

MATRIMONIAL CAUSES (WAR MARRIAGES) BILL

EXPLANATORY MEMORANDUM

THIS Bill makes special temporary provisions to facilitate divorce proceedings in the case of certain war marriages where otherwise legal difficulties would arise by reason of only one of the parties having been domiciled in New Zealand.

With the minor alterations referred to below, the Bill is to the same effect as the present law contained in the Matrimonial Causes (War Marriages) Emergency Regulations 1946 (Serial number 1946/46, as amended by Serial number 1947/14). Those regulations, in turn, were based on an Act of the Parliament of the United Kingdom, the Matrimonial Causes (War Marriages) Act, 1944 (7 & 8 Geo. VI, Chapter 43).

Clause 2 defines "the appointed day" as a day to be appointed by Order in Council. The provisions of the Bill apply only to marriages celebrated since the beginning of the war and before the appointed day. The Bill only applies to proceedings commenced not later than five years after the appointed day.

Clause 3 gives the New Zealand Court jurisdiction in divorce proceedings in the case of a marriage between a New Zealand woman and a man domiciled outside New Zealand. But for this provision the only Courts having jurisdiction would be those of the husband's country. The effect of the proviso to subclause (2) is that clause 3 does not apply in any case where the parties have lived together in the husband's country. This proviso does not appear in Regulation 3 of the existing regulations. It has been inserted in order to make clause 3 exactly the same as the corresponding United Kingdom section, so as to ensure reciprocal recognition of New Zealand decrees in other British countries.

Clause 4 provides for the recognition in New Zealand of decrees made in other British countries under a law declared by Order in Council to be a law substantially corresponding to clause 3.

Clause 5 makes the same provision as clause 3, but it is limited to those cases covered by the existing Regulation 3 that are excluded from clause 3 by the proviso to subclause (2). In other words, clause 5 applies in the cases where the parties have lived together in the husband's country.

Clause 6 gives the New Zealand Court jurisdiction in proceedings for nullity of marriage where the husband is domiciled in New Zealand but the Court may not have jurisdiction by reason of the wife being domiciled in another country. In these cases the wife has not acquired the husband's New Zealand domicile, because the marriage is invalid from the time of its celebration.

Clause 7 provides for the recognition of American decrees of divorce as valid in New Zealand in the case of marriages of New Zealand women to United States men, notwithstanding that the decree may not be recognized by the law of the husband's State, having been granted in another State the

Courts of which do not base their jurisdiction strictly on domicile. The clause only applies to decrees made within three years of the appointed day. The clause is designed to remove the uncertainty that would arise from the extreme difficulty of ascertaining whether any particular decree was strictly valid or not.

Clause 8 shortens from three years to one year the period of desertion or separation required as a ground for divorce in the case of a war marriage between a New Zealand man or woman on war service outside New Zealand and a woman or man domiciled outside New Zealand. The existing regulations shorten the period to six months, but the Bill as introduced provides for one year. By virtue of an amendment made by the Statutes Revision Committee the clause will only apply to marriages celebrated after the beginning of the war and before the passing of the Bill (instead of before the appointed day).

Clause 9 revokes the existing regulations, and makes the usual saving provisions with respect to proceedings taken before the passing of the Bill.

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: 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—

Certain decrees and orders to be recognized in New Zealand Courts.
Cf. 7 & 8 Geo. VI, c. 43, s. 4

10 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.

- 20 (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:
- (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.

22 & 23 Geo. V, c. 4

PART II

35 MISCELLANEOUS

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:

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

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

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.

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

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.

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~~ *passing of this Act*, 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~~ *passing of this Act*, 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