CHAPTER 35

An Act to enable the power of the court in matrimonial proceedings to order alimony, maintenance or the securing of a sum of money to be exercised at any time after a decree; to provide for the setting aside of dispositions of property made for the purpose of reducing the assets available for satisfying such an order; to enable the court after the death of a party to a marriage which has been dissolved or annulled to make provision out of his estate in favour of the other party; and to extend the powers of the court under section seventeen of the Married Women's Property Act, 1882.

[7th July, 1958]

BE it enacted by the Queen'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:—

Time for making orders for maintenance or alimony.

1.—(1) Any power of the court, under the enactments mentioned in the next following subsection, to make an order on a decree for divorce, nullity of marriage or judicial separation shall (subject as mentioned in subsection (3) of this section) be exercisable either on pronouncing such a decree or at any time thereafter.

14 Geo. 6 c. 25.

(2) The said enactments are the following provisions of the Matrimonial Causes Act, 1950 (in this Act referred to as " the Act of 1950 "), that is to say,—

(*a*) subsections (2) and (3) of section nineteen (whereby, on a decree for divorce or nullity of marriage, the court may order the husband to make a secured provision for the wife or to pay her a monthly or weekly sum), and those subsections as extended by subsection (4) of that

section (whereby the like provision or payments may be ordered for a husband where a petition for divorce is presented by his wife on the ground of his insanity);

(*b*) subsection (3) of section twenty-six (whereby, on a decree of divorce or nullity of marriage, the court may order the husband, and, on a decree of divorce made on the ground of the husband's insanity, may order the wife, to make a secured provision for the benefit of the children); and

(*c*) subsection (2) of section twenty (whereby, on a decree for judicial separation, a husband may be ordered to pay alimony to his wife), and that subsection as extended by subsection (3) of that section (whereby the like payments may be ordered to be made by a wife where a petition for judicial separation is presented by her on the ground of her husband's insanity).

(3) In relation to the provisions of the Act of 1950 specified in paragraphs (*a*) and (*b*) of the last preceding subsection,—

(*a*) any reference in subsection (1) of this section to a decree shall be construed as a reference to a decree nisi, and the reference to any time after a decree shall be construed as a reference to any such time whether before or after the decree has been made absolute; but

(*b*) nothing in subsection (1) of this section shall be construed as affecting the provisions of section twenty-nine of the Act of 1950 as to the commencement of proceedings for an order under the provisions specified in those paragraphs or as to the making or effect of such an order.

(4) In accordance with the preceding provisions of this section, the provisions of the Act of 1950 specified in the Schedule to this Act shall have effect subject to the amendments specified in that Schedule.

(5) Nothing in this section, or in any amendment made by this section in any of the enactments referred to therein, shall be construed as requiring the court, in determining any application for an order under any of those enactments, to disregard any delay in making or proceeding with the application.

Avoidance of disposition made to defeat wife's claim for financial relief.

2.—(1) Where under any of the relevant provisions of the Act of 1950 proceedings are brought against a man (in this section referred to as "the husband") by his wife or former wife (in this section referred to as "the wife") for financial relief, the wife may make an application under this section to the court in those proceedings with respect to any disposition made by the husband within the period of three years ending with the date of the application under this section, whether the disposition was made before or after the commencement of those proceedings.

(2) Subject to the following provisions of this section, if on an application by the wife under this section it appears to the court—

(*a*) that the disposition to which the application relates was made by the husband with the intention of defeating the wife's claim for financial relief, and

(*b*) that, if the disposition were set aside, financial relief, or, as the case may be, different financial relief, would be granted to her,

the court may by order set aside the disposition and may give such consequential directions (including directions requiring the making of any payment or the disposal of any property) as the court thinks fit for the purpose of giving effect to the order under this subsection.

(3) The power conferred by the last preceding subsection shall not be exercisable in respect of a disposition made for valuable consideration to a person who, at the time of the disposition, acted in relation thereto in good faith and without notice of any intention on the part of the husband to defeat the wife's claim for financial relief.

(4) Where an application is made under this section with respect to a disposition, not being a disposition falling within the last preceding subsection, and the court is satisfied that the disposition would (apart from this section) have the consequence of defeating the wife's claim for financial relief, the disposition shall be presumed, unless the contrary is proved, to have been made by the husband with the intention of defeating the wife's claim for financial relief.

(5) The preceding provisions of this section shall have effect for enabling an application to the High Court to be made thereunder by a woman after she has obtained an order against her husband or former husband under any of the relevant provisions of the Act of 1950 as they apply for enabling an application to be made in proceedings for such an order:

Provided that for the purposes of the application of those provisions in accordance with this subsection—

(*a*) subsection (2) of this section shall apply as if paragraph (*b*) thereof were omitted, and

(*b*) the presumption mentioned in the last preceding subsection shall apply (in the case of a disposition not falling within subsection (3) of this section) if the court is satisfied that in consequence of the disposition the wife's claim for financial relief was defeated.

(6) The provisions of this section do not apply to a disposition made before the commencement of this Act.

(7) In this section any reference to defeating the wife's claim for financial relief is a reference to preventing financial relief from being granted to her, or reducing the amount of any such relief which might be so granted, or frustrating or impeding the enforcement of any order which might be made on her application under any of the relevant provisions of the Act of 1950.

(8) In this section—

"financial relief" means relief under any of the relevant provisions of the Act of 1950;

"the relevant provisions of the Act of 1950" means the following provisions of that Act, that is to say,—

(*a*) subsections (2) and (3) of section nineteen;

(*b*) subsection (2) of section twenty;

(*c*) subsections (2) to (4) of section twenty-two (whereby, in connection with a decree for restitution of conjugal rights, a husband may be ordered to pay alimony to his wife, or to make or secure periodical payments to her); and

(*d*) section twenty-three (which confers additional power on the court to make orders for maintenance);

"valuable consideration" does not include marriage.

Provision for former wife out of estate of deceased former husband.

3.—(1) Where after the commencement of this Act a person dies domiciled in England and is survived by a former wife of his who has not re-married, the former wife may apply to the High Court for an order under this section on the ground that the deceased has not made reasonable provision for her maintenance after his death:

Provided that an application under this section shall not be made except—

(*a*) before the end of the period of six months beginning with the date on which representation in regard to the estate of the deceased is first taken out, or

(*b*) with the permission of the court, after the end of that period but before the administration and distribution of the estate have been completed.

(2) If on an application by a former wife under this section the court is satisfied—

(*a*) that it would have been reasonable for the deceased to make provision for her maintenance, and

(*b*) that the deceased has made no provision, or has not made reasonable provision, for her maintenance,

the court may order that such reasonable provision for her maintenance as the court thinks fit shall be made out of the net estate of the deceased, subject to such conditions or restrictions (if any) as the court may impose.

(3) Where the court makes an order under this section requiring provision to be made for the maintenance of a former wife, the order shall require that provision to be made by way of periodical payments terminating not later than her death and, if she re-marries, not later than her re-marriage:

Provided that if the value of the net estate of the deceased does not exceed five thousand pounds the order may require the provision for her maintenance to be made, wholly or in part, by way of a lump sum payment.

(4) On any application under this section, the court shall have regard—

(*a*) to any past, present or future capital of the applicant and to any income of hers from any source;

(*b*) to her conduct in relation to the deceased and otherwise;

(*c*) to any application made by her during the lifetime of the deceased, under the Act of 1950 or the enactments repealed by that Act, for such an order as is mentioned in subsection (2) or subsection (3) of section nineteen of that Act, and to the order (if any) made on any such application, or (if no such application was made by her, or such an application was made by her and no such order was made thereon) the circumstances appearing to the court to be the reasons why no such application was made, or no such order was made, as the case may be; and

(*d*) to any other matter or thing which, in the circumstances of the case, the court may consider relevant or material in relation to her, to persons interested in the estate of the deceased, or otherwise.

(5) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order under this section, the court shall have regard to the nature of the property representing the net estate of the deceased, and shall not order any such provision to be made as would necessitate a realisation that would be improvident having regard to the interests of the dependants of the deceased, of the applicant, and of the persons who, apart from the order, would be entitled to that property.

(6) In this and the next following section " former wife ", in relation to a deceased person, means a woman whose marriage with him was during his lifetime dissolved or annulled by a decree made under the Act of 1950 or under any of the enactments repealed by that Act, and " net estate " and " dependant " have the same meanings respectively as in the Inheritance (Family Provision) Act, 1938. 1 & 2 Geo. 6. c. 45.

Discharge and variation of orders under s. 3.

4.—(1) Subject to the following provisions of this section, where an order (in this section referred to as " the original order ") has been made under the last preceding section, the High Court, on an application under this section, shall have power by order to discharge or vary the original order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) An application under this section may be made by or on behalf of any of the following persons, that is to say,—

(*a*) the former wife on whose application the original order was made;

(*b*) any other former wife of the deceased;

(*c*) any dependant of the deceased;

(*d*) the trustees of any relevant property;

(*e*) any person who, under the will of the deceased or under the law relating to intestacy, is beneficially interested in any relevant property.

(3) An order under this section varying the original order, or reviving any suspended provision thereof, shall not be made so as to affect any property which, at the time of the application for the order under this section, is not relevant property.

(4) In exercising the powers conferred by this section, the court shall have regard to all the circumstances of the case, including any change in the circumstances to which the court was required to have regard in determining the application for the original order.

(5) In this section " relevant property " means property the income of which, in accordance with the original order or any consequential directions given by the court in connection therewith, is applicable (wholly or in part) for the maintenance of the former wife on whose application the original order was made.

Extension of preceding provisions in favour of husband or former husband.

5.—(1) Subject to the next following subsection, the provisions of section two of this Act shall have effect for enabling an application thereunder to be made by a man with respect to a disposition made by his wife or former wife, as those provisions have effect for enabling an application thereunder to be made by a woman with respect to a disposition made by her husband or former husband.

(2) For the purposes of the application of those provisions in accordance with the preceding subsection—

(*a*) for references to a man and to a wife or former wife there shall be substituted respectively references to a woman and to a husband or former husband, and for references to a woman and to a husband or former husband there shall be substituted respectively references to a man and to a wife or former wife;

(*b*) " the relevant provisions of the Act of 1950 " (instead of having the meaning assigned to it by subsection (8) of section two of this Act) means the following provisions of that Act, that is to say,—

(i) subsections (2) and (3) of section nineteen as extended by subsection (4) of that section,

(ii) subsection (2) of section twenty as extended by subsection (3) of that section,

(iii) subsection (1) of section twenty-four (which, in a case where the court pronounces a decree for divorce or judicial separation by reason of the adultery, desertion or cruelty of the wife, enables the court to order a settlement of property to which she is entitled), and

(iv) subsection (2) of section twenty-four (which enables the court, where a decree for restitution of conjugal rights is made on the application of the husband, to make an order for the settlement of property to which the wife is entitled or for periodical payments in respect of profits or earnings received by her).

(3) The provisions of sections three and four of this Act shall have effect in relation to a former husband of a deceased woman as they have effect in relation to a former wife of a deceased man, as if any reference in those sections to a former wife were a reference to a former husband:

Provided that, for the purposes of those provisions as applied by this subsection, the reference in paragraph (*c*) of subsection (4) of section three of this Act to such an order as is mentioned in subsection (2) or subsection (3) of section nineteen of the Act of 1950 shall be construed as a reference to any such order as could be made either—

(*a*) under the said subsection (2) or subsection (3) as extended by subsection (4) of the said section nineteen, or

(*b*) under subsection (1) of section twenty-four of that Act.

(4) In the last preceding subsection (but without prejudice to the generality of any reference to a former husband in subsection (1) or subsection (2) of this section) " former husband ", in relation to a deceased woman, means a man whose marriage with her was during her lifetime dissolved or annulled by a decree made under the Act of 1950 or under any of the enactments repealed by that Act.

Supplementary provisions as to orders under ss. 3 and 4.

6.—(1) The provisions of sections three and four of this Act shall not render the personal representatives of a deceased person liable for having distributed any part of the estate of the deceased after the end of the period of six months referred to in subsection

(1) of section three of this Act, on the ground that they ought to have taken into account the possibility that the court might permit an application under that section after the end of that period, or that an order under that section might be varied under section four of this Act; but this subsection shall be without prejudice to any power to recover any part of the estate so distributed arising by virtue of the making of an order under section three or section four of this Act.

(2) In considering, under subsection (1) of section three of this Act, the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account, and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

15 & 16 Geo. 5. c. 49.

(3) For the purposes of subsection (1) of section one hundred and sixty-two of the Supreme Court of Judicature (Consolidation) Act, 1925 (which relates to the discretion of the court as to the persons to whom administration is to be granted), a person by whom or on whose behalf an application under section three or section four of this Act is proposed to be made shall be deemed to be a person interested in the estate of the deceased.

(4) Section three of the Inheritance (Family Provision) Act, 1938 (which relates to the effect and form of orders under that Act) shall have effect in relation to orders under sections three and four of this Act as it has effect in relation to orders under that Act.

(5) In this section any reference to any of the provisions of section three or section four of this Act shall be construed as including a reference to those provisions as applied by the last preceding section.

Extension of s. 17 of Married Women's Property Act, 1882. 45 & 46 Vict. c. 75.

7.—(1) Any right of a wife, under section seventeen of the Married Women's Property Act, 1882, to apply to a judge of the High Court or of a county court, in any question between husband and wife as to the title to or possession of property, shall include the right to make such an application where it is claimed by the wife that her husband has had in his possession or under his control—

(*a*) money to which, or to a share of which, she was beneficially entitled (whether by reason that it represented the proceeds of property to which, or to an interest in which, she was beneficially entitled, or for any other reason), or

(*b*) property (other than money) to which, or to an interest in which, she was beneficially entitled,

and that either that money or other property has ceased to be in his possession or under his control or that she does not know whether it is still in his possession or under his control.

(2) Where, on an application made to a judge of the High Court or of a county court under the said section seventeen, as extended by the preceding subsection, the judge is satisfied—

(*a*) that the husband has had in his possession or under his control money or other property as mentioned in paragraph (*a*) or paragraph (*b*) of the preceding subsection, and

(*b*) that he has not made to the wife, in respect of that money or other property, such payment or disposition as would have been appropriate in the circumstances,

the power to make orders under that section shall be extended in accordance with the next following subsection.

(3) Where the last preceding subsection applies, the power to make orders under the said section seventeen shall include power for the judge to order the husband to pay to the wife—

(*a*) in a case falling within paragraph (*a*) of subsection (1) of this section, such sum in respect of the money to which the application relates, or the wife's share thereof, as the case may be, or

(*b*) in a case falling within paragraph (*b*) of the said subsection (1), such sum in respect of the value of the property to which the application relates, or the wife's interest therein, as the case may be,

as the judge may consider appropriate.

(4) Where on an application under the said section seventeen as extended by this section it appears to the judge that there is any property which—

(*a*) represents the whole or part of the money or property in question, and

(*b*) is property in respect of which an order could have been made under that section if an application had been made by the wife thereunder in a question as to the title to or possession of that property,

the judge (either in substitution for or in addition to the making of an order in accordance with the last preceding subsection) may make any order under that section in respect of that property which he could have made on such an application as is mentioned in paragraph (*b*) of this subsection.

(5) The preceding provisions of this section shall have effect in relation to a husband as they have effect in relation to a wife, as if any reference to the husband were a reference to the wife and any reference to the wife were a reference to the husband.

(6) Any power of a judge under the said section seventeen to direct inquiries or give any other directions in relation to an application under that section shall be exercisable in relation to an application made under that section as extended by this section; and the provisos to that section (which relate to appeals and other matters) shall apply in relation to any order made under the said section seventeen as extended by this section as they apply in relation to an order made under that section apart from this section.

(7) For the avoidance of doubt it is hereby declared that any power conferred by the said section seventeen to make orders with respect to any property includes power to order a sale of the property.

Interpretation.

8.—(1) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"disposition" does not include any provision contained in a will, but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise;

"property" means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, and any other right or interest whether in possession or not;

"will" includes a codicil.

(2) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment.

Short title, commencement and extent.

9.—(1) This Act may be cited as the Matrimonial Causes (Property and Maintenance) Act, 1958.

(2) This Act shall come into operation on such day as may be appointed by the Lord Chancellor by an order made by statutory instrument.

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

SCHEDULE

Section 1.

AMENDMENTS OF MATRIMONIAL CAUSES ACT, 1950

In section nineteen, in subsection (2), for the words " On any decree for divorce or nullity of marriage " there shall be substituted the words " Subject to the provisions of section twenty-nine of this Act, on pronouncing a decree nisi for divorce or nullity of marriage or at any time thereafter, whether before or after the decree has been made absolute "; and in subsection (3), for the words " On any decree for divorce or nullity of marriage ", there shall be substituted the words " Subject to the provisions of the said section twenty-nine, on pronouncing a decree nisi for divorce or nullity of marriage or at any time thereafter, whether before or after the decree has been made absolute ".

In section twenty, in subsection (2), for the words " On any decree " there shall be substituted the words " On or at any time after a decree ".

In section twenty-six, in subsection (3), for the words " On any decree of divorce or nullity of marriage ", there shall be substituted the words " Subject to the provisions of section twenty-nine of this Act, on pronouncing a decree nisi of divorce or nullity of marriage or at any time thereafter, whether before or after the decree has been made absolute ", and for the words " on a decree of divorce " there shall be substituted the words " where the decree is a decree of divorce and is ".

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