SUPPLIED FOR THE PUBLIC SERVICE



CHAPTER 50.

An Act to amend the law of Scotland with regard to divorce and dissolution of marriage. A.D. 1938.

[29th July 1938.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Additional grounds of divorce.

1.—(1) Without prejudice to the power of the Court to grant decree of divorce on the ground of adultery, it shall be competent for the Court to grant decree of divorce on any of the following grounds, that is to say, that the defender—

(*a*) has wilfully and without reasonable cause deserted the pursuer and persisted in such desertion for a period of not less than three years; or

(*b*) is incurably insane; or

(*c*) has been guilty of such cruelty towards the pursuer as would justify, according to the law and practice existing at the passing of this Act, the granting of a decree of separation a mensa et thoro; or

(*d*) has since the date of the marriage been guilty of sodomy or bestiality:

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Provided that, where the ground of action is incurable insanity, the Court shall not be bound to grant a decree of divorce if in the opinion of the Court the pursuer has during the marriage been guilty of such wilful neglect or misconduct as has conduced to the insanity.

(2) For the purposes of paragraph (*d*) of the foregoing subsection, the defender's guilt of sodomy or bestiality shall be held to be proved if an extract of a conviction therefor in any part of the United Kingdom is produced, and the application of such conviction to the defender is admitted or proved.

Effects of divorce on property rights.

2.—(1) A decree of divorce granted on any of the grounds specified in the foregoing section, except that specified in paragraph (*b*) thereof, shall have the like effect as regards the estates of the parties and their rights and interests in and to any property, whether under marriage contract or otherwise, as if the decree had been granted on the ground of the defender's adultery.

(2) Where a decree of divorce has been granted on the ground specified in paragraph (*b*) of the foregoing section, the Court may make such order, if any, as having regard to the respective means of the parties it shall think fit, for the payment by the pursuer, or out of any estate belonging to him or held for his behoof, or, in the event of his predeceasing the defender, by his executors, of a capital sum or an annual or periodical allowance to or for behoof of the defender and any children of the marriage.

(3) Any order made under the last foregoing subsection may be varied or recalled by a subsequent order.

Special provisions as to divorce on ground of insanity.

3. The Court shall appoint a curator ad litem to the defender in any action of divorce on the ground of incurable insanity, and it shall be the duty of the General Board of Control for Scotland, on the request of the Court, to furnish to it a report as to the probability of recovery in the case of the defender to any such action.

Divorce proceedings after grant of judicial separation.

4.—(1) A person shall not be prevented from bringing an action of divorce, or the Court from pronouncing a decree of divorce, by reason only that the pursuer has at any time been granted a decree of separation a mensa et thoro, upon the same or substantially the

same facts as those proved in support of the action of divorce.

(2) In any such action of divorce, the Court may treat the decree of separation as sufficient proof of the adultery or cruelty in respect of which the decree was granted, but the Court shall not pronounce a decree of divorce without administering the oath of calumny to the pursuer and receiving evidence from him.

Proceedings for decree of presumption of death and dissolution of marriage.

5.—(1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the Court craving a decree of dissolution of the marriage on the ground of the presumed death of the other party, and the Court, if satisfied that such reasonable grounds exist, may grant such a decree.

(2) In any proceedings on a petition presented under the last foregoing subsection, the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead unless the contrary is proved.

Interpretation.

6.—(1) In this Act the expression "the Court" means the Court of Session.

(2) In any action of divorce on the ground of incurable insanity, the defender shall not be held to be incurably insane, unless it is proved that he is, and has been for a period of five years continuously immediately preceding the raising of the action, under care and treatment as an insane person, and where such care and treatment as aforesaid is proved, the defender shall, unless the contrary is shown to the satisfaction of the Court, be presumed to be incurably insane.

(3) A person shall be deemed to be under care and treatment as an insane person—

(*a*) while any order or warrant for his detention or custody as a lunatic under the Lunacy (Scotland) Acts, 1857 to 1919, the Army Act, the Air Force Act, the Naval Discipline Act, the Naval Enlistment Act, 1884, or the Yarmouth Naval Hospital Act, 1931, is in force;

47 & 48 Vict. c. 46. 21 & 22 Geo. 5. c. 15.

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(*b*) while he is under care and treatment (other than treatment as a voluntary patient) within the meaning of section one hundred and seventy-six of the Supreme Court of Judicature (Consolidation) Act, 1925, as amended by the Matrimonial Causes Act, 1937;

15 & 16 Geo. 5. c. 49. 1 Edw. 8. & 1 Geo. 6. c. 57.

and not otherwise.

Repeal. 24 & 25 Vict. c. 86.

7. The Act of the Parliament of Scotland, 1573, cap. 55, and section eleven of the Conjugal Rights (Scotland) Amendment Act, 1861, which enactments relate to divorce for desertion, are hereby repealed.

Citation.

8. This Act may be cited as the Divorce (Scotland) Act, 1938.

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Short title and extent.

2.—(1) This Act may be cited as the War Department Property Act, 1938.

(2) It is hereby declared that this Act extends to Northern Ireland.

(3) His Majesty may by Order in Council direct that the foregoing provisions of this Act shall extend, subject however to such exceptions, adaptations and modifications, if any, as may be specified in the Order, to the Channel Islands or the Isle of Man.

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