



ANNO QUINTO

GEORGI VI REGIS.

A.D. 1941.

No. 51 of 1941.

An Act to amend the Matrimonial Causes Act, 1929-1938, to repeal section 47 of the Marriage Act, 1936, and for other purposes.

[Reserved 13th November, 1941.
[Royal Assent Proclaimed 26th March, 1942.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the " Matrimonial Causes Act Amendment Act, 1941 ". Short titles.

(2) The Matrimonial Causes Act, 1929-1938, as amended by this Act, may be cited as the " Matrimonial Causes Act, 1929-1941 ".

(3) The Matrimonial Causes Act, 1929-1938, is hereinafter called " the principal Act ".

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.

3. (1) Section 6 of the principal Act is amended by striking out in paragraph (i) thereof the words " for mental defectives, whether established under the Mental Defectives Act, 1913, the Mental Defectives Act, 1935, or similar enactments in any other part of His Majesty's Dominions and whether situated in South Australia or elsewhere " and inserting in lieu thereof the words—

*Amendment of
s. 6 of
principal Act—
Divorce on the
ground of
mental defect.*

" or premises, either in South Australia or in any other part of His Majesty's dominions, in which persons suffering from mental defect may be confined pursuant to any

statutory enactment of the State or country in which the institution or premises is or are situated. The expression His Majesty's dominions means the United Kingdom of Great Britain and Northern Ireland, and every self-governing dominion, colony and dependency of the Crown.

"Any person confined in any hospital in South Australia for any period between the thirty-first day of December, nineteen hundred and thirty-four, and the first day of January, nineteen hundred and forty-two (being the date fixed by proclamation for the coming into operation of the provisions of the Mental Defectives Act, 1935-1939, relating to the licensing of private mental hospitals), shall be deemed to have been confined in an institution as defined in this paragraph.

"For the purposes of this paragraph a person shall be deemed to be confined in an institution if he is maintained therein (whether pursuant to an order for his detention or not) and if whilst so maintained he receives supervision or treatment as a mentally defective person; and the word 'confinement' shall have a corresponding meaning."

(2) The amendment made by this section shall have effect as if it had come into force on the first day of January, nineteen hundred and thirty-five.

Enactment of
s. 6a of the
principal Act—

4. The following section is enacted and inserted in the principal Act after section 6 thereof :—

Presumption
of death and
dissolution of
marriage.
Cf. U.K.

6a. (1) Any married person domiciled in the State who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may claim an order that it be presumed that the other party to the marriage is dead and that the marriage be dissolved.

(2) The court if satisfied that such reasonable grounds exist may make an order of presumption of death and of dissolution of the marriage.

(3) In any such proceedings the facts that for a period of seven years or upwards the other party to the marriage has been continually absent from the plaintiff and the plaintiff has no reason to believe that the other party has been living within that time shall be evidence that that party is dead until the contrary is proved.

Amendment of
s. 8 of principal
Act—
Consequential
amendment.

5. Section 8 of the principal Act is amended by striking out the word "two" in the first line and inserting in lieu thereof the word "three".

6. Section 15 of the principal Act is amended by inserting after the word "marriage" in the first line thereof the words "and every order of presumption of death and of dissolution of marriage".

Amendment of
s. 15 of
principal Act—
Consequential
amendment.

7. Section 16 of the principal Act is amended as follows :—

Amendment of
s. 16 of principal
Act—

(a) The words "he may make and issue that order" in the second line of subsection (2) are struck out and the words "it may be signed, sealed and entered by him without any authority other than this Act" are inserted in lieu thereof :

Orders
absolute.

(b) The words "or Master" are inserted after the word "court" in the third line of sub-section (4) :

(c) The following subsection is inserted after subsection (5) :—

(5a) Subject to subsection (5) of this section, and unless the court otherwise directs, an order absolute issued under subsection (2) of this section shall be dated as of the day on which a proper request is filed pursuant to subsection (1) of this section ; and an order absolute issued pursuant to an order made under subsections (3) and (4) of this section shall be dated as of the day on which that order is made.

8. The following section is enacted and inserted in the principal Act after section 16 :—

Enactment of
s. 16a of
principal Act—

16a. No appeal shall lie from an order absolute for divorce or nullity of marriage, or of presumption of death and dissolution of marriage, in favour of any person who, having had time and opportunity to appeal from the order *nisi*, has not appealed from that order.

No appeal
against order
absolute.

9. Section 17 of the principal Act is repealed and the following section substituted in lieu thereof :—

Repeal and
re-enactment
of s. 17 of
principal Act—

17. As soon as an order for divorce or of presumption of death and of dissolution of marriage is made absolute, the parties shall be at liberty to re-marry as if the prior marriage had been dissolved by death : Provided that nothing in this section shall—

Re-marriage.

(a) authorize the parties to re-marry whilst an appeal against the order absolute is actually pending, or when the order absolute has been discharged or set aside ; or

(b) validate any re-marriage if the order absolute is subsequently discharged or set aside ; or

(c) invalidate any marriage which would be valid if this section had not been enacted.

Enactment of
s. 39b of
principal Act—

10. The following section is enacted and inserted in the principal Act after section 39a thereof :—

Dispensing
with service of
writs and
notices.

39b. In any proceedings under this Act the court may dispense with service of a writ or of a notice under section 21 if the court deems it necessary or expedient to do so.

Enactment of
ss. 43a and
43b of
principal Act—

11. The following sections are enacted and inserted in the principal Act after section 43 thereof :—

Effect of
adultery of
deserted
plaintiff.

43a. (1) The adultery of a party to a marriage shall not be deemed to be just cause or excuse for deserting that party or for continuing to desert that party, unless that adultery was, in fact, the cause or one of the causes of the desertion, or, as the case may be, of the continuance of the desertion ; but nothing in this section shall affect any discretionary power of the court to refuse to make an order in favour of a party guilty of adultery.

(2) Subsection (1) of this section applies to adultery whether committed before or after the enactment of this section.

Effect of
mental defect
of deserting
spouse.

43b. Where a party to a marriage has been deserted by the other party, the desertion shall not be deemed to be terminated by reason only of any mental defect of the deserting party, if it appears to the court that the desertion would probably have continued if the deserting party had not become mentally defective.

Consequential
repeal of s. 47
of Marriage
Act, 1936.

12. Section 47 of the Marriage Act, 1936, is repealed.

Reserved for the signification of His Majesty the King's pleasure thereon.

C. M. BARCLAY-HARVEY, Governor.