payable on all proceedings before the Court and for regulating the exercise by the Registrar of any powers hereby conferred upon him and in respect of all matters under this Ordinance which it is necessary or convenient to regulate by such rules.

(2.) A copy of every such rule shall be laid before the Legislative Council within seven days after the publication thereof if the Legislative Council be then sitting or otherwise within seven days after the commencement of the next session. If the Legislative Council passes a resolution at any time within fifteen days after such rules have been laid before it disallowing any rule such rule shall thereupon cease to have effect.

(2) No rules of Court have been published in *Papua Govt. Gaz.*