

No. XII.

An Act to amend the Matrimonial Causes DIVORCE PROCEDURE AMENDMENT. Acts in respect of Procedure and certain other matters. [8th September, 1886.]

WHEREAS doubts have arisen as to the right of parties in certain Preamble. suits under the "Matrimonial Causes Act" and the Acts amending the same to require contested matters of fact to be tried by a jury Amendments in procedure required. and it is expedient to amend the said Acts in that respect and also respecting procedure and certain other matters under those Acts. Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. In all suits under the Matrimonial Causes Act or any Act amending the same wherein a decree is sought for dissolution of marriage any party to the suit may require the contested matters of fact therein to be tried by a jury. And the provisions of the Act forty-eighth Victoria number three shall apply to every such trial.

2. No marriage heretofore contracted by the petitioner or the respondent in any such suit after expiration of the time limited by the decree *nisi* and where no opposition was then pending to the making of such decree absolute shall be affected by reason only of its not having been made absolute as now prescribed.

Divorce Procedure Amendment.

Making decree
absolute.

3. On every decree *nisi* in any such suit pronounced after the passing of this Act the Registrar shall indorse a notice that if the petitioner or respondent shall contract marriage before such decree has been made absolute he or she will be guilty of bigamy. But it shall not be necessary for the petitioner to move to make any decree *nisi* absolute whether heretofore or hereafter pronounced. After expiration of the time limited in that behalf the Court on the request in writing of the petitioner and upon a certificate from the Registrar that no matter in opposition to the final decree is then pending shall make the decree absolute as of course.

List of past suits.

4. Within thirty days after the passing of this Act the Registrar shall make out a list of all suits in which a decree *nisi* has been pronounced and the time allowed for showing cause has expired but in which there has been no application to make the decree absolute and shall in such newspapers as the Court shall direct publish a notice that any party to any suit included in the list may inspect the same and may within six months apply to the Judge in Chambers for an order to vacate the decree in such suit and such decree may unless cause be shown to the contrary be vacated accordingly.

What decrees in list
vacated.

5. Within thirty days after the expiration of the said six months the Registrar shall on the request in writing of the petitioner in any suit included in the list submit the name of such suit to the Court for confirmation of the decree therein and upon a certificate from the Registrar that no matter in opposition to the final decree is then pending the Court unless cause be shown to the contrary shall make the decree *nisi* absolute.

What decrees in
list made absolute.

6. All notices required to be served in a divorce suit may be served in the manner now or hereafter prescribed by the Court or may be sent to the party intended to be served in a registered letter directed and posted by an officer of the Court appointed for that purpose.

Service of notices
may be effected by
registered letter.

7. In all cases in which a writ of *capias ad respondendum* could now be issued in an action at law against a defendant the like writ may be issued in a divorce suit against a respondent or co-respondent in respect of alimony costs or damages subject nevertheless to such special directions in any case as the Court shall think fit to give in order to prevent injustice or oppression.

Arrest of
co-respondents.

8. The Court may subject to the provisions of the "Matrimonial Causes Act" make such General Rules as shall be deemed necessary for carrying out the provisions of this or any other Act for amendment of the law of Divorce and may enforce by attachment any order made by the Court for payment of costs or of any sum or sums due in respect of alimony or the maintenance of children. Provided that no person declared or made bankrupt or insolvent in whose schedule all sums due in respect of such costs alimony or maintenance are included shall remain imprisoned under any such writ for nonpayment of costs during a longer period than six months or for nonpayment of alimony or any sum respecting the maintenance of children during a longer period than twelve months.

The Court may
make rules.

Enforcing payment
of costs &c.

9. The word Court in this Act which may be cited as the "Divorce Procedure Amendment Act" shall be taken ordinarily to mean the Judge exercising jurisdiction in matrimonial causes but for the purposes of an appeal shall mean the Supreme Court sitting as in Banco.

Meaning of "Court."
Short title.