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CHAPTER 125

MATRIMONIAL CAUSES

An Act relating to divorce and matrimonial causes within The Bahamas.

6 of 1879
 18 of 1954
 1 of 1957
 47 of 1967
 7 of 1962
 43 of 1964
 46 of 1964
 9 of 1983
 17 of 1988
 9 of 1991

[Commencement 11th March, 1879]

1. This Act may be cited as the Matrimonial Causes Act.

Short title.

2. In this Act, unless the context otherwise requires —

Interpretation.

“adultery” includes any voluntary act of an intimate sexual nature, other than that regarded as an act of mere familiarity, between one party to a marriage with another party of the opposite sex who is not the other spouse and which act is inconsistent with that sexual fidelity that is presumed in the interest of public policy to exist between parties to a marriage, or any conduct between a party to a marriage with another person as afore-mentioned whereby a strong presumption arises that such sexual act occurred between them;

9 of 1983, s. 2.

“court” means the Supreme Court.

“cruelty” includes voluntary conduct reprehensible in nature or which is a departure from the normal standards of conjugal kindness on the part of one party to a marriage thereby occasioning injury to the health of the other spouse or a reasonable apprehension of it on the part of that other spouse and being conduct which, after taking due account of all the circumstances of the case, would be considered to be so grave and weighty a nature that should such other spouse be called upon to continue to endure it, would be detrimental to his or her health;

9 of 1983 s. 2.

“desertion” includes behaviour without cause or excuse on the part of one party to a marriage towards the other spouse whereby it can reasonably be concluded that that party intended through such behaviour to bring the matrimonial consortium to an end.

9 of 1983, s. 2.

Judicial Separation

Decree and effect
of judicial
separation.
9 of 1983, s. 3.

3. (1) A petition for judicial separation may be presented to the court by either party to a marriage on any of the grounds which a petition for divorce may be presented under section 16.

(2) The grant of a decree of judicial separation does not have the effect of dissolving a marriage though it shall no longer be obligatory for the petitioner to cohabit with the respondent as long as the decree is in effect.

(3) A person shall not be prevented from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation or an order under section 4(1) of the Matrimonial Causes (Summary Jurisdiction) Act.

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(4) On a petition for divorce in such a case as is mentioned in subsection (3) the court may treat the decree of judicial separation or order as sufficient proof of any adultery, desertion or other fact by reference to which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.

(5) Where a petition for divorce in such a case follows a decree of judicial separation or an order containing a provision exempting one party to the marriage from the obligation to cohabit with the other, for the purposes of that petition a period of desertion immediately preceding the institution of the proceedings for the decree or order shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

Proof of petition
for judicial
separation.
9 of 1983, s. 4.

4. (1) On the hearing of a petition for judicial separation the court, on being satisfied of the truth of the allegations therein contained and that there is no legal ground why the petition should not be granted, may subject to subsection (2) grant a decree of judicial separation.

(2) Sections 16(2), (3), 17 and 18 shall, as they apply to divorce, apply *mutatis mutandis* to a petition for judicial separation.

5. A wife deserted by her husband may, at any time after such desertion, apply to the court, or to a magistrate, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her husband or his creditors, or any person claiming under him, and the court or magistrate, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry, or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion, from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a *femme sole*:

Property of a wife deserted by her husband protected.

Provided that every such order, when made by a magistrate, shall, within ten days after the making thereof, if made in New Providence, and within thirty days if made elsewhere, be entered with the Registrar of the court, and that it shall be lawful for the husband and any creditor or other person claiming under him, to apply to the court or to the magistrate by whom such order was made for the discharge thereof;

Provided also that, if the husband shall seize or continue to hold any property of the wife, after notice of any such order, he shall be liable at the suit of the wife (which she is hereby empowered to bring) to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid:

Provided further that if any such order of protection be made, the wife shall, during the continuance thereof, be and be deemed to have been during such desertion of her in the like position in all respects with regard to property and contracts, and suing and being sued as she would be under this Act if she obtained a decree of judicial separation ground why the petition should not be granted, may subject to subsection (2) grant a decree of judicial separation.

6. (1) If a husband shall be convicted summarily or otherwise of an aggravated assault upon his wife, the court or magistrate before whom he shall be so convicted may, if satisfied that the future safety of the wife is in peril, and

Additional power of court in case of criminal assault upon wife.
9 of 1983, s. 5.

with the consent of the wife order that the wife shall be no longer bound to cohabit with her husband.

(2) An order under subsection (1) shall have the force and effect in all respects of a judicial separation on the ground of cruelty and such order may further make provision in respect to

- (a) the maintenance of the wife;
- (b) the maintenance and custody of any children of the family,

as if such order were an order being made by the court or the magistrate in or ancillary to proceedings for judicial separation under this Act or proceedings pursuant to section 3 of the Matrimonial Causes (Summary Jurisdiction) Act.

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Proceedings
before magistrate
or court.
46 of 1964, Sch.
Ch. 54.

7. The proceedings before magistrates under this Act shall be governed by the provisions of the Magistrates Act, as well in enforcing orders made as in investigating complaints preferred, and the proceedings before the Supreme Court shall be regulated by such rules as the Rules Committee under section 75 of the Supreme Court Act may from time to time make and enact for the purpose, and in all such proceedings the parties, husband and wife, shall be competent witnesses for both parties.

Ch. 53.

Reversal of
decree of judicial
separation

8. 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 of such decree, and the court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly, but the reversal thereof shall not prejudice or affect the rights or 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 time of the sentence of separation and of the reversal thereof.

Wife's alimony
may be paid to a
trustee.
9 of 1983, s. 6.

9. In all cases in which the court shall make any decree or order for a sum to be paid under section 26 or 27, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf, to be approved of by the

court, and may impose any term or restriction which to the court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the court expedient so to do.

10. In every case of a judicial separation the wife shall from the date of the sentence, and whilst the separation shall continue, 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, and such property may be disposed of by her in all respects as a *femme sole*, and on her decease the same shall, in ease she shall die intestate, go as the same would have gone if her husband had been dead:

A wife to be considered a *femme sole* after judicial separation.

Provided that if any such wife should again cohabit with her husband, all such property as she may be entitled to, when such cohabitation shall take place, shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

11. In every case of a judicial separation, the wife shall, while 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, and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant:

When a wife may be considered a *femme sole* for contracts, wrongs, etc.

Provided that where upon any such judicial separation alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing 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.

12. The provisions of this Act respecting the property of a wife who has obtained a decree for judicial separation or an order for protection shall be deemed to extend to property to which such wife has become, or shall become, entitled, as executrix, administratrix or trustee since the sentence of separation, or the commencement of the desertion (as the case may be); and the death of the testator, or intestate, shall be deemed to be the time when such wife became entitled as executrix or administratrix.

Further effect of a decree for judicial separation.

A wife's earnings protected or any corporation who may deal with her.

13. In every case in which a wife shall under this Act have obtained an order to protect her earnings or property, or a decree for judicial separation, such order or decree shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal with the wife, be deemed valid and effectual, and no discharge, variation or reversal of such order or decree shall prejudice or affect any rights or remedies which any person shall have had, in case the same had not been so reversed, varied or discharged in respect to any debts, contracts or acts of the wife incurred, entered into or done between the times of the making such order or decree and of the discharge, variation or reversal thereof, and property of, or to which the wife is possessed or entitled, for an estate in remainder or reversion at the date of the desertion or decree (as the case may be), shall be deemed to be included in the protection given by the order or decree.

Date of protection.

14. Every order which shall be obtained by a wife under this Act, for the protection of her earnings or property, shall state the time at which the desertion in consequence whereof the order is made commenced. And the order shall, as regards all persons dealing with such wife in reliance thereon, be conclusive as to the time when such desertion commenced.

Protection to persons who make payment to wife.

15. All persons and corporations who shall in reliance on any such order or decree as aforesaid, make any payment to, or permit any transfer or act to be made or done by the wife who has obtained the same, shall, notwithstanding such order or decree may then have been discharged, reversed or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the order or decree been discontinued, be protected and indemnified in the same way in all respects as if at the time of such payment, transfer or other act such order or decree were valid and still subsisting without variation, in full force and effect, and the separation of the wife from her husband had not ceased or been discontinued, unless at the time of such payment, transfer or other act, such persons or corporations had notice of the discharge, reversal or variation of such order or decree, or of the cessation or discontinuance of such separation.

Divorce

16. (1) A petition for divorce may be presented to the court either by the husband or the wife on any of the following grounds that the respondent —

- (a) has since the celebration of the marriage committed adultery; or
- (b) has since the celebration of the marriage treated the petitioner with cruelty; or
- (c) has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or
- (d) has lived separate and apart from the petitioner for a continuous period of at least five years immediately preceding the presentation of the petition; or
- (e) has, since the celebration of the marriage been guilty of a homosexual act, sodomy or has had sexual relations with an animal:

Grounds on which a husband or wife may petition for dissolution of marriage and duty of court in respect of petition.
9 of 1983, s. 7

Provided that a wife may also petition on the ground that her husband has since such celebration been guilty of rape.

(2) On a petition for divorce presented by the husband on the ground of adultery or in any other pleading praying for divorce on that ground, the husband shall make the alleged adulterer a co-respondent unless excused by the court on special grounds from doing so.

(3) On a petition for divorce presented by the wife on the ground of adultery the court may, if it thinks fit, direct that the alleged adulteress be made a respondent.

(4) On a petition for divorce it shall be the duty of the court —

- (a) 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
- (b) to inquire into any counter charges made against the petitioner.

(5) For the purposes of subsection (1)(c) the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing

the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

(6) In considering for the purposes of subsection (1) whether the period for which the respondent has deserted the petitioner or has lived separate and apart from the petitioner has been continuous, no account shall be taken of any one period (not exceeding three months) or of any two or more periods (not exceeding three months in all) during which the parties resumed cohabitation but no period during which the parties cohabited shall count as part of the period of desertion or of the period for which they lived separate and apart, as the case may be.

(7) Subject to subsection (8) no petition for divorce other than that based on facts existing, and constituting a ground for divorce, prior to the coming into operation of this subsection shall be presented to the court before the expiration of the period of two years from the date of marriage (hereinafter in this section referred to as “the specified period”).

(8) The court may, on application made to it, allow the presentation of a petition for divorce within the specified period on it being satisfied that there is no reasonable probability of a reconciliation between the parties during the specified period.

(9) If it appears to the court, at the hearing of a petition for divorce presented in pursuance of leave granted under subsection (8) that the leave was obtained by the petitioner by any misrepresentation the court may —

- (a) dismiss the petition, without prejudice to any petition which may be brought after the expiration of the specified period upon the same facts, or substantially the same facts, as those proved in support of the dismissed petition; or
- (b) if it grants a decree, direct that no application to make the decree absolute shall be made during the specified period.

(10) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which occurred before the expiration of the specified period.

(11) If at any stage of proceedings for divorce it appears to the court that there is a reasonable probability of reconciliation between the parties to the marriage, the court may, without prejudice to any other power, adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation.

17. In all cases in which, on the petition of a husband for a divorce, the alleged adulterer is made a co-respondent, or in which, on the petition of a wife, the person with whom the husband is alleged to have committed adultery is made a respondent, it shall be lawful for the court, after the close of the evidence on the part of the petitioner, to direct such co-respondent or respondent to be dismissed from the suit, if it shall think there is not sufficient evidence against him or her.

Court may order respondent or co-respondent to be dismissed from suit.

18. The court may dismiss a petition for divorce if:

- (a) it is not satisfied on the evidence that the case for the petitioner has been proved; or
- (b) it finds that the petition is presented or prosecuted in collusion with the respondent or either of the respondents; or
- (c) it finds that the petitioner has during the marriage been guilty of adultery; or
- (d) in its opinion 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 either deserted or wilfully separated himself or herself from the other party before the adultery or cruelty; or
 - (iv) where the ground of the petition is adultery or desertion, of such wilful neglect or misconduct as has conduced to the adultery or desertion.

Grounds for dismissing petition.
9 of 1983, s. 8; 17 of 1988, s. 2 and Sch.

19. (1) If the court is satisfied on the evidence that the case for the petitioner has been proved and —

- (a) where the ground of the petition is adultery, that the petitioner has not in any manner accessory to or connived at or condoned the adultery;

Power of court on proof of petition.
9 of 1983, s. 9.

- (b) where the ground of the petition is cruelty that the petitioner, has not in any manner condoned the cruelty,

the court shall, subject to section 18 grant a decree declaring the marriage to be dissolved; and if the court is not satisfied with respect to any of the matters aforesaid; it shall dismiss the petition;

(2) The respondent to a petition for divorce in which the petitioner alleges five years' separation may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage.

(3) Where the grant of a decree is opposed by virtue of subsection (2), then —

- (a) if the court finds that the petitioner is entitled to rely in support of his petition on the fact of five years' separation and makes no such finding as to any other fact mentioned in section 16(1), and
- (b) if apart from this section the court would grant a decree on the petition,

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(4) For the purposes of this section hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

Void and Voidable Marriages

Petition for
nullity
9 of 1983, s. 10.

20. A husband or wife may present a petition to the court praying that his or her marriage may be declared null and void on any of the grounds mentioned in section 21 or 22.

Void marriage.
9 of 1983, s. 10.

21. (1) A marriage shall be void on any of the following grounds:

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- (a) that it is not a valid marriage in accordance with the provisions of the Marriage Act; Ch. 120.
 - (b) that at the time of the marriage, either party was already lawfully married;
 - (c) that the parties are not respectively male and female; or
 - (d) that in the case of a polygamous marriage entered into outside The Bahamas, either party was domiciled in The Bahamas.

(2) For the purposes of paragraph (d) of subsection (1), a marriage may be polygamous although at its inception neither party has any spouse additional to the other.

22. A marriage celebrated after the 31st July, 1971, shall be voidable on any of the following grounds: Voidable marriage.
9 of 1983, s. 10.

- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
- (b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- (c) that either party to the marriage did not validly consent to it whether in consequence of duress, mistake, unsoundness of mind or otherwise;
- (d) that at the time of the marriage either party to the marriage though capable of giving valid consent, was suffering from a mental disorder within the meaning of the Mental Health Act of such a kind or to such an extent as to be unfitted for marriage; Ch. 230.
- (e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
- (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.

23. If the court is satisfied on the evidence of any such fact as is mentioned in section 22, it shall, subject to the provisions of this section, grant a decree annulling the marriage: Decree of nullity.
9 of 1983, s. 10.

Provided that the court shall not grant such a decree —

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- (a) if the court is satisfied on the evidence, that the petitioner, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so, and that it would be unjust to the respondent to grant the decree;
 - (b) without prejudice to paragraph (a), on any of the grounds mentioned in paragraphs (c), (d), (e) or (f) of section 22, unless the proceedings are instituted within one year from the date of the marriage;
 - (c) without prejudice to paragraphs (a) and (b) on any of the grounds mentioned in paragraphs (e) or (f) of section 22, unless the court is satisfied that the petitioner was at the date of the marriage ignorant of the facts alleged; or
 - (d) if the court is satisfied that the petition is presented by the petitioner in collusion with the respondent.

Effect of decree on voidable marriage.
9 of 1983, s. 10.

24. (1) A decree of nullity granted after the 31st July, 1971, in respect of a voidable marriage, shall operate to annul the marriage only as respects any time after the decree has been made absolute and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time.

(2) Where a decree of nullity was granted on or before 31st July, 1971, in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if by the decree the marriage had been dissolved and not annulled, shall be deemed to be the legitimate child of the parties.

Financial provision and property adjustment orders.
9 of 1983, s. 11.

25. (1) The financial provision orders for the purposes of this Act are the orders for periodical or lump sum provision available (subject to the provisions of this Act) under section 27 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation and under section 31(6) on proof of neglect by one party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family, that is to say —

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- (a) any order for periodical payments in favour of a party to a marriage under section 27(1)(a) or 31(6)(a) or in favour of a child of the family under section 27(1)(d), (2) or (4) or 31(6)(d);
 - (b) any order for secured periodical payments in favour of a party to a marriage under section 27(1)(b) or 31(6)(b) or in favour of a child of the family under section 27(1)(e), (2) or (4) or 31(6)(e); and
 - (c) any order for lump sum provision in favour of a party to a marriage under section 27(1)(c) or 31(6)(c) or in favour of a child of the family under section 27(1)(f), (2) or (4) or 31(6)(f);

and references in this Act to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or some of the financial provision orders requiring the sort of financial provision in question according as the context of each reference may require.

(2) The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to the provisions of this Act) under section 28 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say —

- (a) any order under subsection (1)(a) of that section for a transfer of property;
- (b) any order under subsection (1)(b) of that section for a settlement of property; and
- (c) any order under subsection (1)(c) or (d) of that section for a variation of settlement.

(3) Where the court makes under section 27 or 28 a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale in which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

(4) Any order made under subsection (3) may contain such consequential or supplementary provisions as the

court thinks fit and, without prejudice to the generality of the foregoing provision, may include —

- (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and
- (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.

(5) Where an order is made under subsection (3) on or after the grant of a decree of divorce or nullity of marriage, the order shall not take effect unless the decree has been made absolute.

(6) Where an order is made under subsection (3) the court may direct that the order, or such provision thereof as the court may specify, shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified.

(7) Where an order under subsection (3) contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the marriage, the order shall cease to have effect on the death or re-marriage of that person.

(8) For the purposes of this and the ensuing sections of this Act —

- (a) “child”, in relation to one or both of the parties to a marriage, includes an illegitimate or adopted child of that party or, as the case may be, of both parties;
- (b) “child of the family”, in relation to the parties to a marriage, means —
 - (a) a child of both of those parties; and
 - (b) any other child of either party;
- “custody”, in relation to a child, includes access to the child;
- (d) “education” includes training.

26. On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date

Maintenance
pending suit.
9 of 1983, s. 11.

of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

27. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

Financial provision orders in connection with matrimonial proceedings.
9 of 1983, s. 11.

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;
- (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;
- (e) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph (d), (e) or (f) to the restrictions imposed by section 33(1) and (3) on the making of financial provision order in favour of children who have attained the age of eighteen.

(2) The court may also, subject to those restrictions make any one or more of the orders mentioned in subsection (1)(d), (e) and (f) —

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree; and

-
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.
- (3) Without prejudice to the generality of subsection (1)(c) or (f) —
- (a) an order under this section that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section in his or her favour;
- (b) an order under this section for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section in his favour to be met; and
- (c) an order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.
- (4) The power of the court under subsection (1) or (2)(a) to make an order in favour of a child of the family shall be exercisable from time to time; and where the court makes an order in favour of a child under subsection (2)(b) it may from time to time, subject to the restrictions mentioned in subsection (1) make a further order in his favour of any of the kinds mentioned in subsection (1)(d), (e) or (f).
- (5) Without prejudice to the power to give a direction under section 71 for the settlement of an instrument by counsel, where an order is made under subsection (1)(a), (b) or (c) on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

28. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

Property adjustment orders in connection with matrimonial proceedings.
9 of 1983, s. 11.

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement;

subject, however, in the case of an order under paragraph (a) to the restrictions imposed by section 33(1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.

(2) The court may make an order under subsection (1)(c) notwithstanding that there are no children of the family.

(3) Without prejudice to the power to give direction under section 71 for the settlement of an instrument by counsel, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

Matters to which court is to have regard in deciding how to exercise its powers under sections 25, 27 and 28.
9 of 1983, s. 11.

29. (1) It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say —

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

(2) Without prejudice to subsection (3) it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that it to say —

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;

-
- (c) any physical or mental disability of the child;
 - (d) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1) just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

(3) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case) —

- (a) to whether that party had assumed any responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;
- (b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
- (c) to the liability of any other person to maintain the child.

(4) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under section 25(3) in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under this section.

(5) Without prejudice to subsection (1) where the court grants a divorce on the basis of the ground specified in section 16(1)(d) the court, in exercising the powers referred to in subsection (1), shall have particular regard to the conduct of the petitioner where the evidence discloses that but for the misconduct of the petitioner the parties would not have lived separate and apart.

Commencement
of proceedings
for ancillary
relief.
9 of 1983, s. 11.

30. (1) Where a petition for divorce, nullity of marriage or judicial separation has been presented, then, subject to subsection (2) proceedings for maintenance pending suit under section 26, for a financial provision order under section 27, or for a property adjustment order may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition.

(2) Rules of court may provide, in such cases as may be prescribed by the rules —

- (a) that applications for any such relief as is mentioned in subsection (1) shall be made in the petition or answer; and
- (b) that applications for any such relief which are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court.

Neglect by party
to marriage to
maintain other
party or child of
the family.
9 of 1983, s. 11.

31. (1) Either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section referred to as the respondent) —

- (a) being the husband, has wilfully neglected —
 - (i) to provide reasonable maintenance for the applicant, or
 - (ii) to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies;
- (b) being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance —
 - (i) for the applicant in a case where, by reason of the impairment of the applicant's earning capacity through age, illness or disability of

mind or body, and having regard to any resources of the applicant and the respondent respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute, or

(ii) for any child of the family to whom this section applies.

(2) The court shall not entertain an application under this section unless —

- (a) the applicant or the respondent is domiciled in The Bahamas on the date of the application; or
- (b) the applicant has been habitually resident there throughout the period of one year ending with that date; or
- (c) the respondent is resident there on that date.

(3) This section applies to any child of the family for whose maintenance it is reasonable in all the circumstances to expect the respondent to provide or towards whose maintenance it is reasonable in all the circumstances to expect the respondent to make a proper contribution.

(4) Where the child of the family to whom the application under this section relates is not the child of the respondent, then, in deciding —

- (a) whether the respondent had been guilty of wilful neglect to provide, or to make a proper contribution towards, reasonable maintenance for the child, and
- (b) what order, if any, to make under this section in favour of the child

the court shall have regard to the matters mentioned in section 29(3).

(5) Where on an application under this section it appears to the court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the court may make an interim order for maintenance, that is to say, an order requiring the respondent to make to the applicant until the determination of the application such periodical payments as the court thinks reasonable.

(6) Where on an application under this section the applicant satisfies the court of any ground mentioned in subsection (1) the court may make such one or more of the following orders as it thinks just, that is to say —

- (a) an order that the respondent shall make to the applicant such periodical payments, for such term, as may be specified in the order;
- (b) an order that the respondent shall secure to the applicant, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (c) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments, for such term, as may be so specified;
- (e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;
- (f) an order that the respondent shall pay to such persons as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified;

subject, however, in the case of an order under paragraph (d), (e) or (f), to the restrictions imposed by section 33(1) and (3) on the making of financial provision orders in favour of children who have attained the age of eighteen.

(7) Without prejudice to the generality of subsection (6)(c) or (f) an order under this section for the payment of a lump sum —

- (a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met;
- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(8) For the purpose of proceedings on an application under this section adultery which has been condoned shall not be capable of being revived, and any presumption of condonation which arises from the continuance or resumption of marital intercourse may be rebutted by evidence sufficient to negative the necessary intent.

32. (1) The term to be specified in a periodical payments order in favour of a party to a marriage shall be such term as the court thinks fit, subject to the following limits, that is to say —

- (a) in the case of a periodical payments order, the term shall begin not earlier than the date of the making of an application for the order and shall be so defined as not to extend beyond the death of either of the parties to the marriage or, where the order is made on or after the grant of a decree of divorce or nullity of marriage, the remarriage of the party in whose favour the order is made; and
- (b) in the case of a secured periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death or, where the order is made on or after the grant of such a decree, the remarriage of the party in whose favour the order is made.

(2) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made otherwise than on or after the grant of a decree of divorce or nullity of marriage, and the marriage in question is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of that party, except in relation to any arrears due under it on the date of the remarriage.

(3) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply, by reference to the grant of that decree, for a financial provision order in his or her favour, or for a property adjustment order, against the other party to that marriage.

Duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage.
9 of 1983, s. 11.

Duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour.
9 of 1983, s. 11.

17 of 1988, s. 2 and Sch.

17 of 1988, s. 2 and Sch.

33. (1) Subject to subsection (3) no financial provision order and no order for a transfer of property under section 28(1)(a) shall be made in favour of a child who has attained the age of eighteen.

(2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question but shall not in any event, subject to subsection (3) extend beyond the date of the child's eighteenth birthday.

(3) Subsection (1) and subsection (2), shall not apply in the case of a child, if it appears to the court that —

- (a) the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
- (b) there are special circumstances which justify the making of an order without complying with either or both of those provisions.

(4) Any periodical payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of the death.

34. (1) Where a financial provision order under section 27 or 31(6) has been made against a person and there is payable to him any pension or income which is capable of being attached, the court may after giving the person an opportunity of being heard order the pension or income to be attached as to the amount payable under the financial provision order, or as to any lesser amount, and the amount attached to be paid to the person named by the court.

(2) An order under this section shall be authority to the person by whom the pension or income is payable to make the payment in accordance with the order, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge in the payor.

35. (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section, the court shall have power to vary or discharge the

Attachment of earnings or pension to satisfy financial provision order.
9 of 1991, s. 38 and Sch.

Variation, discharge, etc., of certain orders for financial relief.
9 of 1983, s. 11.

order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This section applies to the following orders, that is to say —

- (a) any order for maintenance pending suit and any interim order for maintenance;
- (b) any periodical payments order;
- (c) any secured periodical payments order;
- (d) any order made by virtue of section 27(3)(c) or 31(7)(b) (provision for payment of a lump sum by instalments);
- (e) any order for a settlement of property under section 28(1)(b) or for a variation of settlement under section 28(1)(c) or (d) being an order made on or after the grant of a decree of judicial separation;
- (f) any order made under section 25(3) for the sale of property.

(3) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(4) The court shall not exercise the powers conferred by this section in relation to an order for a settlement under section 28(1)(b) or for a variation of settlement under section 28(1)(c) or (d) except on an application made in proceedings —

- (a) for the rescission of the decree of judicial separation by reference to which the order was made; or
- (b) for the dissolution of the marriage in question.

(5) No property adjustment order shall be made on an application for the variation of a periodical payments or secured periodical payments order made (whether in favour of a party to a marriage or in favour of a child of the family) under section 27 and no order for the payment of a lump sum shall be made on an application for the variation of a periodical payments or secured periodical payments order in favour of a party to a marriage (whether made under section 27 or under section 31).

(6) Where the person liable to make payments under a secured periodical payments order has died, an application

under this section relating to that order (and to any order made under section 25(3)) may be made by the person entitled to payments under the periodical payments order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken out.

(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates and, where the party against whom that order was made has died, the changed circumstances resulting from his or her death.

(8) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (6) on the ground that they ought to have taken into account the possibility that the court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(9) In considering for the purposes of subsection (6) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

36. (1) A person shall not be entitled to enforce through the court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

Payment of certain arrears unenforceable without the leave of the court.
9 of 1983, s. 11.

(2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as the court thinks proper, or may remit the payment of the arrears or of any part thereof.

(3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

37. (1) Where on an application made under this section in relation to an order to which this section applies it appears to the court that by reason of —

- (a) a change in the circumstances of the person entitled to, or liable to make payments under the order since the order was made;
- (b) the changed circumstances resulting from the death of the person so liable,

the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the court thinks just.

(2) This section applies to the following orders, that is to say —

- (a) any order for maintenance pending suit and any interim order for maintenance;
- (b) any periodical payments order; and
- (c) any secured periodical payments order.

(3) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or her or his personal representatives.

(4) An application under this section may be made in proceedings in the court for —

Orders for repayment in certain cases of sums paid under certain orders.
9 of 1983, s. 11.

- (a) the variation or discharge of the order to which this section applies, or
- (b) leave to enforce, or the enforcement of, the payment of arrears under that order.

(5) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

Rights of mortgagee not affected.
9 of 1983, s. 11.

38. (1) Subject to subsection (2) the rights conferred on the husband or wife by any order made under sections 39 to 47 shall be subject to the rights of the person entitled to the benefit of any mortgage, security, charge, or encumbrance affecting the property in respect of which the order is made, if it was registered before the date of the making of the order or if the rights of that person arise under an instrument executed before that date.

(2) Notwithstanding anything in any enactment or in any instrument, no money payable under any such mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of any such order, not being an order under section 37 directing the sale of a matrimonial home.

Court may make orders for occupation of matrimonial home.
9 of 1983, s. 11.

39. (1) The court may, if it thinks fit, on granting a decree of divorce or at any subsequent time, instead of or in addition to making any financial provision or property adjustment orders make an order against the husband or the wife, or his or her personal representative, granting to the wife or husband, as the case may be, for such period and on such terms and subject to such conditions as the court thinks fit, the right personally to occupy the matrimonial home.

(2) Where an order is made under subsection (1) the wife or husband, as the case may be, shall be entitled personally to occupy the land on which the matrimonial home is situated or which is appurtenant to the matrimonial home, or such part of that land as is specified in the order.

(3) The court may make such other orders and give such directions as may be necessary or desirable to give effect to any order made under subsection (1).

(4) An order made under subsection (1) against the husband or wife shall be enforceable against the personal representative of the person against whom it is made, unless the court otherwise directs.

(5) Before any order is made under subsection (1), such notice as the court directs shall be given to any person having an interest in the matrimonial home, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(6) The court may at any time, if it thinks fit, cancel or vary any order made under subsection (1) in such manner as the court thinks fit, whether as to the period of the order or as to the terms and conditions on which or subject to which it was made.

(7) An application under subsection (6) to cancel or vary any order may be made by either of the parties to the marriage, or by the personal representative against whom it was made, or by any person having an interest in the matrimonial home.

(8) Where an order made under this section in respect of any matrimonial home relates to any estate or interest in land, a copy of the order sealed with the seal of the court shall be deemed for the purposes of the Registration of Records Act to be a deed and shall be registrable under the said Act upon payment of the prescribed fee.

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(9) An order made under subsection (1) shall cease to have effect where —

- (a) the order is cancelled by the court under subsection (6); or
- (b) the period for which the order was made has expired; or
- (c) the court so directs in any other case, including in particular where the person in whose favour and the person against whom the order is made so agree in writing.

(10) Where the Registrar General is satisfied that an order made in respect of a matrimonial home and registered under subsection (8) has ceased to have effect pursuant to subsection (9), the Registrar General shall, on application in that behalf, endorse the fact in the appropriate register accordingly.

40. (1) The court, on granting a decree of divorce, if it is satisfied that both parties to the marriage have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever), may, if it thinks fit,

Sale of home or payment may be directed by Court.

9 of 1983, s. 11.

on the application of either party made before the decree of divorce is made, make in lieu of any order under section 25(3) affecting the matrimonial home an order —

- (a) subject to subsection (2) directing the sale of the home (including the land on which it is situated and such other land appurtenant thereto as the court directs) and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the court thinks fit; or
- (b) directing that either party pay to the other such sum, either in one sum or in instalments and either forthwith or at a future date and either with or without security, as the court thinks fair and reasonable in return for the contributions made by that other party.

(2) Where the home comprises part of a building that is not used exclusively or principally as the home of the parties, or where the land appurtenant to the home is not used exclusively or principally for the purposes of a home, the court shall not make an order under this paragraph, unless in the special circumstances of the case the court considers it is fair and equitable.

See s. 45.

(3) In any case to which subparagraph (iii) of paragraph (a) of the definition of the term “matrimonial home” applies, an order made under paragraph (a) of subsection (1), shall direct the sale of the shares held and the succeeding provisions of this section shall be modified and construed accordingly.

(4) Where the court makes an order under subsection (1), it may make such other orders and may give such directions as may be necessary or desirable to give effect to the order.

(5) Before any order is made under subsection (1), such notice as the court directs shall be given to any person having an interest in the property that would be affected by the order, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(6) Where the court directs the sale of the matrimonial home pursuant to subsection (1), it may, if it thinks fit, instead of directing division of the proceeds between the parties to the marriage, direct that the whole or any part of the proceeds be paid or applied for the benefit of the

children of the family or any of them, and may give such other directions as may be necessary or desirable to give effect to that direction.

(7) The amount payable to either party to the marriage under any order made pursuant to paragraph (b) of subsection (1) shall constitute a debt owing to that party by the other and shall be recoverable accordingly, and, in the case of an order made in respect of any estate or interest in land, shall also constitute a charge against that estate of interest; and such an order shall for the purposes of the Registration of Records Act be deemed to be a deed and may be registered under the said Act.

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(8) Where an order is made under subsection (1) and a party to the marriage who has an estate or interest in the matrimonial home dies before the order has been complied with, the order shall be binding on and be complied with by the personal representative of that party.

(9) Without limiting the provisions of subsection (3), where the court, under subsection (1), directs the sale of the matrimonial home and the division of the proceeds pursuant to paragraph (a) of subsection (1) or the application of the proceeds pursuant to subsection (6), the court may appoint a person to sell the matrimonial home and divide or apply the proceeds accordingly.

(10) The execution of any instrument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the matrimonial home is vested.

(11) The court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of any such instrument and its execution by the person so appointed.

41. (1) Where —

- (a) the matrimonial home is owned by the petitioner or the respondent or by both of them as joint owners; and
- (b) the court is satisfied that both parties have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever),

Court may vest in parties in common. *9 of 1983, s. 11.*

the court, on granting a decree of divorce, may, if it thinks fit, on the application of either party made before the decree is made, make in lieu of any property adjustment

order affecting the matrimonial home an order vesting the home (including the land on which it is situated and such other land appurtenant thereto as the court directs) in the parties as owners in common in such shares as the court thinks fit.

See s. 45.

(2) In any case to which subparagraph (iii) of paragraph (a) of the definition of the term “matrimonial home” applies, an order made under subsection (1) shall vest such shares on such terms as the court directs and the provisions of this section shall be modified and construed accordingly.

(3) Before any order is made under subsection (1), such notice as the court directs shall be given to any person having an interest in the matrimonial home, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

Ch. 187.

(4) Where any order made under this section in respect of any matrimonial home relates to any estate or interest in land which is registered under the Registration of Records Act a copy of the order sealed with the seal of the court shall be deemed for the purposes of that Act to be a deed and shall be registrable under the said Act upon payment of the prescribed fee.

(5) The provisions of this section and of any order thereunder shall have effect notwithstanding any prohibition or restrictions in the articles of association of any company relating to the transfer of ownership of shares.

Court may vest tenancy of dwelling house in petitioner or respondent.
9 of 1983, s. 11.

42. (1) Where the court grants a decree of divorce, it may at the same or any subsequent time, if it thinks fit, make an order vesting in the petitioner or the respondent (in this section referred to as the applicant) the tenancy of any dwelling house —

- (a) of which at the time of the making of the decree the applicant's wife or husband (in this section referred to as the other party) is or was either the sole tenant or a tenant holding jointly or in common with the applicant;
- (b) of which at the time of the making of the order under this subsection the other party is a tenant as aforesaid; and
- (c) in which the applicant or the other party resides at the time of the order under this subsection

(2) On the taking effect of an order made under subsection (1), unless the tenancy is sooner lawfully determined, the applicant shall become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force at the time of the making of the order, and the other party shall cease to be the tenant.

(3) Nothing in this section or in any order made thereunder shall be construed to limit or affect the operation of any enactment or other rule of law for the time being applicable to any tenancy to which this section applies or to the dwelling house held under the tenancy, or to authorise the court to vary, except by vesting or revesting the tenancy pursuant to this section, any express or implied term or condition of the tenancy.

(4) On the application of the other party in any case in which an order is made under subsection (1), the court may, if the tenant has died and the tenancy has not been determined by reason thereof, or if in the opinion of the court the circumstances have so changed since the making of the order that the tenancy should be revested in the person or any of the persons in whom it was vested before the making of that order, make an order cancelling the first mentioned order and revesting the tenancy accordingly.

(5) On the taking effect of any revesting order under subsection (4), unless the tenancy is sooner lawfully determined, the person in whose favour it is made shall become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force at the time of the making of the revesting order.

(6) Any order under this section may be made upon and subject to such terms and conditions, not inconsistent with this Act, as the court thinks fit.

(7) Every order under this section shall take effect on such date as may be specified in that behalf in the order, but if an appeal is lodged, the operation of the order shall be suspended until the appeal is determined.

(8) For the purposes of this section, the term “tenant”, in relation to any dwelling house, includes any person whose tenancy has expired or been determined and who is for the time being deemed under or by virtue of any enactment or rule of the law to continue to be the tenant of the dwelling house; and “tenancy” has a corresponding meaning.

Landlord to have
right to be heard.
9 of 1983, s. 11.

43. Notice in the prescribed form of any application for an order under section 42 shall be served in the prescribed manner on the landlord of the dwelling house, who shall be entitled to appear and be heard as a party to the application.

Order in respect
of furniture.
9 of 1983, s. 11.

44. (1) Where the court makes an order for occupation of the matrimonial home under section 39 or an order vesting the tenancy of a dwelling house under section 42, it may, if it thinks fit, by the same or any subsequent order, grant possession of the furniture or any specified articles of furniture in the matrimonial home or, as the case may be, in the dwelling house to the party in whose favour the order is made for such period and on such terms and subject to such conditions as the court thinks fit.

(2) The court, on making a decree of divorce and whether or not it makes any other order affecting the parties may make an order vesting the furniture or any specified articles of furniture owned by one or both of the parties in the other party, or, as the case may be, in one of the parties, if the court thinks it reasonable so to do having regard to the contribution made to the home (whether a matrimonial home or not) by the party in whose favour the order is made (whether in the form of money payments, or services, or prudent management, or otherwise howsoever).

(3) Before any order is made under subsection (1) or subsection (2), such notice as the court directs shall be given to any person having an interest in the furniture that would be affected by the order, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(4) In any case where any furniture is in the possession of one or both of the parties to the marriage under a hire-purchase agreement the court, on making a decree of divorce, may, if it thinks fit, make an order vesting the rights under the hire purchase agreement in respect of all or any of the articles that are subject to the agreement in the other party, or, as the case may be, in one of the parties, and any such order shall have effect notwithstanding anything in any such agreement.

(5) The owner of any furniture to which any such hire-purchase agreement relates shall be entitled to appear and be heard as a party to the application for an order under subsection (4).

(6) The court may make an order under this section in respect of any specified article of furniture, notwithstanding that the article is by law affixed to the realty, save that where any such order is made under subsection (2) the article shall thereupon cease for all purposes to be part of the realty and shall become personal property owned by the person in whose favour the order is made.

(7) The court may at any time, if it thinks fit, cancel any order made under subsection (1).

(8) The court may from time to time vary or extend any order made under subsection (1) in such manner as the court thinks fit, whether as to the period of the order or as to the terms and conditions on which or subject to which it was made.

(9) An application under subsection (7) or subsection (8) to cancel, vary or extend any order may be made by either of the parties to the marriage, or by the personal representative against whom it was made, or by the personal representative of the person against whom it was made, or by any person having any interest in the furniture affected by the order.

45. Notwithstanding any rule of law to the contrary, a party to a marriage in respect of which a decree has been made under this Act who has no interest in the matrimonial home as owner or under any deed, written agreement, or instrument shall have no right, licence, or equity to occupy or to be or remain in possession of the matrimonial home otherwise than in accordance with an order made under this Act.

Exclusion of
common law
rights.
9 of 1983, s. 11.

46. For the purposes of this section and of sections 38 to 45.

Interpretation.
9 of 1983, s. 11.

“dwelling” or “dwelling house” means a building used or intended to be used mainly as a separate dwelling or place of residence, and includes a flat;

“flat” means a separate and self contained set of premises constructed for use as a dwelling and forming part of a building from some other part of which it is divided;

“furniture” includes household appliances and effects, and also includes furniture and household appliances and effects that are the subject of a hire-purchase agreement;

“matrimonial home” or “homes” means any dwelling being used exclusively or principally as a home by one or both of the parties to a marriage in respect of which a decree of divorce is or has been granted, in any case where —

- (a) either or both of the parties or the personal representative of one of them —
 - (i) owns the dwelling; or
 - (ii) owns a specified share of any estate or interest in the land on which the dwelling is situated and by reason of reciprocal agreements with the owners of the other shares is entitled to the exclusive occupation of the dwelling; or
 - (iii) holds shares in a company which owns any estate or interest in the land on which the dwelling is situated, and by reason of holding those shares is entitled to the exclusive occupation of the dwelling; and
- (b) either or both of the parties owned the dwelling or the specified share in land or held the shares, as the case may be, at the date of the decree.

Application of provisions to nullity and judicial separation.
9 of 1983, s. 11.

47. Sections 38 to 46 as far as they are applicable and with any necessary modifications, shall apply with respect to a petition for and a decree of nullity or judicial separation as they apply with respect to a petition for and a decree of divorce.

*Damages, Procedures, Maintenance
Agreements, etc.*

Court may give relief to respondent without the filing of a petition.
9 of 1983, s. 12.

48. If in any proceedings for divorce the respondent opposes the relief sought on the ground of the petitioner’s adultery, cruelty or desertion, the court may give the respondent the relief to which the respondent would have been entitled if the respondent had presented a petition seeking that relief.

Abolition of right to claim damages for adultery
9 of 1983, s. 13.

49. After the coming into operation of this section no person shall be entitled to petition for, or include in a petition a claim for, damages from any other person on the ground of adultery with the wife of the first mentioned person.

50. (1) Rules of court may, either generally or in such cases as may be prescribed by the rules, exclude the application of section 16(2) or (3) where the person alleged to have committed adultery with the other party to the marriage is not named in the petition or other pleading.

Rules of court.
9 of 1983, s. 13.

(2) Rules of court may make provision, in cases not falling within section 16(2) or (3) with respect to joinder as parties to proceedings under this Act of persons involved in allegations of adultery or other improper conduct made in those proceedings, and with respect to the dismissal from such proceedings of any parties so joined; and rules of court made by virtue of this subsection may make different provision for different cases.

(3) In every case in which adultery with any party to a suit is alleged against any person who is made a party to the suit or in which the court considers, in the interest of any person not already a party to the suit, that 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, if any, as the court thinks just.

(4) Until rules are made pursuant to subsections (1) and (2) the rules of procedure and practice which would apply to the matters in respect of which provision could be made under those subsections shall continue to apply in respect of those matters.

51. (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements, then —

Validity of
maintenance
agreements.
9 of 1983, s. 14.

- (a) that provision shall be void; but
- (b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to sections 52 and 53) be binding on the parties to the agreement.

(2) In this section and in section 52 —

“maintenance agreement” means any agreement in writing made, whether before or after the commencement of this section, between the parties to a marriage, being —

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or

- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements.

“financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled), in respect of the making or securing of payments or the disposition of use of any property, including such rights and liabilities with respect of the maintenance or education of any child, whether or not a child of the family.

Alteration of agreements by court during lives of parties.
9 of 1983, s. 14.

52. (1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in The Bahamas then either party may apply to the court for an order under this section.

- (2) If the court is satisfied either —
- (a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements, or
- (b) that the arrangement does not contain proper financial arrangements with respect to any child of the family,

then subject to subsections (3) and (4) the court may by order make such alterations in the agreement

- (i) by varying or revoking any financial arrangements contained in it, or
- (ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to the court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in section 29(3) and the agreement shall have

effect then as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) Where the court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments which the agreement provides shall be made by one of the parties for the maintenance of the other, the term for which the payments or, as the case may be, the additional payments attributable to the increase are to be made under the agreement as altered by the order shall be such term as the court may specify, subject to the following limits, that is to say —

- (a) where the payments will not be secured, the term shall be so defined as not to extend beyond the death of either of the parties to the agreement or the remarriage of the party to whom the payments are to be made;
- (b) where the payments will be secured, the term shall be so defined as not to extend beyond the death or remarriage of that party.

(4) Where the court decides to alter by order under this section an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments, or as the case may be, the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of section 33(2) and (3) as to age limits as if the order in question were a periodical payments or secured periodical payments order in favour of the child.

(5) For the avoidance of doubt it is hereby declared that nothing in this section or in section 51 affects any power of the court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

Alteration of agreements by court after death of one party.
9 of 1983, s. 14.

53. (1) Where a maintenance agreement within the meaning of section 51 provides for the continuance of payments under the agreement after the death of one of the parties and that party dies domiciled in The Bahamas, the surviving party or the personal representative of the deceased party may, subject to subsection (2), apply to the court for an order under section 52.

(2) An application under this section shall not, except with the permission of the court be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.

(3) If a maintenance agreement is altered by a court on an application made in pursuance of subsection (1) the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

(4) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in subsection (2) on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(5) Section 35 shall apply for the purposes of subsection (2) as it applies for the purposes of subsection (6) of section 35.

Avoidance of transactions intended to prevent or reduce financial relief.
9 of 1983, s. 14.

54. (1) For the purposes of this section “financial relief” means relief under any of the provisions of sections 26, 27, 28, 31, 35 (except subsection (6)) and 52 and any reference in this section to defeating a person’s claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.

(2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person —

- (a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
- (b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;
- (c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) by the applicant against the other party, that the other party has, with that intention made a reviewable disposition, make an order setting aside the disposition;

and an application for the purposes of paragraph (b) shall be made in the proceedings for the financial relief in question.

(3) Where the court makes an order under subsection (2)(b) or (c) setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

(4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) is a reviewable disposition for the purposes of subsection (2)(b) and (c) unless it was made for valuable consideration (other than marriage) to a person, who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief.

(5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with

respect to a disposition or other dealing with property which is about to take place and the court is satisfied —

- (a) in a case falling within subsection (2)(a) or (b) that the disposition or other dealing would (apart from this section) have the consequence, or
- (b) in a case falling within subsection (2)(c) that the disposition has had the consequence,

of defeating the applicant’s claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant’s claim for financial relief.

(6) In this section “disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.

(7) This section does not apply to a disposition made more than three years before the coming into operation of this section.

55. (1) Where —

- (a) a periodical payments or secured periodical payments order in favour of a party to a marriage (hereafter in this section referred to as “a payments order”) has ceased to have effect by reason of the remarriage of that party, and
- (b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of the remarriage in the mistaken belief that the order was still subsisting,

the person so liable or his or her personal representatives shall not be entitled to bring proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraphs (a) and (b) against the person entitled to payments under the order or her or his personal representatives, but may instead make an application against that person or her or his personal representatives under this section.

Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage.
9 of 1983, s. 14.

(2) On an application under this section the court may order the respondent to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in subsection (1)(b) or if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

56. (1) Where the court makes a financial provision order requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder within the meaning of the Mental Health Act of managing and administering his or her property and affairs then, subject to any order, direction or authority made or given in relation to that person under Part VIII of that Act, the court may order the payments to be made, or as the case may be, the property to be transferred, to such persons having charge of that person as the court may direct.

Payments etc., under order made in favour of person suffering from mental disorder.
9 of 1983, s. 14.
Ch. 230.

57. In questions of fact, arising in proceedings under this Act, it shall be lawful for, but, except as hereinbefore provided, not obligatory upon the court to direct the truth thereof to be determined before itself, by the verdict of a special or common jury.

Facts arising in proceedings.

58. The court, or any judge thereof, may make all such rules and orders upon the Provost Marshal, or any other person, for procuring the attendance of a special or common jury for the trial of such question as may be necessary, and may also make any other orders which to the court may seem requisite, and every such jury shall consist of persons possessing the like qualifications, and shall be struck, summoned and balloted for, and called in like manner, as if such jury were a jury for the trial of any cause in the court. And every juryman so summoned shall be entitled to the same rights, and subject to the same duties and liabilities, as if he had been duly summoned for the trial of any such cause in the court, and every party to

When a question is ordered to be tried by a jury, they may be summoned as in the court.

any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause.

Question to be tried to be reduced into writing.
43 of 1964, First Sch.

59. When any such question shall be so ordered to be tried, such question shall be reduced into writing in such form as the court shall direct, and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon, according to the evidence.

Issues may be tried in court.

60. It shall be lawful for the court to direct one or more issue or issues to be tried in the court, and either by a special or common jury, in like manner as can now be done by the court on its Equity Side.

Every decree for divorce or for nullity of marriage to be a decree *nisi*. Liberty to show why decree should not be made absolute. Attorney-General may intervene.
47 of 1961, s. 2.

61. Every decree for divorce or for nullity of marriage shall in the first instance be a decree *nisi* not to be made absolute until after the expiration of three months from the pronouncement thereof, unless the court shall by general or special order from time to time direct that the same shall be made absolute within a shorter time, not, however, before the expiration of six weeks from the pronouncement thereof, and during that 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 the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not brought before the court; and, 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; and at any time during the progress of the cause or before the decree is made absolute any person may give information to the Attorney-General of any matter material to the due decision of the case, who may thereupon take such steps as he may deem necessary or expedient, and if from any such information or otherwise the Attorney-General shall suspect that any parties to the suit are or have been acting in collusion for the purposes of obtaining a divorce contrary to the justice of the case, he may, by leave of the court, intervene in the suit, alleging such case of collusion, and retain counsel and subpoena witnesses to prove it; and it shall be lawful for the court to order the costs of such counsel and witnesses, and otherwise, arising from such intervention, to be paid by the parties of such of them as it shall see fit, including a wife if she have separate property.

62. Where the Attorney-General or any other person shall intervene or show cause against a decree *nisi* in any suit or proceeding for divorce or for nullity of marriage, the court may make such order as to the costs of the Attorney-General, or of any other person who shall intervene or show cause as aforesaid, as may seem just; and the Attorney-General and any other person as aforesaid, and such party or parties shall be entitled to recover such costs in like manner as in other cases.

Costs of persons intervening.

63. In every case of a petition for a dissolution of marriage, it shall be lawful for the court, if it shall see fit, to direct all necessary papers in the matter to be sent to the Attorney-General, who shall instruct counsel to argue before the court any question in relation to such matter, and which the court may deem it necessary or expedient to have fully argued; and the Attorney-General shall be entitled to charge and be reimbursed the costs of such proceedings as part of the expense of his office.

Court may send papers to Attorney-General.

64. When the time (if any) limited for appealing against any decree 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.

When divorced persons may marry again.
1 of 1957, s. 6.

65. No action shall be maintainable for criminal conversation.

Criminal conversation.

66. It shall be lawful for the Supreme Court to appoint, by commission under the seal of the court, any resident or residents of the several Out Islands to administer oaths, and to take declarations or affirmations to be used in the court; and such persons shall be entitled from time to time to charge and take such fees as any other person performing the same duties in the court may charge and take.

Power to appoint commissioners on Out Islands to administer oaths.

Jurisdiction in Matrimonial Proceedings

67. (1) Subsections (2) to (5) shall have effect subject to subsection (6) with respect to the jurisdiction of the court to entertain —

Jurisdiction of Supreme Court.
9 of 1983, s. 15.

-
- (a) proceedings for divorce, judicial separation or nullity of marriage and;
 - (b) proceedings for death to be presumed and a marriage to be dissolved in pursuance of section 70.
- (2) The court shall have jurisdiction to entertain proceedings for divorce, judicial separation if (and only if) either of the parties to the marriage —
- (a) is domiciled in The Bahamas on the date when the proceedings are begun; or
 - (b) was habitually resident in The Bahamas throughout the period of three years ending with that date.
- (3) The court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if) either of the parties to the marriage —
- (a) is domiciled in The Bahamas on the date when the proceedings are begun; or
 - (b) was habitually resident in The Bahamas throughout the period of one year ending with that date; or
 - (c) died before that date and either —
 - (i) was at death domiciled in The Bahamas; or
 - (ii) had been habitually resident in The Bahamas throughout the period of one year ending with the date of death.
- (4) The court shall have jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved if (and only if) the petitioner —
- (a) is domiciled in The Bahamas on the date when the proceedings are begun; or
 - (b) was habitually resident in The Bahamas throughout the period of three years ending with that date.
- (5) The court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection (2) or (3) (or of this subsection), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under subsection (2) or (3).

(6) Nothing in this section affects the jurisdiction of the court to entertain any proceedings begun before the coming into operation of this section.

Supplemental

68. (1) The validity of any decree or order or legislative enactment for divorce or dissolution or nullity of marriage made (whether before or after the commencement of this section) by a court or legislature of any country outside The Bahamas shall, by virtue of this section, be recognised in all courts in The Bahamas, if —

Recognition of
overseas decrees.
9 of 1983, s. 15.

- (a) one or both of the parties were domiciled in that country at the time of the decree, order or enactment; or
- (b) that court or legislature has exercised jurisdiction —
 - (i) in any case, on the basis of the residence of one or both of the parties to the marriage in that country if at the date of the commencement of the proceedings any such party had in fact been resident in that country for a continuous period of not less than three years ending with that date; or
 - (ii) in any case, on the basis that one or both of the parties to the marriage are nationals or citizens of that country or of the Sovereign State of which that country forms part; or
 - (iii) in any case, on the basis that the wife has been deserted by her husband, or the husband has been deported, and that the husband was immediately before the desertion or deportation domiciled in that country; or
 - (iv) in any case, on the basis that the wife was legally separated from her husband, whether by order of a competent court or by agreement, and that the husband was at the date of the order or agreement domiciled in that country; or
 - (v) in a case of a nullity of marriage on any ground existing at the time of the marriage on the basis of the celebration of the marriage in that country; or

- (c) the decree or order or enactment is recognised as valid in the courts of a country in which at least one of the parties to the marriage is domiciled.

(2) Nothing in this section shall affect the validity of any decree or order or legislative enactment for divorce or dissolution or nullity of marriage, or of any dissolution of marriage otherwise than by judicial process, that would be recognised in the courts of The Bahamas apart from this section.

Marriage governed by foreign law or celebrated abroad.
9 of 1983, s. 15.

69. (1) Where, apart from this Act, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside The Bahamas, nothing in sections 21, 22 and in paragraph (a) of the proviso to section 23 shall —

- (a) preclude the determination of that matter as aforesaid; or
(b) require the application to the marriage of the grounds or bar there mentioned, except so far as applicable in accordance with those rules.

(2) In the case of a marriage which purports to have been celebrated under any enactments relating to foreign marriages or has taken place outside The Bahamas and purports to be a marriage under common law, section 21 is without prejudice to any ground on which the marriage may be void under those enactments or, as the case may be, by virtue of the rules governing the celebration of marriages outside The Bahamas under common law.

Presumption of death and dissolution of marriage.
9 of 1983, s. 15.

70. (1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may, subject to section 67(4), 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 may, if satisfied that such reasonable grounds exist, make a decree of presumption of death and dissolution of the marriage.

(2) In any proceedings under this section the fact that for a period of seven years or more 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 the other party is dead until the contrary is proved.

(3) Sections 61 to 63 shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

(4) It is hereby declared that neither collusion nor any other conduct on the part of the petitioner which has at any time been a bar to relief in matrimonial proceedings constitutes a bar to the grant of relief under this section.

71. Where the court decides to make a financial provision order requiring any payments to be secured or a property adjustment order —

- (a) it may direct that the matter be referred to any one of the counsel of the court for him to settle a proper instrument to be executed by all necessary parties; and
- (b) where the order is to be made in proceedings for divorce, nullity of marriage or judicial separation it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

Direction for settlement of instrument for securing payments or effecting property adjustment.
9 of 1983, s. 15.

72. (1) Subject to subsection (2) for the purposes of jurisdiction in matrimonial proceedings under this Act, the domicile of a married woman as at any time after the coming into force of this section shall, instead of being the same as that of her husband by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

Abolition of wife's dependent domicile.
9 of 1983, s. 15.

(2) Where immediately before this section came into force a woman was married and then had her husband's domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless and until it is changed by acquisition or revival of another domicile either on or after the coming into operation of this section.

Protection, Custody, etc., of Children

73. (1) The court shall not make absolute a decree of divorce or of nullity of marriage, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied —

- (a) that for the purposes of this section there are no children of the family to whom this section applies; or

Restrictions on decrees for dissolution, annulment or separation affecting children.
9 of 1983, s. 15.

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- (b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that —
- (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or
 - (ii) it is impracticable for the party or parties appearing before the court to make any such arrangements; or
- (c) that there are circumstances making it desirable that the decree should be made absolute or should be granted, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b).

(2) The court shall not make an order declaring that it is satisfied as mentioned in subsection (1)(c) unless it has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children named in the order before the court within a specified time.

(3) If the court makes absolute a decree of divorce or of nullity of marriage, or grants a decree of judicial separation, without having made an order under subsection (1) the decree shall be void but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by subsections (1) and (2) were not fulfilled.

(4) If the court refuses to make an order under subsection (1) in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on an application, by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that subsection.

(5) This section applies to the following children of the family, that is to say —

- (a) any minor child of the family who at the date of the order under subsection (1) is —
 - (i) under the age of sixteen, or
 - (ii) receiving instruction at an educational establishment, or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and

- (b) any other child of the family to whom the court by an order under that subsection directs that this section shall apply;

and the court may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this section should apply to him.

(6) In this section “welfare”, in relation to a child, includes the custody and education of the child and financial provision for him.

74. (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen —

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal; and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of the court.

(2) Where the court makes an order under section 31 the court shall also have power to make such order as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this subsection and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.

(3) Where the court grants or makes absolute a decree of divorce or grants a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.

(4) Where a decree of divorce or of judicial separation contains such a declaration as mentioned in subsection (3)

Orders for custody and education of children affected by matrimonial issues.
9 of 1983, s. 15.

then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

(5) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.

(6) The power of the court under subsection (1)(a) or (2) to make an order with respect to a child shall be exercisable from time to time; and where the court makes an order under subsection (1)(b) with respect to a child it may from time to time until that child attains the age of eighteen make a further order with respect to his custody and education.

(7) The court shall have power to vary or discharge an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

Power to provide
for supervision of
children.
9 of 1983, s. 15.

75. (1) Where the court has jurisdiction by virtue of this Act to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it desirable that the child should be under supervision of an independent person, the court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of a welfare officer designated by the court.

(2) Where a child is under the supervision of any person in pursuance of this section the jurisdiction possessed by a court to vary any financial provision order in the child's favour or any order made with respect to custody or education under this Act shall, subject to any rules of court be exercised at the instance of that court itself.

(3) The court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.