

No. XXXVI.

An Act to amend the Law and Practice in the Matrimonial and Divorce Jurisdiction of the Supreme Court, and to validate certain proceedings therein. [13th June, 1893.]

MATRIMONIAL
CAUSES PROCEDURE
AMENDMENT.

WHEREAS it is expedient to amend the law and practice in the matrimonial and divorce jurisdiction of the Supreme Court: 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. Section six of the "Matrimonial Causes Act Amendment Act of 1884" is hereby repealed.

Repeal of sec. 6,
48 Vic. No. 3.

2. In any petition by a husband for dissolution of marriage or judicial separation on the ground of the adultery of his wife no damages shall be claimed in respect of an act of adultery committed more than three years before the filing of the petition: Provided that nothing herein contained shall affect the right of any petitioner to a decree for dissolution of marriage or judicial separation on the ground of adultery committed more than three years before the filing of the petition.

Limitation of time
for recovery of
damages.

3. Where a decree *nisi* has been pronounced for the dissolution of a marriage, and the petitioner fails to apply at the expiration of the time prescribed in the decree or in any special order to make the decree absolute, the respondent may, on giving notice, or such substituted notice as the Court may allow, to the petitioner, apply to the Court to make the decree absolute. And the Court may order accordingly, and may make the order subject to such conditions as to the payment of permanent alimony, the maintenance of children, and the payment of costs as it may think proper.

Respondent may
apply to make a
decree absolute.

4. Where it is proved to the satisfaction of the Court that any deed, conveyance, instrument, or agreement has been executed or made by or on behalf of, or by direction of, or in the interest of a respondent husband or wife in order to defeat the claim of the petitioner in respect of costs or alimony, or in respect of money payable for the maintenance of children, the deed, conveyance, instrument, or agreement may, on the application of the petitioner, and on such notices being

Fraudulent deed to
be set aside.

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given as may be directed, be set aside on such terms as the Court may think proper. And, if the Court on the hearing of the application so order and declare, any money or property, real or personal, dealt with by such deed, conveyance, instrument, or agreement as aforesaid, may be taken in execution at the suit of the petitioner or charged with the payment of such sums for the maintenance of the petitioner or of the petitioner and children as the Court may direct. And on such hearing as aforesaid, the Court may make such order for the protection of a *bonâ fide* purchaser as it may think just. And the respondent or any one acting in collusion with the respondent may be ordered to pay the costs of the petitioner and of a *bonâ fide* purchaser of and incidental to the execution of the said deed, conveyance, instrument, or agreement, and of setting the same aside.

Sale to defeat
petitioner's claim
may be restrained.

5. Where it shall appear to the Court that a sale of real estate is about to be made with intent to defeat a petitioner's claim in respect of costs, alimony, or the maintenance of children, or damages on the ground of adultery, the Court may by order restrain the sale or order the proceeds of the sale to be paid into Court, to be dealt with as the Court shall direct. Any sale made after an order of the Court restraining the sale, as aforesaid, has been served on the person selling, or his auctioneer or agent for sale, shall be null and void; and the Court may consider the claim of any person interested, and may make such order in the premises as may appear just.

Costs of intervention.
41 Vic., c. 19, s. 2.

6. The Court may make such order as to the costs of any person who shall intervene or show cause against a decree *nisi* in any suit or proceeding, or of all and every party or parties thereto, occasioned by such intervention or showing cause as aforesaid, as may seem just; and may in all suits and proceedings order costs to be paid as between attorney and client.

Extension of powers
of Court under
36 Vic. No. 9., s. 40.
41 Vic., c. 19, s. 3.

7. The Court may exercise the powers vested in it by the provisions of section forty of the "Matrimonial Causes Act," thirty-sixth Victoria number nine, in favour of either party to the marriage, notwithstanding that there are no children.

Wife may be given
custody of children
on rule being made
absolute.

8. In all undefended cases, where the Court is requested under section three of the Act fiftieth Victoria number twelve to make the rule absolute, the Court may give the wife the custody of the children; and may also do so in defended cases, on proof that the respondent has had notice of the intention of the petitioner on the hearing of the motion to make the rule absolute to apply for the custody of the children.

Parties admissible
witnesses.
32 & 33 Vic., c. 68.,
s. 3.

9. The parties to any suit or proceeding, and the husbands and wives of the parties, shall be competent to give evidence in such suit or proceeding: Provided that no witness in any suit or proceeding, whether a party to the same or not, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence in the same suit or proceeding in disproof of his or her alleged adultery. And no proceedings taken, or order or decree made before the passing of this Act, shall be held invalid by reason only of the admission of the evidence of any person who is hereby declared to be a competent witness.

Testing proceedings.

10. All proceedings in the Matrimonial and Divorce Jurisdiction of the Supreme Court shall be tested in the name of the Judge exercising jurisdiction under the "Matrimonial Causes Act."

Powers of registrar.

11. The registrar of the Court shall have power to tax costs subject to review by the Court as at Common Law, to settle issues and deeds directed by the Court to be executed by the parties, to extend the time in undefended suits within which proceedings may be filed, to allow proceedings to be taken or defended in *forma pauperis*, and to examine

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examine witnesses in alimony applications and report the result of the said examinations to the Court, which may consider the same in determining alimony applications, and to discharge such other administrative functions in the Divorce Jurisdiction as are discharged by the Prothonotary at Common Law, subject to such rules as the Court may make relative thereto, and subject to the right of appeal to the Court in all cases.

12. From and after the passing of this Act a decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is by the wife the Court may, at the time of making such decree, or at any time afterwards, order that in the event of such decree not being complied with within any time in that behalf limited by the Court, the respondent shall make to the petitioner such periodical payments as may be just; and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation. The Court may, if it shall think fit, order that the husband shall, to the satisfaction of the Court, secure to the wife such periodical payment, and for that purpose may refer it to the registrar or some conveyancing counsel or attorney of the Court to settle and approve of a proper deed or instrument to be executed by all necessary parties.

Periodical payments
in lieu of attachment.
47 & 48 Vic. c. 68,
s. 2.

13. Where the application for restitution of conjugal rights is by the husband, if it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the Court may, if it shall think fit, order a settlement to be made to the satisfaction of the Court of such property, or any part thereof, for the benefit of the petitioner and of the children of the marriage, or either or any of them, or may order such part as the Court may think reasonable of such profits of trade or earnings to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either or any of them.

Settlement of wife's
property.
47 & 48 Vic. c. 68,
s. 3.

14. The Court may from time to time vary or modify any order for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same wholly or in part, as the Court may think just.

Power to vary orders.
47 & 48 Vic. c. 68,
s. 4.

15. If the respondent shall fail to comply with a decree of the Court for restitution of conjugal rights, such respondent shall thereupon be deemed to have been guilty of desertion without reasonable cause, and a suit for divorce or for judicial separation may be forthwith instituted, and a decree *nisi* for the dissolution of the marriage or a sentence of judicial separation may be pronounced on the ground of desertion, although the period of three years may not have elapsed since the failure to comply with the decree for restitution of conjugal rights. Such decree *nisi* shall not be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the Court shall fix a shorter time.

Non-compliance with
decree to be deemed
desertion.
47 & 48 Vic. c. 68,
s. 5.

16. The Court may at any time before final decree on any application for restitution of conjugal rights, or after final decree if the respondent shall fail to comply therewith, upon application for that purpose, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of the children of the petitioner and respondent as might have been made by interim orders during the pendency of a trial for judicial separation between the same parties.

Custody of children.
47 & 48 Vic. c. 68,
s. 6.

Debts Recovery.

Power to refer to the
Court in Banco.

17. It shall be lawful for the Court, if it thinks fit, to refer any matter of law for the decision of the Supreme Court sitting in Banco, and for the Court in Banco, if it thinks fit, to direct all necessary papers in the matter to be sent to the Crown Solicitor for the purpose and under the conditions prescribed by section twenty-five of the “Matrimonial Causes Act.”

Interpretation.

18. In this Act the word “Court” means the Judge exercising jurisdiction in Matrimonial Causes.

Short title.

19. This Act shall be read and construed with the “Matrimonial Causes Act” and the Acts amending the same, and may be cited as the “Matrimonial Causes Procedure Amendment Act.”
