

LEGISLATION

The following is a list of Ordinances, Acts and Enactments passed during the latter part of 1961. (This list is a continuation of the one appearing in (1961) 3 U.M.L.R. 142-148).

FEDERATION OF MALAYA

<i>Act. No.</i>	<i>Short Title</i>
16.	Corrosive and Explosive Substances and Offensive Weapons (Amendment) Act. ¹
17.	Loan (International Tin Buffer Stock) Act.
18.	Loan (Local) Act.
19.	Local Government Elections (Amendment) Act. ²

1. This Act amends the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, by introducing a new section 6A, sub-section (1) of which reads:

6A(1). Any person who, otherwise than for a lawful purpose —

- (a) carries or has in his possession or under his control; or
- (b) manufactures, sells or hires or offers or exposes for sale or hire; or
- (c) lends or gives to any person,

any scheduled weapon shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding two years, or to a fine not exceeding two thousand dollars, or to both such imprisonment and fine, and in the case of a second or subsequent offence to imprisonment for a term not less than one year and not more than three years.

Originally, the carrying or possession of offensive weapons was only unlawful if they were carried in a public place, but under section 6A, it is an offence irrespective of whether it is carried in a public place or not. The onus of proving that the carrying or possession of the weapon was for a lawful purpose is upon the accused person.

Another important amendment is to include the possession of certain types of weapon, such as S3 flick-knives, chain-whips, etc. as an offence under the Act.

2. This Act is designed to bring Local Councils within the Scope of the Local Government Elections Act, 1960. Hitherto, under the Local Councils Ordinance, 1952, an informal method of election of members to Local Councils was provided. This Act seeks to provide uniform qualifications for Councillors and electors, and to enable the Election Commission to supervise and conduct the elections.

Under section 5A, the State Authority is given wide powers. It may:

- (a) prescribe the total number of Councillors;
- (b) prescribe the number of Councillors to be elected and the number (if any) to be appointed;
- (c) provide for a Chairman and Deputy Chairman of the Council and prescribe the manner in which they shall be appointed or elected;
- (d) prescribe the powers and duties of the Chairman and Deputy Chairman of the Council;
- (e) subject to the provisions of this Act, prescribe the disqualifications of Councillors and candidates for election as Councillors;
- (f) prescribe the manner in which appointed Councillors shall be appointed and, subject to the provisions of this Act, the term of office of appointed Councillors;

20. Life Assurance Companies (Amendment) Act.
21. Federation Light Dues (Amendment) Act.
22. Rubber Industry (Replanting) Fund (Amendment) Act.
23. Treasury Bills and Deposit Receipts (Amendment) Act.
24. Remuneration of Judges Act.
25. Licensed Land Surveyors (Amendment) Act.
26. Treasury Bills (London) (Repeal) Act.
27. Town Boards (Amendment) Act.
28. Supplementary Supply Act.
29. Second-hand Dealers (Amendment) Act.
30. Appraisers (Extension to Perlis) Act.
31. Loan (Local) (Amendment) Act.
32. Tropical Fish Culture Research Institute.³
33. Election Offences (Amendment) Act.
34. Excise Act.⁴
35. Advocates and Solicitors (Amendment) Act.⁵
36. Financial Procedure (Amendment) Act.
37. Weekly Holidays (Amendment) Act.
38. War Risks (Goods) Insurance Fund (Winding-up) Act.

- (g) subject to the provisions of this Act, prescribe the circumstances in which the seat of any Councillor shall become vacant and the manner in which such vacancy shall be filled;
- (h) provide for the payment to Councillors of allowances and other privileges;
- (i) prescribe the form of any declaration of acceptance of office as a Councillor;
- (j) provide for the procedure, quorum and meetings of the Local Council.

Power is also given to the State Authority to amend, modify or repeal any order made under section 5A,

This Act cannot come into force in any State unless adopted by the Government of that State.

3. This Act is designed to implement the Agreement between the Government of Great Britain and Northern Ireland and the Government of the Federation of Malaya for the establishment of the Tropical Fish Culture Research Institute at Batu Berendam in the State of Malacca on June 7, 1960.
4. This Act seeks to amend and consolidate the law relating to the collection of excise duties and the licensing of the sale of intoxicating liquors. Prior to this Act, Johore and Kelantan had their own enactments, whilst the other States were governed by the Excise Enactment of the former Federated Malay States (Cap. 133). The object of this Act is therefore to consolidate all these laws.

The pattern of the Act follows as far as is practicable the Customs Ordinance, 1962 (No. 42 of 1952), particularly in the manner of granting exemption from payment of excise duty and in the parts relating to trials, proceedings, offences and penalties.

An important amendment to existing law is the exclusion from membership of Licensing Boards, public servants who, in their official capacity, have any dealings or are in any way concerned with the sale or purchase of intoxicating liquors or with premises in which such sale or purchase is carried on.

5. This Act amends the Advocates and Solicitors Ordinance, 1947 by enabling an LL.B. graduate of the University of Malaya to be a 'qualified person' within the meaning of the Ordinance. It further provides "that where a petitioner has obtained, either a certificate issued by the Council of Legal Education that he has satisfactorily completed the Council's Post Final Practical Course,

39. Employment (Amendment) Act.
40. Disposal of Public Fund (State of Penang) Act.
41. Kidnapping Act.^{5a}

JOHORE

<i>Enactment No.</i>	<i>Short Title</i>
1.	Town Board (Amendment) Enactment.
2.	Sovereign's Relatives (Allowances) (Amendment) Enactment.
3.	Supplementary Supply (1960) (No. 6) Enactment.
4.	Supplementary Supply (1961) Enactment.
5.	Land Conservation Act, 1960 (Amendment) Enactment.
6.	Age of Majority (Adoption) Enactment.
7.	Town Boards (Amendment) (No. 2) Enactment.
8.	Malay Reservations (Amendment) Enactment.
9.	Supplementary Supply (1960) (No. 7) Enactment.

KEDAH

<i>Enactment No.</i>	<i>Short Title</i>
1.	Kedah State Supplementary Supply (1961) (No. 1) Enactment.
2.	Guardianship of Infants (Adoption) Enactment.
3.	Age of Majority (Adoption) Enactment.
4.	Town Boards (Amendment) Enactment.
5.	Civil Lists (Amendment) Enactment.
6.	State Public Service Commission (Amendment) Enactment.
7.	Loans (Group Settlement Schemes) Enactment.
8.	Kedah State Supplementary Supply (1961) (No. 2) Enactment.
9.	Health Board (Amendment) Enactment.
10.	Loan (Low Cost Housing Schemes) Enactment.

or a certificate issued by the University of Malaya that he has satisfactorily completed a post graduate course of instruction organized by the University, the provisions of this paragraph shall apply to such petitioner as if he had been a pupil or read in Chambers as aforesaid for a period of six months."

It is interesting to note that in the corresponding Singapore amendment there is no such provision. So far no legislation has been passed to establish the Pan-Malayan Council of Legal Education.

- 5a. Due to the alarming rate of kidnapping for ransom in Malaya this Act facilitates the detection of the offence of abduction, wrongful restraint and wrongful confinement for ransom and other related offence, and makes provision for deterrent sentences where a conviction is obtained.

Section 3 of the Act provides that whoever abducts or wrongfully restrains any person for ransom shall be punished on conviction with death or life imprisonment and shall also be liable to whipping in the latter case. It also provides that the accused shall in such offences be tried by a judge with the aid of assessors.

Sections 4 and 5 prescribe punishment up to 10 years and whipping in the case of anyone who knowingly receives ransom or who knowingly negotiates or assists in any negotiation to obtain any ransom in respect for the release of the victims of kidnapping.

Special powers of investigation are given to the Public Prosecutor by sections 6, 7, 8 and 10 in such offences including the power to freeze any bank account and the power to intercept communication.

KELANTAN

<i>Enactment No.</i>	<i>Short Title</i>
1.	First Supplementary Supply (1961) Enactment.
2.	Loan (No. 1) (Amendment) Enactment.
3.	Members of the Legislative Assembly (Remuneration) (Amendment) Enactment.

MALACCA

<i>Enactment No.</i>	<i>Short Title</i>
2.	First Supplementary Supply (1961) Enactment.
3.	Third Supplementary Supply (1960) Enactment.
4.	Constitution of the Municipality of the Town and Fort of Malacca (Amendment) Enactment.
5.	Constitution of the Municipality of the Town and Fort of Malacca (Amendment No. 2) Enactment.
6.	Legislative Assembly (Members' Remuneration) (Amendment) Enactment.
7.	Speaker of the Legislative Assembly (Remuneration) (Amendment) Enactment.
8.	Executive Council (Members Remuneration) (Amendment) Enactment.
9.	Age of Majority (Adoption) Enactment.
10.	Second Supplementary Supply (1961) Enactment.

NEGRI SEMBILAN

<i>Enactment No.</i>	<i>Short Title</i>
1.	Negri Sembilan State Supplementary Supply (1961) (No. 1) Enactment.
2.	Negri Sembilan State Supplementary Supply (1960) (No. 9) Enactment.
3.	Negri Sembilan State Supplementary Supply (1961) (No. 2) Enactment.
4.	Loan (Miscellaneous Schemes) Enactment.

PAHANG

<i>Enactment No.</i>	<i>Short Title</i>
1.	Town Boards (Pahang) (Amendment) Enactment.
2.	Civil List (Amendment) Enactment.
3.	Registration and Licensing of Petition Writers Enactment.
4.	Guardianship of Infants (Adoption) Enactment.
5.	Age of Majority (Adoption) Enactment.
6.	Supplementary Supply (1960) Enactment.

Section 9 imposes a duty on anyone, who is aware of the commission of or the intention of anyone to commit any offence under the Act, to furnish information to the Police. Failure on his part without any reasonable excuse to give such information shall render him guilty of an offence punishable with imprisonment for a term of 3 years.

Sections 12 to 15 deal with questions of evidence and the protection of informers.

PERAK

*Enactment No.**Short Title*

1. Supplementary Supply (1960) (No. 4) Enactment.
2. Supplementary Supply (1961) Enactment.
3. Supplementary Supply (1961) (No. 2) Enactment.
4. Loans (Group Settlement Schemes) Enactment.
5. Perak Padi Planters Board Enactment.
6. Guardianship of Infants (Adoption) Enactment.
7. Age of Majority (Adoption) Enactment.
8. Third Supplementary Supply (1961) Enactment.
9. Loan (Low Cost Housing Schemes) (No. 2) Enactment.

PERLIS

*Enactment No.**Short Title*

1. Perlis State Supplementary Supply (1960) (No. 4) Enactment.
2. Perlis State Supplementary Supply Enactment.
3. Perlis State Development Fund Enactment.
4. Control of Rent (Application to Perlis) Enactment.
5. Perlis State Supplementary Supply (No. 2) Enactment.
6. Guardianship of Infants (Adoption) Enactment.
7. Age of Majority (Adoption) Enactment.
8. Perlis State Supplementary Supply (1961) (No. 3) Enactment.
9. Registration of Cattle (Amendment) Enactment.
10. Perlis Padi Planters Board (Amendment) Enactment.

SELANGOR

*Enactment No.**Short Title*

1. Supplementary Supply (1960) (No. 3) Enactment.
2. Compassionate Allowance (Her Highness Tengku Ampuan Raja Jema'ah binti Raja Ahmad) Enactment.
3. Speaker (Remuneration) (Amendment) Enactment.
4. Legislative Assembly (Members' Remuneration) (Amendment) Enactment.
5. Loans (Group Settlement Schemes) Enactment.
6. Guardianship of Infants (Adoption) Enactment.
7. Administration of Muslim Law (Amendment) Enactment.
8. Selangor Padi Planters Board (Amendment) Enactment.
9. Supplementary Supply (1960) (No. 4) Enactment.
10. Supplementary Supply (1961) (No. 1) Enactment.
11. Sovereign's Relatives (Allowances) (Amendment) (No. 2) Enactment.
12. Land (Amendment) Enactment.
13. Mining (Amendment) Enactment.
14. Supplementary Supply (1961) (No. 3) Enactment.

TRENGGANU

<i>Enactment No.</i>	<i>Short Title</i>
10.	Civil List (Amendment) Enactment.
11.	Fifth Supplementary Supply (1960) Enactment.
12.	Sixth Supplementary Supply Enactment.
13.	Seventh Supplementary Supply (1960) Enactment.
14.	Members of the Legislative Assembly (Remuneration) (Amendment) Enactment.
15.	Supply (1961) Enactment.

<i>Enactment [1961] No.</i>	<i>Short Title</i>
1.	Civil List (Amendment) (No. 2) Enactment.
2.	Trengganu State Development Fund Enactment.
3.	Speaker (Remuneration) (Amendment) Enactment.

SINGAPORE

<i>Ordinance No.</i>	<i>Short Title</i>
8.	Education and Improvement Rates (Abolition) Ordinance.
9.	Post Office Savings Bank (Amendment) Ordinance.
10.	Police Force (Amendment) Ordinance.
11.	Inquiry Commissions (Amendment) Ordinance.
12.	Rubber Estates (Surcharge on Assessment) (Audit) Ordinance.
13.	Public Trustee (Amendment) Ordinance.
14.	Central Sikh Indwara Board Ordinance.
15.	Punishment of Kidnapping Ordinance.
16.	Penal Code (Amendment) Ordinance. ⁶
17.	Police Cadet Corps Ordinance.
18.	Women's Charter. ⁷
19.	Offences Relating to Vehicles Ordinance.
20.	Legislative Assembly Elections (Special Provisions Anson Election) Ordinance.
21.	Economic Development Board Ordinance.
22.	Land Acquisition (Amendment) Ordinance.
23.	Advocates and Solicitors (Amendment) Ordinance. ⁸
24.	Stamp (Amendment) Ordinance.
25.	Certificates (Winding-up) Ordinance.
26.	Road Traffic Ordinance.

LIM KHENG LIAN.

6. See page 331.

7. See page 316.

8. This Ordinance gives recognition to the degree of Bachelor of Laws conferred by the University of Malaya and enables local law graduates to seek admission to the legal profession in Singapore. *cf.* footnote 5.

THE WOMEN'S CHARTER

Ordinance 18 of 1961 of the State of Singapore, whose short title is the Women's Charter, which came into force on 15 September, 1961, makes fairly comprehensive provision for the celebration, annulment and dissolution of marriage and the rights and duties of married persons in the case of non-Muslims, the maintenance of wives and children, and offences against women and children in the case of all persons whether Muslim or not. With two exceptions, namely, the restrictions upon polygamy and extra-judicial divorce the Ordinance is, however, merely a re-enactment with certain amendments of earlier legislative provisions. As enacted, however, it raises a number of problems which merit some discussion.

The first provision with regard to which some difficulty is felt is section 3(1) which provides:

Subject to the provisions of subsection (2) of this section this Ordinance shall apply to all persons resident in Singapore and shall also apply to all persons domiciled in Singapore who are resident outside Singapore.

This is surely a very curious provision. The Ordinance contains laws of many different types; some penal; some personal and some proprietary and yet under this provision all of them, irrespective of their nature, apply to all persons who are either domiciled or resident in Singapore. This disregard of the normal practice by which the connecting factor varies with the nature of the law involved is surely going to produce some most curious results.¹ Even more alarming, however, is the implication that the Ordinance does not apply to persons who are neither resident nor domiciled in Singapore. Much of course will depend upon the meaning attributed to the term "resident" in this context, but unless the term is interpreted as meaning no more than mere physical presence then one inference would seem to be that the penal provisions of Part X do not apply to persons who are neither resident nor domiciled in Singapore. Thus it would seem possible for a man who is careful to maintain both his domicile and his residence in the Federation to claim, when charged with an offence under Part X, that since the Ordinance does not apply to him he cannot be found guilty of an offence under that part of the Ordinance. If, on the other hand "residence" is interpreted as connoting more than mere physical presence the consequences of applying the personal and proprietary rules contained in other parts of the Ordinance to all persons who are merely present in Singapore is likely to produce some startling consequences. It would seem as if the interpretation of this section is going to give rise to many problems.

CELEBRATION OF MARRIAGE

Part III of the Ordinance is concerned with setting out the procedure to be followed for the celebration of a marriage under the Ordinance. It is essentially a re-enactment of the corresponding provisions of the Civil Marriage Ordinance. The outstanding change in the law is that effected by section 4 which takes away the right to take additional wives in respect of all persons to whom the Charter applies. Curiously the Charter does not state that polygamous marriages cannot be celebrated in Singapore; it states instead that persons to whom the Charter

1. Thus proprietary questions are referred to the *lex situs*, personal questions to the personal law, whilst yet other questions may be subject to the *locus regit actum* rule.

applies cannot take second wives, which presumably implies that persons to whom the Charter does not apply, and in particular persons who are neither resident nor domiciled in Singapore can still celebrate polygamous marriages in Singapore.

The major difficulty which arises concerns the relation between the provisions of Part III and section 3 of the Ordinance. The question that needs an answer is simply what are the formalities for the celebration of marriage by persons who are neither resident nor domiciled in Singapore? There would appear to be two possibilities. Either, because the Ordinance does not apply to them, they cannot marry at all in Singapore, or, alternatively because the Ordinance does not apply to them they may marry outside the provisions of the Ordinance.

The choice between these alternatives raises the question whether the provisions of the Ordinance regarding the celebration of marriage are exhaustive or not. On the face of it marriages in Singapore must be celebrated either under the Ordinance or in accordance with the provisions of the *Shari'a*.² Thus section 21 provides:

No marriage shall be solemnized unless a certificate for marriage or a licence authorizing the marriage has been delivered to the person solemnizing the marriage

whilst section 39(1) provides:

Any person who knowingly and contrary to this Ordinance solemnizes a marriage —

- (a) without first receiving a certificate for the marriage or a licence dispensing with such certificate

.....
shall be guilty of an offence.....

Normally these provisions would undoubtedly suffice to ensure that all marriages (other than those celebrated according to Islamic rites) must be celebrated in accordance with the provisions of the Ordinance. There are, however, several considerations which suggest that this result has not necessarily been achieved. The first of these considerations turns upon the wording of section 3(1) which was referred to above. If the Ordinance does not apply to persons who are neither domiciled nor resident in Singapore then presumably the above provisions do not apply to them and they may celebrate their marriages in Singapore without conforming to the provisions of the Ordinance.

It was certainly true before the Ordinance that persons who were not obliged to conform to the provisions of any Ordinance could celebrate a valid common law marriage and this is presumably still good law.³ The question that has to be asked is, therefore, are these persons bound to follow the procedure laid down in the Ordinance? Since the Ordinance does not apply to them they presumably are not so bound and may therefore lawfully celebrate a common law marriage.

A second consideration arises out of the rather surprising absence in the Ordinance of a nullity section. Section 92 sets out the grounds upon which a Singapore court may decree annulment of a marriage but the only provision therein relating to formal invalidity is section 92(1)(e) which provides that a marriage may be annulled on the ground that "the marriage is invalid by the law of the place in which it was celebrated." If therefore the marriage is celebrated in Singapore the

2. The subjection of Muslim marriages to the *Shari'a* is an inference from the exclusion of such marriages from the Charter and the fact that prior to the Charter they were so governed.

3. *Isaac Penhas v. Tan Soo Eng* [1953] A.C. 304.

question is whether it is invalid according to the law of Singapore, and it is precisely on this point that the Ordinance is surprisingly silent. Sections 9, 10, 11, 17 and 20 make it clear that marriages to which either party is under age, marriages within the prohibited degrees, bigamous marriages and marriages celebrated too long after issue of certificate or licence are invalid, but beyond this there is nothing. It is therefore not clear whether a marriage celebrated in contravention of section 21 is invalid or not.

It is by no means uncommon in marriage legislation for there to be provisions breach of which does not result in the invalidity of the marriage and it is therefore by no means self-evident that a contravention of section 21 should result in invalidity. The argument is strengthened by the fact that the Civil Marriage Ordinance did contain a nullity section setting out the formal grounds upon which a marriage would be invalid.⁴ The presumption must be that the omission of a corresponding section in this Ordinance is deliberate and that it was therefore intended that contravention of the formality provisions should not result in invalidity.

If this is so then the only formal ground upon which a marriage celebrated in Singapore may be annulled is that the marriage was not celebrated within three months of the notice thereof (under section 17), or within one month of the date of the licence (under section 20), but this is hardly likely to achieve much if in fact absence of certificate or licence does not invalidate a marriage.

A final point in this context concerns the celebration of mixed marriages. In this connection it should be noted that section 3(3) has introduced an important change in the law of Singapore. Under the Civil Marriage Ordinance it was provided that marriages *both* parties to which were Muslims could not be celebrated thereunder.⁵ By section 3(3) of the Charter "No marriage *one* of the parties to which is a Muslim shall be solemnized or registered under this Ordinance." It follows therefore that whereas under the Civil Marriage Ordinance mixed Muslim-non-Muslim marriages could have been celebrated such marriages can no longer be celebrated under the Charter. If one party is a Muslim the marriage should therefore be celebrated according to Islamic rites. The only form of mixed Muslim - non-Muslim marriage which can, however, take place according to *Shari'a* is that between a Muslim male and *kitābiyya*. This raises the question, therefore, as to what is the position of a marriage between a Muslim and a woman who is not a *kitābiyya* or between a Muslim woman and a non-Muslim? If the provisions of the Charter are not in fact exhaustive then since there is no statutory provision obligating Muslims to marry according to the *Shari'a* it is possible to argue that such mixed marriages may still take place and be formally valid as common law marriages. It is regrettable that the position of such marriages should have been left indeterminate.

Equally indeterminate is the position where one or both of the parties is converted to or from Islam and the wording of section 3(2) raises a number of strange possibilities. This sub-section reads:

Parts II to VI and Part IX and section 166 of this Ordinance shall not apply to any person who is married under, or to any marriage solemnized or registered under, the provisions of the Muslim law or of any written law in Singapore or in the Federation of Malaya providing for the registration of Muslim marriages.

Consider, therefore, a person who having been married under the Charter purports to have been converted to Islam and marries again according to the provisions of the Muslim law. Is he a person who is "married under . . . the provisions of the Muslim law" for the purposes of this section? If he is, then section 4 of the Charter

4. S.34(c).

5. S.3(2).

can be easily evaded by conversion to Islam. A possible means of escape from this conclusion is to argue that the term "married under" in the above sub-section means "validly married under" and that since a person who has married under the Charter cannot take a second wife his second marriage is not valid. The difficulty of this argument is that it involves holding a marriage which is perfectly valid according to the *Shari'a* to be invalid. It is again regrettable that this should have been left indeterminate.

Another difficulty, which was also present under the earlier legislation but which has not been cleared up under the Charter, concerns the question whether the distinction between void and voidable marriages is recognised. The wording of section 7 would seem to imply that it is not. The section reads:

Every marriage solemnized in Singapore after the coming into operation of this Ordinance shall continue until dissolved—

- (a) by the death of one of the parties; or
- (b) by order of a competent court of jurisdiction; or
- (c) by a declaration made by a court of competent jurisdiction that the marriage is null and void or invalid.

The implication of this section is that even a void marriage continues until a court has declared that it is void. The only way round this difficulty is to argue that the term "marriage" cannot be held to include a void marriage, in which case the reference in paragraph (c) to a declaration that the marriage is null and void must be read as being confined to voidable marriages. The difficulty of this view is that paragraph (c) refers disjunctively to marriages which are null and void and marriages which are invalid. If a declaration that a marriage is null and void refers only to voidable marriages what meaning is to be given to the concept of a declaration that a marriage is invalid?

The wording used in the Charter only adds to the confusion. Sections 10, 17 and 20(3) state that a marriage celebrated in contravention of those provisions shall be void, whereas sections 9 and 11 state that a marriage celebrated in contravention of those provisions shall be invalid. The term invalid as used in this context is ambiguous since it can connote both void and voidable marriages. It is further significant that the marginal notes to sections 9 and 11 refer to the "avoidance" of marriages celebrated in contravention of their provisions, for the term avoidance is one which is more appropriate to a voidable marriage than to a void marriage.

On the other hand section 92(4) provides:

Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

This provision seems clearly to contemplate the distinction between void and voidable marriages, but is difficult to reconcile it with wording of section 7.

The wording of the Charter is so confused that it seems impossible to come to any firm conclusion on this point. The probable answer is that since there is no clear exclusion of the distinction it must be regarded as part of the matrimonial law of Singapore by virtue of the provision of section 81 which is to the effect that:

Subject to the provisions contained in this part of this Ordinance the court shall in all suits and proceedings hereunder act and give relief on principles which in the opinion of the court are, as nearly as may be conformable to the principles on which the High Court of Justice in England acts and gives relief in matrimonial proceedings.

It is surely extraordinary, however, that this question should have been left in such a vague state.

A number of minor points arising of this Part of the Ordinance may finally be noted. First the age of marriage has, under section 9, been raised to eighteen, subject to the exception that the Minister may grant a licence authorising the celebration of a marriage even though the girl is under the age of eighteen. There appears to be no limit upon the exercise of discretion in this matter, and in particular no age limit below which the discretion ceases to be exercisable.

The provisions of section 10 relating to marriages within the prohibited degrees contain two points of interest. The first is whether section 10(4) is necessary at all. This reads:

A marriage so solemnized between a man and a sister of his divorced wife and a marriage between a woman and a brother of her divorced husband shall be void if solemnized during the lifetime of such divorced wife or divorced husband as the case may be.

The case of the divorced wife's sister and divorced husband's brother is however already covered by section 10(3) and it is difficult to see the justification for spelling out in an additional sub-section one particular illustration of the operation of section 10(3).

Of greater moment, however, is the provision of section 10(5) which reads:

The Minister may in his discretion notwithstanding the other provisions of this section and the provisions of the first Schedule to this Ordinance grant a licence under this section for a marriage to be solemnized notwithstanding the kindred or affinity of the parties if he is satisfied that such marriage is valid under the law, religion, custom or usage applicable to the parties thereto and, where a marriage is solemnized under such licence, such marriage shall notwithstanding the other provisions of this section be deemed to be valid.

The implication of this section is that despite the Charter, parties (other than Muslims that is) may still be governed by some other law, religion, custom or usage by virtue of which the validity of their marriage may be determined. It is difficult to see how the marriage of persons to whom the Charter applies can be valid with respect to the capacity of the parties if it is not valid under the Charter itself. Surely the effect of the Charter is that persons to whom the Charter applies are no longer governed by their personal law or religion in matters of marriage. If this is so it is difficult to see how a licence can ever be granted under section 10(5) since no marriage can be regarded as valid by the personal law or religion applicable to the parties which is not valid under the Charter for the simple reason that such personal law or religion has, by virtue of the Charter itself, ceased to be applicable to the parties.

Section 12, relating to consent contains a number of curiosities. First section 12(4) provides that:

Notwithstanding anything to the contrary in this Part of this Ordinance consent to the marriage of a minor shall not be necessary if the minor has been previously married.

Section 2, however, defines a minor as:

a person who is under the age of twenty-one years and who is not married or a widower or widow.

Since therefore by definition a person under twenty-one who has previously been married is not a minor it is hardly necessary to enact sub-section (4) which exempts such persons from obtaining consent of parents or guardians since section 12 only applies to minors, and such persons are by definition not minors.

Another difficulty with this section concerns the proviso regarding the dispensation with consent in certain cases. Sub-section (1)(a) provides that:

if the Registrar, or in the case of a proposed marriage by licence the Minister, is satisfied that the consent of any person whose consent is so required cannot be obtained or inaccessibility or by reason of his being under any disability the necessity for the consent of that person shall be dispensed with, if there is any other person whose consent is also required; and if the consent of no other person is required the Registrar or the Minister may dispense with the necessity of obtaining any consent, or the High Court may, on application being made, consent to the marriage.

It will be observed that there are two situations contemplated by this provision. First there is the case where the consent of more than one person is required and the consent of one of them cannot be obtained. Second, that in which the consent of only one person is required, and that person's consent cannot be obtained. There is, however, a third possibility, namely, the case where the consent of more than one person is required and the consent of none of them can be obtained. Under the above quoted provision, however, there appears to be no possibility of a dispensation being obtained.⁶

Finally, reference may be made to sections 18 and 19 relating to the entry of a caveat. This provision, which is taken from the Civil Marriage Ordinance remains difficult to understand. Section 10 provides that if a caveat has been entered and not withdrawn no certificate for marriage shall be issued unless

after examining into the matter of the said objection [the Registrar] is satisfied that it ought not to obstruct the issue of such certificate for the marriage

The problem that arises is upon what grounds may a caveat be held justifiably to obstruct the issue of a licence. There are two possibilities. Either the grounds are based on the existence of a statutory impediment to the marriage or they are not. If they are so based then it is difficult to see just what the caveat provisions achieve since the Registrar is, under section 16, already under a duty to satisfy himself that there are no impediments to the marriage. If the grounds are other than established impediments to marriage then it is difficult to see which grounds, not being impediments, should obstruct the issue of a certificate.

The provisions relating to the registration of marriage call for no special comment here and only two sections of Part V seems to justify comment. The first is section 35 which is new and reads:

Any person who uses any force or threat—

- (a) to compel a person to marry against his will; or
- (b) to prevent a person who has attained the age of twenty-one years from contracting a valid marriage,

shall be guilty of an offence.

6. It may be added that it is unclear what is the effect of absence of consent required by section 12. It is arguable that a marriage may be valid notwithstanding the absence of this consent.

The second is the curious wording of section 41 which reads:

No prosecution for any offence punishable under this Part of this Ordinance shall be instituted except with the authority in writing of the State Advocate-General or the Solicitor-General given within the space of three years after the offence was committed or, in the case of a continuing offence, commenced.

In the case of continuing offences it is surely more usual to provide that the period of limitation commences from the cessation of the offence. As worded it would appear that provided the offence had been successfully continued for three years it would become unprosecutable. The point, however, is not of great significance since none of the offences described in Part V can really be regarded as a continuing offences.

RIGHTS OF HUSBAND AND WIFE

With few exceptions, this part of the Charter is a re-enactment of the Married Women's Property Ordinance, 1902.⁷ This Ordinance dealt with the rights of married women as regards their property and with their capacities and liabilities in contract. This part of the Charter is however given a more general title — 'Rights and Duties of Husband and Wife', — without anything in the contents to warrant it.

The main exception is section 45 and this is the only section concerned with the "rights" of the husband. It will be pointed out⁸ that section 45 gives no rights either to the husband or wife which are enforceable in a court of law. A more appropriate title for this Part would have been 'The duties of a husband and the rights of a wife'. The best method — from the point of view of elegance would have been to limit this Part to rights over property and in contract and tort. This would have been more desirable than a hotch-potch consisting of general principles, conciliatory procedure and rights on property.

If it was intended to include the husband's right in a Charter concerned with the emancipation of women, we might have reasonably expected the statutory embodiment and classification of the husbands common law rights, *e.g.* the right to consortium or a removal by statute of some of his disabilities at Common Law, *e.g.* the husband's inability to sue his wife in tort.

Section 45 lays down four rights and duties for husband and wife. Section 45(1) states that husband and wife shall be mutually bound to co-operate with each other for two purposes, *viz.* safeguarding the interests of the union and in caring and providing for the children. Section 45(2) however permits both husband and wife the right to engage separately in any trade or profession or in social activities. Section 45(3) gives the wife the right to use her own surname and name separately. Section 45(4) ensures to the husband and the wife "equal rights in the running of the matrimonial household."

It is difficult to appreciate the true import of this novel section. Nothing is stated whether the list is exhaustive or not. No specific remedies are provided where one of the parties fails to discharge the duties imposed by this section. On the other hand, a breach of such duties may give rise to other actions. For instance, failure to care and provide for the children may be sufficient cause for an action for divorce on the grounds of cruelty. If this is the purpose, however, the section is superfluous for provision is made elsewhere⁹ for cruelty as a ground for divorce.

7. No. 11 of 1902; Cap. 45.

8. *Infra* at p. 323.

9. S.34.

The sub-sections have been enacted on the unwarranted assumption that no conflict is conceivable between the duties imposed by them. It is not, however, impossible to imagine a situation where, for instance, the wife's exercise of her right to engage separately in trade or social activities would conflict with her obligations¹⁰ to co-operate with her husband in caring and providing for the children. There is nothing to indicate which is paramount, and whether, in the instant case, the right or the duty prevails. If the right is paramount does it not mean that a divorce action for cruelty based on the respondent's neglect of the children can be met by the defence that the respondent was only exercising rights conferred on him by the Statute. If the better view is that no such change in the law relating to cruelty was intended and that the rights enacted in the section can only be exercised in such a way that they do not interfere with the spouses matrimonial obligations either at common law or Statute, then it is regrettable that the section does not say so. Further, if the latter interpretation is accepted it is difficult to see whether the section has any effect in law at all. Similar problems could easily arise in respect of section 45(4).

Section 45(3) is a statutory enactment of a common law right. At Common Law, the wife acquires her husband's surname only by custom.¹¹ She therefore continues to have the right to use her own name and surname. The Common Law's difficulties have arisen out of the rule that a man has no property in his name and therefore he cannot by injunction prevent, say, a divorced wife from using his name, unless she is using it for the purpose of fraud.¹² It is the inadequacy of the husband's right that calls for a remedy. But the section does not attempt to deal with this problem. All it does is to enact what is already perfectly possible.

Section 46 is also a new provision. This empowers the Minister to appoint persons to act as conciliation officers for the purpose of this Ordinance. These officers may only be selected from amongst the narrow field of public officers. Social workers outside the public service are thereby excluded.

The duties of the conciliation officer are to advise and assist the parties to a marriage when differences have arisen between them. He has no part to play unless his services are requested by one of the parties. There is no obligation cast on the parties to go to a conciliation officer prior to seeking the assistance of the Courts, and advice and assistance given by such an officer has no binding effect.

These are the only two sections in this part of the Ordinance which deal with the whole field of matrimonial relations. The rest is concerned with property and rights ancillary to property and, apart from the two new provisions in section 49(2) and (3), are re-enactments of the Married Women Property Ordinance, 1902.

Section 49(2) abolishes restraints on anticipations and alienation on property enjoyed by a woman which are created by documents on or after the date of the Charter coming into operation. Section 49(3) determines the date on which particular instruments are deemed to come into effect for the purposes of this section. An instrument containing such restriction and executed on or before the date of the coming into operation is saved if the restriction is attached in pursuance of an obligation imposed prior to the operational date.¹³ However, a provision contained in an instrument made in exercise of a special power of appointment is deemed to be contained in that instrument only and in the instrument by which the power was

10. S.45(1).

11. See Bromley, *Family Law*, p. 149.

12. *Cowley v. Cowley* [1900] P. 305.

13. S.49(3) (a).

created.¹⁴ Notwithstanding the actual date of the execution of a will, it is deemed to have been executed after the operational date, if the testator dies after such date.¹⁵ These provisions are, with insignificant differences, re-enactments of section 2(2) and 2(3) of the English Law Reform (Married Women and Tortfeasors) Act, 1935.¹⁶ Section 59, however, saves existing settlements and protects the power of making future settlements. Restraints upon anticipation attached, or to be attached, to the enjoyment of any property under any settlement, agreement for a settlement, will or any other instrument continue to be valid.

Section 48(1) provides for the property of a woman to be held by her as a feme sole. This section calls for comment on two grounds. First, it is difficult to see what it adds to section 47(1) which state that a married woman is capable of holding property as a feme sole. Since both sections are concerned with the same subject-matter it is extraordinary that there should be two separate provisions for married women and women in general. The two sections could have been amalgamated without any difficulty. This draftsman's slip is easily understood by looking back at the Married Women's Property Ordinance, 1902. Section 47(1) is a re-enactment of section 4 of that Ordinance and was concerned with the capacity of women already married at the time of the passing of the Ordinance. Section 48(1) is a re-enactment of section 5 of the earlier Ordinance. And that provision was concerned with the position of women married subsequent to the passing of that Ordinance.

The second ground for comment arises out of the definition of the sources of income from which she may acquire property after marriage. They may be acquired by her in any employment, trade or occupation in which she is engaged or which she carries on separately from her husband, or by the exercise of any literary, artistic or scientific skill. This does not contain a specific reference to "professional earnings", which is included in the Income Tax Ordinance¹⁷ together with earnings from employment, trade or occupation. Presumably the list is not exhaustive, and this is supported by the prefacing of the list by the word "including".

A married woman has by virtue of section 47(1) the power to dispose of her property by will. On the other hand, section 5 of the Wills Ordinance¹⁸ denies a married woman the right to dispose of her property by will, except where the will was made under the Married Women's Property Ordinance, 1902. This Ordinance is however repealed by the Women's Charter. Section 5 of the Wills Ordinance ought to have been added to the list of enactments repealed by section 167(1) and (2) of the Charter. As it stands, the provisions in the Charter and the Wills Ordinance are inconsistent, but this makes no material difference for the provisions in section 47(1) prevail by virtue of the rule of construction that a later provision prevails over an earlier one when they cannot be reconciled.¹⁹ Married women's rights over the holding and disposing of property has now resulted in their holding almost all property as their "separate" property. Since married women have the same capacity to hold and dispose of property as a man or a feme sole, it is an anomaly to speak of a married woman's separate property. This has been recognised in England by the Law Reform (Married Women and Tortfeasors) Act, 1935 which abolishes the concept of the separate estate, while giving to the wife the same rights

14. S.49(3)(b).

15. S.49(3)(c).

16. 25 & 26 Geo. V, c.30.

17. Cap.

18. Cap. 35.

19. *Halsbury's Laws of England*, 2nd. ed. Vol. 31. section 759(1).

and powers as those of other adults of full capacity. The provisions of the Women's Charter ensures the same result but doesn't abolish the concept of a separate estate. In fact, a married woman is given full power to deal with her property by permitting her to hold and dispose of all her property "as her separate property".²⁰

There is no definition of either "married woman" or "property" in the Charter. "Married Woman" was defined in the now-repealed Married Women's Property Ordinance, 1902 and "immovable property" and "movable property" are defined in section 2(1) of the Interpretation and General Clauses Ordinance.²¹

It is regrettable that this enactment does not attempt to deal with some of the controversial problems concerning property held by the spouses. For instance the husband still lacks a right to sue his wife in tort (*e.g.* trespass) for the protection of his property. This leaves the husband in a disadvantageous position as compared with his wife's right.

If this part of the Ordinance was not almost wholly a re-enactment, it would have been almost unavoidable that some provision should be made as regards the right of the spouses as regards the matrimonial house. Since the decision in *Bendall v. McWhirter*,²² the Common Law has developed sufficiently to give the deserted wife a considerable degree of protection of the matrimonial home, which she is occupying. The view expressed in that case by Denning L.J. that the wife's right is analogous to that of a contractual licensee with an irrevocable authority, capable of enforcement against many persons claiming through the licensor-husband, has found considerable support.²³ Still, however, the position of the wife is far from secure. Secondly, the wife's right to remain in the matrimonial home can be defeated by the rights of third parties, *e.g.* a mortgage, existing at the time she is deserted.²⁴ Further a deserted wife has no protection against a *bona fide* purchaser for value without notice.²⁵ And she has no power to prevent a sale or transfer from her husband to a third party. A provision enabling the wife to restrain the husband from disposing of the property or a provision permitting the registration of the wife's interest would have been appropriate. This would benefit not only the wife but also third parties, who at present may be defeated by the wife's rights of which they had no knowledge when they entered into the transaction with the husband. It is not proposed to discuss at length the problems arising out of the wife's right to the matrimonial home.²⁶ The above discussion has been included only for the purpose of indicating, some of the problems which the Women's Charter has bypassed.

It is strange that a piece of legislation hailed and proclaimed to be a considerable alleviation of the position of women, should at least in matters concerning property rights be content with a combination of meaningless general principles (or rather moral directives), and muted re-enactments of provisions which would have been considered revolutionary only in the late 19th century.

20. S.47(1).

21. Cap. 1.

22. [1952] 2 Q.B. 466.

23. *Barclay's Bank Ltd. v. Bird* [1954] Ch. 274.

24. *Lloyd's Bank v. Oliver's Trustee* [1963] 2 All E.R. 1443.

25. See Bromley, *Family Law*, p. 401 for a fuller account.

26. See Royal Commission on Marriage and Divorce Report (Cmd. 9678) for a fuller report.

MAINTENANCE

These two parts of the Ordinance provide for the maintenance of the wife and children and the enforcement of such orders, by attaching the husbands earnings while they are still in the hands of his employers. Both are in the main re-enactments. Part VII with few exceptions contains the law found in the Married Women and Children (Maintenance) Ordinance. Part VIII is a re-enactment of the Maintenance (Facilities for Enforcement) Ordinance, 1959. Both these are now repealed by section 167(i)(c) and (h). This contribution will be concerned with the few changes introduced by the Women's Charter and those provisions which in the writer's view might have been usefully included in this part of the Act.

The main amendment introduced in this part of the Women's Charter is a widening of the grounds on which a maintenance order can be made. Previously, the only ground was where the husband neglected or refused to maintain his wife *or* child. This provision has been restrained in an altered form of 'neglect to provide reasonable maintenance for the wife *and* the children.' But the consequences of this alteration render the ground narrowed in one respect. Under the old law an application for maintenance could be made when the husband had neglected to maintain either his wife or his child. Under the Women's Charter²⁷ a married woman must show that the husband has neglected to provide for both her and her children. Now a married woman cannot claim if the neglect to maintain extends only to herself or her children. The husband must therefore neglect to maintain both concurrently.²⁸ The only way in which the wife can avoid the disadvantages of this portion is to seek maintenance on one of the other grounds introduced by section 62. By virtue of these provisions a husband is liable if he has been convicted of any offence under Chapter XVI of the Penal Code against the wife or her children,²⁹ has deserted the wife,³⁰ has treated her or any of her children with cruelty,³¹ is a habitual drunkard³² or is living in adultery with another woman.³³ Where the husband has neglected to provide reasonable maintenance for either the wife or the children and therefore no action is possible under (c), it is perhaps possible for the wife to rely on (d) or plead that neglect to maintain amounts to cruelty. But this may involve an extension of the meaning of cruelty in matrimonial law.

Another consequence of having more than one ground upon which the Court may make an order for maintenance, is that such an order can now be made without the husband having neglected to maintain her. For instance, if the husband is living with his wife and maintaining her adequately, she can apply for a maintenance order if he is a habitual drunkard.

However where a man neglects or refuses to maintain his child, legitimate or illegitimate, he is liable to maintain them as the Court rules to be reasonable. The test applied to determine the measure of maintenance for the wife and legitimate children on the one hand and illegitimate children on the other is now the same. The

27. S.62(1)(c).

28. S.62(2). Under this section an application for maintenance may be made where a child has not been maintained. But this does not help a wife.

29. S.62(1)(a).

30. S.62(1)(b).

31. S.62(1)(d).

32. S.62(1)(e).

33. S.62(1)(f).

old rule which limited liability to maintain an illegitimate child to a sum not exceeding \$40 is now abolished.³⁴

Section 62(3) has been altered to give the court wider discretion. Under the Ordinance monthly allowances were payable from the date of the neglect or from such later date as the court directs. Now the matter is solely at the discretion of the Court. Theoretically, therefore it is possible for the Court to order that the allowances be payable from a date prior to the neglect, desertion, or conviction, etc., as the case may be.

Section 4(1) and (2) of the Married Women and Children (Maintenance) Ordinance³⁵ has been omitted from the Women's Charter. Under section 4(1) of that Ordinance, a husband was liable to have a maintenance order enforced against him notwithstanding his offer to maintain on conditions of her living with him, if the Court was satisfied that he was living in adultery or that he has habitually treated his wife with cruelty. The position of the husband living in adultery or guilty of cruelty is unaltered by the deletion because they are both grounds upon which a married woman can serve a maintenance order under section 62(1). But the position as regards the other grounds is now different. Where, for instance under the old law the husband was a habitual drunkard and when faced with a maintenance order agreed to maintain the wife on condition she lived with him, the court was powerless. Now, of course, a maintenance order can be made, despite such offer.

Under section 4(2) of the Ordinance the wife was not entitled to receive any allowance from her husband if she was 'living' in adultery or refused to live with him without sufficient reason. Presumably the omission of this section makes no practical difference for the Common Law position is that a wife committing adultery automatically loses her right to maintenance. At Common Law however it is not necessary to be "living" in adultery, one act of adultery is sufficient.³⁶ It is a curiosity of the Common Law that a guilty wife is not automatically disbarred from alimony *pendente lite* or permanent alimony after a decree of nullity or divorce. The maintenance allowable is at the complete discretion of the Court.³⁷

This discrepancy was investigated in England by the Royal Commission on Marriage and Divorce.³⁸ The majority view³⁹ was that the Court can safely be relied upon to make provision for a guilty spouse only if it would be reasonable to do so in the circumstances. The minority,⁴⁰ while pointing out that at common law the husband's liability to maintain his wife during the marriage ends if she commits adultery, thought "it wrong in principle that a husband or wife should be called upon to maintain a guilty spouse." The minority view was therefore in favour of applying one principle to all guilty wives irrespective of the remedy sought by them.

There is no reason at all why this discrepancy ought to remain in Singapore. In England, the difference is due entirely to historical reasons.

The Charter may well have remedied another drawback in the law. At present, a husband continues to be liable for his wife's necessities even though he regularly pays the amount specified in a maintenance order. The wife loses this right to

34. S.62(2). Section 2(2) of the Married Women and Children (Maintenance) Ordinance (Cap. 44).

35. Cap. 44.

36. *Wright & Webb v. Annandale* [1930] 2 K.B. 8 (C.A.).

37. *Waller v. Waller* [1956] 2 All E.R. 284 (C.A.).

38. Cmd. 9678.

39. Para. 502.

40. Para. 503.

pledge his credit for necessities only when a separation order is made.⁴¹ The right to pledge credit depends on the common law right to maintenance. A maintenance order does not destroy her right but a single act of adultery or desertion puts an end to it. It is however important that the husband should know the extent of his liability when he is living apart from his wife. There is no reason why the wife's authority should continue until a decree of judicial separation or divorce is decreed.

Two changes have been introduced by Part VIII of the Charter. First, there is a welcome extension of the meaning of 'maintenance order' to include an order for the payment of a periodical sum by way of maintenance or alimony to a wife or for the benefit of any child under Part IX. Orders under this part of the Charter may be made by the Court where the husband does not comply with a decree of restitution of conjugal rights, and when granting alimony both *pendente lite* and permanent. Previously attachment of earning orders could only be made with respect to maintenance orders made under the Married Women and Children (Maintenance) Order, which was only concerned with maintenance prior to the dissolution of a marriage; maintenance orders made by a Shariah Court under the Muslims Ordinance;⁴² and when a maintenance order was confirmed by the Court under the Reciprocal Enforcement of Maintenance Order Ordinance.⁴³

The second amendment increases the penalties applied to those who do not comply with the attachment of earnings order and to those who make false declarations under the provisions of this part. The upper limit for fines is raised from \$500 to \$1,000; and a term of imprisonment not exceeding one year, is introduced. Since both the defendant husband and his employee are required to make certain statements,⁴⁴ it follows that they are liable to these increased penalties.

DIVORCE

Part IX of the Ordinance is almost entirely a re-enactment of the Divorce Ordinance. The outstanding change effected is that of the abolition of extra-judicial divorce for all persons to whom the Charter applies. This change is effected by section 166 which applies to all marriages celebrated before the Charter and is worded exactly the same as section 7 which was referred to earlier. This provision has necessarily led to a widening of the grounds upon which the Singapore courts may exercise matrimonial jurisdiction. Thus in section 82, which sets out the grounds upon which the court may exercise matrimonial jurisdiction the jurisdictional grounds have been extended to include marriages which have been registered or are deemed to have been registered under the Charter. This effects a considerable change in the law for under section 166 any marriage solemnized before 2 March, 1961 which is valid under the law, religion, custom or usage under which it was solemnized is deemed to be registered under the Ordinance. Among the marriages which are thus deemed to be registered are undoubtedly many *de facto* polygamous marriages. Nevertheless under section 82 as now worded the court has jurisdiction to grant matrimonial relief in respect of such marriages. Clearly *Hyde v. Hyde* can hardly be any longer regarded as an authority in respect of such marriages. The section, nevertheless requires that the marriage, unless it is registered or deemed to be registered under the Ordinance, be monogamous before the court can exercise jurisdiction. It is a little difficult to see the justification for applying *Hyde v. Hyde* to marriages other than those registered or deemed to be registered under the Ordinance, but not applying to those which are so registered.

41. *Sandilands v. Carus* [1946] 1 All E.R. 874 (C.A.). Since her right depends on status, and the agency is irrevocable even an agreement to the contrary is unlikely to help the husband.

42. Cap. 46.

43. Cap. 19.

44. Under sections 74 and 75(1).

It seems regrettable that the jurisdictional basis of nullity jurisdiction has been retained without amendment. Jurisdiction in nullity is still limited to marriages which have been celebrated in Singapore. The trend of the English decisions has been to remove most of the limitations upon the exercise of nullity jurisdiction, and it is difficult to see the justification for retaining such a limited jurisdictional basis. This is particularly difficult to understand in the case of a void marriage. In such a case the decree is merely declaratory and it is not necessary to secure the invalidity of the marriage. Consider the case of a man who comes to Singapore bringing with him a woman as his wife. He claims that his marriage to her is void. The Singapore courts will refuse to hear his petition for nullity. If, however, unabashed by this failure, he marries again and is either charged with bigamy, or if his second wife petitions for nullity on the ground that her marriage to him is void on the ground that he was already married to his first alleged wife at the time when she married him the Singapore courts will have to do the very thing which the Charter purports to exclude them from doing, namely considering the validity of his first marriage. An acquittal on a charge of bigamy on the ground that the first marriage was invalid and a decree of nullity obtained before the second marriage do not differ very much. Why then prevent the court from hearing a petition for nullity?

Another change effected by the Charter concerns the grounds upon which a wife may petition for divorce. Under the Divorce Ordinance it had been provided that a woman could petition for divorce on the ground that her husband had since the solemnization of the marriage exchanged his profession of Christianity for the profession of some other religion and gone through a form of marriage with another woman. Under the Charter the requirement relating to change of religion has been omitted so that a woman can now obtain a divorce from her husband on the ground that he has contracted a bigamous marriage. Two points arise out of this change. In the first place it is difficult to see why a woman should be entitled to a divorce if her husband has subsequently contracted a bigamous marriage, but a husband should not be able to obtain a divorce on the ground that his wife has contracted a bigamous marriage. Admittedly the point is not of much practical importance since it could only become crucial if the bigamous marriage had not been consummated, for in any case in which it had been consummated either party could obtain a divorce on the ground of adultery. Nevertheless it is strange to find this discrimination between the sexes. The same is true also of the provision that a woman can obtain a divorce on the ground that her husband has been guilty, since the marriage, of rape, sodomy or bestiality. There is no such provision enabling a husband to divorce his wife if she is guilty of sodomy or bestiality. It may be admitted that women are less likely to be guilty of such offences than men, but the principle remains the same.

Returning, however, to the provision regarding bigamous marriages, it is interesting to note that this provision read with the extended divorce jurisdiction of the court will enable every wife whose husband has taken a second wife, except the last woman he has so taken, to obtain a divorce on the ground that since the solemnization of her marriage to him he has gone through a form of marriage with another woman. Section 166 provides that :

Nothing in this Ordinance shall affect the validity of any marriages solemnized under any law, religion, custom or usage prior to the 2nd day of March, 1961.

Such marriages if *de facto* polygamous may remain valid but every wife save the last is now provided with what is virtually an automatic right of divorce.

There have been a few changes in the law relating to nullity. The most important of which is probably the deletion of what was section 14(1)(c) of the Divorce Ordinance. This had provided that a marriage might be annulled on the ground

that "either party was of unsound mind at the time of the marriage". In 1941 the Ordinance had been amended to introduce the additional grounds set out in the Matrimonial Causes Act, 1937. These included the provision that the marriage might be annulled on the ground that;

either party to the marriage was at the time of the marriage of unsound mind or subject to recurrent fits of insanity or epilepsy.

Thus the Ordinance contained two provisions relating to unsoundness of mind. The Charter has removed the earlier provision.

There would appear to be no other significant amendments in Part IX.

OFFENCES AGAINST WOMEN AND GIRLS

This Part of the Ordinance is, in substance a re-enactment of the Protection of Women and Girls Ordinance. The most important change seems to be an increase in the maximum penalties. This apparently reflects a belief in the deterrent power of punishment.

The other interesting innovation is the creation of a new category that of "places of assignation" which are defined as :

any place where communication is established with any woman or girl, either directly or through an intermediary, for any immoral purpose.

Much will depend upon the interpretation of the phrase "immoral purpose" but unless this phrase is very restrictively interpreted many places normally considered quite unobjectionable could be so considered.

Most of the changes in this Part of the Ordinance are either procedural or increase the powers of the authorities in dealing with the offences mentioned therein. The substantive changes are not extensive.

It is rather surprising to find in an Ordinance dealing otherwise almost entirely with Family Law a Part which is solely concerned with the criminal law. Its inclusion was presumably dictated by the idea that the protection of women and girls from the criminal activity of men is appropriate in an Ordinance sub-titled the Women's Charter. One cannot avoid the reflection, however, that the Ordinance would have been more appropriately so entitled if it had conferred upon women a rather larger number of rights, powers and privileges than they already possessed under existing legislation.

It is impossible to contemplate this Ordinance with much satisfaction. Apart from checking polygamy and extra-judicial divorce it has achieved remarkably little. By re-enacting so much from the earlier Ordinances it has retained many of the anomalies and inconsistencies found therein which are simply derived from English law. It seems a pity that the opportunity was not taken to re-think the whole problem of family law in Singapore. To call these Ordinances the Woman's Charter seems rather pretentious. In view of the fact that it seems to raise more problems than it solves it might, more appropriately be called the Lawyer's Charter.

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