SUPPLIED FOR THE PUBLIC SERVICE



CHAPTER 35.

An Act to explain and amend the Indian and Colonial Divorce Jurisdiction Act, 1926.

[10th July 1940.]

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 :—

Removal of doubts as to effect of Matrimonial Causes Act, 1937, on divorce jurisdiction under Indian and Colonial Divorce Jurisdiction Act, 1926. 16 & 17 Geo. 5. c. 40.

1.—(1) For the removal of doubts it is hereby declared that in considering, for the purposes of the Indian and Colonial Divorce Jurisdiction Act, 1926 (hereafter in this Act referred to as "the principal Act")—

(*a*) what are the grounds on which a decree for the dissolution of any marriage may be granted by the High Court in England according to the law for the time being in force in England; and

(*b*) what are the principles and rules on which, in the exercise of its jurisdiction to make decrees for the dissolution of a marriage, and, as incidental thereto, to make orders as to damages, alimony or maintenance, custody of children and costs, the High Court in England for the time being acts and gives relief,

the amendments of the law relating to divorce effected by sections one to four, six and eight to ten of the Matrimonial Causes Act, 1937, have to be taken into account, and that references in the principal Act to a

1 Edw. 8. & 1 Geo. 6. c. 57.

decree for the dissolution of a marriage include references to such a decree of presumption of death and of dissolution of a marriage as is authorised by the said section eight.

(2) A decree for the dissolution of a marriage granted under the principal Act before the appointed day shall not be invalid by reason only that regard has not been had to the provisions of section one of the Matrimonial Causes Act, 1937, and where before the appointed day a petition under the principal Act has been dismissed which would not have been dismissed if the principal Act had been construed in the manner specified in subsection (1) of this section, the dismissal of the petition shall not prejudice the bringing of a new petition upon the same, or substantially the same, facts.

Amendment of certain conditions precedent to the granting of relief.

2.—(1) For proviso (*c*) to subsection (1) of section one of the principal Act there shall, as from the appointed day, be substituted the following proviso—

"(*c*) no such court shall grant any relief under this Act except in cases where the petitioner resided in India at the time of presenting the petition and the place where the parties to the marriage last resided together was in India, or make any decree of dissolution of marriage on the ground of adultery, cruelty or any crime except where the marriage was solemnized in India or the adultery, cruelty, or crime complained of was committed in India."

(2) For the removal of doubts it is hereby declared that the provision in the said proviso (*c*) as originally enacted that no court shall make any decree of dissolution of marriage except where either the marriage was solemnized in India or the adultery or crime was committed in India did not operate so as to prevent the making of such a decree on grounds other than adultery or crime where the marriage was solemnized in India; and where before the appointed day a petition for the dissolution of a marriage has been dismissed on the ground that the said provision did so operate, the dismissal of the petition shall not prejudice the bringing of a new petition upon the same, or substantially the same, facts.

Jurisdiction under the principal Act in case of husband's change of domicile.

3. Where a wife has been deserted by her husband, and the husband was immediately before the desertion domiciled in England or Scotland but has changed his domicile since the desertion, a High Court in India shall, as from the appointed day, have the same jurisdiction under the principal Act as it would have if the change had not taken place; but, in any such case, the power conferred on the Court by proviso (*d*) to subsection (1) of section one of the principal Act to require the petitioner to show that she is prevented from taking proceedings in the court of the country in which she is domiciled shall include power to require her to show that she is similarly prevented from taking proceedings in the High Court in England, or, as the case may be, the Court of Session.

Registration in England and Scotland of decrees and orders under principal Act.

4.—(1) The following subsection shall, as from the appointed day, be substituted for subsection (2) of section one of the principal Act:—

"(2) Where a decree or order is made under this section, the proper officer of the court making the decree or order shall transmit a certified copy thereof—

(*a*) if the parties to the marriage are domiciled in England, for registration in the High Court in England;

(*b*) if the parties to the marriage are domiciled in Scotland, for registration in the books of council and session,

and upon receipt of a copy of a decree or order purporting to be so certified and transmitted, the decree or order shall be registered accordingly."

(2) In subsection (3) of the said section one for the words down to "have the same force and effect, and" there shall, as from the appointed day, be substituted the words "Where a decree or order has been registered in accordance with the last preceding subsection", and at the end of the said subsection (3), the following words shall, as from the appointed day, be inserted—

"and

(iii) nothing in this subsection shall be construed as preventing the taking of any proceedings in

India under or in relation to any decree or order under subsection (1) of this section at any time after the making thereof."

Application to Burma and Colonies.

5. The foregoing provisions of this Act shall, with the necessary adaptations, apply in relation—

(*a*) to Burma;

(*b*) to any part of His Majesty's dominions to which the provisions of section one of the principal Act apply by virtue of an Order in Council under section two thereof, whenever made,

as they apply in relation to India.

Areas for which the various High Courts in India are to act.

6.—(1) A High Court in India on which jurisdiction is conferred by subsection (1) of section one of the principal Act shall, on and after the appointed day, exercise that jurisdiction if, and only if, the parties to the marriage last resided together, or at the date of the presentation of the petition each reside, in the appropriate area.

(2) In this section, the expression " the appropriate area " means, in relation to any court, the area with reference to which that court is for the time being a High Court for the purposes of the Indian law known as the Indian Divorce Act, 1869, or such other area as the Governor-General may from time to time by public notification specify, in relation to that court, as the appropriate area for the purposes of this section.

(3) The functions of the Governor-General under this section shall be deemed, for the purposes of the Government of India Act, 1935, to be included among the functions which he is, by or under that Act, required to exercise in his discretion, and so much of section eighteen A of the Interpretation Act, 1889, as provides that the expression " Governor-General " shall, in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation of India, mean the Governor-General in Council, shall not apply to this section.

26 Geo. 5. & 1 Edw. 8. c. 2.

52 & 53 Vict. c. 63.