BILL

No. 34 of 1924.

An Act relating to Domestic Relations.

(*Assented to* , 1924.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

SHORT TITLE.

1. This Act may be cited as "*The Domestic Relations Act*, 1924."

PART I.

SOLEMNIZATION OF MARRIAGE.

2. In this part, unless the context otherwise requires, "Court" shall mean the Supreme Court of Alberta.

Who May Solemnize Marriage.

3. The following persons, being resident in Canada, may solemnize marriage between persons not under a legal disqualification to contract marriage:

(*a*) the ministers and clergymen of every church, denomination or religious body duly ordained or appointed according to the rites and ceremonies of the church, denomination or religious body to which they respectively belong;

(*b*) any catechist, missionary or theological student duly appointed or commissioned by the governing body of any church or religious denomination with special authority to solemnize marriages;

(*c*) any duly appointed commissioner or staff officer of the religious society known as the Salvation Army, chosen or commissioned by the society to solemnize marriages;

(*d*) commissioners appointed for that purpose by the Lieutenant Governor in Council.

Preliminaries to Solemnization.

4. No marriage commissioner shall solemnize marriage unless the parties to the intended marriage produce to him the license provided for by this Act; and no minister or clergyman or other person authorized to perform the ceremony of marriage shall solemnize marriage unless the parties to the intended marriage produce to him such license or unless the intention of the parties to intermarry has been published as provided by section 5, and a certificate of such publication (form A) is produced to him.

Publication of Banns.

5.—(1) Such intention shall be proclaimed at least once on each of two successive Sundays, openly, and in an audible voice, either in the church, chapel, meeting-house or other place in which one of the parties has been in the habit of attending worship, or in some church, chapel, meeting-house or other place of public worship of the congregation or religious body with which the minister or clergyman who is to perform the ceremony is connected in the local municipality, parish, circuit or pastoral charge where one of the parties has, for the space of fifteen days immediately preceding, had his or her usual place of abode.

(2) Where both the parties do not reside in the same local municipality, parish, circuit or pastoral charge, a similar proclamation shall be made in the local municipality, parish, circuit or pastoral charge, if within Canada, where the other of the contracting parties has, for the space of fifteen days immediately preceding, had his or her usual place of abode.

(3) Where the proclamation last mentioned is required, the marriage shall not be solemnized until there is delivered to the person proposing to solemnize it a certificate (form A), showing that such proclamation has been made.

(4) Every proclamation shall be made immediately before the service begins or immediately after it ends, or at some intermediate part of the service.

(5) A certificate of the due publication of banns in Alberta (form A) shall be furnished to either party to the intended marriage upon application and on payment of the fee of fifty cents therefor.

Marriage Licenses.

6. Marriage licenses (form B) shall be supplied from the Department of Public Health and shall be issued to persons requiring the same by such persons as the Lieutenant Governor in Council names for that purpose.

7. Such licenses shall be signed by the Registrar General or his deputy, and shall be and remain valid notwithstanding that the Registrar General or his deputy has ceased to hold office before the time of the issue of the license.

8. Every issuer of marriage licenses shall sign each license as the same is issued by him.

9.—(1) Before a license is granted by an issuer one of the parties to the intended marriage shall personally make a statutory declaration before him (form C).

(2) The declaration may be made before a justice of the peace in any case where neither of the parties can conveniently attend personally before an issuer of marriage licenses, and in such case shall state the reason relied upon to excuse personal attendance before an issuer.

10. In case the issuer has knowledge or reason to suspect that any of the statements in the statutory declaration of an applicant for a marriage license are not correct, he shall require further declarations or other evidence to his satisfaction before issuing the license; and a copy of all such declarations and a minute of any such evidence shall be forwarded to the Registrar General.

11. An issuer of marriage licenses may require the production of witnesses to identify any applicant for a license and may examine under oath or otherwise, the applicant, or other witnesses as to any material enquiry pertaining to the issue of the license as he may deem necessary or advisable.

12. No irregularity in the issue of a license where it has been obtained or acted on in good faith shall invalidate a marriage solemnized in pursuance thereof.

13.—(1) Every issuer of marriage licenses shall, on the fifteenth day of January, April, July and October in each year, make a sworn return to the Registrar General of all licenses issued by him during the preceding three months, with the names of the parties to whom issued, and shall accompany such return with the original declaration taken in each instance, together with the written consents of the parents or guardians.

(2) The said return shall further state the number of unissued licenses in the custody of the issuer, and shall be made in the form prescribed by the Lieutenant Governor in Council.

(3) The original affidavits and declarations taken in each instance shall be forwarded forthwith to the Department of Public Health.

(4) The Lieutenant Governor in Council may in special cases dispense with the provisions of this section and may order special returns to be made.

14. Every issuer of marriage licenses shall, whenever called upon by the Registrar General, make a sworn return of all licenses at any time supplied to him and shall return all unissued licenses if so required.

15.—(1) Every issuer of marriage licenses shall pay to the Registrar General in advance, the sum of four dollars and fifty cents for each license received by him, and he shall be entitled to receive from every person requiring a license the sum of six dollars and no more.

(2) In case any licenses issued by the Registrar General are not used by the issuer, the former may refund the fee paid in respect thereof.

Conditions and Restrictions.

16. No marriage shall be solemnized under the authority of a proclamation unless the marriage takes place not less than one week and not more than three months after the second Sunday upon which the proclamation was made; nor shall a marriage be solemnized under the authority of a license unless within three months after the date of issue thereof.

17. No clergyman, minister, marriage commissioner or other person shall solemnize a marriage between the hours of ten o'clock afternoon and six o'clock before noon, unless he is satisfied from evidence adduced to him that the proposed marriage is legal and that exceptional circumstances exist which render its solemnization between those hours advisable.

18. No clergyman, minister, marriage commissioner or other person shall solemnize a marriage without the presence of at least two adult credible witnesses, and every person solemnizing a marriage shall register the same according to the provisions of *The Vital Statistics Act.*

19.—(1) No clergyman, minister or other person who is an issuer of marriage licenses shall solemnize marriage in any case in which he has issued the license authorizing such marriage.

(2) The Lieutenant Governor in Council may at any time exempt any portion of the Province from the operation of this section.

20. No clergyman, minister, marriage commissioner or other person, who solemnizes a marriage ceremony after banns have been published or a license has been issued under this Act in respect thereof, shall be subject to any action or liability for damages or otherwise by reason of there having been any legal impediment to the marriage, unless, at the time when he performed the ceremony, he was aware of the impediment.

Marriage of Minors.

21.—(1) If either of the parties to an intended marriage, not being a widower or widow, is under the age of twenty-one years, then, before a marriage license is issued in respect thereof or, where no marriage license is required, before the publication of the banns, or in other cases before any such marriage is contracted or the ceremony performed, one of the parties to the intended marriage shall deposit with the issuer of marriage licenses, or with the minister or clergyman or other person who is to perform the marriage ceremony, a consent thereto in form D of the persons hereinafter mentioned.

(2) The persons whose consent is required are as follows, that is to say:

(*a*) the father and mother, or such of them as may be living, of the minor if such minor is under eighteen years of age, and the father or the mother if such minor is between the ages of eighteen and twenty-one years;

(*b*) if both the father and mother are dead, then a lawfully appointed guardian or the acknowledged guardian who may have brought up or may, for three years immediately preceding the intended marriage, have supported the minor.

22. The consent hereinbefore mentioned shall not be required where the party under age deposits with the issuer of marriage licenses, or with the minister or clergyman or other person who is to perform the marriage ceremony, an affidavit made by such party, clearly setting forth the facts and showing—

(*a*) that the father and mother of the deponent are dead, and that there is no guardian of such party; or

(*b*) that a parent whose consent is required is not, though living, a resident in Alberta and is not in Alberta at the date of the affidavit and that the deponent is and has been so resident for the next preceding twelve months; or

(*c*) that the deponent is of the age of at least eighteen years, is living apart from his or her parents, without having received financial aid or support from such parents, and has been so living for not less than three months immediately preceding the date of the affidavit.

23. Any person between the ages of eighteen and twenty-one years, whose parents or parent or guardian refuse or refuses consent, may apply to a judge of the Court or of a District Court, and such judge may, in his discretion, grant an order dispensing with such consent, in which case a license may issue, or the banns may be published or the ceremony may be performed accordingly.

24. No license shall be issued to any person under the age of sixteen years except where the woman is shown to be *enceinte* and a certificate to that effect is given by a legally qualified medical practitioner known to the issuer; and, except in such a case, no person shall celebrate the marriage ceremony where either of the contracting parties is under the age of sixteen years.

25. Notwithstanding anything in this Act contained, if the Registrar General considers that circumstances justify the issue of a marriage license in any particular case, he may, in his absolute discretion, authorize an issuer of marriage licenses to issue a license upon the production of such evidence as the Registrar General may deem sufficient.

Civil Marriage.

26. The authority of a commissioner appointed by the Lieutenant Governor in Council to solemnize marriage may be limited to cases where the parties to the intended marriage belong, or one of them belongs, to a certain class, creed or nationality, or it may include all cases where either of the parties objects to or is not desiruous of being married by any of the persons enumerated in clauses (*a*), (*b*) and (*c*) of section 3.

27. In case a marriage is intended to be solemnized by a marriage commissioner, one of the parties shall, at least fourteen clear days immediately preceding the day of the intended marriage, give to the commissioner notice in writing (form E) and shall deposit with the commissioner the necessary license; and the commissioner shall thereupon

enter the particulars of such intended marriage in a book to be kept by him for that purpose in his office, which book shall be open to the inspection of the public at all reasonable hours.

28. Upon due compliance of the parties with the provisions of section 27, the marriage commissioner shall, if required, give a certificate of such compliance (form F).

29. After the expiration of the said period of fourteen days, marriage may be contracted in the office of and solemnized by the marriage commissioner according to the form and in the manner following but not otherwise:

(*a*) the marriage shall be contracted in the presence of two or more credible witnesses besides the marriage commissioner, and with open doors;

(*b*) in the presence of such marriage commissioner and witnesses each of the parties shall declare: "I do solemnly declare that I do not know of any lawful impediment why I, *A.B.*, may not be joined in matrimony to *C.D.*," and each of the parties shall say to the other: "I call upon these persons here present to witness that I, *A.B.*, do take thee, *C.D.*, to be my lawful wedded wife (*or* husband)."

Marriage of Quakers.

30.—(1) In case the parties to an intended marriage are Quakers or one of them is a Quaker, and they desire to be married according to the rites and ceremonies of the Quaker religion or creed, one of the parties shall, at least eight days immediately preceding the day of the intended marriage, give notice in writing (form E) to a marriage commissioner, and a statutory declaration (form C) and the necessary consents, if any (form D), shall be deposited with such marriage commissioner by one of the parties to the intended marriage; and, forthwith after the performance of the ceremony, the parties thereto shall make and sign a declaration (form G), such declaration being made and signed in the presence of two witnesses who shall severally attest the same by their signatures, and such declaration shall, within eight days from the date of the marriage, be delivered by one of the parties so married to the marriage commissioner.

(2) The marriage commissioner shall upon receipt of the documents mentioned in subsection (1) forthwith transmit the same to the registrar for the registration of births, marriages and deaths of the division within which the said marriage was solemnized; and such registrar shall deal with the same in the manner in which it is provided by *The Vital Statistics Act* that such registrar shall deal with the forms containing the original entries of marriage reported to him during the month then current.

Doukhobortsi.

31.—(1) Nothing herein contained shall be construed as in any way preventing the people called Doukhobortsi belonging to the Christian Community of Universal Brotherhood from celebrating marriage according to the rites and ceremonies of their own religion or creed, where either of the parties belongs to that community.

(2) Immediately after the marriage, the parties to the marriage contract shall report, or cause to be reported, to the proper district registrar, full particulars concerning the marriage, including the names of the parties in full, their respective ages, places of residence, places of birth and occupations, whether or not previously married, the names of their respective parents, the name of the owner or occupant of the house in which the marriage took place, the nearest post office, and the names and residences of two witnesses; and the registrar shall thereupon draw up a record of such marriage, stating by whom the information therein contained was given, and dating and signing the same, and shall deal with such record in the manner in which it is provided by *The Vital Statistics Act* that such registrar shall deal with the forms containing the original entries of marriages reported to him during the month then current.

Prohibitions and Penalties.

32. Any person unlawfully issuing a marriage license supplied from the Department of Public Health, any issuer of marriage licenses granting a license without first having obtained the documents required by this Act, and any person solemnizing a marriage contrary to the provisions of this Act, shall, on summary conviction thereof before two justices of the peace, be liable for every such contravention to a penalty not exceeding one hundred dollars and costs of prosecution.

33. If any issuer of marriage licenses issues a license, or if any minister, clergyman, marriage commissioner or other person solemnizes a marriage, knowing or having reason to believe that either of the parties to the intended marriage or to the marriage is an idiot or insane or is under the influence of intoxicating liquor, he shall, on summary conviction before two justices of the peace, be liable to a penalty not exceeding five hundred dollars and to imprisonment for any term not exceeding twelve months.

34. If any person who, having been a minister, clergyman, marriage commissioner or other person having the right to solemnize marriage has been deposed from his ministry, or deposed or removed from the office by virtue of

which he was authorized to solemnize marriage, thereafter solemnizes or undertakes to solemnize any marriage, he shall, on summary conviction before two justices of the peace, be liable to a penalty of five hundred dollars and to imprisonment for any term not exceeding twelve months.

SCHEDULE.

FORM A.

(*Sections* 4, 5 (2) *and* 5 (4)).

CERTIFICATE OF PUBLICATION OF INTENTION TO INTERMARRY.

I, ...of the..... of ..... in the Province of....., do hereby certify that on Sunday the..... day of....., and Sunday the..... day of ....., the intention of *A.B.* of..... (*state residence*) and *C.D.* of.....(*state residence*) to intermarry was duly proclaimed by me in accordance with the provisions of *The Marriage Act* of the Province of Alberta.

I further certify that I verily believe the said *A.B.* (*or C.D. or A.B.* and *C.D.*) had his (*or* her *or* their) usual place of abode in the.....(*local municipality, parish, circuit or pastoral charge*) for the space of fifteen days immediately preceding the said..... day of.....19..., (*date of first Sunday on which proclamation was made*).

Dated this..... day of.....19....

Signature.....

Minister of the.....*Church.*

FORM B.

(*Section* 6).

MARRIAGE LICENSE.

CANADA
PROVINCE OF ALBERTA
TO WIT:

These are to certify that *A.B.*, of....., and *C.D.*, of....., being minded, as it is said, to enter into the contract of marriage and being desirous of having the same duly solemnized the said *A.B.* (*or C.D.*) has made solemn declaration that he (*or* she) believes that there is no affinity, consanguinity or any other lawful cause or legal impediment to bar or hinder the solemnization of the said marriage.

And these are therefore to certify that the requirements in this respect of *The Marriage Act* have been complied with.

Given under my hand at Edmonton, in the Province of Alberta, this..... day of..... 19....

.....
Registrar General
or Deputy Registrar General.

Issued at....., in the Province of Alberta, this..... day of..... 19....

.....
Issuer.

FORM C.

(*Sections* 9 (1) *and* 30 (1)).

STATUTORY DECLARATION.

CANADA
PROVINCE OF ALBERTA
TO WIT:

I, *A.B.*,..... .....bachelor (*or as the case may be*), (*or C.D.* .....spinster, *or as the case may be*), do solemnly declare that—

1. I, and *C.D.*, of....., spinster (*or as the case may be*), (*or A.B.*, of....., bachelor, *or as the case may be*), are desirous of entering into the contract of marriage and of having our marriage duly solemnized at.....

2. According to the best of my knowledge and belief there is no affinity, consanguinity or any other lawful cause or legal impediment to bar or hinder the solemnization of the said marriage.

3. I am of the age of.....years and the said *C.D.*, (*or A.B.*), is of the age of.....years.

4. (*In case one of the parties, not being a widower or widow, is under the age of twenty-one years, add*) :

E.F. of.....is (*or, if the party is under the age of eighteen years, E.F.* and *B.F.*, of.....are), the person(s) whose consent to the said marriage is required by law, and the said *E.F.* (*or E.F.* and *B.F.*) has (have) formally consented to the said marriage.

(*Or, if both parties are under age*) :

E.F., of..... (*or, if the party is under the age of eighteen years, E.F.* and *B.F.*, of.....), and *G.H.*, of (*or, if the party is under the age of eighteen years, G.H.* and *H.H.*, of....., are the persons whose consent to the said marriage is required by law, and the said *E.F.* (*or E.F.* and *B.F.*), and *G.H.* (*or G.H.* and *H.H.*) have formally consented to the said marriage.

If in any case both parents are dead, substitute) :

The father and mother of the said *A.B.* (*or C.D.*) being dead, *K.L.*, the lawfully appointed guardian (*or* the acknowledged guardian) of the said *A.B.* (*or C.D.*) has formally consented to the said marriage.

5. (*If a party is under the age of eighteen years and one of the parents is dead, add*) :

The father (*or* mother) of the said *A.B.* (*or C.D.*) is dead.

NOTE.—If the declaration is made before a justice of the peace under subsection (2) of section 9, state the reason relied on in excuse of personal attendance before an issuer.

(*Signed*) *A.B.* (*or C.D.*)

Declared before me at.....
.....in the Province
of Alberta this.....
day of.....19...

(*Signed*) *I.J.*

FORM D

(*Sections* 21(1) *and* 30(1).)

CONSENT TO MARRIAGE

I, (*or* we) hereby consent to the marriage of my (*or* our) son (*or* daughter *or* ward) with....., and I (*or* we) certify that my (*or* our) said.....is over the age of sixteen years.

Dated at.....this.....day of.....

Witness:.....

FORM E.

(*Sections* 27 *and* 30(1).)

NOTICE TO MARRIAGE COMMISSIONER.

To..... of.....,
Marriage Commissioner.

I hereby give you notice that a marriage is intended to be had on the.....day of..... 19..., between me and the other party described and named herein.

Name	Condition	Rank or profession	Age	Dwelling place

Witness my hand this.....day of..... 19....

(*Signed*) *A.B.*

FORM F.

MARRIAGE COMMISSIONER'S CERTIFICATE.

(*Section* 28.)

I, ..., marriage commissioner in the Province of Alberta, do hereby certify that on the .....day of.....19... notice was duly entered in the Marriage Notice Book kept by me of the marriage intended between the parties therein named and described, delivered under the hand of..... one of the parties, that is to say:

Name	Condition	Rank or profession	Age	Dwelling place

Date of notice entered.....19....

Date of certificate given.....19....

Witness my hand at.....this..... day of.....19....

.....
Marriage Commissioner.

FORM G.

(*Section* 30(1).)

DECLARATION OF MARRIAGE.

We, the persons hereinafter described, declare that marriage according to the rites and ceremonies of the people called Quakers was contracted by us this..... day of.....19..., and we each severally further declare that we know of no lawful impediment of kindred or alliance or other lawful hindrance why we *A.B.* and *C.D.* may not be joined in matrimony.

BRIDEGROOM.

Name in full..... Age.....
Place of residence.....
(*Nearest Post Office*)
Place of birth.....
Bachelor or widower.....
Profession or occupation.....
Names of parents {Father.....
Mother.....

BRIDE.

Name in full..... Age.....
Place of residence before marriage.....
(*Nearest Post Office*)
Place of birth.....
Spinster or widow.....
Names of parents {Father.....
Mother.....
Name of owner or occupant of house in which marriage took place, and nearest post office.....
.....

Names and residences of two witnesses:
.....of.....
.....of.....

A.B.,
C.D.,

In the presence of us
E.F.,
G.H.

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Given under my hand at.....this.....
day of.....19....

I.J.,
Marriage Commissioner.

PART II.

RESTITUTION OF CONJUGAL RIGHTS.

35. If one party to a marriage refuses to cohabit with the other party, the Court may, at its discretion, grant a decree for restitution of conjugal rights.

36. No such decree shall be enforced by attachment.

37. If the defendant shall fail to comply with a decree of the Court for restitution of conjugal rights, such defendant shall thereupon be deemed to have been guilty of desertion without reasonable cause, and an action for judicial separation may be forthwith instituted and a decree of judicial separation may be pronounced although the period of two years may not have elapsed since the failure to comply with the decree for restitution of conjugal rights.

PART III.

JUDICIAL SEPARATION.

38. In this part, unless the context otherwise requires, "Matrimonial offence" shall mean any of the offences mentioned in section 39 hereof.

39.—(1) A decree of judicial separation may be obtained from the Court either by a husband or by a wife, if his wife or her husband, as the case may be, has since the celebration of marriage been guilty of—

(*a*) adultery; or

(*b*) cruelty; or

(*c*) desertion without reasonable cause, for two years or upwards, or desertion constituted by the fact of the wife or husband, as the case may be, having failed to comply with a decree for restitution of conjugal rights; or

(*d*) sodomy or bestiality, or an attempt to commit either of these offences.

(2) "Cruelty" in this Act shall not be confined in its meaning to conduct which creates a danger to life, limb or health, but shall include any course of conduct which in the opinion of the Court is grossly insulting and intolerable.

40. The Court shall have jurisdiction to hear an action for judicial separation or restitution of conjugal rights, or an application for alimony; when both the parties thereto—

(*a*) are domiciled in Alberta at the time of the commencement of the action; or

(*b*) had a matrimonial home in Alberta, when their cohabitation ceased, or the events occurred on which the claim for separation is based; or

(*c*) are resident in Alberta at the time of the commencement of the action.

41. No decree of judicial separation shall be granted when it is made to appear at the hearing of the case that the petitioner has—

(*a*) in any case where judicial separation is sought on the ground of adultery, been accessory to or connived at the adultery of the other party;

(*b*) condoned the matrimonial offence complained of;

(*c*) presented or prosecuted the claim in collusion with the respondent;

(*d*) committed adultery during the existence of the marriage, which has not been condoned.

42. A decree for judicial separation may be refused when the claim has been presented on the grounds of adultery, and it is made to appear at the hearing that the plaintiff has been guilty of conduct conducing to the adultery.

43. After a decre of judicial separation has been granted—

(*a*) Neither the husband or the wife shall be under any duty of cohabitation;

(*b*) the wife shall, during the continuance of the separation be considered as a *feme sole* for the purposes of contracts and wrongs and injuries and suing and being sued in any civil proceeding, and for all other purposes and shall be reckoned as *sui juris* and as an independent person for all purposes, including the acquisition of a new domicile distinct from that of her husband.

43*a*. After a decree of judicial separation, the property of the husband or wife shall in the event of his or her death intestate during the continuance of the separation, go as the same would have gone if the husband or wife had died on the day of the decree.

44. After a decree of judicial separation and during the continuance of the separation, the husband shall not be liable in respect of any engagement or contract his wife may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant:

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

45. A husband may either by an action for judicial separation or in an action limited to such object only, recover damages from any person who has committed adulerty with his wife, and the Court may direct in what manner such damages shall be paid or applied, and may direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife.

46. The Court shall dismiss any such action if it finds that—

(*a*) the plaintiff during the marriage has been accessory to or conniving at the adultery of his wife;

(*b*) the plaintiff has condoned the adultery complained of;

(*c*) the action has been presented or prosecuted in collusion with the wife.

47. The Court may dismiss any such action if it finds that the plaintiff has been guilty of—

(*a*) adultery during the marriage;

(*b*) unreasonable delay in presenting or prosecuting the action;

(*c*) cruelty towards his wife;

(*d*) having deserted or wilfully separated himself from his wife before the adultery complained of without reasonable excuse; or

(*e*) wilful neglect or misconduct which has conduced to the adultery.

PART IV

ALIMONY, MAINTENANCE, ETC.

48.—(1) Upon any application being made in an action for dissolving a marriage, a declaration of nullity, judicial separation or restitution of conjugal rights, an interim order for the payment of alimony to the wife *pendente lite* may be made, and in the event of an appeal such alimony may be continued by a further order until the determination thereof.

(2) No such order shall be made where the wife has from any source whatsoever sufficient means of support independent of her husband.

(3) The order may direct the payment of periodical sums of money, a lump sum of money or the transfer, incumbrance or settlement of the whole or any part of the husband's property, and the amount of the alimony directed shall be in the discretion of the judge.

49. After an order for alimony, interim or other, has been made, and during its subsistence, the husband shall not be liable for necessaries supplied to his wife.

50. Whenever alimony is applied for, the Court may, either before or after judgment, grant an injunction for such time and upon such terms as may be just to prevent any apprehended disposition by the defendant of his property, whether real or personal.

51. An order or judgment for alimony may be registered in any land titles office and the registration shall, so long as the order or judgment registered remains in force, bind the estate and interest of every description which the defendant has in any lands in the land titles district where the registration is made, and shall operate thereon in the same manner and with the same effect as a registration of a charge by the defendant of a life annuity on his lands.

52.—(1) When a decree for judicial separation has been granted, the judge may order that the husband shall pay to the wife until further order, or during the joint lives or any shorter period, a periodical sum by way of maintenance or alimony, and when a decree for restitution of conjugal rights has been granted the judge may make a similar order, to take effect in the event of such decree not being complied with.

(2) In lieu of periodical sums, the order may direct the payment of a lump sum of money, or the transfer, incumbrance or settlement of the whole or any part of the husband's property.

53. If it appears that the means of the husband have increased or diminished respectively, or that the wife has been guilty of misconduct, the Court may from time to time vary or modify such order, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same wholly or in part.

54. Where a husband has obtained a decree of judicial separation or a decree for divorce for adultery of his wife, the Court may order such settlement as it thinks reasonable of any property to which the wife may be entitled in possession or reversion for the benefit of the innocent party and of the children of the marriage, or either or any of them.

55.—(1) Where a decree for divorce or nullity of marriage has been obtained, the Court may order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her life, as, having regard to her fortune (if any), to the ability of the husband and to the conduct of the parties, it may deem reasonable.

(2) The Court may, if it thinks fit (in addition or in the alternative), order that the husband shall pay to the wife during their joint lives such monthly or weekly sum for her maintenance and suport, as the Court may think reasonable.

(3) In case of a decree for divorce an order may be made in favor of a guilty wife.

56. When a final decree for divorce or of nullity of marriage is made, the Court may make such order as to the Court shall seem fit with regard to the application, either for the benefit of the children of the marriage or of the parties to the marriage, of property comprised in any ante-nuptial or post-nuptial settlement made on the parties to the marriage.

57. Where a decree for restitution of conjugal rights is obtained by the husband, and the wife is entitled to property, or is in receipt of any profits of trade or earnings, the Court may order a settlement to be made of such property for the benefit of the husband and the children of the marriage, or either or any of them, or may order part of such profit of trade or earnings to be periodically paid to the husband for his own benefit, or to the husband or any other person for the benefit of the children of the marriage, or either or any of them.

PART V.

PROTECTION ORDERS

58.—(1) A wife may obtain from a court of summary jurisdiction an order providing that she be no longer bound to cohabit with her husband, in the following cases—

(*a*) if her husband has been summarily convicted of an aggravated assault upon her; or

(*b*) if her husband has been convicted of an assault upon her, and sentenced to pay a fine of more than twenty-five dollars, or to a term of imprisonment of more than two months; or

(*c*) if her husband has deserted her; or

(*d*) if her husband has been guilty of persistent cruelty to her, or has been guilty of wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain, and by such cruelty has caused her to leave, and live separately from him.

(2) Such an order, while in effect, shall have the effect in all respects of a decree of judicial separation on the ground of cruelty.

(3) "Court of summary jurisdiction" shall mean two justices of the peace and also any person having the power or authority of two justices of the peace.

59. The Court may also, in the circumstances referred to in section 58, order that the husband shall pay to the wife personally, or for her use, such weekly sum, not exceeding ..... dollars, as it shall, having regard to the means of both parties, consider reasonable.

60. The Court may also, in the circumstances referred to in section 58, order that the legal custody of any children of the marriage between the applicant and her husband, while under the age of sixteen years, be committed to the applicant.

61. No order shall be made under the provisions of sections 58, 59 and 60 of this Act on the application of a married woman, if it shall be proved that such married woman has committed an act of adultery:

Provided that the husband has not condoned, or connived at, or by his wilful neglect or misconduct conduced to such act of adultery.

62.—(1) The Court may, on the application of the married woman or of her husband, and upon cause being shown upon fresh evidence to the satisfaction of the Court at any time, alter, vary or discharge any such order, and may upon any such application from time to time increase or diminish the amount of any weekly payment ordered to be made, so that the same do not in any case exceed the weekly sum of.....dollars.

(2) If any married woman upon whose application an order shall have been made under sections 58, 59 and 60 of this Act, or either of them, shall voluntarily resume cohabitation with her husband, or shall commit an act of adultery, such order shall upon proof thereof be discharged.

PART VI.

Loss of Consortium.

63. A person who, without lawful excuse, knowingly and wilfully persuades or procures a woman to leave her husband against the latter's will, whereby the husband is deprived of the society and comfort of his wife, shall be liable to an action for damages by the husband.

64. A husband has also a right of action for damages against any person who, without lawful excuse, knowingly receives, harbours and detains his wife against his will.

65. No such action as that provided for in the last preceding section will lie if either—

(*a*) the plaintiff and his wife were living apart by agreement, or were judicially separated, when the act of the defendant took place; or

(*b*) the plaintiff has been guilty of cruelty to his wife, and the defendant harbours the wife from motives of humanity; or

(*c*) the defendant has reasonable grounds for supposing that the husband has been guilty of cruelty to his wife, and harbours the wife from similar motives.

66.—(1) Where any person has either intentionally or by neglect of some duty existing independently of contract, inflicted physical harm upon a woman, and thereby deprived her husband of her comfort and society, he is liable to an action for damages by the husband in respect of such loss.

(2) The right of the husband to bring any such action shall be in addition to, and independent of, any right which the wife herself, or the husband in her name, may have to bring an action for the injury inflicted upon her.

PART VII.

JACTITATION OF MARRIAGE

67.—(1) If a person persistently and falsely alleges that he is married to another, the latter may, in a suit of jactitation of marriage, obtain a decree forbidding the former to make such allegations.

(2) No such decree will be granted in favour of a person who has at any time acquiesced in the making of such allegations by the other party.

PART VIII.

ADOPTION OF CHILDREN

68. In this part unless the context otherwise requires—

(*a*) "Judge" shall mean judge of the District Court of a judicial district in which either the applicant for an order of adoption or the proposed adoptive child resides;

(*b*) "Provincial officer" shall mean an officer in the public service designated for that purpose by the Lieutenant Governor in Council;

(*c*) "Regulations" shall mean regulations made under the authority of this part.

69.—(1) Any adult person may apply to a judge by petition for leave to adopt an unmarried minor as his child.

(2) Where an applicant has a husband or wife living who is competent to join in the application, such husband or wife must join therein, and upon adoption the child shall be in law the child of both.

69*a*. The application shall by affidavit disclose the age of the child, the name or names of the lawful guardian or guardians of the child and their religion.

70.—(1) An order for adoption shall not be made, except as hereinafter provided, without the consent of the child, if he has attained the age of ten years, and of his lawful guardian or guardians.

(2) No order for adoption shall be made except after notice to the provincial officer of the application.

(3) The fact that the child was born out of wedlock shall in no case appear in the order for adoption.

71. The consent of a guardian shall not be required if—

(*a*) such person is adjudged by the judge upon evidence submitted to him to be insane or naturally incompetent or unfit to give such consent; or

(*b*) such person is undergoing sentence for a term of which more than three years remain unexpired at the date of the application; or

(*c*) such person is a person whose duty is to provide proper care and maintenance for such child, and has neglected so to do; or

(*d*) the judge for reasons which appear to him sufficient, deems it necessary or desirable that such consent should be dispensed with.

72.—(1) If the written consent required by the provisions of sections 70 and 71 is not submitted with the application, the judge may order notice of the application to be served on the parties whose consent is required.

(2) The judge may order the service required by subsection (1) of this section to be made substitutionally or by publication of the notice in each of three successive weeks in such newspaper as the judge may order, the last publication thereof to be at least seven clear days before the time appointed for the hearing.

(3) The judge may require additional notice and consent.

73. If, after such notice, a person whose consent is required does not appear and object to the adoption, or appears and objects upon grounds which the judge deems insufficient having in view the interests of the child and of its guardians, the judge may dispense with his consent.

74. The judge, if satisfied of the ability of the applicant to fulfil the obligations and perform the duties of a parent towards the child to be adopted, and of the fitness and propriety of the adoption having regard to the welfare of the child and the interests of its guardians and to their religion may make an order for the adoption of the child by the applicant.

75. An order for the adoption of a child under ten years of age shall not be made unless the provincial officer certifies in writing—

(*a*) that the child has lived for at least one year previously with the applicant, and that during that period the conduct of the applicant and the conditions under which the child has lived have been such as to justify the making of the order; or

(*b*) that the applicant is to the knowledge of the provincial officer a fit and proper person to have the care and custody of the child, and that for reasons set out in the certificate the period of residence may be dispensed with.

76.—(1) An order for adoption shall—

(*a*) divest the natural parent, guardian or person in whose custody the child has been, of all legal rights in respect of such child, and free such person from all legal obligations and duties as to the maintenance of such child;

(*b*) make such child, for the purposes of the custody of the person and rights of obedience, to all intents and purposes the child of the adopting parent;

(*c*) give the child the same right to any claim for nurture, maintenance and education upon his adopting parent that he would have were the adopting parent his natural parent.

(2) In and by the adopting order the judge may in his discretion give to such adopted child the surname of his adopting parent, and in that event such child shall thenceforth be entitled to and be known by the surname of the adopting parent.

77.—(1) A person who has been adopted in accordance with the provisions of this part shall take the same share of property which the adopting parent could dispose of by will as he would have taken if born to such parent in lawful wedlock, and he shall stand in regard to the legal descendants, but to no other kindred of such adopting parent, in the same position as if he had been born to him.

(2) If the person adopted dies intestate his property acquired by himself or by gift or inheritance from his adopting parent or from the kindred of such parent, shall be distributed according to the laws of this province relating to intestacy among the persons who would have been his kindred if he had been born to his adopting parent in lawful wedlock, and the property received by gift or inheritance from his natural parents or kindred shall be distributed in the same manner as if no act of adoption had taken place.

(3) Where a person is adopted he shall not lose his right to inherit from his natural parents or kindred.

78. The word "child" or its equivalent in any will, conveyance or other instrument shall include an adopted child unless the contrary plainly appears by the terms of the instrument.

79. A person resident out of the province who has been adopted according to the laws of any of the provinces of Canada, shall upon proof of such adoption be entitled to the same rights of succession to property as he would have had in the province in which he was adopted, save in so far as those rights are in conflict with the provisions of this Act.

80. If the child has been previously adopted, all the legal consequences of the former order of adoption shall, upon a subsequent adoption, determine except in so far as any interest in property may have vested in the adopted child.

81. Every order of adoption, together with all the material used on the application, shall be filed in the office of the clerk of the court, the judge of which made the order,

and the clerk shall forward a copy of the order certified by the judge to the Registrar General or his deputy, who shall record the same in the manner prescribed by the regulations.

82. Every application under this part shall be heard by the judge in his chambers.

83. The Lieutenant Governor in Council may make regulations—

(*a*) for the recording of all orders of adoption made under this part in the office of the Registrar General or his deputy, as administrator of *The Vital Statistics Act;*

(*b*) respecting the procedure to be followed upon an application for an order for adoption;

(*c*) for fixing the fees, costs, charges and expenses payable on proceedings under this part and for dispensing with the payment of such fees, costs, charges and expenses where owing to lack of means or any other reason the judge deems such action advisable;

(*d*) for payment, out of such sums as may be appropriated by the Legislature for that purpose, of the expenses of the provincial officer in carrying out the provisions of this part;

(*e*) for designating a provincial officer and for the appointment of local and other assistants to the provincial officer, and for authorizing any such assistants to act for and in the place of the provincial officer;

(*f*) generally for better carrying out the provisions of this part.

PART IX

LEGITIMATION

84.—(1) Where the parents of any child born out of lawful wedlock have intermarried after the birth of the child and prior to the passing of this Act, the child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

(2) Nothing in this section shall affect any right, title or interest in or to property where the right, title or interest has vested in any person prior to the passing of this Act.

85. Where the parents of any child born out of lawful wedlock intermarry after the birth of the child and

subsequent to the passing of this Act the child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

86. Nothing in the preceding section shall affect any right, title or interest in or to property where the right, title or interest has vested in any person prior to the intermarriage.

87. No child shall be legitimated by this Act unless the father at the time of the intermarriage is domiciled in Alberta or in some other place by the law of which legitimation by subsequent marriage is recognized.

88. Any natural born British subject, or any person whose right to be deemed a natural born British subject depends wholly or in part on his legitimacy or on the validity of a marriage, being domiciled in Alberta and claiming any property situate in Alberta, may apply by petition to a judge of the Supreme Court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage, or for a decree declaring either of the matters aforesaid.

89. Every such petition shall be accompanied by such affidavit verifying the same and of the absence of collusion as the Supreme Court may by any general rule direct.

90. A copy of every such petition and affidavit shall one month at least previously to the presentation and filing of such petition be delivered to the Attorney General, who shall be a respondent upon the hearing of such petition and upon every subsequent proceeding relating thereto.

PART X.

GUARDIANSHIP

91. In this part unless the context otherwise requires—

(*a*) "Court" shall mean the Supreme Court of Alberta, or a judge of the District Court sitting in Chambers;

(*b*) "Guardian" shall mean the guardian of the estate and person of an infant.

92. Guardianship in socage, by nature and for nurture are hereby abolished.

93.—(1) Unless otherwise ordered by the Court the father and mother of an infant shall be joint guardians of such infant, and the mother of an illegitimate child shall be sole guardian thereof.

(2) Where a child has been adopted, his adopted father and mother shall be deemed to be his parents within the meaning of this Part.

94. Any parent of an infant may by deed or will appoint any person to be guardian of such infant, after his or her death, who shall act jointly with the other parent, or guardian appointed by such other parent.

95. The Court may from time to time appoint a guardian of an infant to act jointly with the father or mother of such infant, or the guardian appointed by the father or mother of such infant.

96. Upon the application of an infant, or of any one on its behalf, when it is made to appear that the infant has no parent or lawful guardian or that such parent or lawful guardian is not a fit and proper person to have the guardianship of the infant, the Court may appoint a guardian or guardians of such infant.

97.—(1) Testamentary guardians and guardians appointed by order or letters of guardianship shall be removable by the Court for the same causes for which trustees are removable.

(2) Any such guardian may by leave of the Court resign his office upon such terms and conditions as may be deemed just.

98. In any case where a decree for judicial separation, or a decree either *nisi* or absolute for divorce, shall be pronounced, the Court pronouncing such decree may thereby declare the parent by reason of whose misconduct such decree is made, to be a person unfit to have the custody of the children (if any) of the marriage, and in such case the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of such children.

99. Where the parents are not living together or where the parents are divorced or judicially separated, they may enter into a written agreement as to which parent shall have the custody, control and education of the children of the marriage, and in the event of the parents failing to agree either parent may apply to the Court for its decision.

100.—(1) The Court, upon the application of the father or of the mother of an infant, who may apply without a next friend, may make such order as the Court sees fit regarding the custody of the infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary or discharge the order on the application of either parent, or, after the death of either parent, of any guardian appointed under this part, and in every case make such order respecting the costs of the mother and the liability of the father for the same, or otherwise, as the Court may deem just.

(2) The Court may also make an order for the maintenance of the infant by payment by the father or the mother or out of any estate to which the infant is entitled, of such sum from time to time as, according to the pecuniary circumstances of the father or the mother or the value of the estate, the Court deems reasonable.

101. Where upon any application by a parent or any person at law liable to maintain an infant or entitled to its custody (hereinafter called "any other responsible person") for the production or custody of an infant, the Court is of opinion that the parent or other responsible person has abandoned or deserted the infant, or that he has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the infant, the Court may, in its discretion, decline to make the order.

102. If, at the time of the application for the production of an infant, the infant is being brought up by another person or by a school or institution, the Court may, in its discretion, if it orders the infant to be given up to the parent or other responsible person, further order that the latter shall pay to such person, school or institution, the whole of the cost properly incurred in bringing up the infant, or such portion thereof as shall seem to the Court to be just and reasonable, having regard to all the circumstances of the case.

103. Where a parent or other responsible person has—

(*a*) abandoned or deserted his infant; or

(*b*) allowed his infant to be brought up by another person or by a school or institution at his or its expense, for such a length of time and under such circumstances as to satisfy the Court that the parent or other responsible person was unmindful of his parental duties,

the Court shall not make an order for the delivery of the infant unless it is satisfied that it would be for the welfare of the infant so to do.

104.—(1) Upon any application by a parent or other responsible person for the production or custody of an infant, if the Court is of opinion that he ought not to have the custody of the infant and that the infant is being brought up in a different religion to that in which the parent or other responsible person has a legal right to require that the infant should be brought up, the Court shall have power to make such order as it may think fit to secure that the infant be brought up in the latter religion.

(2) Nothing in this Act contained shall interfere with or affect the power of the Court to consult the wishes of the infant in considering what order ought to be made, or diminish the right which any infant now possesses to the exercise of its own free choice.

105. In questions relating to the custody and education of infants the rules of equity shall prevail where not in conflict with the provisions of this Act.

106. Subject to the provisions of this Act in respect thereto and except where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited, the guardian so appointed or constituted during the continuance of his guardianship shall be entitled to—

(*a*) the custody and control of the infant;

(*b*) control his education;

(*c*) the possession and control of the lands of the infant and the receipt of the rents and profits thereof;

(*d*) the management of the goods, chattels and personal estate of such infant;

(*e*) to act for and on behalf of the infant;

(*f*) to appear in any Court and prosecute and defend any action or proceedings in the infant's name.

REPEALS.

107. *The Marriage Act,* being chapter 213 of the Revised Statutes of Alberta, 1922, sections 21, 22 and 23 of *The Judicature Act,* being chapter 72 of the Revised Statutes of Alberta, 1922, and sections 2 to 9, inclusive, and 22 to 33, inclusive, of *The Infants Act,* being chapter 216 of the Revised Statutes of Alberta, 1922, are hereby repealed.

108. This Act shall come into force on.....

No. 34.

FOURTH SESSION

FIFTH LEGISLATURE

14 GEORGE V

1924

BILL

An Act Relating to Domestic Relations.

Received and read the

First time .....

Second time .....

Third time .....

HON. MR. BROWNLEE.

EDMONTON:
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A.D. 1924