

CHAPTER 57

LEGITIMACY

Ordinances Nos. 3 of 1932, 43 of 1960, 37 of 1966. Act No. 14 of 1975
 AN ACT TO AMEND THE LAW RELATING TO CHILDREN BORN OUT
 OF WEDLOCK

[25th February, 1932.]

Short title

1. This Act may be cited as the Legitimacy Act.

Interpretation

2. In this Act, unless the context otherwise requires—
 “legitimated person” means a person legitimated by this Act;
 “date of legitimation” means the date of the marriage leading to the legitimation or, where the marriage occurred before the commencement of this Act;
 “disposition” means an assurance of any interest in property by any instrument whether *inter vivos* or by will;
 “intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his property, real or personal;
 “void marriage” means a marriage, not being voidable only, in respect of which the Supreme Court has or had jurisdiction to grant a decree of nullity, or would have or would have had such jurisdiction if the parties were domiciled in Fiji. (*Inserted by 43 of 1960, s. 2.*)

Legitimation by subsequent marriage of parents

3.—(1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage resident in Fiji, render that person, if living, legitimate from the commencement of this Act or from the date of the marriage whichever last happens.

(2) The legitimation of a person under this Act does not enable him or his spouse, children or remoter issue to take any interest in real or personal property save as is hereinafter in this Act expressly provided.

(3) The provisions contained in the Schedule shall have effect with respect to the re-registration of the births of legitimated persons.

(*Section amended by 43 of 1960, s. 3.*)

Legitimation of children of void marriages in certain circumstances

4.—(1) Subject to the provisions of this section, the child of a void marriage, whether born before or after the commencement of this Act, shall be treated as the legitimate child of his parents if at the time of the act of intercourse resulting in the birth (or at the time of the celebration of the marriage if later) both or either of the parties reasonably believed that the marriage was valid.

(2) This section applies, and applies only, where the father of the child was

domiciled in Fiji at the time of the birth or, if he died before the birth, was so domiciled immediately before his death.

(3) Notwithstanding the provisions of section 12, this section may affect the succession to a dignity or title of honour of persons, and so far as it affects such succession or devolution of property settled therewith, applies only to children born after the commencement of this Act.

(4) This section does not affect any rights under the intestacy of a person who died before the commencement of this Act, and does not (except so far as may be necessary to avoid the severance from a dignity or title of honour of property settled therewith) affect the operation or construction of any disposition coming into operation before the commencement of this Act.

(5) Any reference in this section to property settled with a dignity or title of honour is a reference to any real or personal property, or any interest in such property, which is limited by any disposition (whether subject to a preceding limitation or charge or not) in such a way as to devolve with the dignity or title as nearly as the law permits, whether or not the disposition contains any express reference to the dignity or title and whether or not the property or some interest in the property may in some event become severed from it.

(Section inserted by 43 of 1960, s. 4.)

Declarations of legitimacy of legitimated persons

5.—(1) A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may, whether domiciled in Fiji or elsewhere and whether a natural born British subject or not, apply by petition to the Supreme Court praying the Court for a decree declaring that the petitioner is the legitimate child of his parents, and the Supreme Court shall have jurisdiction to hear and determine such applications and to make such decree declaratory of the legitimacy or illegitimacy of such person as to the Court may seem just, and such decree shall be binding to all intents and purposes on Her Majesty and on all persons whomsoever.

(2) Every petition under this section shall be accompanied by such affidavit verifying the same and of the absence of collusion as the Court may by any general rule direct.

(3) In all proceedings under this section the Court shall have full power to award and enforce payment of costs to any persons cited, whether such persons shall or shall not oppose the declaration applied for, in case the said Court shall deem it reasonable that such costs should be paid.

(4) A copy of every petition under this section and of the affidavit accompanying the same shall, one month at least previously to the presentation or 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.

(5) Where any application is made under this section to the said Court such persons or person, if any, besides the Attorney-General as the Court shall think fit shall, subject to the rules made under this section, be cited to such proceedings or otherwise summoned in such manner as the Court shall direct, and may be permitted to become parties to the proceedings and oppose the application.

(6) The decree of the said Court shall not in any case prejudice any person unless such person has been cited or made a party to the proceedings or is the heir-at-law or next of kin or other real or personal representative of or derives title

under or through a person so cited or made a party, nor shall such sentence or decree of the Court prejudice any person if subsequently proved to have been obtained by fraud or collusion.

(7) No proceeding to be had under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

(8) The Chief Justice may make rules for carrying the provisions of this section into effect. Rules made under this section shall not have any force or effect until they have been approved by Parliament, and when so approved shall have the same force and effect as if they formed part of this Act.

Rights of legitimated persons, etc., to take interests in property

6.—(1) Subject to the provisions of this Act, a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest—

- (a) in the estate of an interstate dying after the date of legitimation;
- (b) under any disposition coming into operation after the date of legitimation;
- (c) by descent under an entailed interest created after the date of legitimation,

in like manner as if the legitimated person had been born legitimate.

(2) Where the right to any property, real or personal, depends on the relative seniority of the children of any person, and those children include one or more legitimated persons, the legitimated person or persons shall rank as if he or they had been born on the day when he or they became legitimated by virtue of this Act, and if more than one such legitimated person became legitimated at the same time they shall rank as between themselves in order of seniority.

(3) This section applies, only if and so far as a contrary intention is not expressed in the disposition and shall have effect subject to the terms of the disposition and to the provisions therein contained.

Succession on intestacy of legitimated persons and their issue

7. Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of all or any of his real or personal property, the same persons shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

Application to illegitimate persons dying before marriage of parents

8. Where an illegitimate person dies after the commencement of this Act and before the marriage of his parents leaving any spouse, children or remoter issue living at the date of such marriage, then, if that person would, if living at the time of the marriage of his parents, have become a legitimated person, the provisions of this Act with respect to the taking of interests in property by or in succession to the spouse, children and remoter issue of a legitimated person (including those relating to the rate of estate duty) shall apply as if such person as aforesaid had been a legitimated person and the date of the marriage of his parents had been the date of legitimation.

Personal rights and obligations of legitimated persons

9. A legitimated person shall have the same rights and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate and, subject to the provisions of this Act.

the provisions of any Act relating to claims for damages, compensation, allowance, benefit or otherwise by or in respect of a legitimate child shall apply in like manner in the case of a legitimated person.

Provisions as to persons legitimated by extraneous law

10.—(1) Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, and the father of the illegitimate person was or is at the time of the marriage domiciled in a country other than Fiji by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person if living shall, in Fiji, be recognized as having been so legitimated from the commencement of this Act or from the date of the marriage, whichever last happens, notwithstanding that his father was not at the time of the birth of such person domiciled in a country in which legitimation by subsequent marriage was permitted by law.

(2) All the provisions of this Act relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remoter issue of a legitimated person (including those relating to the rate of estate duty) shall apply in the case of a person recognized as having been legitimated under this section or who would, had he survived the marriage of his parents, have been so recognized, and accordingly this Act shall have effect as if references therein to a legitimated person included a person so recognized as having been legitimated.

(3) For the purposes of this section the expression "country" includes any country or territory of the Commonwealth as well as a foreign country.

(Subsection amended by 37 of 1966, s. 44.)

Right of illegitimate child and mother of illegitimate child to succeed on intestacy of the other

11.—(1) Where after the commencement of this Act the mother of an illegitimate child, such child not being a legitimated person, dies intestate as respects all or any of her real or personal property and does not leave any legitimate issue her surviving, the illegitimate child or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

(2) Where after the commencement of this Act an illegitimate child, not being a legitimated person, dies intestate in respect of all or any of his real or personal property, his mother, if surviving, shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent.

(3) This section does not apply to or affect the right of any person to take by purchase or descent any entailed interest in real or personal property.

Savings

12.—(1) Nothing in this Act shall affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title.

(2) Nothing in this Act shall affect the operation or construction of any disposition coming into operation before the commencement of this Act or affect any rights under the intestacy of a person dying before the commencement of this Act.

THE SCHEDULE

(Section 3)

REGISTRATION OF BIRTHS OF LEGITIMATED PERSONS

1. The Registrar-General may, on production of such evidence as appears to him to be satisfactory, authorise at any time the re-registration of the birth of a legitimated person whose birth is already registered under any written law relating to the registration of births, and such re-registration shall be effected in such manner and at such place as the Registrar-General may by regulations prescribe:

(Amended by 14 of 1975 s. 11)

Provided that the Registrar-General shall not authorise the re-registration of the birth of any such person in any case where information with a view to obtaining such re-registration is not furnished to him by both parents, unless—

- (a) the name of a person acknowledging himself to be the father of the legitimated person has been entered in the register in pursuance of section 16 of the Births, Deaths and Marriages Registration Act; or
- (b) the paternity of the legitimated person has been established by an affiliation order or otherwise by a decree of a court of competent jurisdiction; or
- (c) a declaration of the legitimacy of the legitimated person has been made by the Supreme Court under section 5.

(Cap. 49)

2. It shall be the duty of the parents of a legitimated person, or, in cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, of the surviving parent, within the time hereinafter specified, to furnish to the Registrar-General information with a view to obtaining the re-registration of the birth of that person; that is to say—

- (a) if the marriage took place before the commencement of this Act, within six months of such commencement;
- (b) if the marriage takes place after the commencement of this Act, within three months after the date of the marriage.

3. Where the parents, or either of them, fail to furnish the necessary information within the time limited for the purpose, the Registrar-General may at any time after the expiration of that time require the parents of a person whom he believes to have been legitimated by virtue of this Act, or either of them, to give him such information concerning the matter as he may consider necessary, verified in such manner as he may direct, and for that purpose to attend personally either at his office or at any other place appointed by him within such time, not being less than seven days after the receipt of the notice, as may be specified in the notice.

4. The failure of the parents or either of them to furnish information as required by this Schedule in respect of any legitimated person shall not affect the legitimation of that person.

5. No fee for re-registration under this Schedule shall be charged if the necessary information for the purpose is furnished within the time above specified;

but in any other case there shall be charged in respect of such re-registration such fees, not exceeding in the aggregate one dollar, as may be prescribed by regulations under this Schedule.

6. This Schedule shall be construed as one with the Births, Deaths and Marriages Registration Act. *(Cap. 49)*

Controlled by Ministry of the Attorney-General