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CHAPTER 102.

MATRIMONIAL CAUSES.

An Ordinance to Amend the Law Relating to Divorce and Matrimonial Causes. ^{9 of 1949.}

[1ST NOVEMBER, 1950.]

1. This Ordinance may be cited as the Matrimonial Causes Ordinance, and shall apply to the Colony and Protectorate. Short title, and application.

PART I.—INTRODUCTORY.

2. In this Ordinance, unless the context otherwise requires— Interpretation.
“court” means the Supreme Court;
“marriage” means the union of one man and one woman for life to the exclusion of all others, and the expressions “husband” and “wife” shall be construed accordingly.

PART II.—DIVORCE AND NULLITY OF MARRIAGE.

New grounds
for decree of
nullity.

3. (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 the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or

(c) 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) and (c) of this sub-section, 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 paragraph (b) of the last foregoing sub-section 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.

Restriction
on petitions
for divorce
during first
three years
after
marriage.

4. (1) No petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of the 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.

5. A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent—

Grounds of
petition for
divorce.

(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;

and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality.

6. (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.

Provision as
to making
adulterer
co-respond-
ent.

(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.

Duty of court
on presenta-
tion of peti-
tion for
divorce.

7. (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.

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

(i) the case for the petitioner 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 of the marriage; or

(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 desertion, of such wilful neglect or misconduct as has conduced to the adultery or desertion.

Dismissal of
respondent
or co-
respondent
from
proceedings.

8. 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