CHAPTER 57.

An Act to amend the law relating to marriage and divorce. [30th July 1937.]

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WHEREAS it is expedient for the true support of marriage, the protection of children, the removal of hardship, the reduction of illicit unions and unseemly litigation, the relief of conscience among the clergy, and the restoration of due respect for the law, that the Acts relating to marriage and divorce be amended:

Be it therefore 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:—

Restriction on petitions for divorce during first three years after marriage.

1.—(1) No petition for divorce shall be presented to the High Court unless at the date of the presentation of the petition three years have passed since the date of the marriage:

Provided that a judge of the High Court may, upon application being made to him in accordance with rules of court, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition, that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree nisi, do so subject to the condition

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that no application to make the decree absolute shall be made until after the expiration of three years from the date of the marriage, or may dismiss the petition, without prejudice to any petition which may be brought after the expiration of the said three years upon the same, or substantially the same, facts as those proved in support of the petition so dismissed

(2) In determining any application under this section for leave to present a petition before the expiration of three years from the date of the marriage, the judge shall have regard to the interests of any children of the marriage and to the question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said three years.

(3) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which have occurred before the expiration of three years from the date of the marriage.

Grounds of petition for divorce. 15 & 16 Geo. 5. c. 49.

2. The following section shall be substituted for section one hundred and seventy-six of the Supreme Court of Judicature (Consolidation) Act, 1925 (hereinafter called "the principal Act"):—

"176. A petition for divorce may be presented to the High Court (in this part of this Act referred to as 'the court') either by the husband or the wife on the ground that the respondent—

(*a*) has since the celebration of the marriage committed adultery; or

(*b*) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or

(*c*) has since the celebration of the marriage treated the petitioner with cruelty; or

(*d*) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition;

and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality."

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Definition of "care and treatment" in relation to insanity.

3. For the purposes of section one hundred and seventy-six of the principal Act, as amended by this Act, a person of unsound mind shall be deemed to be under care and treatment—

(*a*) while he is detained in pursuance of any order or inquisition under the Lunacy and Mental Treatment Acts, 1890 to 1930, or of any order or warrant under the Army Act, the Air Force Act, the Naval Discipline Act, the Naval Enlistment Act, 1884, or the Yarmouth Naval Hospital Act, 1931, or is being detained as a criminal lunatic or in pursuance of an order made under the Criminal Lunatics Act, 1884; 47 & 48 Vict. c. 46. 21 & 22 Geo. 5. c. 15. 47 & 48 Vict. c. 64.

(*b*) while he is receiving treatment as a voluntary patient under the Mental Treatment Act, 1930, being treatment which follows without any interval a period of such detention as aforesaid; 20 & 21 Geo. 5. c. 23.

and not otherwise.

Duty of court on presentation of petition for divorce.

4. The following section shall be substituted for section one hundred and seventy-eight of the principal Act:—

"178.—(1) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties and also to inquire into any countercharge which is made against the petitioner.

(2) If the court is satisfied on the evidence that—

(i) the case for the petition has been proved; and

(ii) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to, or connived at, or condoned the adultery, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty; and

(iii) the petition is not presented or prosecuted in collusion with the respondent or either of the respondents;

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the court shall pronounce a decree of divorce, but if the court is not satisfied with respect to any of the aforesaid matters, it shall dismiss the petition:

Provided that the court shall not be bound to pronounce a decree of divorce and may dismiss the petition if it finds that the petitioner has during the marriage been guilty of adultery or if, in the opinion of the court, the petitioner has been guilty—

(*a*) of unreasonable delay in presenting or prosecuting the petition; or

(*b*) of cruelty towards the other party to the marriage; or

(*c*) where the ground of the petition is adultery or cruelty, of having without reasonable excuse deserted, or having without reasonable excuse wilfully separated himself or herself from, the other party before the adultery or cruelty complained of; or

(*d*) where the ground of the petition is adultery or unsoundness of mind or desertion, of such wilful neglect or misconduct as has conduced to the adultery or unsoundness of mind or desertion."

Decree of judicial separation.

5. The following subsections shall be substituted for subsections (1) and (2) of section one hundred and eighty-five of the principal Act:—

"(1) A petition for judicial separation may be presented to the court either by the husband or the wife on any grounds on which a petition for divorce might have been presented, or on the ground of failure to comply with a decree for restitution of conjugal rights or on any ground on which a decree for divorce a mensa et thoro might have been pronounced immediately before the commencement of the Matrimonial Causes Act, 1857, and the foregoing provisions of this Part of this Act relating to the duty of the court on the presentation of a petition for divorce, and the circumstances in which such a petition shall or may be granted or dismissed, shall apply in like manner to a petition for judicial separation.

20 & 21 Vict. c. 85.

(2) Where the court in accordance with the said provisions grants a decree of judicial separation, it shall no longer be obligatory for the petitioner to cohabit with the respondent."

Divorce proceedings after grant of judicial separation or other relief.

6.—(1) A person shall not be prevented from presenting a petition for divorce, or the court from pronouncing a decree of divorce, by reason only that the petitioner has at any time been granted a judicial separation or an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, upon the same or substantially the same facts as those proved in support of the petition for divorce.

(2) On any such petition for divorce, the court may treat the decree of judicial separation or the said order as sufficient proof of the adultery, desertion, or other ground on which it was granted, but the court shall not pronounce a decree of divorce without receiving evidence from the petitioner.

(3) For the purposes of any such petition for divorce, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation or an order under the said Acts having the effect of such a decree shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce.

New grounds for decree of nullity.

7.—(1) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall be voidable on the ground—

(*a*) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or

(*b*) that either party to the marriage was at the time of the marriage of unsound mind or a mental defective within the meaning of the Mental Deficiency Acts, 1913 to 1927, or subject to recurrent fits of insanity or epilepsy; or

(*c*) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or

(*d*) that the respondent was at the time of the marriage pregnant by some person other than the petitioner:

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Provided that, in the cases specified in paragraphs (*b*) (*c*) and (*d*) of this subsection, the court shall not grant a decree unless it is satisfied—

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings were instituted within a year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

(2) Any child born of a marriage avoided pursuant to paragraphs (*b*) or (*c*) of the last foregoing subsection shall be a legitimate child of the parties thereto notwithstanding that the marriage is so avoided.

(3) 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.

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

8.—(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 to have it presumed that the other party is dead and to have the marriage dissolved, and the court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage.

(2) In any such proceedings 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 until the contrary is proved.

(3) Sections one hundred and eighty-one to one hundred and eighty-four inclusive of the principal Act shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

Prevention of delay in application for decree absolute.

9. Section one hundred and eighty-three of the principal Act shall be amended by adding thereto a subsection as follows:—

"(3) Where a decree nisi has been obtained, whether before or after the passing of this Act, and

no application for the decree to be made absolute has been made by the party who obtained the decree, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom the decree nisi has been granted shall be at liberty to apply to the court and the court shall, on such application, have power to make the decree absolute, reverse the decree nisi, require further inquiry or otherwise deal with the case as the court thinks fit."

Amendments as to maintenance, settlement of property, &c.

10.—(1) When a petition for divorce or nullity of marriage has been presented, proceedings under section one hundred and ninety, section one hundred and ninety-one, section one hundred and ninety-two or subsection (3) of section one hundred and ninety-three of the principal Act (which, respectively, confer power on the court to order the provision of alimony, the settlement of the wife's property, the application of property which is the subject of marriage settlements, and the securing of money for the benefit of the children) may, subject to and in accordance with rules of court, be commenced at any time after the presentation of the petition:

Provided that no order under any of the said sections or under the said subsection (other than an interim order for the payment of alimony under section one hundred and ninety) shall be made unless and until a decree nisi has been pronounced, and no such order, save in so far as it relates to the preparation, execution, or approval of a deed or instrument and no settlement made in pursuance of any such order, shall take effect unless and until the decree is made absolute.

(2) The said section one hundred and ninety shall apply in any case where a petition for divorce or judicial separation is presented by the wife on the ground of her husband's insanity as if for the references to the husband there were substituted references to the wife, and for the references to the wife there were substituted references to the husband, and in any such case and in any case where a petition for divorce, nullity, or judicial separation, is presented by the husband on the ground of his wife's insanity or mental deficiency, the court may order the payments of alimony or maintenance under the said section to be made to such persons having charge of the respondent as the court may direct.

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(3) In subsection (1) of the said section one hundred and ninety-one there shall be inserted after the word "adultery" the words "desertion, or cruelty."

(4) The following subsection shall be added to section one hundred and ninety-three of the principal Act:—

"(3) The court may, if it thinks fit, on any decree of divorce or nullity of marriage, order the husband, or (in the case of a petition for divorce by a wife on the ground of her husband's insanity) order the wife, to secure for the benefit of the children such gross sum of money or annual sum of money as the court may deem reasonable, and the court may for that purpose order that it shall be referred to one of the conveyancing counsel of the court to settle and approve a proper deed or instrument to be executed by all necessary parties:

Provided that the term for which any sum of money is secured for the benefit of a child shall not extend beyond the date when the child will attain twenty-one years of age."

25 & 26 Geo. 5. c. 2.

(5) Section three of the Supreme Court of Judicature (Amendment) Act, 1935, shall cease to have effect.

Extension of jurisdiction of courts of summary jurisdiction in matrimonial matters. 58 & 59 Vict. c. 39.

11.—(1) Among the grounds on which a married woman may apply to a court of summary jurisdiction under the Summary Jurisdiction (Married Women) Act, 1895, for an order or orders under that Act there shall be included the ground that her husband has been guilty of adultery.

(2) A husband shall be entitled to apply to a court of summary jurisdiction for an order on the ground that his wife has been guilty of adultery, and the powers of the court under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, shall include power to make, upon any such application, any one or more of the orders set out in section five of the Licensing Act, 1902.

2 Edw. 7. c. 28.

(3) On any application made by virtue of this section, the court shall not make an order unless it is satisfied that the applicant has not condoned or connived at, or by his or her wilful neglect or misconduct conduced to, the adultery, and that the application is

not made or prosecuted in collusion with the other party to the marriage or any person with whom it is alleged that adultery has been committed.

Relief for clergy of Church of England and of Church in Wales.

12. The following subsection shall be substituted for subsections (2) and (3) of section one hundred and eighty-four of the principal Act :—

"(2) No clergyman of the Church of England or of the Church in Wales shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on any ground and whose former husband or wife is still living or to permit the marriage of any such person to be solemnized in the Church or Chapel of which he is the minister"

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

13. Where a wife has been deserted by her husband, or where her husband has been deported from the United Kingdom under any law for the time being in force relating to the deportation of aliens, and the husband was immediately before the desertion or deportation domiciled in England and Wales, the court shall have jurisdiction for the purpose of any proceedings under Part VIII of the principal Act, notwithstanding that the husband has changed his domicile since the desertion or deportation.

Short title, construction, commencement and application.

14.—(1) This Act may be cited as the Matrimonial Causes Act, 1937, and shall be construed as one with Part VIII of the principal Act, and this Act and that Part may be cited together as the Matrimonial Causes Acts, 1925 and 1937.

(2) This Act shall come into operation on the first day of January, nineteen hundred and thirty-eight.

(3) This Act shall not apply to Scotland or Northern Ireland.

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