

ORDRE EN CONSEIL

Ratifiant un Projet de Loi intitulé

**Loi ayant rapport au Divorce et à
d'autres Causes Matrimoniales.**

(Enregistré sur les Records de l'Île de Guernesey le
22 juillet 1939.)

VI
1939



ORDRE EN CONSEIL.



A LA COUR ROYALE DE L'ILE DE GUERNSEY.

Le vingt-deux juillet mil neuf cent trent-neuf, par devant Ernest de Garis, écuyer, Lieutenant-Baillif; présents : Osmond Priaulx Gallienne, Arthur Dorey, Jean Nicolas Robin, Aylmer Mackworth Drake, John Leale, James Frederick Carey, écuyers, Messire Abraham James Lainé, K.C.I.E., et Dan Alfred Aubert, écuyer, Jurés.

Monsieur le Lieutenant-Baillif, ayant ce jour communiqué à la Cour un Ordre de Sa Majesté en Conseil en date du trois juillet mil neuf cent trent-neuf ratifiant un Projet de Loi intitulé "Loi ayant rapport au Divorce et à d'autres Causes Matrimoniales", la Cour, après avoir eu lecture du dit Ordre, ouïes les conclusions des Officiers du Roi, a ordonné que le dit Ordre en Conseil sera enregistré sur les Records de cette Ile et qu'un extrait des Registres de ce présent Acte avec un exemplaire du dit Ordre en Conseil sera expédié par le Greffier du Roi à Monsieur le Juge d'Auregny et à Monsieur le Sénéchal de Sercq afin d'être enregistrés sur les Records des dites Iles, duquel Ordre la teneur suit :—

LE 22 JUILLET 1939.

At the Court at Buckingham Palace,

The 3rd day of July, 1939.

Present,

The King's Most Excellent Majesty

LORD PRESIDENT.

MAJOR TRYON.

EARL OF BRESSBOROUGH.

MR. RAMSBOTHAM.

Whereas there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 30th day of June, 1939, in the words following, viz :—

"Your Majesty having been pleased by Your General Order of Reference of the 18th day of December, 1936, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth :—

‘ 1. That on the 27th day of March, 1935, the States of Deliberation, after considering a Petition submitted to them by several of their members, passed a resolution approving in principle of a Law on Divorce : 2. That in pursuance of the said resolution the States, on the 24th day of April, 1935, named a Committee to study the question in all its aspects and to report thereon in due course : 3. That in accordance with the aforesaid resolution of the 24th day of April, 1935, the States, on the 3rd day of November, 1937, after careful consideration of the report of their Committee, passed a resolution approving the same with certain modifications and requesting the Royal Court to prepare the legislation necessary in order to give effect to their resolution on the subject : 4. That the States of the Island of Alderney at a sitting held on the 22nd day of June, 1936, passed a resolution desiring that the provisions of the Law on Divorce which the Royal Court

might eventually adopt should apply to the Island of Alderney : 5. That at a sitting of the Chief Pleas of the Island of Sark held on the 30th day of September, 1936, a resolution was passed desiring that the Island of Sark be excepted from the operation of the provisions of the proposed legislation on the subject of Divorce : 6. That on the 25th day of March, 1939, in accordance with the aforesaid resolution of the States of the 3rd day of November, 1937, the Royal Court adopted a Bill or "Projet de Loi" intituled "Loi ayant rapport au Divorce et à d'autres Causes Matrimoniales" and requested the Bailiff to submit the same to the States for approval : 7. That on the 21st day of April, 1939, the States duly considered the said Bill or "Projet de Loi," and a resolution was passed approving the same and authorizing the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto : 8. That on the 25th day of May, 1939, the States of the Island of Alderney unanimously approved of the provisions of the aforesaid Bill or "Projet de Loi" : 9. That the said Bill or "Projet de Loi" is in the words and figures set forth in the Schedule annexed to the Petition. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" intituled "Loi ayant rapport au Divorce et à d'autres Causes Matrimoniales," and to order and direct that the same should have the force of Law within the Bailiwick of the Island of Guernsey.'

"The Lords of the Committee, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty,

that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said *Projet de Loi*."

His Majesty, having taken the said Report into consideration is pleased, by and with the advice of His Privy Council, to approve of and ratify the said *Projet de Loi*, and to order, as it is hereby ordered, that the same shall have the force of Law within the Bailiwick of the Island of Guernsey.

And His Majesty doth hereby further direct that this Order, and the said *Projet de Loi* (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

And the Lieutenant Governor or Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other His Majesty's Officers, for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

RUPERT B. HOWORTH.

**PROJET DE LOI referred to in the foregoing Order
in Council.**

PROJET DE LOI

INTITULÉ

**LOI AYANT RAPPORT AU DIVORCE ET À
D'AUTRES CAUSES MATRIMONIALES**

LES ETATS ont approuvé les dispositions suivantes
rédigées en anglais lesquelles, moyennant la Sanction
de Sa Très Excellente Majesté en Conseil, auront
force de Loi en ce Bailliage.

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The Law

Part I.—General Provisions

ARTICLE 1.—DEFINITIONS AND INTER- PRETATION

In this Law, unless the context otherwise requires or the contrary intention appears or it is otherwise specially provided, the following words and expressions have the meanings hereby respectively assigned to them, namely:—

“Appeal Court ” means the Cour des Jugements et Records :

“Bailiwick ” means the Bailiwick of Guernsey :

“Cause ” and “Suit ” each include any proceedings in which there is an applicant, petitioner or plaintiff :

“Finding of fact ” includes the assessment of damages in any matrimonial cause :

“Habitual drunkard ” means a person who habitually and intemperately drinks intoxicating liquor or habitually takes or uses, otherwise than in accordance with medical advice, opium or any other dangerous drug :

“His Majesty’s Procureur ” and “His Majesty’s Comptroller ” include any person duly appointed to exercise temporarily the duties of those offices respectively ; “His Majesty’s Greffier ” includes any Deputy-Greffier duly appointed and any person duly appointed to exercise temporarily the duties of His Majesty’s Greffier ; “His Majesty’s Sergeant ” includes any Deputy-Sergeant duly appointed and any person duly appointed to exercise temporarily the duties of His Majesty’s Sergeant :

“Island of Guernsey ” includes the Islands of Herm and Jethou :

The “Law of 1930 ” means the Law entitled “Loi relative à la Séparation de Mariés en Police Correctionnelle ” approved by Order in Council of the 28th July, 1930, and registered on the Records of the Island of Guernsey on the 21st August, 1930 :

The "Law of 1936" means the Law entitled "Loi sur les Empêchements au Mariage à cause de Parenté et sur l'Etablissement de la Juridiction Civile dans les Causes Matrimoniales, 1936", approved by Order in Council of the 3rd March, 1936, and registered on the Records of the Island of Guernsey on the 21st March, 1936 :

"Magistrate" means the Police Court Magistrate and includes any person duly appointed to exercise temporarily the duties of the Magistrate :

"Suit" and "Cause" each include any proceedings in which there is an applicant, petitioner or plaintiff :

Words importing the masculine gender shall include females :

Words in the singular shall include the plural, and words in the plural shall include the singular.

ARTICLE 2.—INSTITUTION OF COURT FOR MATRIMONIAL CAUSES AND MATTERS AND JURISDICTION THEREOF

(1) Subject to the provisions of this Article, on and from the date on which this Law comes into operation—

- (a) the original jurisdiction exercisable by the Royal Court sitting as a Full Court in virtue of the Law of 1936 ; and
- (b) the original jurisdiction exercisable by the Royal Court sitting as an Ordinary Court (hereinafter in this Law referred to as "the Ordinary Court") in respect of matrimonial causes, suits and matters ; and
- (c) the appellate jurisdiction exercisable by the Ordinary Court in respect of suits for Judicial Separation and Suits for Restitution of Conjugal Rights and matters in relation thereto or arising thereout originating in the Court of Alderney and the Court of Sark

shall be vested in and exercisable exclusively by a

Division of the Royal Court to be designated "The Matrimonial Causes Division of the Royal Court of Guernsey" (hereinafter in general in this Part and Part III. (entitled "Judicial Separation") of this Law referred to as "the Court for Matrimonial Causes" and in the other Parts of this Law as "the Court").

(2) The Court for Matrimonial Causes shall, except as provided by paragraph (3) of this Article and by Article 21 (entitled "Exclusion of Sark") of this Law, have and exercise jurisdiction in respect of all Suits for Divorce, Suits for Judicial Separation, Suits for Restitution of Conjugal Rights, Suits of Nullity of Marriage, Applications by a Husband or Wife for a Decree of Presumption of the Death of the other Spouse and Dissolution of Marriage thereupon and all other causes, suits and matters matrimonial triable under this Law or otherwise in this Bailiwick.

(3) (a) The Court for Matrimonial Causes shall not have jurisdiction in applications for temporary separation orders and maintenance orders in pursuance of the Law of 1930 as amended by this Law and by any other Law hereafter in force, and such applications shall as heretofore be made to and determined by the Magistrate.

(b) The Court for Matrimonial Causes shall not have original jurisdiction in Suits for Judicial Separation and Suits for Restitution of Conjugal Rights in respect of which the Court of Alderney or the Court of Sark has heretofore had jurisdiction, and those last-named courts shall as heretofore exclusively exercise original jurisdiction in such suits.

(4) (a) Subject to the provisions of sub-paragraph (b) of this paragraph, the Ordinary Court and the Court for Matrimonial Causes shall have concurrent jurisdiction with regard to

- (i) pronouncing a judicial separation in cases where the parties to a marriage consent to such judicial separation; and

(ii) sanctioning terms of separation in such cases.

(b) Where application for a judicial separation has been made to the Ordinary Court in the exercise of its jurisdiction under sub-paragraph (a) of this paragraph, and either

- (i) the parties do not agree regarding the terms of their separation ; or
- (ii) the Ordinary Court declines to sanction the terms of separation presented to it by the parties,

the Ordinary Court shall cease to have jurisdiction regarding the matter in difference, and the Court for Matrimonial Causes shall thereupon and thereafter be seized thereof to the exclusion of the Ordinary Court.

(5) Where a wife has been deserted by her husband, or where her husband has been deported from the United Kingdom or from any of the Channel Islands under any enactment relating to the deportation of aliens, and the husband was immediately before the desertion or deportation domiciled in the Bailiwick, the Court for Matrimonial Causes shall have jurisdiction for the purpose of divorce proceedings and any other proceedings under this Law, notwithstanding that the husband has changed his domicile since the desertion or deportation :

Provided that nothing in this paragraph shall impair or abridge or otherwise limit the jurisdiction of any Court where, under this Law, such jurisdiction is exercisable irrespective of the domicile of the parties.

ARTICLE 3.—APPEALS

(1) No appeal shall lie from any finding of fact by the Court for Matrimonial Causes, other than the assessment of damages.

(2) On any question of law or assessment of damages, or in relation to any order made under Part

VII. (entitled "Care of Children") or Part VIII. (entitled "Property and Contributions for Support") of this Law, other than an interim order, an appeal shall lie from the Court for Matrimonial Causes to the Appeal Court and thence to His Majesty in Council.

(3) Any party having a right of appeal to the Appeal Court under this Law and intending to appeal shall give notice of such intention to His Majesty's Greffier at the Greffe within seven days after the date of the decision appealed from, and if notice is not so given such right of appeal shall lapse.

(4) No appeal from a decision of the Court for Matrimonial Causes to the Appeal Court shall lie after the expiration of the six calendar months next following the date of that decision, unless within that period the matters in issue in such appeal have been brought in due form to the Appeal Court for adjudication, and it shall be the duty of His Majesty's Greffier, on the expiration of such period, to strike out of the Appeal List any appeal not so brought to the said Court within that period.

(5) Where an appeal has, in accordance with this Law, been brought before the Appeal Court, that Court may make such order as it deems just with regard to costs in the suit, whether in relation to such appeal or otherwise.

(6) Where the Court for Matrimonial Causes has refused to grant a decree and an appeal lies, the Appeal Court may, after hearing an appeal in the suit, make such decree.

(7) In any proceedings under this Law in the Appeal Court, in which any of the parties thereto does not appear either in person or by counsel or other lawful representative, then, unless the Appeal Court otherwise directs, judgment shall be entered against the absent party if it appears to the Appeal Court, by a certificate of service of His Majesty's

Sergeant, that a citation to appear has been duly served upon such absent party or his lawful representative; and any such judgment of the Appeal Court shall be definitive against such absent party, any other rule of procedure to the contrary notwithstanding.

(8) (a) The provisions of this Law shall not be deemed to affect the right of any person aggrieved by a decision of the Court for Matrimonial Causes or the Appeal Court, in any matrimonial cause, suit or matter, to seek redress by way of appeal to His Majesty in Council.

(b) Any rules of law governing the initiation and prosecution of appeals to His Majesty in Council shall apply in the case of appeals in matrimonial causes, suits and matters.

ARTICLE 4.—CONSTITUTION OF COURT FOR MATRIMONIAL CAUSES AND MATTERS

The Court for Matrimonial Causes shall consist of the Bailiff or a Lieutenant-Bailiff or the Judge Delegate and of any four of the Jurats of the Royal Court.

ARTICLE 5.—CAUSES ETC. PENDING AT COM- MENCEMENT OF THIS LAW

(1) In the case of any Matrimonial Cause or Matter listed as a “Cause en Preuve” of which, when this Law comes into operation, the trial has begun, the court which was then seized of such Cause or Matter shall remain seized thereof and shall hear, determine and deal with the same as fully and effectually as if this Law had not been enacted.

(2) The jurisdiction conferred on the Court for Matrimonial Causes by this Law shall extend to the

trial of any Matrimonial Cause or Matter which is pending but of which the trial as a "Cause en Preuve" has not begun when this Law comes into operation.

ARTICLE 6.—POWER OF ROYAL COURT TO MAKE RULES OF PRACTICE AND PROCEDURE FOR MATRIMONIAL CAUSES, ETC.

The Royal Court may from time to time by Ordinance make such Rules of Court regulating the Practice and Procedure in Matrimonial Causes and Matters, including the use of prescribed Forms and the service of citations within and without the Bailiwick, as the Royal Court deems necessary.

ARTICLE 7.—POOR PERSONS

(1) Subject to the provisions of this Article, the Royal Court may from time to time, by Ordinance, make Regulations determining what persons are to be regarded as Poor Persons in matrimonial causes and matters and with regard to—

- (a) the legal assistance to be afforded to poor persons and the manner of making application therefor and the conditions attaching to the grant thereof; and
- (b) costs payable by poor persons; in such causes and matters.

(2) The Regulations made under this Article may include provisions—

- (a) requiring any poor person who desires legal assistance in instituting, prosecuting or defending a matrimonial cause or matter to apply therefor in the first instance to the Magistrate;
- (b) that upon proof to the satisfaction of the Magistrate that the poor person's circumstances are such that he is unable to pay the cost of instituting, prosecuting or defending

the proceedings in such suit but not otherwise, and if the Magistrate is satisfied that there is a *prima facie* case to be laid before the Court for Matrimonial Causes, the Magistrate shall certify that the applicant is a poor person entitled to legal assistance in accordance with the said Regulations ; and

(c) that, where the applicant is a wife, the Magistrate may grant one or more of the following certificates :

(i) a certificate that she is entitled to proceed as a poor person in the matrimonial suit or that she is entitled thus to proceed only in so far as may be necessary to enable her to obtain from her husband security for her costs therein ;

(ii) a certificate that she is entitled thus to proceed only in so far as may be necessary to obtain from her husband contribution for support *pendente lite*.

ARTICLE 8.—INVESTIGATING OFFICER

(1) The States may, on the recommendation of the Royal Court, appoint, or direct the appointment of, an Investigating Officer to the Court for Matrimonial Causes, invested with the rights and charged with the duties of making such investigations in connexion with any suit for divorce or nullity of marriage or decree of presumption of death and dissolution of marriage thereon as may be proper with a view to aiding justice or preventing abuse of process.

(2) Unless and until an Investigating Officer is appointed under paragraph (1) of this Article, and thereafter, during any vacancy in that office and any absence from duty of the holder thereof, the powers, rights, and duties of Investigating Officer shall be vested in His Majesty's Procureur and His Majesty's Comptroller jointly and severally.

(3) In any proceedings to which this Article relates, the Investigating Officer shall be entitled, at any stage of the proceedings before the Court for Matrimonial Causes, to intervene in the proceedings, in such manner as he deems likely to assist the court, if, in the opinion of the Investigating Officer, such intervention is advisable in the interests of justice.

(4) Where the Court for Matrimonial Causes deems it necessary or expedient that any matter in relation to any suit for divorce or for nullity of marriage or decree of presumption of death and dissolution of marriage thereon then pending should be investigated by the Investigating Officer or where that Court or the Appeal Court deems it necessary or expedient that any such matter should be fully argued before it, the Court for Matrimonial Causes or the Appeal Court as the case may be may adjourn the proceedings pending such investigation or argument and may direct all necessary papers in the matter to be sent to the Investigating Officer and thereupon the Investigating Officer shall investigate the matter and report thereon to the court which gave such direction, or shall arrange for the matter to be argued before that court as the case may require.

(5) The Investigating Officer may, in pursuance of the provisions of this Article, employ such assistance as he deems necessary, and the cost of such assistance and all other expenses incurred by the Investigating Officer in connexion with his duties under this Article shall be defrayed by the States.

(6) Where the Investigating Officer intervenes or shows cause against a decree in any proceedings for divorce or for nullity of marriage or for presumption of death and dissolution of marriage thereon, the court adjudicating therein may make such order as to the payment by other parties to the proceedings of the costs of the services performed by or on behalf

of the Investigating Officer in relation to such proceedings in virtue of this Article, as may seem just.

ARTICLE 9.—PROVISION FOR RECONCILIATION IN PROCEEDINGS FOR DIVORCE OR SEPARATION

(1) Where any person

(i) has petitioned the Court for Matrimonial Causes for a decree of divorce or judicial separation ; or

(ii) has applied to the Ordinary Court, or to the Court for Matrimonial Causes, for the granting of a judicial separation by consent ; or

(iii) has applied to the magistrate for a separation order ;

then, unless the court seized of the case or the magistrate, as the case may be, is satisfied that an attempt has been made to reconcile the parties or that such an attempt is impracticable or undesirable, such court or the magistrate, as the case may be, may, for the purpose of affording an opportunity of reconciliation between the parties, adjourn the case and may, with the consent of the parties, nominate one or more persons to act as mediators between the parties with a view to their reconciliation.

(2) The Court for Matrimonial Causes shall prepare and maintain a list of persons of repute willing to serve as members of a Panel of Mediators and in that capacity to be called upon by the court or magistrate from time to time to endeavour to reconcile married persons as provided for in paragraph (1) of this Article.

(3) Any petitioner for divorce or petitioner or applicant for judicial separation or applicant for a separation order, who, in a case in which the court or magistrate is of opinion that an attempt should be

made to reconcile the parties, refuses to go before a mediator shall, unless the court or magistrate, after considering the circumstances of such refusal, otherwise directs, be disentitled to proceed with the said petition or application.

(4) Where an application is made to the magistrate for a separation order and the magistrate is of opinion that an attempt should be made to reconcile the husband and wife before the application is finally adjudicated upon, he may, if he thinks fit, make a separation order to take effect during such interval as he directs for the purpose of the making of endeavours to effect such reconciliation.

ARTICLE 10.—JOINDER OF CO-RESPONDENT. DAMAGES AND COSTS

(1) In the proceedings on any petition, whether by a husband or a wife, for divorce or judicial separation on the ground of adultery, or if, in the answer to the petition the husband or wife prays by cross-petition for divorce or judicial separation on the ground of adultery, the petitioner or respondent, as the case may be, shall cause any person with whom he or she in such petition or cross-petition alleges that the other spouse has committed adultery to be cited as a co-respondent, unless such citation is excused on special grounds by the court seized of the case.

(2) In proceedings for divorce or judicial separation on the ground of adultery, but not otherwise, the Court for Matrimonial Causes may award damages, if claimed in the petition or cross-petition, and costs, against a co-respondent, whether male or female, in favour of the party to whom a decree of divorce or judicial separation is granted, and any such award may be made, notwithstanding that such co-respondent is domiciled or resident elsewhere than in the Bailiwick. Such damages shall be compensatory and not exemplary or punitive.

(3) The court may direct in what manner such damages as it awards under paragraph (2) of this Article shall be paid or applied and may also direct that the whole or any part thereof shall be settled for the benefit of all or any of the children of the marriage or as a provision for either spouse ; and any such direction by the court shall be deemed to be the determination of a question of law on which an appeal shall lie in accordance with the provisions of paragraph (2) (relating to appeals on questions of law or assessment of damages) of Article 3 (entitled " Appeals ") of this Law.

ARTICLE 11.—POWER OF COURT TO ALLOW INTERVENTION

In every case in which any person is charged with adultery with any party to a suit or in which the Court for Matrimonial Causes considers that in the interest of any person not already a party to the suit, that person should be made a party to the suit, the court may, if it thinks fit, allow that person to intervene upon such terms as the court thinks just.

ARTICLE 12.—DECREES AND FINAL ORDERS

(1) Where a decree of divorce or a decree of nullity of marriage has been made by the Court for Matrimonial Causes or the Appeal Court, such decree and any order made thereupon under Part VII (entitled " Care of Children ") or Part VIII (entitled " Property and Contributions for Support ") of this Law, other than an interim order under Part VII or under paragraph (3) of Article 47 (entitled " Contributions for Support ") of this Law, shall be provisional until—

(a) a Final Order, as provided for in this Article, has been made ; or

(b) His Majesty in Council has issued an Order (i) disallowing an appeal against the granting of the decree, or (ii) allowing an appeal against a reversal by the Appeal Court of the granting of the decree.

(2) Where a decree of the kinds mentioned in paragraph (1) of this Article has been made by the Court for Matrimonial Causes or has been made or affirmed by the Appeal Court and

(a) no appeal allowable against such decree has been lodged within the time allowed for lodging such appeal; or

(b) an appeal thus allowable and duly lodged has not been prosecuted within the time allowed for its prosecution;

then the Court for Matrimonial Causes shall, on the application, which may be *ex parte*, of either party to the marriage to which the said decree relates, make a Final Order in the suit pronouncing—

in the case of a decree of divorce, that on and after the date of such Final Order the said marriage shall stand dissolved;

in the case of a decree of nullity of marriage, such marriage to be and to have been null and void.

(3) Upon the making, in virtue of this Article, of a Final Order, neither the Final Order nor the decree to which it relates shall thereafter be questioned, whether for lack of jurisdiction or on any ground whatsoever.

(4) The Court for Matrimonial Causes may refuse to make a Final Order if application for the same is not made within a period of twelve calendar months from the date on which application therefor might first have been made.

ARTICLE 13.—VARIATION OF ORDERS

(1) The Court for Matrimonial Causes may from time to time, whether before or after a decree in any matrimonial suit, vary or modify any order pre-

viously made under Part VII. (entitled "Care of Children") or Part VIII. (entitled "Property and Contributions for Support") of this Law, other than an order for the payment outright of a gross sum which has been fully complied with.

(2) As regards any matter of the kinds to which Part VII. (entitled "Care of Children") or Part VIII. (entitled "Property and Contributions for Support") of this Law relates, the Court for Matrimonial Causes shall have the like powers to vary or modify from time to time any order previously made in an extraneous jurisdiction in consequence of a decree in a matrimonial suit, wherever such decree was made, if the parties to the variation or modification proceedings are both resident within the Bailiwick at the time of the institution thereof.

(3) Any order made by the Court of Alderney or the Court of Sark, consequential upon a decree of judicial separation pronounced in either of those Courts, whether before or after the commencement of this Law, may be varied or modified by the Court by which such order was made.

ARTICLE 14.—ABATEMENT OF PROCEEDINGS

(1) (a) Without prejudice to the operation of any rule of law in force in the Bailiwick governing the abatement of any other proceedings under this Law and subject to the provisions of paragraph (2) of this Article, the death of the petitioner or respondent in an unconcluded suit for Divorce, Judicial Separation or Nullity of Marriage shall abate the suit.

(b) For the purposes of the foregoing sub-paragraph, a suit for Divorce or Nullity of Marriage shall be deemed an unconcluded suit unless

- (i) a Decree of Divorce or Nullity of Marriage has been granted in that suit; and
- (ii) such Decree is not merely provisional.

(2) Where, in any proceedings for divorce or judicial separation on the ground of adultery, a claim for damages is made against a person cited as a co-respondent in such proceedings, such claim may be proceeded with notwithstanding the death of the spouse with whom such co-respondent is alleged to have committed adultery and, if damages have already been awarded in such proceedings, the court seized of the case may give directions as to the disposal of the sum awarded notwithstanding the death of that spouse or of the spouse in favour of whom such damages were awarded.

(3) The provisions of the last foregoing paragraph shall not affect the continued operation of the proviso to subsection (1) of Section 1 (entitled "Effect of Death on Certain Causes of Action") of the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1936.

Part II.—Divorce

ARTICLE 15.—CONDITIONS OF EXERCISE OF JURISDICTION WITH REGARD TO DIVORCE

Subject to the provisions of paragraph (5) (relating to certain cases of desertion and deportation) of Article 2 (entitled "Institution of Court for Matrimonial Causes", etc.) of this Law, it shall be a necessary condition of the exercise by the Court of its jurisdiction in divorce causes and matters that the petitioner and respondent are domiciled in the Bailiwick when the suit for divorce is or was instituted :

Provided that if a respondent who is absent from the Bailiwick was immediately before departing therefrom domiciled therein, such respondent shall be deemed to have retained a domicile in the Bailiwick unless the contrary is proved :

Provided also, if the petitioner, or, where the petitioner is the wife, the husband of the petitioner,

though domiciled in the Bailiwick, has not been domiciled therein during the whole of the three years immediately preceding the presentation of the petition, that the petitioner or the respondent has, during that period, been actually present within the Bailiwick for at least seven hundred days ; and that, where the ground for divorce on which the petition is based is adultery or cruelty, such adultery or cruelty has occurred after the commencement of the actual presence in the Bailiwick of the petitioner or the respondent, within the said period of three years.

ARTICLE 16.—GROUNDS OF PETITION FOR DIVORCE

(1) A decree of divorce dissolving a marriage may be pronounced by the Court :

(i) on the petition of either the husband or the wife on the ground that the respondent

(a) has since the celebration of the marriage committed adultery ; or

(b) has deserted the petitioner without just and reasonable cause for a period of at least three years immediately preceding the presentation of the petition ; or

(c) has since the celebration of the marriage treated the petitioner with cruelty ; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition ; or

(e) is, and has been for a period of not less than three years since the celebration of the marriage and immediately preceding the presentation of the petition, an habitual drunkard, and by reason thereof, co-habitation of the petitioner with the respondent is a grave hardship ; or

(f) (i) is, by reason of the commutation of a death sentence, undergoing penal servitude for life, or imprisonment for life, or in confinement as a criminal lunatic ; or (ii) is serving a sentence of not less than fifteen years' penal servitude or imprisonment :

Provided that such a decree shall only be pronounced on a ground mentioned in paragraph (f) of this Article if the petition is presented not earlier than two years nor later than ten years after the date of such sentence ; and that at the time of the decree the respondent is still undergoing penal servitude or imprisonment or in confinement as a criminal lunatic : or

(g) has since the celebration of the marriage been guilty of sodomy or bestiality ; and

(ii) on the petition of the wife, on the ground that her husband has, since the celebration of the marriage, been guilty of rape ; and a decree may be granted on this ground upon proof of rape, although the offence has not been charged against the husband in criminal proceedings.

(2) A petition may be presented, and the Court may pronounce a decree under the provisions of paragraph (1) of this Article, notwithstanding that the ground or grounds for divorce alleged in the petition arose or began before the date on which this Law comes into operation.

ARTICLE 17.—DIVORCE PROCEEDINGS AFTER GRANT OF JUDICIAL SEPARATION OR SEPARATION ORDER

(1) A person shall not be prevented from presenting a petition for divorce, or the Court from pronouncing a decree of divorce, by reason only that the petitioner has at any time been granted, in this jurisdiction or elsewhere, a judicial separation or a

separation order upon the same or substantially the same facts as those alleged in the petition for divorce or proved in support thereof.

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

(3) For the purposes of a petition for divorce on the ground of desertion—

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

(b) where a decree of judicial separation or a separation order having the effect of such a decree has been granted on the ground of desertion and—

(i) the period of desertion immediately preceding the institution of proceedings for such decree or order was of less than three years duration; and

(ii) such decree or order was granted not later than three years before the presentation of the petition for divorce and has been continuously in force since the granting thereof; and

(iii) the parties have not resumed co-habitation:

the period of desertion immediately preceding the institution of proceedings for such decree or order shall be deemed to have been of a duration of three years.

ARTICLE 18.—DUTY OF COURT ON PRESENTATION OF PETITION FOR DIVORCE

(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 counter-charge which is made against the petitioner.

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

- (a) the case for the petition has been proved ; and
- (b) 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
- (c) the petition is not presented or prosecuted in collusion with the respondent or any co-respondent ;

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—

- (i) of unreasonable delay in presenting or prosecuting the petition ; or
- (ii) of cruelty towards the other party to the marriage ; or
- (iii) 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

(iv) where the ground of the petition is adultery or habitual drunkenness or unsoundness of mind or desertion, of such wilful neglect or misconduct as has conduced to the adultery or habitual drunkenness or unsoundness of mind or desertion ; or

(v) where the ground of the petition is desertion and the desertion, being of a duration of less than three years, is deemed, under the provisions of paragraph (3) (b) of Article 17 (entitled " Divorce Proceedings after Grant of Judicial Separation ", etc.) of this Law, to have been of a duration of three years, of unreasonable unwillingness to resume cohabitation.

ARTICLE 19.—RE-MARRIAGE OF DIVORCED PERSONS

(1) When, in proceedings for the dissolution of a marriage by divorce under this Law,

(a) a Final Order has been made therein under the provisions of Article 12 (entitled " Decrees and Final Orders ") of this Law ; or

(b) there has been registered on the records of this Island an Order of His Majesty in Council, such as is referred to in sub-paragraph (b) of paragraph (1) of the said Article 12, and having the effect of dissolving the marriage ;

either of the parties to the marriage may marry again as if the prior marriage had been dissolved by death.

(2) The expression " divorced wife ", wherever that expression occurs in Articles 2 and 3 of the Law of 1936, shall mean a wife in favour of or against whom a decree of divorce has been granted.

ARTICLE 20.—RELIEF TO RESPONDENT ON PETITION FOR DIVORCE

If in any proceedings for divorce the respondent

in his answer opposes the relief sought, on the ground of the adultery, cruelty or desertion of the petitioner and, in such answer, prays by cross-petition for relief on any such ground, the Court may give to the respondent the relief sought in such cross-petition as if the cross-petition of the respondent had been an original petition.

ARTICLE 21.—EXCLUSION OF SARK

Nothing contained in this Law shall enable the Court to grant a decree of divorce dissolving the marriage of any person who, at the time of the institution of the suit, is domiciled in the Island of Sark or in any of its Dependencies.

Part III.—Judicial Separation (including Separation by Consent)

ARTICLE 22.—CONDITIONS OF EXERCISE OF JURISDICTION WITH REGARD TO JUDICIAL SEPARATION

Subject to the provisions of paragraph (5) (relating to certain cases of desertion and deportation) of Article 2 (entitled “Institution of Court for Matrimonial Causes”, etc.) of this Law, it shall be a necessary condition of the exercise of original jurisdiction by the Court for Matrimonial Causes and by the Ordinary Court with regard to any suit for judicial separation that both parties thereto—

- (a) are domiciled in the Island of Guernsey when the suit is instituted ; or
- (b) had a matrimonial home in that Island when their cohabitation ceased, or the events occurred on which a claim for separation is based ; or
- (c) are resident in that Island when the suit is instituted.

ARTICLE 23.—GROUNDS OF PETITION FOR JUDICIAL SEPARATION

A petition by one of two married persons for judicial separation may be presented to the Court for Matrimonial Causes—

- (1) on any grounds on which a petition for divorce might have been presented ; or
- (2) on the ground that the respondent—
 - (a) has wilfully deserted the petitioner without just and reasonable cause ; or
 - (b) has failed to comply with a decree for restitution of conjugal rights ; or
 - (c) is an habitual drunkard ; or
 - (d) where a wife is the petitioner, has wilfully and continuously neglected to provide such reasonable maintenance for the petitioner or her children as he is legally liable to provide ; or
- (3) on any other ground on which such a petition might before the commencement of this Law have been presented.

ARTICLE 24.—DUTY OF COURT ON PRESENTATION OF PETITION FOR JUDICIAL SEPARATION

The provisions contained in Article 18 of this Law relative to the duty of the Court on the presentation of a petition for divorce and the circumstances in which such a petition shall or may be granted or dismissed, shall apply in like manner to a petition for judicial separation.

ARTICLE 25.—RELIEF TO RESPONDENT ON PETITION FOR JUDICIAL SEPARATION

In any proceedings for judicial separation in which, under the provisions of this Law, the court seized of the case is the Court for Matrimonial Causes, and the respondent, in his answer, opposes the

relief sought, on the ground of the adultery, cruelty or desertion of the petitioner, and, in such answer, prays by cross-petition for a decree of judicial separation on any such ground, the Court for Matrimonial Causes may give to the respondent the relief sought in such cross-petition as if the cross-petition of the respondent had been an original petition.

ARTICLE 26.—EFFECT OF DECREE FOR JUDICIAL SEPARATION

(1) When a judicial separation is decreed or pronounced, it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(2) So long as a separation under a decree, pronouncement or order subsists, the husband shall not be liable in respect of any engagement or contract into which the wife enters after the separation begins, or for any wrongful act or omission by her or for any costs she incurs as plaintiff or defendant :

Provided that where, in relation to a judicial separation or a separation order, the Court or the Magistrate has ordered the husband to make a payment or payments to the wife or for her use to any other person on her behalf, for or towards her maintenance, or the maintenance of any child or children mentioned in the order, and he has not duly made such payment or payments, the husband shall be liable for necessities supplied for the use of the wife or of such child or children.

ARTICLE 27.—JUDICIAL SANCTION REQUISITE TO VALIDITY OF AGREEMENTS FOR SEPARATION

No agreement for or in relation to separation between married persons which is made after the commencement of this Law while the parties thereto are resident within the Bailiwick shall have any legal

validity in the Bailiwick unless it is sanctioned pursuant to a decree or pronouncement of judicial separation by a court in the Bailiwick competent to make such decree or pronouncement.

ARTICLE 28.—REVERSAL, DISCHARGE AND VARIATION OF DECREES FOR JUDICIAL SEPARATION

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

The term "absence" in this Article means non-appearance as a party in the suit and not merely that the person was not present at the proceedings.

(2) The Court for Matrimonial Causes may, at the instance of either party to the marriage, and after hearing the parties thereto, in person or by counsel, discharge a decree for judicial separation and may make such order as it thinks fit respecting the terms of separation subsisting between the parties at the time of such discharge.

(3) The Court for Matrimonial Causes may at any time vary a decree for judicial separation for any purpose necessary for giving effect to any provision in Part VII. (entitled "Care of Children") or Part VIII. (entitled "Property and Contributions for Support") of this Law.

(4) The powers of the Court for Matrimonial Causes under this Article shall extend to any judicial separation made by that Court or by the Appeal Court and to any order made in relation thereto.

(5) The Ordinary Court shall, in respect of judicial separations pronounced by that Court, whether

before or after the commencement of this Law, have like powers to the powers conferred by this Article upon the Court for Matrimonial Causes.

ARTICLE 29.—PROVISIONS REGARDING TERMINATION OF SEPARATION AND THE PROTECTION OF THIRD PARTIES

(1) A judicial separation decreed or pronounced under the provisions of this Law shall, as between the parties to the marriage, be rescinded by their resumption of co-habitation, but such judicial separation shall continue to be valid and effectual as regards the rights and remedies of other persons (and, if varied, thus valid and effectual as varied) until—

(a) in the case of a judicial separation pronounced under the provisions of sub-paragraph (a) (relating to concurrent jurisdiction) of paragraph (4) of Article 2 (entitled “ Institution of Court for Matrimonial Causes ”, etc.) of this Law, such rescission is evidenced by a Declaration of Rescission, made, dated and signed, in accordance with a Form prescribed by the Rules of Court, by the said parties or their attorneys in the presence of His Majesty’s Greffier ; and

(b) in the case of a judicial separation by decree, the decree has been discharged by the court.

(2) The reversal, discharge or variation of a decree or pronouncement of judicial separation, or the rescission of a judicial separation, or an order made in virtue of paragraph (2) of Article 28 (entitled “ Reversal, discharge and variation of decrees for judicial separation ”) of this Law, shall not affect—

(a) the validity of any act or thing lawfully done by any person before the granting or making of the said reversal, discharge, variation or order, and done in virtue of, or in reliance upon,

- the terms of separation subsisting between the parties to the marriage when such act or thing was thus lawfully done ; or
- (b) the rights or remedies which any person would have had, if the decree or pronouncement had not been reversed, discharged or varied or the judicial separation rescinded, or the said order made, in respect of any debts, contracts or acts of the husband or wife incurred, entered into or done between the time of the decree or pronouncement and the reversal, discharge or variation thereof, or the rescission of the judicial separation, or the making of the said order, as the case may be.

Part IV.—Restitution of Conjugal Rights

ARTICLE 30.—CONDITIONS OF EXERCISE OF JURISDICTION WITH REGARD TO RESTITUTION OF CONJUGAL RIGHTS

Subject to the provisions of paragraph (5) (relating to certain cases of desertion and deportation) of Article 2 (entitled “ Institution of Court for Matrimonial Causes ”, etc.) of this Law, it shall be a necessary condition of the exercise by the Court of its jurisdiction in suits for the restitution of conjugal rights that the parties thereto—

- (1) are domiciled in the Island of Guernsey when the suit is instituted ; or
- (2) had a matrimonial home in the Island of Guernsey when their co-habitation ceased ; or
- (3) are resident in the Island of Guernsey when the suit is instituted.

ARTICLE 31.—POWER OF COURT TO DECREE RESTITUTION OF CONJUGAL RIGHTS

(1) A petition for restitution of conjugal rights may be presented to the Court by either the husband

or the wife, and if the Court, after inquiring into the allegations contained in the petition is satisfied—

- (a) that the said allegations are true ;
- (b) that the petitioner *bona fide* desires a resumption of co-habitation ; and
- (c) that there is no legal ground why a decree for restitution of conjugal rights should not be granted ;

may pronounce a decree accordingly.

(2) The powers of the Court to grant decrees for restitution of conjugal rights shall be the same as those exercisable by the Royal Court before the commencement of this Law.

ARTICLE 32.—POWER OF COURT TO ORDER PERIODIC PAYMENTS BY RESPONDENT

The Court, at the time of making a decree for restitution of conjugal rights or at any subsequent time, may, in the event of the decree not being complied with within any time limited in that behalf by the Court, order the respondent to make to the petitioner such periodic payments as it thinks just.

Part V.—Nullity of Marriage

ARTICLE 33.—CONDITIONS OF EXERCISE OF JURISDICTION WITH REGARD TO SUITS FOR NULLITY OF MARRIAGE

Subject to the provisions of paragraph (5) (relating to certain cases of desertion and deportation) of Article 2 (entitled “ Institution of Court for Matrimonial Causes ”, etc.) of this Law, it shall be a necessary condition of the exercise by the Court of its jurisdiction in suits for nullity of marriage that—

- (1) the marriage was celebrated in the Bailiwick ;
or
- (2) the parties to the marriage are domiciled in the Bailiwick when the suit is instituted :

Provided that—

- (a) where the sole ground of the petition is that the marriage in respect of which the petition is presented was bigamous on the part of the respondent, the Court may exercise jurisdiction if the petitioner is domiciled in the Bailiwick when the suit is instituted ;
- (b) in a suit for nullity of marriage on any of the grounds mentioned in paragraphs (1), (3), (4), (5) and (7) (relating respectively to impotency ; refusal of consummation ; pregnancy by a person other than the petitioner ; venereal disease ; and recurrent fits of insanity, etc.) of Article 34 (entitled “ Grounds for Decree of Nullity ”) of this Law, or on any ground on which a marriage would by law in the Bailiwick have been voidable before the enactment of this Law, the Court shall exercise jurisdiction only if the parties to the marriage are domiciled in the Bailiwick when the suit is instituted.

ARTICLE 34.—GROUNDS FOR DECREE OF NULLITY

The Court may decree the nullity of a marriage on any of the grounds mentioned in paragraphs (1) to (9) of this Article, as well as on any other ground on which a marriage is by law void or voidable :—

- (1) the continuing impotency of one party or of both parties to the marriage since the celebration thereof ;
- (2) that the marriage was celebrated through fraud, threats or duress by the respondent upon or to the petitioner ;
- (3) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage ;
- (4) that the respondent was at the time of the marriage pregnant by some person other than

the petitioner, unless the pregnancy resulted from intercourse which occurred between the respondent and a former husband during the subsistence of their marriage ;

- (5) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form ;
 - (6) that either party to the marriage was at the time of the marriage of unsound mind or a mental defective within the meaning of the " Loi ayant rapport aux Faibles d'Esprit " of 1926 ;
 - (7) that either party to the marriage was at the time of the marriage subject to recurrent fits of insanity or epilepsy ;
 - (8) that the marriage in respect of which the petition is presented was bigamous on the part of the respondent ;
 - (9) (i) that the marriage has been annulled by the competent court of an extraneous jurisdiction in which the party who is the respondent in the proceedings in the Bailiwick was domiciled when the suit for such annulment was instituted in such extraneous jurisdiction, if the annulment was made upon one of the grounds mentioned in paragraphs (1), (3), (4), (5) and (7) of this Article, or upon some other ground whereby the marriage was lawfully voidable in such extraneous jurisdiction ; and
 - (ii) that the marriage has been annulled by the competent court of an extraneous jurisdiction in which—
 - (a) the party who is the respondent in the proceedings in the Bailiwick was domiciled when the suit for such annulment was instituted in such extraneous jurisdiction, or
 - (b) the marriage was celebrated ;
- if the annulment was made upon one of the

grounds mentioned in paragraphs (2), (6) and (8) of this Article, or upon some other ground whereby the marriage was void *ab initio* in such extraneous jurisdiction;

Provided that—

- (a) in the cases specified in paragraphs (1), (3), (4), (5) and (7) of this Article, a decree may be granted only on the petition of a party to the marriage; and
- (b) in the cases specified in paragraphs (4), (5), (6) and (7) of this Article, 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.

ARTICLE 35.—PRESERVATION OF LEGITIMACY OF CHILDREN IN CERTAIN CASES

Any child born of a marriage avoided pursuant to paragraphs (2), (5), (6) or (7) (relating respectively to fraud etc.; venereal disease; unsoundness of mind; and recurrent fits of insanity, etc.) of Article 34 (entitled “Grounds for Decree of Nullity”) of this Law shall be a legitimate child of the parties thereto notwithstanding that the marriage is so avoided.

ARTICLE 36.—SAVING AS TO VOID MARRIAGES

Nothing in this Part of this Law 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.

ARTICLE 37.—CERTAIN EVIDENCE IN NULLITY CASES TO BE IN CAMERA

In any proceedings for nullity of marriage, evidence

on the question of sexual capacity shall be heard in camera unless in any case the Court is satisfied that in the interests of justice any such evidence ought to be heard in open Court.

Part VI.—Presumption of Death and Dissolution of Marriage thereon

ARTICLE 38.—CONDITIONS OF EXERCISE OF JURISDICTION WITH REGARD TO PRESUMP- TION OF DEATH AND DISSOLUTION OF MARRIAGE THEREON

Subject to the provisions of paragraph (5) (relating to certain cases of desertion and deportation) of Article 2 (entitled “Institution of Court for Matrimonial Causes”, etc.) of this Law, it shall be a necessary condition of the exercise by the Court of its jurisdiction with regard to the granting of decrees of presumption of death and of dissolution of marriage thereupon that—

- (1) the absentee spouse was domiciled in the Bailiwick immediately before his or her departure or disappearance therefrom, but such jurisdiction shall not be exercisable if it appears to the Court that the absentee spouse had acquired a domicile elsewhere and has not since re-acquired a domicile in the Bailiwick; and
- (2) the petitioner, if the husband of the absentee, is domiciled in the Bailiwick when the proceedings are instituted.

ARTICLE 39.—PROCEEDINGS FOR DECREE OF PRESUMPTION OF DEATH AND DISSOLU- TION OF MARRIAGE THEREON

(1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the Court to have it presumed that the other party is dead and to have the marriage dissolved, and the

Court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage.

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

ARTICLE 40.—PROVISIONS REGARDING REMARRIAGE AFTER DECREE OF PRESUMPTION OF DEATH

After the expiration of six calendar months from the date of the making of a decree of presumption of death and dissolution of marriage, if the decree has not been rescinded and if proceedings for the rescission of the decree are not sub-judice, the petitioner shall be entitled to marry again as if the previous marriage had been dissolved by death.

ARTICLE 41.—PROVISIONS REGARDING RE-SCISSION OF DECREE

Upon proof being given to the satisfaction of the Court at the instance of any person that a person, whose death has been presumed by decree, is alive, the Court shall rescind the decree but, notwithstanding the rescission of any such decree—

- (1) any marriage lawfully contracted by the petitioner for the decree after the granting thereof shall not be deemed to be void or voidable as a civil marriage by reason of the decree being rescinded; and
- (2) if the petitioner has lawfully contracted a marriage after the granting of such decree, the previous marriage of the petitioner shall

be deemed to have been dissolved as at the date of such decree as though the person whose death was thereby presumed had died on that date.

ARTICLE 42.—DECREE IN EXTRANEOUS JURISDICTION

Where a decree of presumption of death has been made by a Court of competent jurisdiction in the domicile outside the Bailiwick of the person whose death is thereby presumed, and such decree is proved to the Court for Matrimonial Causes in manner provided in the Rules of Court or directed by the Court, that Court shall order that the said decree shall as from the date of the decree have the same effect as a decree of presumption of death and dissolution of marriage pronounced by that Court.

Part VII.—Care of Children

ARTICLE 43.—POWER OF COURT TO MAKE ORDERS FOR CUSTODY, MAINTENANCE ETC. OF CHILDREN

(1) The Court may from time to time, after the making in the Island of Guernsey of a decree of divorce or judicial separation or nullity of marriage, make such orders as appear just with respect to the custody, maintenance and education of the children and access to the children, the marriage of whose parents is the subject of the said decree, and the Court shall have like power, after the commencement of any proceedings in relation to any such decree, or in relation to a decree for restitution of conjugal rights, to make interim orders under this Part of this Law.

(2) Where a respondent fails to comply with a decree for restitution of conjugal rights, the Court may, from time to time, make any such order, not

being an interim order under the preceding paragraph of this Article, as it is empowered to make under that paragraph.

Part VIII.—Property and Contributions for Support

ARTICLE 44.—SUCCESSORAL INTERESTS TO CEASE ON DIVORCE ETC.

Where a marriage—

- (a) in the case of proceedings for divorce, has been dissolved, or
- (b) in the case of proceedings for nullity, has been dissolved or declared void,

neither of the parties whose marriage is thus dissolved or declared void shall be entitled, upon the death of the other, to any legal successoral share or interest in the real or personal estates of the deceased, nor shall a divorced woman, or a woman whose marriage has been so dissolved or declared void, be entitled to any rights of dower, arising by reason of that marriage, in the real estate of any other person.

ARTICLE 45.—POWER OF COURT TO VARY SETTLEMENTS, ETC.

(1) The Court, after the making in the Island of Guernsey of a decree of divorce or nullity of marriage, may, upon the application of either party to the marriage which is the subject of such decree, or upon the application of any person beneficially interested,

- (a) cancel, vary or modify, or
- (b) terminate the trusts of

any marriage contract, marriage settlement, post-nuptial settlement, or terms of separation subsisting between the parties to such marriage, in any manner which, having regard to the means of the parties,

the conduct of either of them or the interests of any children of such marriage appears to the Court to be just.

(2) The Court shall have jurisdiction under this Article notwithstanding that the marriage referred to in paragraph (1) of this Article was contracted, and the marriage contract, marriage settlement, post-nuptial settlement or terms of separation was or were made or entered into, in an extraneous jurisdiction.

ARTICLE 46.—POWER OF COURT TO ORDER VESTING OR DIVISION OF PROPERTY

(1) Where a decree of divorce or nullity of marriage or judicial separation has been granted, the Court may, if it thinks fit, as regards real and personal property in which each of the parties to the marriage has, notwithstanding the provisions of Article 44 (entitled "Successoral Interests to cease on Divorce etc.") of this Law, an interest, present, prospective or conditional, direct that their interests in such property shall be vested solely in the one or the other of the parties or shall be divided between them in such proportions as the Court directs, and, where such property is so directed to be vested solely in one of the parties or to be divided between them, order that one party shall pay to the other for his or her absolute benefit such gross sum or shall secure to the other for his or her benefit, such gross or periodic sum or both for any term not exceeding the life of the party in favour of whom the same is secured as the Court may direct, or may refrain from making any order as to payment or security.

(2) An order made under this Article, in so far as such order relates to a judicial separation, shall be deemed to be part of the terms of separation between the parties within the meaning of this Law.

ARTICLE 47.—CONTRIBUTIONS FOR SUPPORT

(1) Where a decree for divorce, judicial separation, restitution of conjugal rights or nullity of marriage has been granted, the Court may, if it thinks fit, having regard to the circumstances of the case, including the financial position and conduct of the parties, order that the one party shall pay or make provision for the payment to the other party during any term not exceeding the life of such other party of such annual or other periodic sum of money for or towards the support of such other party as the Court may deem reasonable, and that the party against whom such order is made shall secure the payments to be made under such order in manner directed by the Court.

(2) The Court may, if it thinks fit, order that a gross sum of money shall be paid or secured in lieu of or in addition to the annual or other periodic sum referred to in the preceding paragraph of this Article.

(3) On a petition for divorce, judicial separation, restitution of conjugal rights or nullity of marriage, the Court may, if it thinks fit, by interim order, direct payments to be made by the husband to the wife, for or towards her support, and any such interim order shall remain in force until it is rescinded by the Court or until the Court makes a definitive order in respect thereof, or until the relief sought in the petition is refused.

ARTICLE 48.—CONTRIBUTION ORDER AGAINST WIFE OF HUSBAND OF UNSOUND MIND

When a decree of divorce or judicial separation is granted to a wife on the ground that her husband is of unsound mind, the Court may, if it thinks fit, direct that the wife shall, for the benefit of her husband, make any payment or give any security which

the Court is by Article 47 (entitled "Contributions for Support") of this Law empowered to order a party to make or give.

ARTICLE 49.—PAYMENT OVER OF CONTRIBUTIONS FOR SUPPORT TO PERSONS HAVING CHARGE OF MENTALLY AFFLICTED RESPONDENT

Where a decree of divorce or judicial separation or nullity of marriage is granted on the ground of the respondent's unsoundness of mind or mental deficiency, the Court may direct that any payments of contributions for support which it orders to be made shall be made to such persons having charge of the respondent as the Court directs.

ARTICLE 50.—POWER OF COURT TO ORDER SETTLEMENT OF WIFE'S PROPERTY IN FAVOUR OF HUSBAND AND CHILDREN

Where, on the petition of the husband, a decree of divorce or judicial separation, or nullity of marriage is granted, the Court may, if it thinks fit, order that such settlement as it deems reasonable shall be made of the wife's real and personal property, or any part thereof, for the benefit of the children of the marriage and for the benefit of such husband or any of them.

ARTICLE 51.—ASCERTAINMENT OF ASSETS AND LIABILITIES OF PARTIES

(1) For the purposes of this Part of this Law, the Court may require each of the parties to a suit to file a sworn detailed declaration of his or her assets and liabilities and of particulars of all charges against such assets.

(2) The Court may sit in private for the verification of the assets and liabilities of the parties and for

the purpose of deciding upon the nature and extent of the order or orders, if any, proper to be made in the case in pursuance of this Part of this Law, and may refer to one or more Commissioners appointed by the Court and sitting in private the consideration of such assets and liabilities and the drafting for submission to the Court of any such orders.

ARTICLE 52.—POWER OF COURT TO AWARD PARTICULAR PRIORITY TO “HYPOTHÈQUE”

The Court may, having regard to the deprivation suffered under Article 44 (entitled “Successoral Interests to cease on Divorce etc.”) of this Law, of a successoral share or interest in real estate and to the deprivation suffered, by reason of orders made under Article 45 (entitled “Power of Court to vary settlements etc.”) and Article 46 (entitled “Power of Court to order vesting or division of property”) of this Law or either thereof, of an interest, present, prospective or conditional, in any real property, declare that, as regards any gross sum ordered to be paid or any gross sum or periodic sum ordered to be secured for a term, the “hypothèque” to which the registration of any such order for payment or the giving of security may give rise shall, if such order be registered at any time before the Greffe closes on the day on which it is next open for general public business after the day on which the order is made, instead of having priority as at the date of its registration, have priority, as regards the sum or sums specified in the order or such part thereof as the Court directs, at such earlier date as the Court directs :

Provided that in making any such declaration as aforesaid the Court shall have regard to the rights and interests of registered creditors of the person whose realty will be affected by the “hypothèque” to which the registration of the order gives rise and that, where, at the time of the making of the decree, there

is in existence any registration or priority against or over the successoral share or interest or other interest, present, prospective or conditional, of the person in whose favour such "hypothèque" will take effect, in any such realty, then, notwithstanding any such declaration as aforesaid, such "hypothèque" shall be deemed to be posterior in date to any such registration or priority.

ARTICLE 53.—COURT TO HAVE REGARD TO BENEFITS ACCRUING TO PARTY

In making any order under Article 47 or Article 48 of this Law, (which Articles relate respectively to Contributions for Support and Contribution Order against Wife of Husband of Unsound Mind), the Court shall have regard to the benefits accruing to the party in whose favour such first-mentioned order is made, under any other order made in pursuance of this Part of this Law.

ARTICLE 54.—DEATH OF PARTY AFTER DECREE

(1) In the event of the death of either of the parties to a suit for a decree of divorce or nullity of marriage, after the marriage has been dissolved or declared void but before any definitive order under this Part of this Law has been made, the Court may make any such order as aforesaid which it could lawfully have made if such death had not occurred, and the said order shall take effect as if it had been made immediately before the death.

(2) The Court may make an order under this Article on the application of any person who is, in the opinion of the Court, an interested person, if the Court is satisfied that notice of the proceedings has been given to every person whose interests may be affected by the order or to the Attorneys of such persons.

ARTICLE 55.—PRIORITY OF RIGHTS UNDER ORDERS OF COURT

Upon the grant of a decree of divorce or judicial separation or nullity of marriage and until the Court has made an order or orders under this Part of this Law or has refused to make any such order, any rights in real property acquired by third parties from either of the parties to the suit, or from his or her successors in title, shall be subordinated to such rights thereto as may vest under any such order or orders.

ARTICLE 56.—JURISDICTION CONSEQUENTIAL ON PAST DECREES

The powers of the Court under this Part of this Law may be exercised in any cause, suit or matter consequential upon a judicial decision made in the Island of Guernsey in a matrimonial suit before the commencement of this Law.

ARTICLE 57.—EXECUTION OF INSTRUMENTS BY ORDER OF COURT

Where any person neglects or refuses to comply with an order of the Court directing him to execute or make any conveyance, assignment, or other document or instrument or indorsement for giving effect to any Act of Court under this Part of this Law, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, assignment, or other document or instrument or indorsement shall be executed, made or done by such person as the Court nominates for the purpose, at the cost of the person in default, or otherwise, as the Court directs, and a conveyance, assignment, document, instrument or indorsement so executed, made or done shall operate and be for all purposes available as if it had been executed, made or done by the person originally directed to execute, make or do it.

Part IX.—Private International Law

ARTICLE 58.—PROPERTY SUBJECT TO EXTRANEIOUS LAW

In determining whether to make or decline to make an order or orders under Part VIII. (entitled "Property and Contributions for Support") of this Law, respecting any property which, by reason of a marriage contract or other agreement, trust, arrangement or otherwise, is subject to the law of an extraneous jurisdiction, the Court shall have regard to the question of the legal effectiveness, outside the jurisdiction of the Court, of the order or orders which the Court might make.

ARTICLE 59.—DECREES IN EXTRANEIOUS JURISDICTIONS

(1) A final decree of divorce made by a court of competent jurisdiction in an extraneous jurisdiction shall be recognised as a valid decree in the Bailiwick—

- (i) if the husband was domiciled in such extraneous jurisdiction when the proceedings resulting in such decree were instituted; or
- (ii) if the competent courts of the husband's domicile would recognise the decree as valid although the extraneous jurisdiction in which the decree was made was not the jurisdiction of the husband's domicile;

and a marriage contracted by either of the parties to a marriage so dissolved by divorce, whether before or after the commencement of this Law, shall not be deemed to have been or to be void or voidable by reason of the pre-existent marriage so dissolved by such divorce:

Provided that the proceedings in the forum of the decree did not, according to the principles of legal process in the Bailiwick, involve substantial injustice.

- (2) Where the marriage was lawfully celebrated

in the Bailiwick, a decree of nullity made by a court in an extraneous jurisdiction on the ground that some formality, not required by law in the Bailiwick, was not observed, shall not, except as a ground for the making of a decree in pursuance of Article 34 (entitled "Grounds for Decree of Nullity") of this Law, be recognised by the courts of the Bailiwick.

(3) A decree of judicial separation made by a competent court in an extraneous jurisdiction in which the parties were either domiciled or resident when the proceedings resulting in such decree were instituted shall be recognised as valid in the Bailiwick.

ARTICLE 60.—DOMICIL

(1) Subject to the provisions of paragraph (2) of this Article, a husband's domicile of choice shall be taken to be the country or place in which, in the opinion of the Court, he has last resided with the intention of there having his settled home.

(2) Where it is necessary, for the purpose of giving effect to any provision in this Law, for the Court to recognise or decline to recognise the validity of a decree made by a court in an extraneous jurisdiction and a husband's domicile is a relevant consideration for the Court, the husband's domicile shall be taken to be the country or place in which, in the opinion of the Court, he resided with the intention of there having his settled home, when the proceedings resulting in the said decree were instituted.

(3) Unless the contrary is proved, the Court shall presume the continuance of a proved domicile of origin or choice, as the case may be.

Part X.—Miscellaneous

ARTICLE 61.—EVIDENCE

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

(2) A witness who, in a matrimonial suit, has given evidence in disproof of adultery on his or her part, shall, if such adultery is a matter in issue in that suit, but not otherwise, be liable to be asked and be bound to answer questions put, in the course of that suit, tending to show that he or she has in fact been guilty of such adultery.

ARTICLE 62.—INDECENT EVIDENCE

In any proceedings under this Law in which any evidence of an indecent character is about to be tendered, the court before which the proceedings are taking place may, if the court thinks it necessary in the interest of the administration of justice or of public decency, direct that all or any persons, not being members or officers of the court or the parties to the case or other persons directly concerned in the case, shall be excluded from the court during the taking of that evidence.

ARTICLE 63.—RELIEF FOR CLERGY OF CHURCH OF ENGLAND

(1) No clergyman of the Church of England shall be compelled to publish the banns of marriage of or to solemnise the marriage of any person whose previous marriage has been dissolved by decree of divorce either in Guernsey or elsewhere, and whose former husband or wife is still living, or to permit the marriage of any such person to be solemnised in the church or chapel of which he is the minister, or to administer the Holy Communion to any such person who has re-married.

(2) No such clergyman shall be liable to any civil action, suit or penalty for refusing to publish the banns of marriage of, or for refusing to solemnise the marriage of, any such person, or for refusing to permit the marriage of any such person to be solemnised in the church or chapel of which he is the minister, or for refusing to administer the Holy Communion to any such person who has re-married.

ARTICLE 64.—PUBLICATION OF ACTS OF COURT, Etc.

At the end of every calendar week, His Majesty's Greffier shall cause to be exhibited on a notice board in the vestibule of the Royal Court a tabular statement giving short particulars, in respect of that week's proceedings and records, of

- (1) any Act of Court granting a decree of divorce, separation, nullity of marriage, or presumption of death and dissolution of marriage thereon, or making a temporary separation order ;
- (2) any Final Order made under Article 12 (entitled "Decrees and Final Orders") of this Law ;
- (3) any Order in Council such as is referred to in sub-paragraph (b) of paragraph (1) of the said Article 12 ;
- (4) any Declaration of Rescission of a judicial separation, made under Article 29 (entitled "Provisions regarding termination of separation" etc.) of this Law ; and
- (5) any reversal or discharge of any such Act of Court.

The tabular statements provided for in this Article shall be exhibited in the manner hereby prescribed during one calendar week.

ARTICLE 65.—REGULATION OF REPORTS

(1) It shall not be lawful to print or publish, or cause or procure to be printed or published, in relation to any judicial proceedings for dissolution of marriage, for the separation of married persons, for nullity of marriage, or for restitution of conjugal rights, any particulars other than the following :—

- (a) the names, addresses and occupations of the parties and witnesses ;

- (b) a concise statement of the charges, defences and countercharges in support of which evidence has been given ;
- (c) submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon ;
- (d) the summing-up, the judgment of the court and observations made by members of the court in giving judgment :

Provided that nothing in this Article shall be held to permit the publication of any details or other matter likely to injure public morals.

(2) If any person acts in contravention of the provisions of this Article, he shall, in respect of each offence, be liable, on conviction, to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months, with or without hard labour, or to both such fine and imprisonment:

Provided that no person, other than a proprietor, editor, master printer or publisher of the newspaper or other vehicle of publication of the matter in respect of which a prosecution is instituted shall be liable to be convicted under this Article.

(3) Nothing in this Article shall apply to the printing of any pleadings, transcript of evidence or other document for use in connexion with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the Court or of the Appeal Court or of His Majesty or of the Lords of His Privy Council ; or to the printing or publication of any matter in any separate volume or part of any bona fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or in any publication of a technical character bona fide intended for circulation among members of the legal or medical professions.

ARTICLE 66.—USE OF ENGLISH LANGUAGE

In all proceedings, whether oral or written, in pursuance of this Law or of any Ordinance or Rule of Court passed or made in virtue of this Law, any member of any Court and any party or person engaged or concerned in any such proceedings or giving evidence therein shall if he choose employ the English language.

ARTICLE 67.—POWER OF ROYAL COURT TO PASS ORDINANCES

The Royal Court may pass such Ordinances as it deems necessary for giving effect to this Law.

ARTICLE 68.—POWER OF COURT TO AWARD COSTS AND IMPOSE PENALTIES

The powers exercisable at its discretion by the Royal Court, sitting judicially,

(a) to award costs, and

(b) to enforce compliance with its orders by the imposition of penalties and otherwise

shall be in like manner vested in and exercisable by the Court for Matrimonial Causes in respect of the jurisdiction of the last mentioned Court.

ARTICLE 69.—COSTS AND COURT FEES CHARGEABLE

(1) The Royal Court may by Ordinance determine the Costs and Court Fees to be chargeable in respect of proceedings taken and things done pursuant to or in virtue of this Law.

(2) Until the Royal Court otherwise determines in accordance with the provisions of paragraph (1) of this Article, the Costs and Court Fees chargeable as aforesaid shall be in accordance with the provisions of the Loi relative aux Frais Curiaux et aux Honoraires de la Cour Royale, 1931, registered on the

Records of this Island on the 29th July, 1931, in so far as those provisions are applicable thereto.

(3) With regard to any such proceedings taken or things done as aforesaid to which the provisions of the Law mentioned in paragraph (2) of this Article are not applicable, and until the Royal Court otherwise determines by Ordinance as provided in this Article, the amount of the Costs and Court Fees chargeable in any particular suit shall be such as are deemed reasonable by the Law Officers of the Crown or either of them.

ARTICLE 70.—AMENDMENT OF LOI RELATIVE À LA SÉPARATION DE MARIÉS EN POLICE CORRECTIONNELLE

The Law of 1930 shall have effect as if—

- (1) In Article 1 thereof the following paragraph were added immediately after paragraph (f)
“ or (g) has been guilty of adultery ; ”
- (2) in Article 3 thereof the following words were inserted immediately after the word “ children ” where it first occurs :
“ or has been guilty of adultery ; ” and
- (3) the following Article were added immediately after Article 5 thereof :

“ 6.—On any application by a husband or wife for an order on the ground that the other party to the marriage has been guilty of adultery, the Magistrate shall not make an order unless he is satisfied that the applicant has not condoned or connived at, or by his or her wilful neglect or misconduct conducted to, the adultery and that the application is not made or prosecuted in collusion with the other party to the marriage or

any person with whom it is alleged that the adultery has been committed."

ARTICLE 71.—COMMENCEMENT

(1) On the day on which this Law is registered on the Records of the Island of Guernsey, the under-mentioned Articles and paragraph thereof shall come into operation, viz :—

Article	Title	Extent of Operation
1	Definitions and Interpretation	The whole Article
2	Institution of Court for Matrimonial Causes and Matters and Jurisdiction thereof	" "
4	Constitution of Court for Matrimonial Causes and Matters	" "
6	Power of Royal Court to make Rules etc.	" "
7	Poor Persons	" "
21	Exclusion of Sark	" "
67	Power of Royal Court to pass Ordinances	" "
69	Costs and Court Fees chargeable	Paragraph (1) of the Article
71	Commencement	The whole Article
72	Short Title	" "

(2) The Articles and paragraphs of this Law other than those specified in paragraph (1) of this Article shall come into operation on such day or days as the Royal Court by Ordinance appoints.

ARTICLE 72.—SHORT TITLE

This Law may be cited as the Matrimonial Causes Law (Guernsey), 1939.

A. J. ROUSSEL,
Greffier du Roi.

Matrimonial Causes Law (Guernsey), 1939

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