

Page 2929—*The Matrimonial Causes Jurisdiction Ordinance of 1910.*

In Section 12(1.) for “very” read “every”.

# THE MATRIMONIAL CAUSES JURISDICTION ORDINANCE OF 1910. <sup>(1)(2)</sup>

No. 2 of 1911.

## An Ordinance to Establish a Divorce and Matrimonial Causes Jurisdiction in the Central Court.

**B**E it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. As soon as this Ordinance shall come into operation—

(1) There shall be vested in the Central Court<sup>(3)</sup> jurisdiction in respect of divorces *a mensà et thoro* suits of nullity of marriage suits of dissolution of marriage suits of restitution of conjugal rights suits of 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 Central Court<sup>(3)</sup> and the said jurisdiction and all powers and authorities conferred by this Ordinance may be exercised in like manner as the other powers jurisdiction and authority given to or vested in the Central Court.<sup>(3)</sup>

(3) The said jurisdiction shall except as herein otherwise provided be exercised by the Chief Judicial Officer<sup>(4)</sup> and by any Deputy Chief Judicial Officer<sup>(4)</sup> for the time being exercising the powers and functions of the Chief Judicial Officer<sup>(4)</sup> and every decree or order of any such judge shall be valid and effectual.

Jurisdiction of the court.  
Q. 28 Vic.  
No. 29, s. 1.  
N.S.W. No. 14,  
1899, s. 4 (1).

2. In all suits and proceedings other than proceedings to dissolve any marriage the court shall proceed and act and give relief

Principles of Ecclesiastical Courts to be followed.

(1) This Ordinance is repealed by the *Matrimonial Causes Ordinance, 1941*, which has not yet, however, been proclaimed to come into operation.

Q. Ib. s. 12.  
N.S.W. Ib. s. 5.

(2) 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.
1. 6. 1910	15. 2. 1911	15. 2. 1911 (Papua <i>Gaz. of 15. 2. 1911</i> ) Govt.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.

(4) See Section 4 of the *Central Court Ordinance, 1925*.

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on principles and rules which in the opinion of the said 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 before the passing of the Imperial Act twentieth and twenty-first Victoria Chapter Eighty-five but subject to the provisions herein contained and to the rules and orders under this Ordinance.

### SITTINGS OF COURT.

Sittings of Court.  
Q. 28. Vic. No.  
29, s. 6.

3. The court shall hold its sittings for divorce and matrimonial causes at Port Moresby.

Judge may sit  
in chambers.  
Q. 1b. s. 7.

4. It shall be lawful for the judge presiding at such sittings to sit in chambers for the despatch of such part of the business of the court as can in the opinion of the judge with advantage to the suitors be heard in chambers and such sittings in chambers shall from time to time be appointed by the judge.

Power of judge  
in chambers.  
Q. 1b. s. 8.

5. 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.

Trial in  
chambers.  
Q. 61 Vic.  
No. 6, s. 2.

6. 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.

Q. 1b. s. 3.

The term "Matrimonial Action" means all proceedings instituted in the Central Court<sup>(3)</sup> in its Matrimonial Causes Jurisdiction.

### RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION.

Judicial  
separation may  
be decreed.  
Q. 28 Vic.  
No. 29, s. 2.

7. The court may pronounce a decree for a judicial separation which shall have the same force and the same consequences as a divorce *a mensà et thoro* would have had in England according to the law in force before the passing of the Imperial Act twentieth and twenty-first Victoria Chapter Eighty-five and such other effect as herein mentioned.

Grounds for  
judicial  
separation.  
Q. 1b. s. 9.

8. A decree for judicial separation may be obtained either by the husband or the wife on the ground of adultery or cruelty or desertion without cause for two years and upwards.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

9. Application for judicial separation on any one of the grounds aforesaid or for restitution of conjugal rights may be made by either husband or wife by petition to the court.

Proceedings  
by petition.  
Q. 28 Vic.  
No. 29, s. 10.

10. The court on being satisfied of the truth of the allegations therein contained and that there is no legal ground why the same should not be granted may decree such restitution of conjugal rights or judicial separation accordingly.

Decree.  
Q. *Ib.* s. 10.

11.—(1.) Any husband or wife upon the application of whose wife or husband as the case may be a decree of judicial separation has been pronounced may at any time thereafter present a petition to the court praying for a reversal of such decree on the ground that it was obtained in his or her absence and that there was reasonable ground for the alleged desertion where desertion was the ground for such decree.

Reversal of  
decree.  
Q. *Ib.* s. 13.

(2.) The court may on being satisfied of the truth of the allegation of such petition reverse the decree accordingly.

(3.) The reversal of the decree shall not prejudice nor affect the rights and remedies which any other person would have had in case such reversal had not been decreed in respect of any debts contracts or acts of the wife incurred entered into or done between the times of the decree of separation and the reversal thereof.

12.—(1.) In every case of judicial separation the wife shall from the date of the decree and whilst separation continues be considered as a *femme sole* with respect to property of every description which she may acquire or which may come to or devolve upon her.

On judicial  
separation wife  
becomes a  
*femme sole*.  
Q. *Ib.* s. 15.

(2.) Such property may be disposed of by her in all respects as a *femme sole* and on her decease the same shall in case she shall die intestate go as the same would have gone if her husband had been then dead.

(3.) If after the decree of judicial separation a wife again cohabits with her husband all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use subject however to any agreement in writing made between herself and her husband when separate.

13.—(1.) In every case of judicial separation the wife shall whilst so separated be considered as a *femme sole* for the purposes of contract and wrongs and injuries and suing and being sued in any civil proceeding.

Wife may sue  
and be sued.  
Q. *Ib.* s. 16.

(2.) The husband shall not be liable in respect of any engagement or contract entered into or for any wrongful act or omission by the wife or for any costs incurred by her as plaintiff or defendant.

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(3.) Where upon any judicial separation alimony has been decreed or ordered to be paid to the wife and the same is not duly paid by the husband he shall be liable for necessaries supplied for her use.

(4.) Nothing herein contained shall prevent the wife from joining at any time during such separation in the exercise of any joint power given to herself and her husband.

### DISSOLUTION OF MARRIAGE.

14. It shall be lawful for any husband to present a petition to the said court praying that his marriage may be dissolved on the ground that his wife has since the celebration thereof been guilty of adultery.

15. It shall be lawful for any wife to present a petition to the said court praying that her marriage may be dissolved on the ground that since the celebration thereof her husband has been guilty of incestuous adultery or of bigamy with adultery or of rape or of sodomy or bestiality or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et thoro* under the law existing in England before the passing of the Imperial Act twentieth and twenty-first Victoria Chapter Eighty-five or of adultery coupled with desertion without reasonable excuse for two years or upwards. "Incestuous Adultery" means adultery committed by a husband with a woman with whom if his wife were dead he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity or affinity. "Bigamy" means marriage of any person being married to any other person during the life of the former husband or wife whether the second marriage takes place within the dominions of His Majesty or elsewhere.

16. Any person by leave of the court or a judge may intervene in the suit for the purpose of opposing the petitioner's obtaining the decree but no such leave shall be granted except upon affidavit showing to the satisfaction of such court or judge in suits for dissolution of marriage that there is reasonable ground to believe that the petitioner has been in some manner accessory to or conniving at the adultery or in suits for dissolution of marriage or nullity of marriage that any parties to the suit have been acting in collusion as aforesaid or that material facts have not been pleaded or brought before the court.

17.—(1.) Where the husband presents a petition for dissolution of marriage he shall make the alleged adulterer a co-respondent to the petition unless on special grounds to be allowed by the court he is excused from so doing.

Petition for dissolution of marriage by husband.  
Q. 28 Vic.  
No. 29, s. 21.

Petition for dissolution of marriage by wife.  
Q. *Ib.* s. 21.

Intervention.  
Q. *Ib.* s. 22.

Co-respondents to petition by husband.  
Q. *Ib.* s. 23.

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(2.) Where the wife presents a petition for dissolution of marriage the court may if it sees fit direct that the person with whom the husband is alleged to have committed adultery be made a respondent.

To petition by wife.

(3.) In either of the cases hereinbefore mentioned the court may after the close of the evidence for the petitioner direct such co-respondent or respondent to be dismissed from the suit if it thinks there is not sufficient evidence against him or her and in its discretion to award him or her costs.

Dismissal from suit.

18. On the hearing of a petition for dissolution of marriage the court shall satisfy itself so far as it reasonably can—

Connivance and counter-charge to be enquired into.

(a) as to the facts alleged;

Q. 28 Vic. No. 29, s. 23.

(b) where adultery is charged whether or no the petitioner has been in any manner accessory to or conniving at the adultery or has condoned the same.

N.S.W. No. 14, 1899, s. 17.

The court shall also enquire into any counter charge which may be made against the petitioner.

19. The court shall dismiss such last mentioned petition if—

Dismissal of petition.

(a) it is not satisfied on the evidence that the alleged adultery was committed; or

Q. 1b. s. 25.

N.S.W. 1b. s. 18.

(b) it finds that the petitioner has during the marriage been accessory to or conniving at the adultery of the other party to the marriage or has condoned the adultery complained of; or

(c) it finds that the petition is presented or prosecuted in collusion with either of the respondents.

20.—(1.) The court shall pronounce a decree declaring the marriage to be dissolved if it is satisfied on the evidence that the case of the petitioner has been proved and does not find against the petitioner any of the facts mentioned in (b) and (c) of the last preceding section.

Decree when to be pronounced.

Q. 1b. s. 26.

N.S.W. 1b. s. 19.

(2.) The court shall not be bound to pronounce such decree if—

Discretion of court.

(a) it finds that the petitioner has during the marriage been guilty of adultery; or

(b) it is of opinion that the petitioner has been guilty of—

(i) unreasonable delay in presenting or prosecuting the petition; or

(ii) cruelty towards the other party to the marriage; or

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- (iii) having deserted or wilfully separated himself or herself from the other party before the adultery complained of; or
- (iv) such wilful neglect or misconduct as has conduced to the adultery.

Decree *nisi* in first instance.  
Q. 39 Vic.  
No. 13, s. 7.  
N.S.W. No. 14,  
1899, s. 20.

21.—(1.) Every decree for dissolution of marriage or for nullity of marriage shall in the first instance be a decree *nisi*.

(2.) A decree *nisi* shall not be made absolute till after the expiration of such time not being less than three months from the pronouncing thereof as the court shall by general or special order from time to time direct.

(3.) During such period any person shall be at liberty in such manner as the court shall by general or special order in that behalf from time to time direct to show cause why such decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not having been brought before the court.

(4.) On cause being so shown the court shall deal with the case by making the decree absolute or by reversing the decree *nisi* or by requiring further inquiry or otherwise as justice may require.

Decree absolute application for by petitioner.  
N.S.W. *Ib.* s. 22.

22.—(1.) After the expiration of the time limited in that behalf the petitioner who has obtained a decree *nisi* for dissolution of marriage may make request in writing that such decree *nisi* be made absolute.

N.S.W. *Ib.*  
s. 22.

(2.) The court shall upon a certificate from the registrar that no matter in opposition to the final decree is then pending make the decree absolute as of course.

N.S.W. *Ib.*  
s. 22.

(3.) It shall not be necessary for such petitioner to move to make absolute any such decree *nisi*.

Decree absolute application by respondent.  
N.S.W. *Ib.* s. 23.

23.—(1.) Where a decree *nisi* has been pronounced for the dissolution of a marriage and the petitioner fails to apply at the expiration of the time prescribed in the decree or in any special order to make the decree absolute the respondent may on giving notice to the petitioner or such substituted service as the court allows apply to the court to make the decree absolute.

(2.) The court may order accordingly and may make the order subject to such conditions as to the payment of permanent alimony the maintenance of children and payment of costs as it thinks proper.

ALIMONY.

*On Dissolution of Marriage.*

24.—(1.) The court may on any decree for dissolution of marriage order the husband to secure to the wife for any term not exceeding her life and to the satisfaction of the court such gross or annual sum of money as it deems reasonable.

Permanent alimony gross or annual sum. N.S.W. No. 14, 1899, s. 39. Q. 28 Vic. No. 29, s. 27.

(2.) The court shall in making such order have regard to the wife's fortune (if any) to the ability of the husband and the conduct of the parties.

(3.) The court may settle and approve or refer it to the registrar of the court to settle and approve of a proper deed or instrument to be executed by all necessary parties.

(4.) The court may in such case if it see fit suspend the pronouncing of its decree until such deed or instrument has been duly executed.

25.—(1.) The court instead of ordering the husband to secure to the wife a gross or annual sum may make an order on the husband for payment to the wife during their joint lives of such monthly or weekly sums for her maintenance and support as the court thinks reasonable.

Monthly or weekly payments. N.S.W. *Ib.* s. 40.

(2.) If the husband afterwards from any cause becomes unable to make such payments the court may discharge or modify the order or temporarily suspend the same as to the whole or any part of the money ordered to be paid and again revive the same order wholly or in part as to it seems fit.

N.S.W. *Ib.* s. 40.

(3.) If the wife marries again the court may upon proof of that fact discharge the said order or if there be infant children in the wife's custody may vary the order.

N.S.W. *Ib.* s. 40.

26. Upon any petition for dissolution of marriage the court shall have the same power to make interim orders for payment of money by way of alimony or otherwise to the wife as it would have in a suit instituted for judicial separation.

Alimony *pendente lite*. N.S.W. *Ib.* s. 41. Q. *Ib.* s. 27.

*Alimony on Judicial Separation and Restitution of Conjugal Rights.*

27. Where a decree is made for judicial separation the court may make all such orders in respect of alimony to the wife as it could make if the decree made was for dissolution of marriage.

Powers of court on decree for judicial separation. N.S.W. *Ib.* s. 43.

28. Where a decree is made for restitution of conjugal rights the court may if the respondent fails to comply with the decree make any order for alimony and on any terms and conditions which it deems just.

Powers of court on decree for restitution of conjugal rights.



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Powers of court where wife is applicant.  
N.S.W. No. 14,  
1899, s. 44.

29. Where the application for judicial separation or for restitution of conjugal rights is by the wife the court may make any order for alimony which it deems just.

Payment to wife or trustee.  
Q. 28 Vic.  
No. 29, s. 14.  
N.S.W. *Ib.* s. 45.

30. The court may in all cases in which it makes any decree or order for alimony direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the court and may direct any securities to be given and may impose any terms or restrictions which seem expedient and may from time to time appoint a new trustee if for any reason it appears expedient to the court to do so.

### DAMAGES.

Damages against adulterer.  
Q. *Ib.* s. 28.  
N.S.W. *Ib.* s. 52,  
altered.

31.—(1.) Any husband may in a petition for dissolution of marriage or for judicial separation or in a petition limited to such object only claim damages from any person on the ground of his having committed adultery with the petitioner's wife.

Service.

(2.) Every petition claiming damages shall be served on the alleged adulterer and the wife unless the court dispenses with such service or directs some other service to be substituted.

How tried.

(3.) Every petition claiming damages shall be heard and tried before a judge sitting alone on the same principles in the same manner and subject to the same or the like rules and regulations in other respects as were formerly applicable to the trial of actions for criminal conversation in England.

Provisions of this Ordinance to apply.

(4.) The provisions of this Ordinance with reference to the hearing and decision of other petitions shall so far as may be necessary be deemed applicable to petitions claiming damages.

Application of damages.  
Q. *Ib.* s. 28.  
N.S.W. *Ib.* s. 53.

32. The court may after damages have been ascertained direct in what manner they shall be paid and applied and may order the whole or any part thereof to be settled for the benefit of the children (if any) of marriage or as a provision for the maintenance of the wife.

### Costs.

Costs.  
Q. *Ib.* s. 29.

33. Whenever in a petition presented by the husband the alleged adulterer is made a co-respondent and the adultery is established the court may order the adulterer to pay the whole or any part of the costs of the proceedings.

Discretionary.  
N.S.W. *Ib.*  
s. 47.  
Q. *Ib.* s. 46.

34. On the hearing of any suit proceeding or petition under this Ordinance the court may make such order as to costs as seems just.

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35. The court may make such order as to the costs of any person who intervenes or shows cause against a decree *nisi* in any suit or proceeding and of all parties thereto occasioned by such intervention or showing cause as aforesaid as seems just.

Costs of intervention.  
N.S.W. No. 14,  
1899, s. 51.

36. The bill of any proctor attorney or solicitor for any fees charges or disbursements in respect of any business transacted in the court shall as well as between proctor or attorney or solicitor and client as between party and party be subject to taxation by the taxing officer of the court and the mode in which any such bill shall be referred for taxation and by whom the costs of taxation shall be paid shall be regulated by the rules and orders to be made by or under this Ordinance and the certificate of the taxing officer of the amount at which such bill is taxed shall be subject to appeal to a judge of the Central Court.<sup>(3)</sup>

Costs may be taxed.  
Q. 28 Vic.  
No. 29, s. 58.

CUSTODY AND MAINTENANCE OF CHILDREN.

37.—(1.) In any suit or other proceeding for obtaining a decree of judicial separation or of nullity or dissolution of marriage the court may—

Custody and maintenance of children.  
Q. 1b. s. 30.  
N.S.W. 1b. s. 60.

- (a) make such orders as it deems just and proper with respect to the custody maintenance and education of the children the marriage of whose parents is the subject of such suit or other proceedings; and
- (b) if it thinks fit direct proper proceedings to be taken for placing such children under the protection of the court.

(2.) Such orders and directions may be made—

- (a) from time to time by interim orders before making the final decree; or
- (b) by provisions in the final decree; or
- (c) from time to time after the final decree upon application by petition for the purpose.

Time when orders may be made.  
Q. 39 Vic.  
No. 13, s. 8.  
N.S.W. 1b.  
s. 60.

38. The court may on any application for restitution of conjugal rights at any time after decree if the respondent fails to comply therewith upon application for that purpose 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 during the pendency of a trial for judicial separation between the same parties.

Custody etc. of children in applications for conjugal rights.  
N.S.W. 1b. s. 62.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

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### PETITIONS AND SERVICE.

Petition to  
state facts.  
N.S.W. No. 14,  
1899, s. 63.

39. Every petition praying for dissolution of marriage shall state as distinctly as the nature of the case permits the facts on which the claim to have the marriage dissolved is founded.

Petition to be  
verified.  
N.S.W. *Ib.* s. 64.  
Q. 28 Vic.  
No. 29, s. 36.

40. Every person seeking a decree of nullity of marriage or of judicial separation or of dissolution of marriage or of jactitation of marriage shall together with the petition or other application for the same file an affidavit verifying such petition or other application so far as he or she is able to do so and stating that there is not any collusion or connivance between the deponent and any other party to the marriage.<sup>(5)</sup>

Service of  
petition.  
Q. *Ib.* s. 37.

41.—(1.) Every such petition shall be served upon the party to be affected thereby either within or without the Territory of Papua in such manner as the court shall by special or general order<sup>(6)</sup> from time to time direct.

(2.) The court may dispense with such service altogether in case it shall seem necessary or expedient to do so.

Hearing may  
be adjourned.  
Q. *Ib.* s. 39.

42. The court may from time to time adjourn the hearing of any such petition and may require further evidence thereon if it shall see fit so to do.

### WITNESSES AND EVIDENCE.

Witnesses to  
be examined in  
open court.  
Q. *Ib.* s. 41.  
N.S.W. *Ib.* s. 77.

43. Subject to this Ordinance and to such rule<sup>(7)</sup> and regulations as may be established as herein provided the witnesses in all proceedings before the court when their attendance can be had shall be sworn and examined orally in open court:

Affidavits.  
N.S.W. *Ib.*  
s. 77.

Provided that parties except as herein provided shall be at liberty to verify their respective cases in whole or in part by affidavit but so that the deponent in every such affidavit may on the application of the opposite party or by direction of the court be cross-examined orally in open court and thereafter may be re-examined orally in open court.

Cross-  
examination  
of deponents.  
N.S.W. *Ib.*  
s. 77.

Examination of  
petitioner.  
Q. *Ib.* s. 38.  
Q. 37 Vic.  
No. 9, s. 3.

44. In any proceeding under this Ordinance the court may order the attendance of the petitioner and may examine him or her or permit him or her to be examined or cross-examined on oath on the hearing of any petition and all parties to the proceeding and the wives and husbands of all parties shall be competent to give evidence

(5) The words "and any other party to the marriage" appeared in the original Ordinance. The word "any" has now been omitted and the word "the" inserted in its stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

(6) No general order has been published in *Papua Govt. Gaz.*

(7) The word "rule" appeared in the original Ordinance. *Semble*, "rules" was intended.

therein but no witness under any proceeding under this Ordinance whether a party to the suit or not shall 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 proceeding in disproof of his or her alleged adultery.

N.S.W. No. 14,  
1899, s. 79.

45. Where a witness is out of the jurisdiction of the court or when by reason of his illness or from other circumstances the court shall not think fit to enforce the attendance of the witness in open court it shall be lawful for the court to order a commission to issue for the examination of such witness on oath upon interrogatories or otherwise or if the witness be within the jurisdiction of the court to order the examination of such witness on oath upon interrogatories or otherwise before any officer of the court or other person to be named in such order for the purpose.

Orders and  
commissions to  
examine  
witnesses.  
Q. 28 Vic.  
No. 29, s. 42.

46. All powers given to the Central Court<sup>(3)</sup> for enabling the Central Court<sup>(3)</sup> to issue commissions and give orders for the examination of witnesses in actions depending in such court and to enforce such examinations and all the provisions of the Acts or Ordinances for enforcing or otherwise applicable to such examination and the witnesses examined shall extend and be applicable to the court in its Matrimonial Causes Jurisdiction.

Powers of  
Central Court  
to apply.  
Q. *Ib.* s. 42.

47. The rules of evidence observed in the Central Court<sup>(3)</sup> in civil cases shall be applicable to and observed in the trial of all questions of fact in the court in its Matrimonial Causes Jurisdiction.

Rules of  
evidence.  
Q. *Ib.* s. 43.

48. The court may under its seal issue writs of subpœna or subpœna *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 and give evidence in obedience thereto:

Enforcing  
attendance of  
witnesses.  
Q. *Ib.* s. 44.

Provided that any petitioner required to be examined or any person called as witness or required or desiring to make an affidavit or deposition under or for the purposes of this Ordinance shall be permitted to make his or her solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would be permitted so to do under the "Oaths Act of 1867"<sup>(8)</sup> (Queensland adopted).

#### SETTLEMENTS.

49.—(1.) Whenever the court pronounces a decree of dissolution of marriage or judicial separation for the adultery of the wife and

Settlement of  
separate property  
of adulterer for  
benefit of  
husband and  
children.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(8) Repealed and replaced in the Territory of Papua by the *Oaths Ordinance*, 1912.

Q. *Ib.* s. 40.  
N.S.W. *Ib.*  
s. 55.

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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 such property or any part thereof for the benefit of the innocent party and the children of the marriage or any or either of them.

Marriage settlements may be reformed after final decree.

Q. 39 Vic.  
No. 13, s. 9.

(2.) The court may at any time within two years after pronouncing a final decree of dissolution of marriage nullity of marriage or judicial separation enquire into the existence of antenuptial or postnuptial settlements made on the parties whose marriage is the subject of the decree or either of them and may make such orders with reference to the application of the whole or a portion of the property settled for the benefit of the parties to the marriage or their respective children or any or either of them as to the court shall seem fit.

(3.) The powers conferred by Subsections (1.) and (2.) of this section may be exercised whether there have been any children of the marriage or not or whether such children or any of them are surviving at the time of the order or not.

(4.) Any instrument executed pursuant to any order of the court made under Subsections (1.) and (2.) of this section shall be deemed valid and effectual notwithstanding the existence of the disability of coverture at the time of the execution thereof.

### APPEALS.

Appeals.

50. Any party dissatisfied with any decree order judgment or decision of a judge 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.

### ENFORCEMENT OF DECREES AND ORDERS.

Enforcing decrees and orders.

Q. 28 Vic.  
No. 29, s. 47.

51. All decrees and orders made by the court in any suit proceeding or petition 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 Central Court<sup>(3)</sup> may be now enforced and put in execution.

Attachment.

N.S.W. No. 14,  
1899, s. 90.

52. 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.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

GENERAL.

53. When the time limited for appealing against any decree absolute dissolving a marriage shall have expired and no appeal shall have been presented against such decree or when any such appeal shall have been dismissed or when in the result of any appeal any marriage shall be declared to be dissolved but not sooner it shall be lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death:

Persons divorced may marry again.  
Q. 28 Vic. No. 29, s. 52.

Provided always that no clergyman of any religious denomination shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved on the ground of his or her adultery or shall be liable to any suit penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

54. No action shall be maintainable for criminal conversation.

Actions of criminal conversation abolished.  
Q. *Ib.* s. 53.

55.—(1.) The Chief Judicial Officer<sup>(4)</sup> may make general rules<sup>(9)</sup> for regulating the practice and procedure under this Ordinance for fixing and regulating the fees payable upon all proceedings before the court for enabling persons to sue in the court *in formâ pauperis* and for regulating the exercise by the Registrar of the powers hereby conferred upon him.

General rules and fees.  
Q. *Ib.* ss. 48 and 49.  
N.S.W. No. 14, 1899, s. 91.

(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.

56. Registrars commissioners for taking oaths in the Central Court<sup>(3)</sup> and all other persons now or hereafter authorized to administer oaths shall have power to administer oaths under this Ordinance.

Power to administer oaths.  
Q. *Ib.* s. 57.

57. In cases where it is necessary to obtain affidavits declarations or affirmations to be used in the court from persons residing in foreign parts out of His Majesty's Dominions the same may be sworn affirmed or declared before any foreign local magistrate or other person having authority to administer an oath there.

Affidavits how sworn abroad.  
Q. *Ib.* s. 61.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(4) See Section 4 of the *Central Court Ordinance*, 1925.

(9) See the *Rules of the Central Court (Matrimonial Causes Jurisdiction)*, printed on p. 2942.

## MARRIAGE AND DIVORCE—

How sworn in  
Great Britain  
etc.

Q. 28 Vic.  
No. 29, s. 62.

58. Affidavits declarations and affirmations to be used in the court may be sworn and taken in any place within His Majesty's Dominions outside the Territory of Papua before any court judge notary public or person legally authorized to administer oaths in such place and all judges and officers of the court shall take judicial notice of the seal or signature as the case may be of any such judge notary public or person which shall be attached suspended or subscribed to any such affidavit declaration or affirmation or to any other document.

Powers of  
Registrar.  
N.S.W. No. 14,  
1899, s. 94.

59. The Registrar shall subject to the rules of court have the following powers:—

- (a) to tax costs subject to review by the court;
- (b) to settle deeds directed by the court to be executed by the parties;
- (c) to extend the time within which proceedings may be filed in undefended suits;
- (d) to allow proceedings to be taken *in formâ pauperis*;
- (e) to examine witnesses in alimony applications and report the result of the said examinations to the court:

Provided that all or any of such powers may be performed and executed by a judge of the Central Court<sup>(3)</sup> if for any reason he thinks fit to do so.

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

60. 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.

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.

Construction.

61. In the construction of this Ordinance—

- (1) the words "Court" and "Central Court"<sup>(3)</sup> shall unless repugnant to or inconsistent with the context mean the Central Court<sup>(3)</sup> of the Territory of Papua;
- (2) the word "Judge" shall mean and include the Chief Judicial Officer<sup>(4)</sup> and any Deputy Chief Judicial

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(4) See Section 4 of the *Central Court Ordinance*, 1925.

*The Matrimonial Causes Jurisdiction Ordinance of 1910.*

Officer<sup>(4)</sup> for the time being exercising and performing the powers and functions of the Chief Judicial Officer;<sup>(4)</sup>

- (3) the word "Registrar" shall mean the Registrar of the Central Court<sup>(3)</sup> and any person appointed to act as such.

**62.** This Ordinance shall be styled and may be cited as *The* Short title.  
*Matrimonial Causes Jurisdiction Ordinance of 1910.*<sup>(1)</sup>

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(1) See footnote (1) printed on p. 2927.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(4) See Section 4 of the *Central Court Ordinance, 1925.*