

Hon. Mr. Mason

MATRIMONIAL CAUSES (WAR MARRIAGES)

ANALYSIS

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A BILL INTITULED

AN ACT to amend the Divorce and Matrimonial Causes Act, 1928, in relation to certain War Marriages. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Matrimonial Causes (War Marriages) Act, 1947, and shall be read together with and deemed part of the Divorce and Matrimonial Causes Act, 1928 (hereinafter referred to as the principal Act). Short Title. See Reprint of Statutes, Vol. III, p. 865

Interpretation.
Cf. Matrimonial
Causes (War
Marriages)
Act, 1944
(7 & 8 Geo. VI,
c. 43), s. 5
(U.K.)

2. (1) In this Act, unless the context otherwise requires,—

“The appointed day” means such day as the Governor-General may by Order in Council appoint, being a day not earlier than the date of its appointment: 5

“Marriage” includes a purported marriage which was void *ab initio*; and “husband” and “wife” shall be construed accordingly.

(2) The jurisdiction conferred by this Act on any Court shall be concurrent with any jurisdiction in respect of the same matters which would, apart from this Act, be exercisable by any other Court. 10

PART I

TEMPORARY EXTENSION OF JURISDICTION 15

Extension of
jurisdiction of
Supreme Court
to certain
marriages
irrespective of
domicile.
Cf. 7 & 8
Geo. VI, c. 43,
s. 1

3. (1) In the case of marriages to which this section applies the Supreme Court of New Zealand shall have jurisdiction in and in relation to proceedings for divorce or for nullity of marriage as if both parties were at all material times domiciled in New Zealand: 20

Provided that this subsection shall not apply to any such proceedings unless they were commenced not later than five years after the appointed day.

(2) The marriages to which this section applies are marriages celebrated on or after the third day of September, nineteen hundred and thirty-nine, but before the appointed day, where the husband was, at the time of the marriage, domiciled outside New Zealand, and the wife was, immediately before the marriage, domiciled in New Zealand: 25 30

Provided that this section shall not apply to any marriage if, since the celebration thereof, the parties thereto have at any time resided together in the country in which the husband was domiciled at the time of the residence, and for the purposes of this proviso the whole of the United States of America, the whole of India, and the whole of any British possession outside India shall each be treated as one country. 35

(3) This section shall not extend or alter the jurisdiction of the Supreme Court in or in relation to any proceedings for divorce or for nullity of marriage 40

where, at the commencement of those proceedings, the parties are domiciled in New Zealand.

4. (1) The validity of any decree or order made either—

- 5 (a) By virtue of section *three* of this Act; or
 (b) By virtue of any law passed or made by any Legislature or other authority having power to make laws with respect to matrimonial causes for any part of His Majesty's dominions outside New Zealand, or for any British protected State, which is declared by Order in Council to be a law substantially corresponding to the provisions made in respect of New Zealand by section *three* of this Act—
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shall, by virtue of this Act, be recognized in all New Zealand Courts.

(2) Every Order in Council made under this section shall be laid as soon as may be before both Houses of Parliament.

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(3) This section applies—

- (a) In relation to any British protectorate and any territory in respect of which a mandate or trusteeship has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom, as if it were a colony:
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- (b) In relation to any territory in respect of which a mandate or trusteeship has been accepted by His Majesty and is being exercised by the Government of any Dominion within the meaning of the Statute of Westminster, 1931, as if it were part of that Dominion.
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Certain decrees and orders to be recognized in New Zealand Courts.

Cf. 7 & 8 Geo. VI, c. 43, s. 4

22 & 23 Geo. V, c. 4

PART II

MISCELLANEOUS

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5. (1) In the case of marriages to which this section applies the Supreme Court of New Zealand shall have jurisdiction in and in relation to proceedings for divorce or for nullity of marriage as if both parties were at all material times domiciled in New Zealand:

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Provided that this subsection shall not apply to any such proceedings unless they were commenced not later than five years after the appointed day.

Extension of jurisdiction of Supreme Court to certain marriages irrespective of domicile.

Cf. Serial number 1946/46, Reg. 3

(2) The marriages to which this section applies are marriages celebrated on or after the third day of September, nineteen hundred and thirty-nine, but before the appointed day, where the husband was, at the time of the marriage, domiciled outside New Zealand, and the wife was, immediately before the marriage, domiciled in New Zealand, and where, since the celebration of the marriage, the parties thereto have at any time resided together in the country in which the husband was domiciled at the time of the residence. For the purposes of this subsection the whole of the United States of America, the whole of India, and the whole of any British possession outside India shall each be treated as one country.

(3) This section shall not extend or alter the jurisdiction of the Supreme Court in or in relation to any proceedings for divorce or for nullity of marriage where, at the commencement of those proceedings, the parties are domiciled in New Zealand.

6. (1) In the case of marriages to which this section applies the Supreme Court of New Zealand shall have jurisdiction in and in relation to proceedings for nullity of marriage as if both parties were at all material times domiciled in New Zealand:

Provided that this subsection shall not apply to any such proceedings unless they were commenced not later than five years after the appointed day.

(2) The marriages to which this section applies are marriages celebrated outside New Zealand on or after the third day of September, nineteen hundred and thirty-nine, but before the appointed day, where the marriage is alleged to be void *ab initio*, and where the husband was, at the time of the marriage, domiciled in New Zealand and serving in any capacity in connection with the war, and the wife was, immediately before the marriage, domiciled outside New Zealand.

(3) This section shall not extend or alter the jurisdiction of the Supreme Court in or in relation to any proceedings for nullity of marriage where, at the commencement of those proceedings, the parties are domiciled in New Zealand.

Jurisdiction in certain nullity suits where marriages void *ab initio*.
Cf. Serial number 1946/46, Reg. 3A

7. (1) The validity of any decree or order made by any Court of any State of the United States of America in any proceedings for divorce or for nullity of marriage in relation to any marriage to which this section applies shall, by virtue of this section, be recognized in all New Zealand Courts, notwithstanding that the husband may not have been, at the time of the commencement of the proceedings, domiciled in the State to which the Court belongs, and that the validity of the decree or order may not be recognized in the Courts of the State or country in which the husband was then domiciled.

Certain American decrees and orders to be recognized in New Zealand Courts.

Cf. Serial number 1946/46, Reg. 5

Provided that this subclause shall not apply to any such decree or order unless it was made not later than three years after the appointed day.

(2) The marriages to which this section applies are marriages celebrated on or after the third day of September, nineteen hundred and thirty-nine, but before the appointed day, where the husband was, at the time of the marriage, domiciled anywhere in the United States of America, and the wife was, immediately before the marriage, domiciled in New Zealand.

8. (1) For the purposes of any proceedings for divorce in relation to any marriage to which this section applies, paragraphs (b), (i), and (j) of section ten of the principal Act shall be read as if they had been amended by omitting the words "three years", and substituting in each case the words "twelve months":

Shortening period of desertion or separation as ground for divorce in certain cases.

Cf. Serial number 1946/46, Reg. 6

Provided that this subsection shall not apply to any such proceedings unless they were commenced not later than five years after the appointed day.

See Reprint of Statutes, Vol. III, p. 869.

(2) The marriages to which this section applies are—

(a) Marriages celebrated on or after the third day of September, nineteen hundred and thirty-nine, but before the appointed day, where the husband was, at the time of the marriage, domiciled outside New Zealand and serving in any capacity in connection with the war, and the wife was, immediately before the marriage, domiciled in New Zealand:

(b) Marriages celebrated outside New Zealand on or after the third day of September, nineteen-hundred and thirty-nine, but before the appointed day, where the husband was, at the time of the marriage, domiciled in New Zealand and serving in any capacity in connection with the war, and the wife was, immediately before the marriage, domiciled outside New Zealand. 5

Revocations and savings.
Serial numbers 1946/46 and 1947/14

9. (1) The Matrimonial Causes (War Marriages) Emergency Regulations 1946 and the Matrimonial Causes (War Marriages) Emergency Regulations 1946, Amendment No. 1, are hereby revoked. 10

(2) All Orders in Council, decrees, and orders, and generally all acts of authority that originated under any of the provisions of the regulations hereby revoked, and are subsisting or in force at the commencement of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated. 15 20

(3) All matters and proceedings commenced under the said regulations, and pending or in progress at the commencement of this Act, may be continued and completed under this Act, and in any such proceedings any decree or order may be made that could have been made if the regulations had continued in force. 25