

No. 37, 1953.]

ACT

To amend the law relating to the property rights of spouses, to orders for maintenance, to the guardianship and custody of minors and to divorce.

(English text signed by the Governor-General.)
(Assented to 1st October, 1953.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Limitation on powers of husband in regard to certain immovable property.

1. (1) No husband shall be entitled, without his wife's written consent, to alienate, mortgage, burden with a servitude or confer any real right in—

- (a) any immovable property which is the separate property of the wife; or
- (b) any immovable property held in community—
 - (i) which the wife has at the marriage brought into the community; or
 - (ii) which she acquired during the marriage by inheritance or gift; or
 - (iii) which has been paid for with the wife's earnings during the marriage; and
 - (iv) in respect of which an endorsement or note has been made under sub-section (2).

(2) The officer in charge of the deeds registry in which the property is registered shall, on the written application of the husband or wife, if he is satisfied as to the relevant facts, endorse upon the title deeds of the property, or if the husband refuses to produce any such title deed in his possession or under his control, upon the registry duplicate thereof only, and note in the appropriate registers, that it is property in respect of which paragraph (b) of sub-section (1) applies.

(3) If a wife withholds the consent required by sub-section (1), the husband may apply to a judge in chambers for an order dispensing with such consent, and the judge may grant such order if he is satisfied that the consent is unreasonably withheld.

(4) A wife may make an application under sub-section (2), and any application to a judge in connection therewith, and may appear in any proceedings under sub-section (3), without the assistance of her husband.

(5) Section *seventeen* of the Deeds Registries Act, 1937 (Act No. 47 of 1937), is hereby amended by the insertion in sub-section (4), after the word "therewith", of the words "and subject to the provisions of sub-section (1) of section *one* of the Matrimonial Affairs Act, 1953".

Limitation on powers of husband in regard to certain movable property.

2. (1) No husband shall be entitled, without his wife's written consent—

- (a) to receive any remuneration due or accruing from his wife's employer for services rendered by her, or to take possession of any such remuneration received by her; or
- (b) to receive any compensation awarded to the wife in respect of personal injuries sustained by her or to take possession of any such compensation received by her; or
- (c) to withdraw any deposit standing in the name of his wife in the Post Office Savings Bank of the Union or in a building society or in a savings account in a banking institution, or to take possession of any moneys withdrawn by her therefrom; or
- (d) to alienate or pledge any shares held by his wife in a building society, to receive any dividends on or the

- proceeds of such shares or to take possession of any such dividends or proceeds received by her; or
- (e) to receive any amount payable in terms of any insurance policy taken out by his wife for the purpose of providing for the education or advancement of her child, the premiums of which have been paid by her, or to take possession of any such amount received by her, or to deal in any manner with any rights under any such policy; or
- (f) to alienate or pledge any tool or implement of trade with which his wife is earning any remuneration.
- (2) If any shares in a building society are held by a married woman, the society shall not register any transfer of those shares without her written consent, except in pursuance of a sale in execution of a judgment of a competent court.
- (3) (a) No remuneration, compensation, deposit, share, dividend, proceeds, amount, right, tool or implement referred to in sub-section (1), shall be attached or sold in execution for any liability incurred by the husband for or in connection with the supply of intoxicating liquor.
- (b) No property in respect of which an order under sub-section (4) is in operation, shall be attached or sold in execution for any liability of the joint estate except for any liability incurred in respect of necessaries for the joint household or for any order of costs awarded against the wife in any legal proceedings instituted by her in terms of sub-section (6).
- (4) (a) A wife shall, on *prima facie* proof that her husband has deserted her and is not residing with her, and that she has at any time during the period of the desertion acquired or become entitled to any movable property, be entitled to an order of a judge or magistrate of a court within whose area of jurisdiction she resides, declaring the property (which shall be described in the order in such manner as to be identifiable) to be free from the control of her husband, and prohibiting the husband from dealing in any manner with the property.
- (b) Any judge or magistrate of such court may, on good cause shown, rescind or vary any such order.
- (c) A wife shall for the purposes of this sub-section be deemed to have been deserted by her husband if she is living apart from her husband because of his refusal to reside with her or because of repeated assaults or other acts of cruelty or because he is an habitual drunkard or because of his refusal or neglect without sufficient cause to supply her or his children with the necessaries of life when able so to do or because of his detention in any prison, gaol or other institution.
- (5) A married woman, whether under the marital power or not, may be a depositor in a savings account in a banking institution as defined in section *one* of the Banking Act, 1942 (Act No. 38 of 1942), and may without assistance execute all necessary documents, give all necessary acquittances and enjoy all the privileges and be liable to all the obligations attaching to depositors in a savings account in a banking institution.
- (6) Every wife shall be entitled, without the assistance of her husband—
- (a) to receive or sue for remuneration due from her employer for services rendered by her;
- (b) to receive or sue for any compensation, deposit, dividend or proceeds referred to in paragraph (b), (c) or (d) of sub-section (1);
- (c) to take out an insurance policy for the purpose of providing for the education or advancement of her child, and to receive or sue for any amount payable in terms of any such policy; and
- (d) to institute legal proceedings in connection with any share, policy, tool or implement referred to in sub-section (1) which has been alienated or pledged or any right thereunder which has been dealt with without her consent, or in connection with any attachment or sale in contravention of sub-section (3), or for the purpose of obtaining an order under sub-section (4), or to protect herself against any act by her husband which is

or would be unlawful in terms of sub-section (1), or in conflict with an order under sub-section (4).

Liability of husband and wife for household necessities.

3. A husband and wife married out of community of property shall be liable jointly and severally for all debts incurred by either spouse in respect of necessities for the joint household: Provided that if the wife pays any such debt or part thereof, she shall have a right of recourse against the husband for the full amount paid by her.

Amendment of section 110 of Act 46 of 1935.

4. Section *one hundred and ten* of the General Law Amendment Act, 1935, is hereby amended—

(a) by the substitution in sub-sections (3) and (4), for the words "this section", of the expression "sub-section (1)"; and

(b) by the addition at the end thereof, of the following sub-sections:

"(5) If any person against whom an order referred to in sub-section (1) has been made, during the currency of the order changes the place of his residence or employment, he shall forthwith give notice thereof in writing to the person to whom payment is to be made in terms of the order, and shall in that notice state fully and clearly where the new place of his residence or employment is situate.

(6) Any person who fails to give notice as required by sub-section (5) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds."

Guardianship and custody of minors.

5. (1) Any provincial or local division of the Supreme Court or any judge thereof may—

(a) on the application of either parent of a minor in proceedings for divorce or judicial separation in which an order for divorce or judicial separation is granted; or

(b) on the application of either parent of a minor whose parents are divorced or are living apart,

if it is proved that it would be in the interests of the minor to do so, grant to either parent the sole guardianship (which shall include the power to consent to a marriage) or sole custody of the minor, or order that on the predecease of the parent named in the order, a person other than the survivor shall be the guardian of the minor, to the exclusion of the survivor or otherwise.

(2) An order under sub-section (1) granting the sole guardianship or custody of a minor whose parents are living apart to a parent shall, if the parents become reconciled and live together again as husband and wife, lapse with effect from the date on which the parents commence to live together again.

(3) Subject to any order of court—

(a) a parent to whom the sole guardianship or custody of a minor has been granted under sub-section (1), or a mother who is vested with the paternal power over a minor in pursuance of section *fifty-eight* of the Children's Act, 1937 (Act No. 31 of 1937), may by testamentary disposition appoint any person to be the sole guardian or to be vested with the sole custody of the minor, as the case may be; and

(b) the father of a minor to whom the sole guardianship of the minor has not been granted under sub-section (1), shall not be entitled by testamentary disposition to appoint any person as the guardian of the minor in any other manner than to act jointly with the mother.

(4) If the mother of a minor does not consent to the marriage of the minor, the consent of the father (whether or not he has in any proceedings been granted the sole custody of the minor), shall not be sufficient, unless he has been granted the sole guardianship of the minor.

(5) The court or a judge may—

- (a) where a parent has appointed a guardian or custodian as provided in paragraph (a) of sub-section (3); or
- (b) where a guardian has been appointed to a minor by the father, to act jointly with the mother,

upon the application of the other parent, or of the guardian or mother, as the case may be, made after the death of the testator, make such order in regard to the guardianship or custody of the minor as the court or judge may deem in the interests of the minor.

(6) If an order under section *fifty-eight* of the Children's Act, 1937 (Act No. 31 of 1937), is rescinded, or if an order under sub-section (1) granting the sole guardianship or custody of a minor to a parent, lapses or is rescinded or is varied in such a manner that the parent is no longer the sole guardian or vested with the sole custody of the minor, any disposition made under paragraph (a) of sub-section (3) shall lapse.

(7) A wife may make any application referred to in this section, and any application to a court in connection therewith, without the assistance of her husband.

Amendment of section 1 of Act 22 of 1939.

6. Section *one* of the Matrimonial Causes Jurisdiction Act, 1939, is hereby amended by the substitution for sub-section (1) of the following sub-section:

“(1) Any provincial or local division of the Supreme Court of South Africa shall have jurisdiction to try an action instituted by a wife against her husband for divorce or for restitution of conjugal rights or for judicial separation, if the wife has been ordinarily resident within the area of jurisdiction of that division for a period of one year immediately preceding the date on which the proceedings are instituted, and if—

- (a) in any case in which the husband has deserted the wife and has departed from the Union or has been deported from the Union, he is at the said date or was immediately before the desertion or deportation domiciled within the Union;
- (b) in any other case of an action for divorce or for restitution of conjugal rights, the husband is, at the said date domiciled within the Union; or
- (c) in any other case of an action for judicial separation, the husband is, at the said date, domiciled or resident within the Union.”.

Amendment of section 5 of Act 22 of 1939.

7. Section *five* of the Matrimonial Causes Jurisdiction Act, 1939, is hereby amended by the insertion after the word “custody” wherever it occurs, of the word “, guardianship”.

Amendment of section 6 of Act 22 of 1939.

8. Section *six* of the Matrimonial Causes Jurisdiction Act, 1939, is hereby amended by the substitution for the words “is domiciled”, of the words “is or was domiciled or is resident, as the case may be”.

Insertion of section 6bis in Act 22 of 1939.

9. The following section is hereby inserted in the Matrimonial Causes Jurisdiction Act, 1939, after section *six*:

“Recogni-
tion of
certain
decrees and
orders.

6bis. (1) The validity of any decree or order made in any country in any case in which the husband is not domiciled in that country, under the provisions of any law which are declared by the Governor-General by proclamation in the *Gazette* to be provisions substantially corresponding to the relevant provisions of paragraph (a) of sub-section (1) of section *one*, or of section *four* or *five*, read with the said paragraph, shall be recognized by the courts of the Union.

(2) No proclamation shall be issued under sub-section (1) unless the Governor-General is satisfied that adequate provision is made by the law of the country concerned for the recognition by the courts thereof of the decrees and orders made in any case in which the husband is not domiciled within the Union, under the said paragraph, or under section *four* or *five*, read with the said paragraph.

(3) The Governor-General may at any time withdraw any such proclamation.”.

Maintenance orders on divorce. 10. (1) The court granting a divorce may, notwithstanding the dissolution of the marriage—

- (a) make such order against the guilty spouse for the maintenance of the innocent spouse for any period until the death or until the remarriage of the innocent spouse, whichever event may first occur, as the court may deem just; or
- (b) make any agreement between the spouses for the maintenance of one of them, an order of court,

and any court of competent jurisdiction may, on good cause shown (which may be a cause other than the financial means of either of the respective spouses) rescind, suspend or vary any such order.

(2) Any court of competent jurisdiction may at any time upon the application of either party to an agreement for the maintenance of one of them entered into prior to the date of commencement of this Act between spouses who have been divorced, make such an agreement an order of court, and any court of competent jurisdiction may on good cause shown (which may be a cause other than the financial means of either of the respective spouses) rescind, suspend or vary any such order, or any order made prior to the date of commencement of this Act by which an agreement between spouses who have been divorced, for the maintenance of one of them, was made an order of court.

Short title. 11. This Act shall be called the Matrimonial Affairs Act, 1953.