CHAPTER 100

Law Reform (Miscellaneous Provisions) Act, 1949

ARRANGEMENT OF SECTIONS

Section
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An Act to amend the law relating to divorce and other matrimonial proceedings, the admissibility of evidence as to access, the charge and payment of percentage under the Lunacy Act, 1890, and to wards of court; and for purposes connected therewith.

[16th December 1949.]

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:—

Extension of jurisdiction of High Court in certain matrimonial proceedings.

1.—(1) The High Court in England shall have jurisdiction in proceedings by a wife for divorce, notwithstanding that the husband is not domiciled in England, if—

(*a*) the wife is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings; and

(*b*) the husband is not domiciled in any other part of the United Kingdom or in the Channel Islands or the Isle of Man.

(2) Without prejudice to any jurisdiction exercisable by the court apart from this section, the foregoing provisions of this section shall apply to proceedings for nullity of marriage as they apply to proceedings for divorce.

(3) In proceedings under subsection (1) of section eight of the Matrimonial Causes Act, 1937 (which enables the court to make a decree of presumption of death and dissolution of marriage) the court shall have jurisdiction in the following cases only, that is to say—

(*a*) in any proceedings, if the petitioner is domiciled in England;

(*b*) in proceedings by the wife, if she is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings;

and in determining for the purposes of this subsection whether a woman is domiciled in England, her husband shall be treated as having died immediately after the last occasion on which she knew or had reason to believe him to be living.

(4) In any proceedings in which the court has jurisdiction by virtue of this section, of section thirteen of the Matrimonial Causes Act, 1937, or of section one of the Matrimonial Causes (War Marriages) Act, 1944, the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in England at the time of the proceedings.

Extension of jurisdiction of Court of Session in certain consistorial proceedings.

2.—(1) The Court of Session shall have jurisdiction in proceedings by a wife for divorce notwithstanding that the husband is not domiciled in Scotland, if—

(*a*) the wife is resident in Scotland and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings; and

(*b*) the husband is not domiciled in any other part of the United Kingdom, or in the Channel Islands or the Isle of Man.

(2) Without prejudice to any jurisdiction exercisable by the Court of Session apart from this section, the foregoing provisions of this section shall apply to proceedings for nullity of marriage as they apply to proceedings for divorce.

(3) In proceedings under subsection (1) of section five of the Divorce (Scotland) Act, 1938 (which enables the Court of Session to grant a decree of dissolution of marriage on the ground of presumed death of one party) the Court shall have jurisdiction in the following cases only, that is to say—

(*a*) in any proceedings, if the petitioner is domiciled in Scotland;

(*b*) in proceedings by the wife, if she is resident in Scotland and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings;

and in determining for the purposes of this subsection whether a woman is domiciled in Scotland, her husband shall be treated as having died immediately after the last occasion on which she knew or had reason to believe him to be living.

(4) In any proceedings in which the Court of Session has jurisdiction by virtue of this section or of section two of the

Matrimonial Causes (War Marriages) Act, 1944, the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in Scotland at the time of the proceedings.

Addition to definition of "care and treatment" in relation to insanity.

3. Notwithstanding anything in section three of the Matrimonial Causes Act, 1937, a person shall be deemed for the purposes of section one hundred and seventy-six of the Supreme Court of Judicature (Consolidation) Act, 1925, to be under care and treatment—

(*a*) while detained in pursuance of any order or warrant for his detention or custody as a lunatic under the Lunacy (Scotland) Acts, 1857 to 1919;

(*b*) while detained in pursuance of any order for his detention or treatment as a person of unsound mind or a person suffering from mental illness made under any law for the time being in force in Northern Ireland, the Isle of Man or any of the Channel Islands (including any such law relating to criminal lunatics); or

(*c*) while receiving mental treatment as a voluntary patient under the Mental Treatment Act, 1930, or under any such law as is mentioned in paragraph (*b*) of this section, being treatment which follows without any interval a period during which he was detained as mentioned in paragraph (*a*) or paragraph (*b*) of this section.

Legitimacy of children of voidable marriages.

4.—(1) Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, on the date of the decree shall be deemed to be their legitimate child notwithstanding the annulment.

(2) Subsection (2) of section seven of the Matrimonial Causes Act, 1937, is hereby repealed.

Additional power of court to make order for maintenance.

5.—(1) Where a husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or the infant children of the marriage, the High Court in England, if it would have jurisdiction to entertain proceedings by the wife for judicial separation, may, on the application of the wife, order the husband to make to her such periodical payments as may be just; and the order may be enforced in the same manner as an order for alimony in proceedings for judicial separation.

(2) Where the court makes an order under this section for periodical payments it may, if it thinks fit, order that the husband shall, to the satisfaction of the court, secure to the wife the

periodical payments, and for that purpose may direct that a proper deed or instrument to be executed by all necessary parties shall be settled and approved by one of the conveyancing counsel of the court.

Extension of power to discharge or amend orders for maintenance.

6.—(1) The power of the court under section fourteen of the Administration of Justice (Miscellaneous Provisions) Act, 1938 (which provides for the discharge, variation or suspension of certain orders) shall be exercisable—

(*a*) in relation to any order made under section five of this Act; and

(*b*) in relation to any order for the securing of a gross or annual sum made under subsection (1) of section one hundred and ninety of the Supreme Court of Judicature (Consolidation) Act, 1925,

in like manner as it is exercisable in relation to the orders mentioned in the said section fourteen:

Provided that in relation to an order made before the commencement of this Act under subsection (1) of the said section one hundred and ninety, the powers conferred by this section shall not be exercised unless the court is satisfied that the case is one of exceptional hardship which cannot be met by the discharge, variation or suspension of any order made under subsection (2) of that section.

(2) The powers exercisable by the court under the said section fourteen as amended by this section in relation to any order shall be exercisable also in relation to any deed or other instrument executed in pursuance of the order.

(3) References in this section to an order made under subsection (1) or subsection (2) of section one hundred and ninety of the Supreme Court of Judicature (Consolidation) Act, 1925, shall be construed as including references to any order which has effect as if it were so made.

Evidence of access.

7.—(1) Notwithstanding any rule of law, the evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

(2) Notwithstanding anything in this section or any rule of law, a husband or wife shall not be compellable in any proceedings to give evidence of the matters aforesaid.

(3) Section four of the Adoption of Children Act, 1949, shall cease to have effect.

Amendment of s. 148 of 53 & 54 Vict. c. 5.

8. The following proviso shall be inserted at the end of subsection (3) of section one hundred and forty-eight of the Lunacy Act, 1890 (which provides that the percentage payable in pro-

ceedings relating to a patient and his estate shall be charged upon his estate and be payable thereout), that is to say—

"Provided that neither the charge created by this subsection nor any payment made by virtue thereof shall cause any interest of the patient in any property to fail or determine or to be prevented from recommencing."

Wards of court.

9.—(1) Subject to the provisions of this section, no infant shall be made a ward of court except by virtue of an order to that effect made by the court.

(2) Where application is made for such an order in respect of an infant, the infant shall become a ward of court on the making of the application, but shall cease to be a ward of court at the expiration of such period as may be prescribed by rules of court unless within that period an order has been made in accordance with the application.

(3) The court may, either upon an application in that behalf or without such an application, order that any infant who is for the time being a ward of court shall cease to be a ward of court.

Provisions as to Northern Ireland.

10. It is hereby declared that the Parliament of Northern Ireland has and always has had power to make laws corresponding with the provisions of sections one and two of this Act and section thirteen of the Matrimonial Causes Act, 1937.

Short title and extent.

11.—(1) This Act may be cited as the Law Reform (Miscellaneous Provisions) Act, 1949.

(2) This Act (except section ten) shall not extend to Northern Ireland.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Lunacy Act, 1890	53 & 54 Vict. c. 5.
Supreme Court of Judicature (Consolidation) Act, 1925	15 & 16 Geo. 5. c. 49.
Mental Treatment Act, 1930	20 & 21 Geo. 5. c. 23.
Matrimonial Causes Act, 1937	1 Edw. 8 & 1 Geo. 6. c. 57.
Divorce (Scotland) Act, 1938	1 & 2 Geo. 6. c. 50.
Administration of Justice (Miscellaneous Provisions) Act, 1938	1 & 2 Geo. 6. c. 63.
Matrimonial Causes (War Marriages) Act, 1944	7 & 8 Geo. 6. c. 43.
Adoption of Children Act, 1949	12, 13 & 14 Geo. 6. c. 98.