

MATRIMONIAL CAUSES.

No. 22 of 1945.

An Act relating to Matrimonial Causes.

[Assented to 16th August, 1945.]

[Date of commencement, 13th September, 1945.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Matrimonial Causes Act* 1945. Short title.

2. This Act is divided into Parts, as follows :—

Parts.

Part I.—Preliminary.

Part II.—Institution of Matrimonial Causes against Members of Overseas Forces, and certain other Persons, not Domiciled in Australia.

Part III.—Institution of Matrimonial Causes by certain Persons Domiciled in Australia.

Part IV.—Miscellaneous.

3.—(1.) In this Act, unless the contrary intention appears—

Definitions.

“Australia” includes the Territories of the Commonwealth ;

“marriage” includes a purported marriage which was void *ab initio* ;

"matrimonial causes" includes suits for the dissolution of marriage, nullity of marriage, restitution of conjugal rights and judicial separation, and also includes, as incidental to any such suit, matters in relation to damages, alimony, maintenance, the custody, maintenance and education of children, settlements, re-marriage, cross or counter-proceedings and costs, together with all other matters incidental to any such suit;

"suit" includes any action or original proceeding between parties;

"Territory" means Territory of the Commonwealth.

(2.) In this Act, any reference to the Supreme Court of a Territory shall, in relation to the Territory of Norfolk Island, be read as a reference to the Court of Norfolk Island sitting in its Full Jurisdiction.

PART II.—INSTITUTION OF MATRIMONIAL CAUSES AGAINST MEMBERS OF OVERSEAS FORCES, AND CERTAIN OTHER PERSONS, NOT DOMICILED IN AUSTRALIA.

Marriages to which Part II. applies.

4. This Part shall apply in relation to marriages celebrated in Australia, on or after the third day of September, One thousand nine hundred and thirty-nine, and before the appointed day, where the husband (whether a member of an overseas Naval, Military or Air Force, or not) was, at the time of the marriage, not domiciled in Australia, and the wife was, immediately before the marriage, domiciled in a State or Territory.

Institution of matrimonial causes in relation to marriages to which Part II. applies.

5.—(1.) Where the parties to a marriage in relation to which this Part applies are not domiciled in a State or Territory, either party may institute proceedings in any matrimonial cause in the Supreme Court of the State or Territory in which that party is resident, notwithstanding that that party is not, or has not been for any period required by the law of that State or Territory, domiciled in that State or Territory.

(2.) The Supreme Court of each State is hereby invested with Federal jurisdiction, and jurisdiction is hereby conferred on the Supreme Court of each Territory, to hear and determine matrimonial causes instituted under the last preceding sub-section.

(3.) Nothing in this section shall entitle a person to institute proceedings in a matrimonial cause in any State or Territory if the parties to the marriage have, at any time since the marriage, resided together in a country outside Australia in which the husband was domiciled at the time of the residence.

(4.) For the purposes of the last preceding sub-section, where the husband was domiciled in a part of the United Kingdom, of a British possession or of the United States of America, residence in any other part of the United Kingdom, of that British possession, or of the United States of America, shall be deemed to be residence in the country in which the husband was domiciled.

(5.) This section shall not apply in relation to any proceedings in a matrimonial cause unless the proceedings are commenced not later than five years after the appointed day.

6. Subject to this Part, the Supreme Court of a State shall exercise any jurisdiction with which it is invested, and the Supreme Court of a Territory shall exercise any jurisdiction which is conferred on it, by this Part—

Law to be applied in proceedings under Part II.

(a) in accordance with the law (other than the law relating to practice and procedure) of the State or Territory in which the last or only matrimonial home of the parties to the marriage was situated ; or

(b) if—

(i) the last or only matrimonial home of the parties was not in a State or Territory ; or

(ii) the parties did not at any time have a matrimonial home,

in accordance with the law (other than the law relating to practice and procedure) of the State or Territory in which the marriage was celebrated.

7. Nothing in this Part shall affect the jurisdiction of any court of a State or Territory otherwise than under this Part.

Preservation of jurisdiction otherwise than under Part II.

8.—(1.) The validity of any judgment, decree or order made by virtue of any law enacted 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 Australia or for any other country which is declared by Proclamation to be a law substantially corresponding to the provisions made with respect to Australia by this Part shall, by virtue of this Act, be recognized in all courts in Australia.

Recognition of judgments, decrees, &c., of courts of other countries.

(2.) A Proclamation shall not be made under this section with respect to any law of any such part of His Majesty's dominions or of any other country, unless the Governor-General is satisfied that adequate provision is made by the law of that part or country for the recognition by the courts of that part or country of the judgments, decrees and orders which are given or made in pursuance of the provisions of this Part.

9. In this Part, " the appointed day " means such day as is specified by Proclamation to be the appointed day.

Definition.

PART III.—INSTITUTION OF MATRIMONIAL CAUSES BY CERTAIN PERSONS DOMICILED IN AUSTRALIA.

10.—(1.) Where any person domiciled in a State or Territory is resident in some other State or Territory and has resided there for not less than one year immediately prior to the institution of proceedings

Institution of matrimonial causes in certain cases.

under this Part, that person may institute proceedings in any matrimonial cause in the Supreme Court of that other State or Territory notwithstanding that that person is not, or has not been for any period required by the law of that other State or Territory, domiciled in that other State or Territory.

(2.) The Supreme Court of each State is hereby invested with Federal jurisdiction, and jurisdiction is hereby conferred on the Supreme Court of each Territory, to hear and determine matrimonial causes instituted under the last preceding sub-section.

**Law to be
applied in
proceedings
under Part III.**

11. Subject to this Part, the Supreme Court of a State shall exercise any jurisdiction with which it is invested, and the Supreme Court of a Territory shall exercise any jurisdiction which is conferred on it, by the last preceding section in accordance with the law (other than the law relating to practice and procedure) of the State or Territory in which the person instituting the proceedings is domiciled.

**Preservation of
jurisdiction
otherwise than
under Part III.**

12.—(1.) Nothing in this Part shall affect the jurisdiction of any court of a State or Territory otherwise than under this Part.

(2.) Where it appears to the Supreme Court of a State or Territory in which proceedings in a matrimonial cause have been instituted under this Part—

(a) that similar proceedings have been instituted between the same parties in the Supreme Court of the State or Territory in which the parties are domiciled; or

(b) that it is in the interests of justice that the proceedings be carried on in the Supreme Court of the State or Territory in which the parties are domiciled,

the first-mentioned Supreme Court may, on the application of the respondent or defendant, stay proceedings in the cause for such time as it thinks fit, and, in the case of any cause to which paragraph (b) of this sub-section applies, may refer the cause to the Supreme Court of the State or Territory in which the parties are domiciled, and that court shall thereupon have the same jurisdiction to hear and determine the proceedings as it would have had if they had been instituted in that court otherwise than under this Part.

PART IV.—MISCELLANEOUS.

**Effect of
judgments.**

13. Any judgment, decree, order or sentence of the Supreme Court of a State or Territory given or pronounced in the exercise of any jurisdiction invested or conferred by this Act shall be of the same force and effect as if that judgment, decree, order or sentence had been given or pronounced by a court of the State or Territory in which the parties were domiciled.

Regulations.

14. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are

required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act, and in particular—

- (a) providing for the substituted service of process in proceedings instituted under this Act; and
- (b) providing for the enforcement of judgments, decrees, orders or sentences given or pronounced in proceedings instituted under this Act.

15.—(1.) The Judges of the Supreme Court of any State or Territory, or such of them as may make Rules of Court in other cases, or, if there is only one Judge, that Judge, may make Rules (not inconsistent with this Act or the regulations) for prescribing the practice and procedure in connexion with proceedings under this Act in that court. Rules of Court.

(2.) Until Rules have been so made, and so far as Rules so made do not provide for the circumstances of any particular case, the practice and procedure of the Supreme Court of the State or Territory shall apply as far as practicable.

16.—(1.) Section eleven of the *Service and Execution of Process Act* 1901–1934 is amended by omitting paragraph (f) of sub-section (1.) and inserting in its stead the following paragraph :— Proceedings where no appearance entered.

“(f) in a matrimonial cause—

- (i) that the domicile of the person against whom any relief is sought is within that State or part; or
- (ii) that the proceedings were instituted under the *Matrimonial Causes Act* 1945.”.

(2.) The *Service and Execution of Process Act* 1901–1934, as amended by this section, may be cited as the *Service and Execution of Process Act* 1901–1945.