

Island of



Guernsey

Ordinance of the States. **VIII**

1952

Made 30th April, 1952.
Coming into Operation .. 1st May, 1952.

The Matrimonial Causes (Poor Persons) Ordinance, 1952.

THE STATES, on the representations of the States Advisory Council, under and by virtue of the powers conferred on them by Article 7 of the Matrimonial Causes Law (Guernsey), 1939, hereby order:—

1. The Regulations relating to Poor Persons set out in the Schedule hereto shall regulate proceedings by and against Poor Persons in matrimonial causes and matters.

2. (1) Rules 43 to 55 inclusive of the Matrimonial Causes Rules, 1945, are hereby repealed.

(2) This Ordinance, in its application to proceedings by and against Poor Persons pending on the 1st day of May, 1952, shall have effect subject to such directions as the Matrimonial Causes Division of the Royal Court may in any particular case think fit to give.

3. Copies of this Ordinance shall be transmitted by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the Records of those Islands respectively " par être logé au Greffe ".

4. This Ordinance shall come into force on the 1st day of May, 1952.

SCHEDULE

REGULATIONS RELATING TO POOR PERSONS

ARRANGEMENT OF REGULATIONS

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Regulations relating to Poor Persons.

Regulation 1.—Interpretation.

(1) The Provisions of Article 1 (entitled "Definitions and Interpretation") of the Law shall apply in like manner to the words and expressions therein mentioned, when they occur in these Regulations.

(2) In these Regulations, unless the context otherwise requires or it is otherwise specifically provided, the following words and expressions have the meanings hereby respectively assigned to them, namely :—

- “ affidavit ” means a declaration in writing which is deposed to on oath or by affirmation or solemn declaration by the declarant, and which complies with the provisions of Regulation 13 ;
- “ Court Fees ” includes the fees chargeable by Her Majesty’s Greffier and Her Majesty’s Sergeant ;
- “ filed ” means handed to Her Majesty’s Greffier for filing as a document for inclusion in the dossier relating to the suit in question ;
- “ Her Majesty’s Greffier ” includes any Deputy Greffier ;
- “ matrimonial cause ” and “ matrimonial suit ” each include any proceedings in which there is an applicant, petitioner or plaintiff for divorce, judicial separation, restitution of conjugal rights, nullity of marriage or presumption of death and dissolution of marriage thereon, in the Matrimonial Causes Division of the Royal Court of Guernsey ;
- “ the Court ” and “ the Court for Matrimonial Causes ” mean the Matrimonial Causes Division of the Royal Court of Guernsey ;
- “ the Law ” means the Matrimonial Causes Law (Guernsey) 1939, and any Law amending, supplementing or superseding that Law.

Regulation 2.—Poor Persons.

(1) Subject to the provisions of paragraph (2) of this Regulation, a poor person, within the meaning of these Regulations, is a person—

- (a) whose assets (excluding wearing apparel and tools of trade) do not exceed in value two hundred pounds ; and
- (b) whose usual income from all sources does not exceed the rate of five pounds a week.

(2) Where the person applying to be admitted to proceed as a poor person is a wife, she shall, subject to the provisions of paragraph (3) of this Regulation, be deemed to be a poor person only if she and her husband together fulfil the conditions as to assets and income stated in paragraph (1) of this Regulation, inclusive of taking into account any joint assets and joint income which they have.

(3) For the purpose only of obtaining from her husband security for her costs in a matrimonial cause, or contribution for support pendente lite, a wife shall be deemed to be a poor person if she herself, considered apart from her husband's assets and income satisfies the conditions as to assets and income stated in paragraph (1) of this Regulation.

Regulation 3.—Poor Person's Certificates.

(1) Any poor person who desires to be granted legal assistance as a poor person in instituting, prosecuting, or defending a matrimonial suit shall apply to the Magistrate for a certificate as provided for in this Regulation.

(2) The Magistrate shall investigate every application made under paragraph (1) of this Regulation and may examine the applicant on

oath or may require the applicant to make an affidavit as to any facts alleged in support of the application; and he may also take evidence on oath or by affidavit from any other person whose testimony he regards as material to the application.

(3) If, after the investigation provided for in the last foregoing paragraph, the Magistrate is satisfied that it is proved that the applicant is a poor person within the meaning of Regulation 2, and if the Magistrate is satisfied that there is, in such suit, a prima facie case to be laid before the Court for Matrimonial Causes, the Magistrate shall, subject to the provisions of the next ensuing paragraph, certify that the applicant is a poor person entitled to legal assistance in accordance with these Regulations.

(4) Where the applicant is a wife, the Magistrate may grant one or more of the following certificates—

- (a) a certificate that she is entitled to proceed as a poor person in the matrimonial suit;
- (b) a certificate that she is entitled thus to proceed in so far as may be necessary to enable her to obtain from her husband security for her costs therein;
- (c) a certificate that she is entitled thus to proceed in so far as may be necessary to obtain from her husband contribution for support pendente lite.

(5) Every poor person's certificate granted by the Magistrate under these Regulations shall be in duplicate and each copy shall be signed by him and shall bear the date on which it is granted, and one copy shall be filed for the use of the Court for Matrimonial Causes.

(6) The Magistrate, in his certificate, shall state the amount of the poor person's assets and income as he finds them proved.

Regulation 4.—Proceedings by and against Poor Persons.

Any poor person who has obtained a poor person's certificate may apply to the Court for the assignment of an advocate to act for him in instituting and prosecuting or in defending, proceedings, as a poor person, in a matrimonial suit in which such person is concerned; and the Court, in so assigning an advocate, may prescribe the fees to be payable to him by the poor person, not exceeding the following—

- (a) where the poor person is a petitioner, and whether or not the petition is defended, the sum of five pounds, together with the amount of any disbursements incurred by the advocate on the petitioner's behalf;
- (b) where the poor person is a party other than a petitioner—
 - (i) the sum of two pounds, together with the amount of any disbursements incurred by the advocate in relation to any answer or other pleading, and
 - (ii) a further sum of two pounds in respect of representing the party before the Court.

Regulation 5.—Non-Liability for Court Fees and Costs.

The poor person named in the poor person's certificate shall not be liable for any Court Fees in the suit to which the certificate relates, and unless

the Court otherwise orders, in the exercise of its powers under Article 68 (entitled " Power of Court to award costs ", etc.) of the Law, the poor person shall not be liable to pay costs to any other party.

Regulation 6.—Allowable and Prohibited Payments to Poor Person's Advocate.

(1) The Court may, from time to time, allow such payments as it thinks just to be made by a poor person to his advocate acting in the matrimonial suit in respect of out-of-pocket expenses, which shall not include office expenses.

(2) The Court may require a poor person to deposit in Court, or as it directs, a sum of money, in order to cover the disbursements of his advocate under Regulation 4 (entitled " Proceedings by and against Poor Persons ") and, if such deposit is found to be insufficient in relation to the proceedings, may direct a further sum or further sums to be deposited. Any sum so deposited shall be used only for the payment to the advocate of any out-of-pocket expenses (not including office expenses) properly incurred in the course of the proceedings; and any surplus shall be repaid to the poor person.

(3) Except as provided by these Regulations no advocate shall take, or agree to take, or seek to obtain, any payment, fee, profit or reward for the conduct of the proceedings or for out-of-pocket or other expenses. If any such payment, fee, profit or reward is made, given or promised, the Court may order the suspension of the operation of any certificate given by the Magistrate under these Regulations and thereafter the poor person shall not be admitted in the same proceedings as a poor person unless the Court otherwise directs.

Regulation 7.—Discontinuance of Proceedings.

After the date on which a poor person's certificate is granted, neither the poor person nor his advocate shall enter into any settlement or compromise, whether before or after the commencement of the proceedings, nor discontinue the proceedings, without leave of the Court.

Regulation 8.—Termination of Retainer.

(1) No poor person shall, without leave of the Court, terminate the retainer of any advocate acting for him.

(2) No advocate shall be at liberty to discontinue his assistance to the poor person before the making of a Final Order in the cause, unless he satisfies the Court that he has reasonable ground for discontinuing his assistance.

Regulation 9.—Acquisition of Means after the Grant of Poor Person's Certificate.

If and whenever the poor person, or, where the wife is the poor person, if and whenever she or her husband becomes possessed of means beyond those stated in the poor person's certificate, the poor person shall forthwith, and from time to time, report accordingly to his advocate, who shall thereupon make a report in writing to the Court, and, if the Court finds cause for so doing, the Court may thereupon discharge any certificate which the magistrate has given under these Regulations.

Regulation 10.—Costs in favour of Poor Person.

(1) (a) Subject to the provisions of Regulation 5 the Court may order an opposite party to pay the expenses of a poor person. Where such an order is made

it shall be deemed to include all out-of-pocket expenses properly incurred in the course of the proceedings, and advocate's fees paid or payable by that poor person under these Regulations, but not office expenses or Court Fees.

- (b) Where it appears to the Court that the proceedings are of such length or difficulty as to place an unusual burden on the advocate, the Court may order the opposite party to pay, in addition to the expenses referred to in the foregoing sub-paragraph, such sums as the Court thinks fit in respect of such unusual burden.
- (c) Notwithstanding anything in these Regulations to the contrary, in a case where a decree of divorce or judicial separation is granted to a petitioner who is a poor person, the Court may, where it appears just so to do, order an opposite party to pay the costs which the petitioner would have been liable to pay had he not proceeded as a poor person.

(2) Where it appears to the Court that any opposite party has acted unreasonably in bringing or defending the proceedings or in his conduct of them, or that the special circumstances of the case require it, the Court may order the opposite party to pay the costs of the poor person, which costs may in that event, if the Court so orders, include profit costs, or a proportion of profit costs, or a specified sum in respect thereof, in addition to out-of-pocket expenses properly incurred in the course of the proceedings, but not Court Fees.

(3) Where an order is made for the payment of costs, under paragraph (1) or paragraph (2) of this Regulation, the order shall not be enforced without leave of the Court, and the Court may refuse leave if satisfied by the party ordered to pay costs that he has not the means to pay them.

Regulation 11.—Fraud and Misrepresentation.

Where it appears to the Court that a poor person's certificate was obtained by fraud or misrepresentation, the Court may order the poor person to pay the costs of the opposite party, and, where such an order is made, such costs shall be assessed as if the poor person ordered to pay them were not a poor person.

Regulation 12.—Payment out of Money Recovered and Property or Interest Awarded.

(1) Having regard to any property or interest awarded by the Court to a poor person, or any money recovered by the poor person in a matrimonial suit, the Court may direct that the poor person's advocate shall be entitled to—

- (a) such sum in respect of costs as would have been ordinarily chargeable by the advocate if the said party had not been a poor person ; or
- (b) such other sum in respect of costs as the Court thinks fit ;

and any sum to which the advocate is thus entitled by direction of the Court (less such amount as may be recovered by the advocate from any other party), may be recovered by the advocate out of the money recovered by the poor person as aforesaid or out of such property or interest awarded to the poor person as aforesaid :

PROVIDED that the total amount so to be paid out or charged for profit costs, shall not in either case exceed one-fourth of the amount or value recovered and remaining after the deduction therefrom of all proper disbursements made by the said advocate.

(2) In this Regulation, money or property recovered includes money or property recovered by virtue of a settlement or compromise.

Regulation 13.—Affidavits.

(1) An affidavit for the purposes of these Regulations shall—

- (a) if made in the Island of Guernsey, be made before the Bailiff, or Lieutenant-Bailiff, and any two Jurats, or before a Notary Public ;
- (b) if made in the Island of Alderney, be made before any two Jurats ;
- (c) if made in the Island of Sark, be made before the Seneschal ;
- (d) if made in the Island of Jersey, or in Great Britain, Northern Ireland, or the Isle of Man, be made before any person authorised by law in the place in which it is made to take sworn declarations or administer oaths ;
- (e) if made elsewhere, be made before—
 - (i) a Consular Officer of Her Majesty, or
 - (ii) any person authorised by law in the place in which it is made to take sworn declarations or administer oaths.

(2) To every affidavit made under the provisions of sub-paragraph (e) of paragraph (1) of this Regulation, other than an affidavit made before a Consular Officer of Her Majesty, shall be annexed

a certificate that the person before whom it was sworn was, when it was sworn, a person duly authorised to administer oaths in the jurisdiction in which the affidavit was made, and such certificate shall be—

- (a) sealed with the seal of the High Court or of any Court of Record of such jurisdiction, or
- (b) signed by a member of the judiciary of such jurisdiction, or by the Registrar or similar officer of a Court of Justice in such jurisdiction, or by a Consular Officer of Her Majesty holding office in such jurisdiction.

(3) In this Regulation, the expression "Consular Officer" has the meaning assigned to that expression in the Interpretation Act, 1889, registered on the Records of this Island on the 20th March, 1926.

JAMES E. LE PAGE,

Her Majesty's Greffier.