

DIVORCE AND MATRIMONIAL CAUSES ORDINANCE 1934.⁽¹⁾

No. 32 of 1934.

An Ordinance Relating to Divorce and Matrimonial Causes.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1932*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Divorce and Matrimonial Causes Ordinance 1934*.⁽¹⁾ Short title.
2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.⁽¹⁾ Commencement.
3. The *Matrimonial Causes Jurisdiction Ordinance 1928* is repealed. Repeal.
4. This Ordinance shall not affect any proceedings pending at the commencement of this Ordinance under *The Matrimonial Causes Jurisdiction Ordinance of 1910*⁽²⁾ of the Territory of Papua in its application to the Territory of New Guinea as amended by the *Matrimonial Causes Jurisdiction Ordinance 1928*, or any right or privilege acquired or duty imposed or liability incurred thereunder; and any such right, privilege, duty, or liability may be enforced, and any such proceedings continued, completed, and enforced, as if this Ordinance had not been passed. Saving.
5. This Ordinance is divided into Parts, as follows:— Parts.
 - Part I.—Preliminary.
 - Part II.—Judicial Separation and Restitution of Conjugal Rights.
 - Part III.—Divorce and other Relief.

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

Date of reservation by Administrator.	Date on which assent of Gov.-Gen. in Council published in <i>N.G. Gaz.</i>	Date on which came into operation.
6.2.1934	15.5.1934	1.6.1934 (<i>N.G. Gaz.</i> of 15.5.1934)

(2) As from 1.6.1934 *The Matrimonial Causes Jurisdiction Ordinance of 1910* of the Territory of Papua ceased to apply to the Territory of New Guinea: See the *Laws Repeal and Adopting Ordinance 1934*.

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Part IV.—Remedies against Adulterers.

Part V.—Maintenance and Children.

Part VI.—Settlements and Transactions to Defeat Claims.

Part VII.—Miscellaneous.

Definitions.

6. In this Ordinance, unless the contrary intention appears—

“Court” means the Supreme Court;

“habitual drunkenness” includes habitual intoxication by reason of taking or using to excess any sedative, narcotic, or stimulating drug or preparation;

“Rules” means rules of court made under this Ordinance.

Jurisdiction.

7.—(1.) The Court, in addition to the jurisdiction conferred by this Ordinance and the Rules, shall have the jurisdiction in relation to all matrimonial causes and matters (except marriage licences) which was vested in any Ecclesiastical Court or person in England immediately prior to the Imperial *Matrimonial Causes Act*, 1857.

(2.) In all proceedings other than proceedings for divorce, the Court shall proceed and act and give relief on principles and rules which, in the opinion of the Court, as nearly as may be conform to the principles and rules upon which the Ecclesiastical Courts of England proceeded and acted and gave relief, but subject to the provisions of this Ordinance, the Rules, and any other Ordinance.

Retrospective provision.

8. A decree for divorce or judicial separation may be made under this Ordinance notwithstanding that the acts or circumstances constituting the grounds therefor commenced or took place before the commencement of this Ordinance.

PART II.—JUDICIAL SEPARATION AND RESTITUTION OF CONJUGAL RIGHTS.

Grounds for judicial separation.

9. Any married person may present a petition to the Court praying for a judicial separation from the other party to the marriage on any of the following grounds existing or occurring after the marriage:—

(a) Adultery;

(b) Cruelty;

(c) Desertion for two years;

(d) Failure to comply with a decree for restitution of conjugal rights;

(e) Any ground on which a decree for divorce *a mensa et thoro* might have been pronounced in England immediately prior to the Imperial *Matrimonial Causes Act*, 1857.

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10.—(1.) The Court, on being satisfied that the allegations contained in a petition for judicial separation are true and that there is no legal ground why the petition should not be granted, may make a decree for judicial separation.

Decree for judicial separation.

(2.) A decree for judicial separation shall have the same force and effect as a decree for divorce *a mensa et thoro* had in England immediately prior to the Imperial *Matrimonial Causes Act, 1857*.

11. The Court, 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, may 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 for the decree, that there was reasonable cause for the alleged desertion.

Decree for judicial separation may be reversed.

12.—(1.) Any married person may present a petition to the Court praying for restitution of conjugal rights on the ground that the other party to the marriage has without reasonable excuse withdrawn from his or her society.

Decree for restitution of conjugal rights.

(2.) The Court, on being satisfied that the allegations contained in the petition are true and that there are no legal grounds why the petition should not be granted, may make a decree for restitution of conjugal rights.

13. A decree for restitution of conjugal rights shall not be enforced by attachment, but failure to comply therewith shall constitute desertion as from the date of the decree.

Enforcement of decree for restitution of conjugal rights.

PART III.—DIVORCE AND OTHER RELIEF.

14. Any married person who is domiciled in the Territory and at the time of the filing of the petition has been domiciled or resident there for two years at least, may present a petition to the Court praying for a divorce from the other party to the marriage on any of the following grounds existing or occurring after the marriage:—

Grounds for divorce.

- (a) Adultery;
- (b) Habitual cruelty for one year;
- (c) Desertion for three years;
- (d) Habitual drunkenness for three years together with—
 - (i) if the husband is the respondent, habitually leaving his wife without sufficient means of support; or
 - (ii) if the wife is the respondent, habitual neglect of her domestic duties;

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- (e) Imprisonment for the three years immediately preceding the filing of the petition 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 filing of the petition for having attempted to murder or having done grievous bodily harm to the other party;
- (g) If the husband is the respondent, frequent convictions within the five years immediately preceding the filing of the petition, the sentences for which aggregate three years, together with habitually leaving his wife without sufficient means of support;
- (h) A conviction during the year immediately preceding the filing of the petition for sodomy, rape, or bestiality;
- (i) If the husband is the respondent, habitual and wilful failure during the three years immediately preceding the filing of the petition 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 a separation between him and his wife.

Domicile of wife.

15.—(1.) A deserted wife whose husband was domiciled in the Territory at the time of desertion, shall be deemed, for the purposes of this Ordinance, to have retained her Territory domicile, notwithstanding that since the desertion her husband has acquired some other domicile.

(2.) Where a wife petitions for divorce on the ground specified in paragraph (i) of the last preceding section and her husband was domiciled in the Territory when the order to pay maintenance or the agreement for separation was made, the wife shall be deemed, for the purposes of this Ordinance, to have retained her Territory domicile, notwithstanding that her husband has since acquired some other domicile.

(3.) Where a wife living in the Territory petitions for divorce on any ground and has been living in the Territory for not less than three years immediately preceding the filing of the petition and has such intention of residing in the Territory as would constitute a Territory domicile in the case of a single woman and has been living apart from her husband for a period exceeding three years, she shall be deemed to be domiciled in the Territory and to have been, at the time of the petition, domiciled there for two years at least, within the meaning of the last preceding section.

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16. Upon the hearing of a petition for divorce, the Court shall as far as possible satisfy itself that there is no reason why the decree should not be pronounced, and shall inquire into any countercharge that is made against the petitioner.

Duty of Court at hearing.

17. A decree for divorce shall not be pronounced—

Absolute bars to relief.

(a) if the petitioner has condoned, been accessory to, or connived at all the grounds proved; or

(b) if there has been collusion between the petitioner and the respondent.

18. The Court may refuse to pronounce a decree for divorce if the petitioner has been guilty of—

Discretionary bars to relief.

(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 ground relied upon; or

(f) wilful neglect or misconduct conducing to the existence of the ground relied upon.

19. Subject to the provisions of this Ordinance, the Court, upon being satisfied as to the existence of any ground specified in section fourteen of this Ordinance, shall pronounce a decree for divorce.

Duty of Court to pronounce decree.

20. On the filing of any petition for divorce or nullity of marriage, the Registrar of the Court shall send a copy of the petition to the Crown Law Officer.

Registrar to send copy of petition to Crown Law Officer.

21. The Crown Law Officer, if he thinks fit, may oppose a petitioner obtaining a decree for divorce or nullity of marriage, or show cause why such a decree should not be made.

Intervention by Crown Law Officer.

22. Any person may give information to the Crown Law Officer of any matter material to the decision of a petition for divorce or nullity of marriage.

Information to Crown Law Officer.

23. At any time prior to the making of a decree absolute for divorce or nullity of marriage, 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 in the proceeding, which have not been, or may not be, but which ought to be, made known to the Court.

Intervention by other persons.

24. If in any proceeding for divorce or judicial separation the respondent alleges in his or her answer any matter entitling him or

Relief to respondent.

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her to any relief under this Ordinance, the Court may give to the respondent, on his or her application, the same relief as he or she would have been entitled to if he or she had filed a petition seeking such relief.

Decree *nisi*.

25.—(1.) Every decree for divorce or 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.

(2.) On cause being shown in the prescribed manner why a decree *nisi* should not be made absolute, the Court may direct that the decree *nisi* shall stand unaffected, reverse the decree *nisi*, require further inquiry, or otherwise deal with the case as it thinks fit.

Decree absolute.

26. Unless the Court otherwise orders, a decree *nisi* for divorce or nullity of marriage shall become absolute upon the expiration of six months from the pronouncing thereof or upon the dismissal of any appeal, proceeding, or intervention as regards the decree *nisi*, whichever last happens; and when the decree *nisi* becomes absolute, the Registrar of the Court shall issue the decree absolute as of course.

Remarriage.

27. When a decree for divorce has been made absolute but no sooner, the parties to the marriage shall be at liberty to marry again as if the marriage to which the decree relates had been dissolved by death.

PART IV.—REMEDIES AGAINST ADULTERERS.

Claim for damages.

28.—(1.) Either party to a marriage may, in a petition 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, committed not more than two years before the filing of the petition:

Provided that if the petition is dismissed no damages shall be recovered.

(2.) Every petition claiming damages shall be served on the alleged adulterer.

Co-respondent.

29. If there is a claim by either party to a marriage for damages or costs against an alleged adulterer, the latter shall be made a co-respondent, but not otherwise.

Abolition of action for criminal conversation.

30. The action for criminal conversation is abolished, but, subject to the provisions of this Ordinance, the principles relating thereto shall be applicable to a claim for damages referred to in section twenty-eight of this Ordinance.

31. The Court may direct in what manner the damages awarded in pursuance of this Part shall be paid or applied, and that they shall be settled as it thinks proper for the benefit of children (if any) of the marriage or as a provision for the maintenance of the wife. Application of damages.

32. Where under this Part any person has been made a co-respondent, the Court may award him costs, or, if the adultery has been established against him, order him to pay the whole or any part of the costs of the proceedings. Power to award costs to or against co-respondent.

33. Except in the case mentioned in section twenty-nine of this Ordinance, unless an order to the contrary is made by the Court, a person (other than a party to the marriage) charged with adultery shall be served with a notice that the charge has been made and shall be entitled to intervene. Notice to adulterer.

PART V.—MAINTENANCE AND CHILDREN.

34. In any proceeding for divorce, nullity of marriage, judicial separation, or restitution of conjugal rights, 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 proceeding, and may direct proper proceedings to be taken for placing the children under the protection of the Court. Custody &c. of children.

35.—(1.) In any proceeding for divorce, nullity of marriage, judicial separation, or restitution of conjugal rights, the Court 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. Maintenance.

(2.) The Court shall have regard to the means of the husband and of the wife and to the conduct of the parties.

36. The Court in exercising its powers under this Part may— Powers of Court as to maintenance.

- (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 shall be executed and that such documents of title shall be produced or such other things done, as are necessary to enable any order to be carried out effectively or to provide security for the due performance of any order;
- (c) order that payments shall be made to the husband or wife or to a trustee to be appointed or to any public body;

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- (d) make a permanent order or an order pending the disposal of the petition, or for a fixed term, or until the happening of some future event, or for a life, or during joint lives, or until further order;
- (e) impose terms and conditions and order that a decree *nisi* shall not become absolute 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 until the happening of some future event;
- (g) revive any order wholly or in part;
- (h) increase or decrease the amount payable under any decree or order;
- (i) make any other order (whether of the same nature as those mentioned in the preceding paragraphs of this section or not, and whether in accordance with the practice prior to the commencement of this Ordinance or not) which it thinks is necessary to do justice;
- (j) in the same order deal with any two or more of the matters mentioned in this section; and
- (k) include its order under this Part in a decree *nisi* or decree absolute, or make an order under this Part at any time before or after a decree absolute.

Enforcement of order for maintenance.

37.—(1.) A copy, certified by the Registrar of the Court, of any decree or order made under this Part, which contains directions as to the maintenance of a wife or child, may be filed with the Clerk of a District Court.

(2.) Upon the filing of the decree or order, those parts thereof which relate to maintenance and are in force for the time being may be enforced in the same manner as an order for the support of a wife or child made by a District Court under the *Deserted Wives and Children Ordinance* 1934, and noncompliance therewith may be punished in the same manner as if those parts were an order for support made under that Ordinance.

PART VI.—SETTLEMENTS AND TRANSACTIONS TO DEFEAT CLAIMS.

Power as to variation of settlements.

38. After a decree absolute for divorce, nullity of marriage, or judicial separation, the Court may inquire 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 as it thinks proper with reference to the application of the whole

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or part of the settled property for the benefit of the children of the marriage (if any) or of the parties or of any of them, and in relation thereto may exercise any of its powers under Part V. of this Ordinance which are applicable.

39.—(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 interests of, a party, if it is made or intended to be made to defeat an existing or anticipated order for costs, damages, or maintenance.

Transactions to
defeat claims.

(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 interest 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.

PART VII.—MISCELLANEOUS.

40. Every petition shall state, as distinctly as the nature of the case permits, the facts upon which the claim is based.

Petition.

41. Every person seeking a decree for divorce, nullity of marriage, judicial separation, or restitution of conjugal rights shall make and file, together with the petition, an affidavit verifying it so far as the deponent is able to do so, and stating that there is not any collusion between the deponent and the other party to the marriage, and also, in every case where adultery is alleged, that there is not any connivance between the deponent and the other party to the marriage.

Affidavit
verifying
petition.

42. Every petition under this Ordinance shall be served on the party to be affected thereby, either within or without the Territory, in the manner the Court by any general or special order from time to time directs:

Serving
petition.

Provided that the Court may dispense with service altogether where it seems necessary or expedient to do so.

43. The parties to any proceeding instituted in consequence of adultery, and the husbands and wives of the parties, shall be competent to give evidence in the proceeding; but no witness in any such proceeding, whether a party thereto or not, shall be liable to be asked or be bound to answer any question tending to show that he

Evidence of
parties.

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or she has been guilty of adultery, unless he or she has already given evidence in the proceeding in disproof of the alleged adultery.

Evidence of non-access.

44. In any proceeding under this Ordinance, either party to a marriage may give evidence proving or tending to prove that the 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.

Proof of wilful failure to pay maintenance.

45. On the hearing of a petition for divorce on the ground specified in paragraph (i) of section fourteen of this Ordinance, if it is proved that the husband has failed to pay the maintenance ordered or agreed to be paid, the onus shall be on the husband of proving that the failure was not wilful.

Proof of births, deaths, and marriages.

46. The Court may receive as evidence of the facts therein stated any document purporting to be either the original or a certified copy of a certificate, entry, or record of a birth, death, or marriage alleged to have taken place outside the Territory.

Mode of taking evidence.

47. The witnesses in any proceeding under this Ordinance, where their attendance can be had, shall be sworn and examined orally in open Court, and their attendance and the production of documents by them shall be compelled in the same manner as in an ordinary civil action:

Provided that the parties, with the leave of the Court, may verify their respective cases in whole or in part by affidavit, but so that the deponent may be orally cross-examined and re-examined in open Court either on the application of the other party or by direction of the Court.

Commissions for the examination of witnesses.

48. The Court may order the examination of witnesses, and also a commission to issue for the examination of witnesses, in the same way to all intents as if the matter before it were an ordinary civil action.

Adjournment.

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

Costs.

50. Subject to the provisions of this Ordinance and the Rules, the Court, on the hearing of any proceeding under this Ordinance, shall have full power to determine by whom and to what extent the costs are to be paid and may make such order as to costs as to it seems just.

51. Subject to the provisions of this Ordinance, all decrees and orders made by the Court in any proceeding under this Ordinance shall be enforced and put in execution in the same or in the like manner as other judgments, decrees, and orders of the Court may be enforced and put in execution.

Enforcement of decrees and orders.

52. If, in the opinion of the Court, a witness might be adversely affected in giving evidence by the presence in the Court room of members of the public, or if the Court has reason to believe that the evidence will be of such a nature that it is proper to do so, the Court may exclude the public during the whole or any part of the hearing.

Power to take evidence in private.

53.—(1.) When a wife in any proceeding for divorce, nullity of marriage, or judicial separation has as petitioner duly filed her petition, or as respondent duly entered an appearance, the Court may order—

Power to order husband to pay money to wife to have her case investigated &c.

- (a) that the husband shall pay into Court a sum of money sufficient to enable her to have the merits of her case investigated by a solicitor, and that the sum or part thereof shall, on the Taxing Master being satisfied that the sum or part has been properly incurred or spent in ascertaining whether the wife has a good cause of suit or defence on the merits and giving his certificate accordingly, be paid to the wife or to her solicitor; and
- (b) that if, after investigating the case, the wife's solicitor is of opinion that she has a good cause of suit or defence on the merits and files a certificate to that effect in the office of the Registrar of the Court, the husband shall thereupon pay into Court the sum of Twenty pounds.

(2.) An order in respect of the matters referred to in paragraphs (a) and (b) of the last preceding sub-section or an order in respect of the matters referred to in paragraph (b) alone may be made under the provisions of that sub-section.

(3.) Subject to the provisions of this section, no order shall be made for the taxation and payment of costs *de die in diem*, or for the payment before hearing or trial of any costs of or incidental to the hearing of the cause, or for the giving of security for the costs by the husband.

(4.) The costs of the wife of or incidental to any proceeding referred to in sub-section (1.) of this section in which she is either petitioner or respondent shall be in the discretion of the Court, and, when the decision of the Court is against the wife, the Court may, if it thinks the proceeding was a reasonable one to maintain or defend, order that she shall receive the costs of or incidental to the

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proceeding, or at or after the decision fix an amount to be paid to her for costs in accordance with the husband's ability to pay costs, and may make an order in respect of the money paid into Court under this section.

Appeal.

54. No appeal shall lie to, nor leave to appeal be granted by, the High Court from a decree absolute for divorce or nullity of marriage:

Provided that the provisions of section twenty-four of the *Judiciary Ordinance 1921-1934*⁽³⁾ shall apply to any order made under Part V. of this Ordinance whether the order is included in a decree absolute or not.

Marriages according to native custom.

55. The provisions of this Ordinance shall not apply to a marriage according to native custom and shall not be deemed to affect any Ordinance or Regulations providing for the divorce of natives married according to native custom.

Rules.

56.—(1.) The Chief Judge may make rules of court—⁽⁴⁾

(a) prescribing and regulating the practice, pleading, and procedure under this Ordinance; and

(b) prescribing and regulating the costs to be allowed by the Court and paid to solicitors in any proceeding under this Ordinance.

(2.) Rules made under this Ordinance shall be subject at any time to disallowance by the Minister,⁽⁵⁾ and any rule so disallowed shall cease to have effect from the date of publication of the disallowance in the *New Guinea Gazette*.

(3) Now the *Judiciary Ordinance 1921-1938*.

(4) See the *Rules of Court (Matrimonial Causes) 1934*, printed on p. 3167.

(5) Section 4 of the *Ordinances Interpretation Ordinance 1934-1941* provides that "In any Ordinance, unless the contrary intention appears . . . 'Minister' means the Minister of State for the time being administering the *New Guinea Act 1920-1932*."