

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Thursday, the 9th Day of December 1976

MATRIMONIAL PROPERTY BILL

Proposed Amendments

(The amendments shown on this Supplementary Order Paper supersede those shown on Supplementary Order Paper No. 59.)

Hon. Mr THOMSON, in Committee, to move the following amendments:

Clause 8 (c): To insert in line 18 on page 10, after the word "common", the words "in equal shares".

Clause 8 (e): To omit from line 28 on page 10 the word "marriage", and substitute the words "the marriage, including property acquired for the common use and benefit of both the husband and the wife out of property owned by either the husband or the wife or both of them before the marriage or out of the proceeds of any disposition of any property so owned".

Clause 8A: To omit subclause (2) (all the words in lines 18 to 20 on page 11), and substitute the following subsection:

(2) Subject to subsection (6) of this section and to sections 8 (e) and 8B of this Act, all property acquired out of separate property, and the proceeds of any disposition of separate property, shall be separate property.

Clause 8A (5): To omit the proviso to this subclause (all the words in lines 40 to 44 on page 11), and substitute the following proviso:

Provided that where the matrimonial property has been divided upon the bankruptcy of a spouse—

- (a) The matrimonial home and any family chattels acquired subsequent to that division may be matrimonial property; and
- (b) Any other property acquired by either the husband or the wife after the discharge of that spouse from bankruptcy may be matrimonial property.

Clause 8A (6): (a) To insert in line 2 on page 12, after the word "Act," the words "any separate property which is or".

(b) To insert in line 5 on page 12, after the words "the spouse", the word "owning".

Clause 9D: To omit from line 11 on page 16 the word "disproportionately".

Clause 11: (a) To omit from lines 19 and 23 on page 20 the word "greater" in both places where it appears, and substitute in each case the word "lesser".

(b) To omit from line 20 on page 20 the expression “9c”, and substitute the expression “9A”.

(c) To omit from lines 25 and 26 on page 20 the words “nor pass to the Official Assignee on the bankruptcy of the other spouse”.

(d) To insert, after subclause (2), the following subclauses:

(2A) Where, on the bankruptcy of a spouse, the matrimonial home (including a homestead) or, where section 9 (2) of this Act applies, the proceeds of the sale of the matrimonial home, pass to the Official Assignee, he shall, after paying any debts secured on the home or, as the case may be, those proceeds and any unsecured debts (other than personal debts) of that spouse, pay to the other spouse the amount of his or her protected interest or so much of it as remains after paying those debts.

(2B) Where, on the bankruptcy of a spouse, section 9 (3) of this Act applies, the Official Assignee shall pay to the other spouse such amount in satisfaction of the protected interest of that spouse as the Court, on application by the Official Assignee or by that spouse, may direct.

Clause 22: (a) To omit from lines 23 and 24 on page 30 the words “, if there is more than one matrimonial home, any one or more of the matrimonial homes”, and substitute the words “any other premises forming part of the matrimonial property”.

(b) To add to subclause (2) the words “or the other premises to which the order relates”.

Clause 50A: To insert, after *clause 50*, the following clause:

50A. Exemption from stamp duty—Section 11 (2) of the Stamp and Cheque Duties Act 1971 is hereby amended by adding the following paragraph:

“(o) The Matrimonial Property Act 1976.”

Clause 51: (a) To insert in line 28 on page 46, after the word “Act,”, the words “but subject to section 53 (5) of this Act,”.

(b) To omit from line 31 on page 46 the word “may”, and substitute the word “shall”.

Clause 53: To add the following subclause:

(5) Nothing in this Act shall affect the validity of any agreement entered into before the commencement of this Act by way of settlement of any question that has arisen in relation to matrimonial property and every such agreement shall have effect as if this Act had not been passed.

EXPLANATORY NOTE

Clause 8: Under *paragraph (c)* of this clause property owned in common by the husband and the wife is matrimonial property for the purposes of the Bill. The amendment now proposed to this paragraph limits its application so that, in the case of property owned in common, it will only be property that is owned in common in equal shares by the husband and the wife that is *ipso facto* matrimonial property.

Under *paragraph (e)* of this clause all property acquired by either the husband or the wife after the marriage is, subject to certain exceptions, matrimonial property. The amendment now proposed provides that (subject to special exceptions in the case of the matrimonial home and the family chattels and to property acquired by succession or survivorship by a beneficiary

under a trust or by gift) all property acquired by either the husband or the wife after the marriage, including property acquired for the common use and benefit of both the husband and the wife out of property owned by either the husband or the wife or both of them before the marriage or out of the proceeds of any disposition of any property so owned, shall be matrimonial property.

Clause 8A: The first of the proposed amendments to this clause substitutes a new *subclause (2)*. The new subclause makes it clear that, subject to *clause 8 (e)* and *clause 8A (6)*, all property acquired out of separate property shall be separate property.

The amendment to *subclause (5)* substitutes a new proviso. The new proviso makes it plain that where the matrimonial property is divided upon the bankruptcy of a spouse the matrimonial home and any family chattels acquired subsequent to that division may be matrimonial property.

The amendments to *subclause (6)* extend its scope by providing that any separate property used, with the express or implied consent of the spouse owning, receiving, or entitled to it, for the acquisition or improvement of, or to increase the value of, or the amount of any interest of either the husband or the wife in, matrimonial property shall be matrimonial property.

Clause 9D: The proposed amendment, by omitting the word "disproportionately" from *subclause (1)*, makes it easier to displace the presumption of equal division imposed by that clause.

Clause 11: The first amendment corrects a cross-reference.

The second amendment alters the amount of the protected interest in the matrimonial home. As the Bill stands that interest amounts to \$10,000 or one half of the equity of the husband and the wife in the home, whichever is the greater. Under the proposed amendment the protected interest is to be the lesser of the two amounts.

The third and fourth amendments deal with the situation where the matrimonial home or the proceeds of its sale pass to the Official Assignee on the bankruptcy of a spouse. The Official Assignee will, after paying any debts secured on the matrimonial home or those proceeds and any unsecured debts (other than personal debts) of the bankrupt spouse, pay to the other spouse the amount of his or her protected interest or so much of it as remains after paying those debts.

Where *clause 9 (3)* applies, the amount to be paid by the Official Assignee in satisfaction of the protected interest of the other spouse is to be determined by the Court on the application of the Official Assignee or that other spouse.

Clause 22: The proposed amendments enlarge the power to make occupation orders so that they can be made in respect of any premises forming part of the matrimonial property.

Clause 50A: This proposed new clause amends the Stamp and Cheque Duties Act 1971. The effect of the amendment is that no stamp duty will be payable on any instrument required for the purposes of the Bill.

Clause 51: The proposed amendments to *subclause (1)* make it obligatory on the Court, in dealing with applications under the Act in relation to the matrimonial property of any marriage that took place before the Act, to have regard to any agreement entered into before the commencement of the Act by the parties to the marriage. *Clause 51 (1)* is made subject to the new *subclause (5)* being inserted in *clause 53* by this Supplementary Order Paper.

Clause 53: The new *subclause (5)* provides that agreements entered into before the commencement of the Act by way of settlement of questions relating to matrimonial property are to have effect as if the Act had not been passed.