

Matrimonial Causes (Amendment) Bill, 1923.

EXPLANATORY NOTE.

THE object of this Bill is to make insanity a ground of divorce ; to provide that the failure to comply with a decree for restitution of conjugal rights shall not be a ground for divorce ; to give the Court a discretionary power to grant a divorce to persons who have been judicially separated for three years ; and to make certain general amendments in the Principal Act.

Clause 2 of the Bill adds certain additional definitions which are necessary to give effect to the amendments proposed by the Bill, and makes insanity a ground of divorce, subject to the provision of certain safeguards to ensure the adequate protection of the interests of the insane respondent.

Paragraph (d) of this clause provides for the insertion in the Principal Act of a new section, 16A, by which a decree for dissolution may be granted after a judicial separation.

Clause 3 amends section 11 of the Principal Act so as to provide that the refusal to comply with a decree for restitution of conjugal rights shall not be a ground for divorce.

Clause 4 contains general amendments in the Principal Act. The more important of the proposed amendments are :—

Paragraph (h) : Power to grant alimony in a suit for nullity of marriage.

Paragraph (i) : Power to assess costs so as to save the expense of taxation.

Paragraphs (o), (p), (q), (r) : Providing for a jury of four persons in substitution for a jury of twelve persons.

Paragraphs (t) and (u) : Abolishing the right now given by section 90 of the Principal Act to attach a person for non-payment of costs.

Paragraph (v) : Providing that general rules shall be made by not less than three judges instead of by a single judge as at present ; enlarging the rule-making power ; and providing for the delegation to the registrar of certain powers which can now only be exercised by the Court, including the hearing of suits in which no appearance has been entered.

Clause 5 provides that the amendment in the law made by clause 3 of the Bill shall not apply to petitions presented before the passing of the Bill.

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1923.

A BILL

To provide that insanity shall in certain cases be a ground for divorce; to repeal the provisions under which failure to comply with a decree for the restitution of conjugal rights is a ground for a divorce; to amend the Matrimonial Causes Act, 1899, in these and certain other respects; and for purposes connected therewith.

[MR. BAVIN;—

, 1923.]

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BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

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Short title.

1. This Act shall be construed with the Matrimonial Causes Act, 1899, herein called the Principal Act, and may be cited as the "Matrimonial Causes (Amendment) Act, 1923."

Amendment of Principal Act (Insanity).
Sec. 3.

2. The Principal Act is amended as follows :— 10

(a) By inserting in section three, before the definition of the word "Prescribed," the following definitions :—

" 'Hospital for the insane' means any hospital for the insane, hospital for the criminal insane, or licensed house within the meaning of the Lunacy Act, 1898. 15

" 'Insane person' means any insane person or insane patient within the meaning of the Lunacy Act, 1898. 20

" 'Matrimonial offence' means any ground upon which relief can be granted by the court " ;

Sec. 18.

(b) by adding at the end of section thirteen the following paragraph :— 25

(f) that his wife is an insane person at the date of the presentation of the petition, and is at such date detained in a hospital for the insane, and has been detained in such a hospital for a continuous period of five years, or for periods aggregating not less than five years within seven years immediately preceding the presentation of the petition, and is not likely to recover her sanity ; 30 35

Insanity as a ground of relief.
cf. N.Z., 1908 No. 50, s. 21 (1) (f).
W.A., 1912 No. 7, s. 2 (d).
Vic. No. 3,049 (1920), s. 3.

Sec. 16.

(c) by adding at the end of section sixteen the following paragraph :—

(g) that her husband is an insane person at the date of the presentation of the petition, and is at such date detained in a hospital for the insane, and has been 40 been

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5 been detained in such a hospital for a continuous period of five years, or for periods aggregating not less than five years within seven years immediately preceding the presentation of the petition, and is not likely to recover his sanity ;

(d) by inserting after section sixteen the following Secs. 16A and 16B. new headings and sections :—

10 *On petition by husband or wife.*

15 16A. (1) The court may, in its discretion, Decree for dissolution after judicial separation. on the petition of a spouse in whose favour or against whom a decree of judicial separation has been made, when the decree is then in full force and effect and has continued in full force and effect continuously for three years and upwards prior to the presentation of the petition, pronounce a decree of dissolution of marriage between the parties, and on the hearing of the petition and in making the decree, and in dealing with all matters arising out of the petition, the court shall, subject to the provisions of this section, have the same powers as if the petition had been presented under section thirteen or section sixteen of this Act.

20 (2) If on the hearing of the petition it shall appear that after the decree of judicial separation was made the respondent has bona fide offered to return to cohabitation and that the offer has been declined by the petitioner without just cause or excuse the court may refuse to dissolve the marriage.

25 *Special provisions when insanity a ground.*

30 16B. (1) Where a ground of a petition for Crown Solicitor to act for insane respondent and medical evidence required. dissolution of marriage or judicial separation is the insanity of the respondent, the petition shall be served upon the Crown Solicitor.

(2)

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of. N.Z. 1907
No. 78, s. 4.
Vic. 1920
No. 3,049,
s. 3 (2).

(2) The Crown Solicitor may thereupon enter an appearance on behalf of the respondent to the petition, and shall in any case be served with notice of all subsequent proceedings in the suit, and may take such steps as he may think proper on behalf of the respondent in regard to the suit and to all matters and questions arising in the suit. 5

(3) The court may upon such terms as it may deem just allow any relative of the respondent to intervene and to be made a party respondent to the suit, and such person so allowed to intervene shall be served with notice of all subsequent proceedings in the suit, and shall have the same rights and powers in reference thereto as if he had been the original respondent to the suit. 15

(4) Before pronouncing the decree the court shall hear the oral testimony of at least two legally qualified medical practitioners appointed by the court, one of whom shall be a medical officer of the hospital for the insane in which the respondent is detained, as to the mental condition of the respondent and as to the likelihood of the recovery of sanity by the respondent ; 25

Sec. 20.

(e) by the addition at the end of subsection one of section twenty of the following words: "or the insanity of the respondent";

Secs. 96, 97.

(f) by inserting the following sections next after section ninety-five :—

Decree on ground of insanity.

96. A decree made upon the ground of the insanity of the respondent shall not relieve the petitioner from any obligation to support the respondent or to pay such sums to the Master in Lunacy for the support of the respondent as may be ordered under the provisions of the Lunacy Act, 1898, or any Act amending the same. 35

- 5 97. If a wife respondent to any decree made on the ground of insanity shall subsequently recover her sanity the making of the decree shall not relieve the petitioner from the obligation to support the respondent. Such obligation shall continue notwithstanding the decree and may be enforced by the court at any time on motion by the respondent.
- 10 **3.** The Principal Act is further amended—
- (a) By omitting from subsection one of section eleven—
- 15 (i) the words “for dissolution of marriage or” where first occurring;
- (ii) the words “a decree nisi for the dissolution of the marriage or”; and
- (iii) the word “three” and by inserting in lieu thereof the word “two”;
- (b) by omitting subsection two of the same section.
- 20 **4.** The Principal Act is further amended as follows:—
- (a) by omitting from sections eighteen and nineteen respectively the words “under sections twelve, fourteen or fifteen” and substituting therefor the words “for the dissolution of a marriage”;
- 25 (b) by omitting from section eighteen the word “adultery” wherever occurring, and substituting therefor the words “matrimonial offence”;
- 30 (c) by omitting from subsection two of section nineteen the word “adultery” where it first occurs and substituting therefor the words “a matrimonial offence”; and by omitting from the same subsection the word “adultery” where it secondly and thirdly occurs and substituting therefor the words “matrimonial offence”;
- 35 (d) by omitting subsection one of section twenty-four and substituting therefor the following subsection:—
- 40 (1) Where the husband presents a petition for dissolution of marriage he shall make the alleged

Obligation to support respondent.

Amendment of Principal Act, s. 11. (Restitution.)

Amendment of Principal Act (General). Secs. 18, 19.

Sec. 18.

Sec. 19.

Sec. 24.

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alleged adulterer a co-respondent to the petition, and where the husband sets up in his answer a cross-claim for relief on the ground of his wife's adultery he shall make the alleged adulterer a respondent to the suit, unless on special grounds to be allowed by the court he is excused from so doing ;

Sec. 25. (e) by omitting section twenty-five and substituting therefor the following section :—

25. In a suit for dissolution of marriage if the respondent opposes the suit upon any ground upon which he or she might have instituted a suit for dissolution of marriage the court may on the application of the respondent give such relief as the respondent would have been entitled to if he or she had presented a petition seeking such relief ;

Sec. 26. (f) by omitting in subsection one of section twenty-six the words "in relation to a petition for dissolution of marriage" and substituting therefor the words "in relation to any petition or other proceeding" ;

Sec. 29. (g) by inserting in section twenty-nine after the words "twenty-one" the words "twenty-two and twenty-three" ;

Sec. 44A. (h) by inserting the following sub-heading and section after section forty-four :—

In suits for nullity of marriage.

Alimony. 44A. In a suit for nullity of marriage the court may make any order for alimony which it deems just.

Sec. 47. (i) by omitting section forty-seven, and substituting therefor the following section :—

47. (1) The court may make any order as to the costs of any proceedings under this Act which it deems just, and except in the case of proceedings on appeal may order payment of costs as between solicitor and client.

- (2) The court may by consent of all parties interested assess the costs of any proceedings, and in the case of interlocutory proceedings may do so without the consent of the parties, and the costs so assessed shall be recoverable from the person ordered to pay the same in the same manner as if they had been duly taxed and certified by the taxing officer;
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- (k) by inserting in section forty-eight after the word "co-respondent" the words "or in a petition by the wife there is a cross-claim by the husband for relief on the ground of his wife's adultery"; Sec. 48.
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- (l) by omitting in paragraph (c) of subsection two of section sixty the words "by petition for the purpose" and substituting therefor the words "in the manner prescribed"; Sec. 60.
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- (m) by inserting in subsection one of section sixty-five after the words "nullity of marriage" the words "restitution of conjugal rights"; Sec. 65.
- 20
- (n) by omitting section sixty-seven, and substituting therefor the following section:—
- 25
67. No decree for the dissolution of her marriage shall be granted to any wife, except as provided in section sixteen, unless it is proved to the satisfaction of the court that at the time of the institution of the suit her husband was domiciled in New South Wales, and every decree for dissolving the marriage shall state that such proof has been given;
- 30
- (o) by omitting in subsection one of section seventy-three the word "forty-eight" and substituting therefor the word "twelve"; and by omitting in subsection two of the same section the word "six" and substituting therefor the word "two"; Sec. 73.
- 35
- (p) by omitting in subsection three of section seventy-four the words "twelve" and "six" and substituting therefor respectively the words "four" and "two"; Sec. 74.
- 40
- (q)

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Sec. 75. (q) by omitting in subsection one of section seventy-five the word "six" and substituting therefor the word "two"; and by omitting in subsection five of the same section the word "twelve" and substituting therefor the word "four"; 5

Sec. 81. (r) by omitting in subsection one of section eighty-one the words "on circuit";

Sec. 81A. (s) by inserting after section eighty-one the following section:—

Evidence upon trial of issues may be used subsequently. 81A. Any evidence which has been taken 10 upon the trial of any issues in any suit may be used as evidence in any subsequent proceedings in such suit.

Sec. 88. (t) by omitting in subsection one of section eighty-eight the words "or costs"; 15

Sec. 90. (u) by omitting section ninety and substituting therefor the following section:—
90. (1) The court may enforce by attachment any order made by it for payment of any sum due in respect of alimony or the maintenance 20 of children, or may in the exercise of its discretion refuse to do so.

(2) No person adjudicated bankrupt in whose statement of affairs all sums due in respect of such alimony or maintenance are 25 included shall remain imprisoned under such writ during a longer period than twelve months;

Sec. 91. (v) by omitting section ninety-one and substituting therefor the following section:—

91. (1) The judges of the Supreme Court, 30 or any three of them, may make general rules—

(a) for regulating the pleading, practice, and procedure of the court, and may by such rules amend, vary, or dispense with any provisions of this Act regulating such 35 pleading, practice, or procedure;

(b) for fixing the amount of all fees and allowances to officers of the court and solicitors in respect of proceedings under this Act; 40

(c)

5 (c) for enabling persons to sue in the court in forma pauperis, and for regulating the exercise by the registrar of the jurisdiction and powers conferred upon or delegated to the registrar under this Act, and the right of appeal from the registrar ;

10 (d) generally as to all matters necessary or expedient for giving effect to the provisions of this Act.

15 (2) The judges of the Supreme Court or any three of them may by rules of court made in that behalf delegate to the registrar power to do such things and transact such business and to exercise any such authority and jurisdiction as is now done, transacted or exercised by the court except in respect of the hearing of suits in which an appearance is entered or in respect of matters relating to the liberty of the subject :

20 Provided that the registrar shall, where any party interested so desires, and may in case of doubt or difficulty refer any matter to the court :

25 Provided also that the court may direct any matter in which an order has been made by the registrar to be re-argued before the court upon giving a direction to that effect within the prescribed time after such order has been made by the registrar.

30 (3) A copy of every such rule shall be laid before both Houses of Parliament within one month from the making thereof if Parliament be then sitting, or if Parliament be not then sitting within one month after the commencement of the next ensuing session ;

35 (w) by inserting at the end of section ninety-Sec. 94. four the following paragraph :—

40 (h) to exercise the jurisdiction delegated to him under this Act.

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Retrospec-
tive operation
of Act.

5. This Act shall not extend or apply to any petition presented before the passing of this Act praying for a decree for dissolution of marriage by reason of non-compliance with a decree for restitution of conjugal rights, but shall extend to and be applicable to all other cases in which any such petition is presented, whether the decree for restitution of conjugal rights has been made before or after the passing of this Act. 5
