

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1936.

A BILL

To amend the Matrimonial Causes Act, 1899, in certain respects, and for purposes connected therewith.

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:—

1. (1) This Act may be cited as the "Matrimonial Causes (Amendment) Act, 1936." Short title and citation.

(2) This Act shall be read and construed with the Matrimonial Causes Act, 1899, as amended by subsequent Acts, which Act as so amended is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Matrimonial Causes Act, 1899-1936.

2. The Principal Act is amended—

- (a) (i) by inserting in subsection two of section twenty-four after the word "marriage" the words "or for judicial separation";
- (ii) by omitting from subsection three of the same section the word "either" and by inserting in lieu thereof the word "any";

Amendment of Act No. 14, 1899.

Sec. 24. (Respondents in suits for judicial separation.)

- (b) by inserting in section three before the definition of "The Court" the following new definition:—

Sec. 3. (Interpretation.)

"Children" or "children of the marriage" or "children of the petitioner and respondent" include a child adopted under the Child Welfare Act, 1923, or any Act amending or replacing the same, by a husband and wife or by either of them during the marriage.

- (c) by omitting Part VIII and by inserting in lieu thereof the following new Part:—

Substituted Part VIII.

PART VIII.

ALIMONY.

39. Upon any petition for dissolution of marriage, for judicial separation, for restitution of conjugal rights, or for nullity of marriage, the court may make any order pendente lite which it thinks proper for the maintenance of the wife.

Orders pendente lite.

40. (1) On or within a reasonable time after any decree for dissolution of a marriage, for a judicial separation, for restitution of conjugal rights, or for nullity of marriage, the court may make any order which it thinks proper for the maintenance of the wife, and may make an order in favour of a guilty wife.

Maintenance cf. South Aust. No. 1946, 1929, s. 32.

(2).

(2) The court may order that the husband shall, to the satisfaction of the court or the registrar, secure to the wife such sum or sums of money as may be ordered to be paid for her maintenance.

41. (1) The court in exercising its powers under this Part or under Part III shall have regard to the means and conduct of the parties, and to the ability of the husband to comply with the order, and may—

Powers of court.
cf. South Aust. No. 1946, 1929, s. 33.

- (a) order that any necessary deed or instrument should be executed, and that such documents of title should be produced, or such other things be done as are necessary to enable an order to be effectively carried out, or to provide security for the due performance of any order;
- (b) order that payments should be made to the wife or to a trustee on her behalf, to be approved by the court;
- (c) impose terms and conditions and suspend any final decree or decree nisi until compliance with an order under this Part or under Part III;
- (d) from time to time discharge or modify any order under this Part or under Part III, or suspend its operation wholly or in part, and either until further order or until a fixed time or the happening of some future event;
- (e) revive any order wholly or in part;
- (f) increase or decrease the amount payable under any order;
- (g) discharge or from time to time vary or modify any order for security or direct a different, or additional security to be given;

(h)

- (h) remove any trustee appointed, and appoint a new trustee where such course seems desirable;
- (i) make any other order (whether of the same nature as those mentioned in the preceding paragraphs or in Part III or not, and whether or not it is in accordance with the practice prior to the commencement of the Matrimonial Causes (Amendment) Act, 1936) which it thinks is necessary to do justice;
- (j) deal with any two or more of the matters mentioned in this section or in Part III in the same order;
- (k) direct the execution of any supplemental deed or instrument varying the terms of any deed or instrument executed in pursuance of any prior order.

42. The court in determining applications under this Part may consider the registrar's report of the result of his examination of witnesses.

Reports of registrar. cf. 56 Vic. No. 36, s. 11.

43. The court may exercise the powers conferred on it by this Part in any suit, proceeding or petition pending at the commencement of the Matrimonial Causes (Amendment) Act, 1936, as well as in any suit, proceeding or petition commenced after such commencement.

Application of Part.

For the purposes of this section a suit, proceeding or petition shall be regarded as pending at such commencement, although prior thereto a final decree had been pronounced therein.

- (d) by inserting in Part IX next after section fifty-one the following new section:—

New s. 51A.

51A. A party or anyone acting in collusion with a party may be ordered to pay the costs of any other party or of a bona fide purchaser of and incidental to any deed, conveyance, instrument, agreement, or sale, the subject-matter of

Costs.

of

of an application under Part XII of this Act and of the setting aside or restraining thereof under the powers conferred by that Part.

- (e) by inserting at the end of section fifty-six the following new subsection:—

Sec. 56.
New sub-sec. (2).
(What dispositions are deemed settlements.)

- (2) Any disposition of real or personal property—

- (a) made, prior to and in contemplation of marriage, to or for the benefit of the parties to the marriage or either of them; or
- (b) made, during the marriage, to or for the benefit of the parties to the marriage; or
- (c) made, during the marriage, by one of the parties to the marriage to or for the benefit of the other party,

shall be deemed to be a settlement made on the parties within the meaning of this section.

This subsection shall extend to a disposition of real or personal property made before as well as as to one made after the commencement of the Matrimonial Causes (Amendment) Act, 1936.

- (f) (i) by omitting from subsection one of section fifty-eight the words “respondent husband or wife in order to defeat the claim of the petitioner” and by inserting in lieu thereof the words “party to a suit, proceeding, or petition under this Act in order to defeat an existing or anticipated order”;
- (ii) by omitting from the same subsection the words “application of the petitioner” and by inserting in lieu thereof the words “application of any party to the suit, proceeding, or petition”;
- (iii) by omitting subsection four of the same section;

Sec. 58 (1).
(Setting aside deeds, &c.)

(g)

(g) by omitting from subsection one of section fifty-nine the words "a petitioner's claim" and by inserting in lieu thereof the words "an existing or anticipated order";

Sec. 59 (1).
(Sales may be restrained.)

(h) by inserting next after section seventy-nine the following new section:—

New s. 79A.

79A. (1) Where a question is raised as to the adultery of a wife in any case to which this section applies, a husband or wife may give evidence, and any statement or admission by a husband or wife may be received in evidence notwithstanding that such evidence, statement, or admission may prove or tend to prove that a child is not the issue of the marriage between such husband and wife.

Evidence of access or non-access.

(2) This section applies to any proceedings under this Act, the Deserted Wives and Children Act, 1901-1931, or the Child Welfare Act, 1923, or any Act amending or replacing that Act, whether instituted before or after the passing of the Matrimonial Causes (Amendment Act, 1936.

(3) The evidence shall be admissible for the purposes of the proceedings in which it is so received, and for no other purpose.

(4) Nothing in this section shall render inadmissible any evidence of access or non-access in any case in which apart from this section the evidence is admissible.

(i) by inserting next after section eighty-one the following new section:—

New s. 81A.

81A. In any proceedings for nullity of marriage evidence on the question of sexual incapacity shall be heard in camera unless in any case the judge is satisfied that, in the interests of justice, any such evidence ought to be heard in open court.

Certain evidence in nullity suits to be heard in camera.
25 Geo. V, c. 2, s. 4.

(j)

- (j) (i) by omitting from section one the matter under the heading "Part VIII.—Alimony" and by inserting in lieu thereof the following matter:—"Maintenance—ss. 39, 40; Powers of Court—s. 41; Reports of registrar—s. 42; Application of Part—s. 43"; Sec. 1.
(Consequential.)
- (ii) by omitting from the same section the figures "51" and by inserting in lieu thereof the figures and letter "51A"; (Correc-
tions.)
- (iii) by omitting from the same section the figures "79" and by inserting in lieu thereof the figures and letter "81A";
- (iv) by omitting from the same section the figures "80" and by inserting in lieu thereof the figures "82";
- (v) by omitting from the same section the figures "81" and by inserting in lieu thereof the figures "83";
- (vi) by omitting from the same section the figures "82" and by inserting in lieu thereof the figures "84";
- (vii) by omitting from the same section the figures "83" and by inserting in lieu thereof the figures "85";
- (viii) by omitting from the same section the figures "84" and by inserting in lieu thereof the figures "86";
- (ix) by omitting from the same section the figures "85" and by inserting in lieu thereof the figures "87";
- (x) by omitting from the same section the figures "86" and by inserting in lieu thereof the figures "88";
- (xi) by omitting from the same section the figures "87, 88" and by inserting in lieu thereof the figures "89, 90, 90A";
- (xii) by omitting from the same section the figures "89-93" and by inserting in lieu thereof the figures "91-95."

3. (1) The Principal Act is further amended—

Further amendment of Act No. 14, 1899. Sec. 73. (Summoning of jurors.)

- (a) (i) by omitting from subsection one of section seventy-three the word "twelve" and by inserting in lieu thereof the word "sixteen";
- (ii) by inserting in subsection two of the same section after the word "co-respondent" wherever occurring the words "or intervener";
- (iii) by inserting at the end of the same section the following new subsection:—

(3) In this section and in section seventy-five of this Act "intervener" means a person who has been made a respondent by direction of the court given pursuant to subsection two of section twenty-four of this Act.

- (b) by inserting in section seventy-five after the word "co-respondent" wherever occurring the words "or intervener";
- (c) by omitting from section seventy-six the word "now" and by inserting in lieu thereof the words "that for the time being."

Sec. 75. (Impaneling jury.) Sec. 76. (General law and practice to apply.)

(2) The District Courts Act, 1912-1936, is amended—

Amendment of Act No. 23, 1912. Sec. 136. (Summoning of jurors.)

- (a) (i) by omitting from subsection one of section one hundred and thirty-six the word "thirty" and by inserting in lieu thereof the word "sixteen";
- (ii) by inserting in subsection two of the same section after the word "co-respondent" wherever appearing the words "or intervener";
- (iii) by omitting from the same subsection the word "six" and by inserting in lieu thereof the word "two";
- (iv) by inserting at the end of the same section the following new subsection:—

(3) In this section and in section one hundred and thirty-eight "intervener" means

means a person who has been made a respondent by direction of the Court given pursuant to subsection two of section twenty-four of the Matrimonial Causes Act, 1899-1936.

- (b) (i) by omitting from subsection three of section one hundred and thirty-seven the word "twelve" and by inserting in lieu thereof the word "four"; Sec. 137.
(Drawing of jury.)
- (ii) by omitting from the same subsection the word "six" and by inserting in lieu thereof the word "two";
- (c) (i) by omitting from subsection one of section one hundred and thirty-eight the word "six" and by inserting in lieu thereof the word "two"; Sec. 138.
(Impaneling jury.)
- (ii) by inserting in subsection three of the same section after the word "co-respondent" the words "or intervener";
- (iii) by inserting in subsection four of the same section after the word "co-respondent" the words "or intervener";
- (iv) by omitting from subsection five of the same section the word "twelve" and by inserting in lieu thereof the word "four."

