

Act No. 14, 1899.

MATRIMONIAL  
CAUSES.

An Act to consolidate the Acts relating to  
Divorce and Matrimonial Causes. [*20th*  
*November, 1899.*]

**B**E it 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:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Matrimonial Causes Act  
1899" and is divided into parts as follows:—

PART I.—PRELIMINARY—*ss.* 1-3.

PART II.—JURISDICTION—*ss.* 4, 5.

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*Matrimonial Causes.*

PART III.—RESTITUTION OF CONJUGAL RIGHTS—

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PART XVII.—APPEALS NEW TRIALS &amp;C.—

*Appeal from decree or order of the Court—s.* 80.*Appeal from decision of the Registrar—s.* 81.*New Trial—s.* 82.*Special Verdict and Special Case—s.* 83.*Referring Points of Law—s.* 84.

PART XVIII.—ENFORCEMENT OF DECREES AND ORDERS—

*Generally—s.* 85.*Liabilities not affected by Bankruptcy Laws—s.* 86.*Orders in respect of alimony maintenance costs or damages—ss.*  
87, 88.PART XIX.—MISCELLANEOUS—*ss.* 89–93.Repeal and saving.  
Schedule.**2.** (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.

Judges and officers.

(2) All Judges or persons nominated or appointed under the Acts hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been nominated or appointed hereunder.

Rules of Court.

(3) All rules of Court made under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made under the authority of this Act.

Interpretation.

**3.** In this Act unless the context or subject matter otherwise indicates or requires—

“The Court” means—

36 Vic. No. 9 s. 49.

(1) the Court holden before the Judge appointed to exercise jurisdiction under this Act or before any Judge acting in his place or having co-ordinate jurisdiction with him

50 Vic. No. 12 s. 9.

56 Vic. No. 36 s. 1.

(2) in the case of an appeal the Full Court.

55 Vic. No. 37 s. 7.

36 Vic. No. 9 s. 49.

55 Vic. No. 37 s. 7.

“The Full Court” means the Supreme Court consisting of three or more Judges sitting as in banco.

“Prescribed” means prescribed by this Act or rules made hereunder.

“The Registrar” means the Registrar of the Court or any person appointed to act as such.

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PART II.

JURISDICTION.

4. (1) There shall be vested in the Supreme Court jurisdiction in respect of divorces a mensâ et thoro suits of nullity of marriage suits for dissolution of marriage suits for restitution of conjugal rights suits for jactitation of marriage and in all causes suits and matters matrimonial (except in respect of marriage licenses). Composition and jurisdiction of Court. 36 Vic. No. 9 s. 2.

(2) The said jurisdiction shall be the matrimonial causes jurisdiction of the Supreme Court and the said jurisdiction and all the powers and authorities conferred by this Act may be exercised in like manner as the other powers jurisdictions and authorities given to or vested in the Supreme Court.

(3) The said jurisdiction shall except as herein otherwise provided be exercised by the Judge appointed in that behalf and by any Judge acting in his place or having co-ordinate jurisdiction with him and every decree or order of any such Judge shall in causes and matters under this Act be as valid to all intents and purposes as if such decree or order had been made by the Full Court. Ibid. ss. 3 & 4. 48 Vic. No. 3 s. 2. 50 Vic. No. 36 s. 1.

5. In all suits and proceedings other than proceedings to dissolve any marriage the Court shall proceed and act and give relief on principles and rules which in the opinion of the Court shall be as nearly as may be conformable to the principles and rules on which the Ecclesiastical Courts of England acted and gave relief before the passing of the Imperial Act twentieth and twenty-first Victoria chapter eighty-five but subject to the provisions herein contained and to the rules and orders under this Act. Court to act on principles of the Ecclesiastical Courts. 36 Vic. No. 9 s. 17.

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PART III.

RESTITUTION OF CONJUGAL RIGHTS.

*Applications.*

6. Application for restitution of conjugal rights may be made by either husband or wife by petition to the Court. By petition. Ibid. s. 16.

*Decrees.*

7. (1) The Court on being satisfied of the truth of the allegations contained in the petition and that there is no legal ground why the same should not be granted may decree restitution of conjugal rights accordingly. Power to decree. Ibid.

(2)

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Attachment abolished.  
56 Vic. No. 36 s. 12.  
Where wife is the applicant periodical payments ordered.  
*Ibid.* s. 12.

(2) A decree for restitution of conjugal rights shall not be enforced by attachment.

Enforcing order for payments.

8. (1) Where the application for restitution of conjugal rights is by the wife the Court may at the time of making the 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;

(2) Such order may be enforced in the same manner as an order for alimony in a suit for judicial separation.

Settlement of payments.

(3) The Court may if it thinks 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 counsel or attorney to settle and approve of a proper deed or instrument to be executed by all necessary parties.

Where husband is applicant wife's property may be settled.  
56 Vic. No. 36 s. 13.

9. (1) Where the application for restitution of conjugal rights is by the husband and the wife is entitled to any property either in possession or reversion the Court may if it thinks 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 periodical payments ordered out of earnings.

(2) If the wife is in receipt of any profits of trade or earnings the Court may order such part thereof as it thinks reasonable 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.

Orders for payment may be varied.  
*Ibid.* s. 14.

10. The Court may from time to time vary or modify any such 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 thinks just.

Failure to comply with decree equivalent to desertion.  
*Ibid.* s. 15.

Suit for dissolution or separation may be instituted.  
*Ibid.*

11. (1) If the respondent fails 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 dissolution of marriage or for judicial separation may be forthwith instituted and a decree nisi for the dissolution of the marriage or a decree 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.

Decree absolute thereupon.  
*Ibid.*

(2) Such decree nisi shall not be made absolute until after the expiration of six months from the pronouncing thereof unless the Court fixes a shorter time.

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## PART IV.

## DISSOLUTION OF MARRIAGE.

*On petition by husband.*

**12.** Any husband may present a petition to the Court praying that his marriage may be dissolved on the ground that his wife has since the celebration thereof been guilty of adultery.

**13.** Any husband who at the time of the institution of the suit has been domiciled in New South Wales for three years and upwards (provided he did not resort to New South Wales for the purpose of such institution) may present a petition to the Court praying that his marriage may be dissolved on one or more of the grounds following—

- (a) that his wife has without just cause or excuse wilfully deserted the petitioner and without any such cause or excuse left him continuously so deserted during three years and upwards
- (b) that his wife has during three years and upwards been a habitual drunkard and habitually neglected her domestic duties or rendered herself unfit to discharge them
- (c) that at the time of the presentation of the petition his wife has been imprisoned for a period of not less than three years and is still in prison under a commuted sentence for a capital crime or under sentence to penal servitude or imprisonment for seven years or upwards
- (d) that within one year previously his wife has been convicted of having attempted to murder the petitioner or of having assaulted him with intent to inflict grievous bodily harm
- (e) that during one year previously his wife has repeatedly assaulted and cruelly beaten the petitioner.

*On petition by wife.*

**14.** (1) Any wife may present a petition to the Court praying that her marriage may be dissolved on the ground that since the celebration thereof her husband has been guilty of—

- (a) incestuous adultery or
- (b) bigamy with adultery or
- (c) rape sodomy bestiality or
- (d) adultery coupled with such cruelty as without adultery would have entitled her to a divorce a mensâ et thoro under the law existing in England before the passing of the Imperial Act twentieth and twenty-first Victoria chapter eighty-five or
- (e) adultery coupled with desertion without reasonable excuse for two years or upwards.

(2)

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(2) "Incestuous adultery" means adultery committed by a husband with a woman with whom if his wife were dead he could not lawfully contract matrimony by reason of her being within the prohibited degrees of consanguinity or affinity.

"Bigamy" means marriage of any person being married to any other person during the life of his or her former wife or husband whether the second marriage takes place within the dominions of Her Majesty or elsewhere.

Adultery where husband domiciled in New South Wales.  
44 Vic. No. 31 s. 1.

15. Any wife whose husband is at the time of the institution of the suit domiciled in New South Wales may present a petition to the Court praying that her marriage may be dissolved on the ground that since the celebration thereof her husband has been guilty of adultery.

Where wife domiciled in New South Wales.  
55 Vic. No. 37 s. 1.

16. Any wife who at the time of the institution of the suit has been domiciled in New South Wales for three years and upwards (provided she did not resort to New South Wales for the purpose of such institution) may present a petition to the Court praying that her marriage may be dissolved on one or more of the grounds following—

Desertion.

(a) that her husband has without just cause or excuse wilfully deserted the petitioner and without any such cause or excuse left her continuously so deserted during three years and upwards and no wife who was domiciled in New South Wales when the desertion commenced shall be deemed to have lost her domicile by reason only of her husband having thereafter acquired a foreign domicile

Habitual drunkenness or cruelty.

(b) that her husband has during three years and upwards been a habitual drunkard and either habitually left the petitioner without the means of support or habitually been guilty of cruelty towards her

Sentence for crime.

(c) that at the time of the presentation of the petition her husband has been imprisoned for a period of not less than three years and is still in prison under a commuted sentence for a capital crime or under a sentence to penal servitude or imprisonment for seven years or upwards

Imprisonment in aggregate for three years.

(d) that her husband has within five years undergone frequent convictions for crime and been sentenced in the aggregate to imprisonment for three years or upwards and left the petitioner habitually without the means of support

Attempted murder.

(e) that within one year previously her husband has been convicted of having attempted to murder the petitioner or of having assaulted her with intent to inflict grievous bodily harm

Repeated assaults.

(f) that during one year previously her husband has repeatedly assaulted and cruelly beaten the petitioner.

*Hearing*

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*Hearing of Petition.*

17. On the hearing of a petition for the dissolution of marriage the Court shall satisfy itself so far as it reasonably can—

- (a) as to the facts alleged
- (b) where adultery is charged whether or no the petitioner has been in any manner accessory to or conniving at the adultery or has condoned the same.

The Court shall also inquire into any counter charge which may be made against the petitioner.

Duty of Court.  
36 Vic. No. 9 s. 24.  
55 Vic. No. 37 s. 3.

*Dismissal of Petition.*

18. Whenever a petition is presented under sections twelve fourteen or fifteen the Court shall dismiss the petition if—

- (a) it is not satisfied on the evidence that the alleged adultery was committed or
- (b) it finds that the petitioner has during the marriage been accessory to or conniving at the adultery of the other party to the marriage or has condoned the adultery complained of or
- (c) it finds that the petition is presented or prosecuted in collusion with either of the respondents.

Petition under ss.  
12 14 15.  
36 Vic. No. 9 s. 26.  
44 Vic. No. 31 s. 4.

*Decree when to be pronounced.*

19. (1) Whenever a petition is presented under sections twelve fourteen or fifteen the Court shall pronounce a decree declaring the marriage to be dissolved if it is satisfied on the evidence that the case of the petitioner has been proved and does not find against the petitioner any of the facts mentioned in (b) and (c) of the last preceding section.

(2) The Court shall not be bound to pronounce such decree if—

- (a) it finds that the petitioner has during the marriage been guilty of adultery or
- (b) it is of opinion that the petitioner has been guilty of—
  - (i) unreasonable delay in presenting or prosecuting the petition or
  - (ii) cruelty towards the other party to the marriage or
  - (iii) having deserted or wilfully separated himself from the other party before the adultery complained of or
  - (iv) such wilful neglect or misconduct as has conduced to the adultery.

Petitions under ss.  
12 14 15.  
Court to pronounce  
decree.  
36 Vic. No. 9 s. 27.  
44 Vic. No. 31 s. 3.

Discretion of Court.  
*Ibid.*



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Petitions under ss.  
13 16.  
Discretion of Court.  
55 Vic. No. 37 s. 2.

**20.** (1) Whenever a petition is presented under sections thirteen or sixteen the Court may dismiss the petition if in its opinion the petitioner's own habits or conduct induced or contributed to the wrong complained of.

Court to pronounce  
decree.

(2) In all other cases under the said sections the Court shall if it is satisfied that the case of the petitioner is established pronounce the decree prayed for.

Application of s. 19  
(2).  
*Ibid.* s. 3.

(3) So far as they severally are applicable all the provisions of sections eighteen (b) and (c) and nineteen (2) shall apply to petitions and suits under sections thirteen and sixteen.

*Decrees Nisi.*

*Nisi* in first instance.  
36 Vic. No. 9 s. 28.

**21.** (1) Every decree for dissolution of marriage shall in the first instance be a decree *nisi*.

Not absolute until  
after six months.

(2) A decree *nisi* shall not be made absolute until after the expiration of six months (or such shorter time as the Court fixes by special order) from the pronouncing thereof.

Time for showing  
cause.

(3) During such period any person may in such manner as the Court by a general or special order directs show cause why the said decree should not be made absolute.

Grounds for showing  
cause.

(4) Cause may be shown on the following grounds—

- (a) that the decree was obtained by collusion or
- (b) that material facts were not brought before the Court.

Powers of Court on  
cause shown.

(5) On cause being so shown the Court shall—

- (a) make the decree absolute or
- (b) reverse the decree *nisi* or
- (c) require further inquiry or
- (d) otherwise deal with the case as justice requires.

*Decrees Absolute.*

Application by  
petitioner.  
50 Vic. No. 12 s. 3.

**22.** (1) After the expiration of the time limited in that behalf the petitioner may make request in writing that such decree *nisi* be made absolute.

(2) The Court shall upon a certificate from the Registrar that no matter in opposition to the final decree is then pending make the decree absolute as of course.

(3) It shall not be necessary for the petitioner to move to make absolute any such decree *nisi*.

Application by  
respondent.  
56 Vic. No. 36 s. 3.

**23.** (1) 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 to the petitioner or such substituted notice as the Court allows apply to the Court to make the decree absolute. (2)

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(2) 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 thinks proper.

*Co-respondents.*

24. (1) Where the husband presents a petition for dissolution of marriage he shall make the alleged adulterer a co-respondent to the petition unless on special grounds to be allowed by the Court he is excused from so doing. To petition by husband. 36 Vic. No. 9 s. 23.

(2) Where the wife presents a petition for dissolution of marriage the Court may if it sees fit direct that the person with whom the husband is alleged to have committed adultery be made a respondent. To petition by wife.

(3) In either of the cases hereinbefore mentioned the Court may after the close of the evidence for the petitioner direct such co-respondent or respondent to be dismissed from the suit if it thinks there is not sufficient evidence against him or her. Dismissal from suit.

*Relief given to Respondent.*

25. (1) In suits for dissolution of marriage under sections twelve fourteen or fifteen if a wife being a respondent opposes on the ground of the petitioner's adultery cruelty or desertion a petition presented by her husband or if a husband being a respondent opposes on the ground of the petitioner's adultery or cruelty a petition presented by his wife the Court may on the application of such respondent give the same relief to which such respondent would have been entitled in case he or she had filed a petition seeking such relief. 36 Vic. No. 9 s. 32.

(2) So far as they severally are applicable all the provisions of this section shall apply to petitions and suits under sections thirteen and sixteen. 55 Vic. No. 37 s. 3.

*Power to direct questions to be argued.*

26. (1) Whenever the Court deems it necessary or expedient to have any question in relation to a petition for dissolution of marriage fully argued it may direct all necessary papers in the matter to be sent to the Crown Solicitor. Ibid. s. 25. 56 Vic. No. 36 s. 17.

(2) The Crown Solicitor shall under the directions of the Attorney-General instruct counsel to argue such question before the Court.

*Re-marriage.*

27. On every decree nisi for dissolution of marriage the Registrar shall indorse a notice that if the petitioner or respondent contracts marriage before the decree is made absolute he or she will be guilty of bigamy. Before decree absolute. 50 Vic. No. 12 s. 3.

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After decree  
absolute.  
36 Vic. No. 9 s. 46.

**28.** (1) The respective parties to a suit for dissolution of marriage may marry again as if the marriage had been dissolved by death where but not before—

- (a) the time limited for appealing against a decree absolute has expired and no appeal has been presented or
- (b) any such appeal is dismissed or
- (c) in the result of any appeal the marriage is declared to be dissolved.

(2) No officiating minister shall be compelled to solemnize the marriage of any person whose former marriage was dissolved on the ground of his or her adultery nor shall he be liable to any suit penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

## PART V.

## NULLITY OF MARRIAGE.

Decrees and suits.  
*Ibid.* s. 28.  
48 Vic. No. 3 s. 9.

**29.** The provisions of section twenty-one shall apply to decrees and suits for nullity of marriage.

## PART VI.

## INTERVENTION BY CROWN SOLICITOR.

In suits for Dissolu-  
tion or Nullity.  
36 Vic. No. 9 s. 28.  
48 Vic. No. 3 s. 9.

**30.** (1) During the progress of or before the decree is made absolute in a suit for dissolution or nullity of marriage any person may give information to the Crown Solicitor of matters material to the due decision of the case.

(2) The Crown Solicitor may thereupon take such steps as the Attorney-General deems necessary or expedient.

(3) If from any such information or otherwise the Crown Solicitor suspects that any parties to the suit are or have been acting in collusion for the purpose of obtaining a decree of dissolution or nullity of marriage contrary to the justice of the case he may under the direction of the Attorney-General and by leave of the Court intervene in the suit alleging such collusion and may retain counsel and subpœna witnesses to prove the alleged collusion.

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## PART VII.

## JUDICIAL SEPARATION.

*On petition by husband or wife.*

**31.** A decree of judicial separation may be obtained either by the husband or the wife upon application by petition to the Court on the ground of adultery or of cruelty or of desertion without cause for two years and upwards. Adultery cruelty desertion. 36 Vic. No. 9 ss. 15 16.

**32.** Any married person who at the time of the institution of the suit has been domiciled in New South Wales for three years and upwards (provided that he or she did not resort to New South Wales for the purpose of such institution) may present a petition to the Court praying that a judicial separation may be granted if a husband on one or more of the grounds upon which a petition for dissolution of marriage may be presented under section thirteen and if a wife upon one or more of the grounds upon which a petition for dissolution of marriage may be presented under section sixteen. Where petitioner domiciled for three years. 55 Vic. No. 37 s. 1.

*Decrees.*

**33.** A decree for a judicial separation may be pronounced in all cases in which Power to pronounce. 36 Vic. No. 9 s. 2.

- (a) a decree for a divorce a mensâ et thoro might at any time prior to the passing of the Imperial Act twentieth and twenty-first Victoria chapter eighty-five have been pronounced in England
- (b) the petitioner's case if for dissolution of the marriage has failed or the petition been dismissed but a case for judicial separation has been established. 55 Vic. No. 37 s. 2 proviso.

**34.** In suits for judicial separation under section thirty-one the Court on being satisfied of the truth of the allegations contained in the petition and that there is no legal ground why the same should not be granted may decree judicial separation accordingly. Under s. 31. 36 Vic. No. 9 s. 16.

**35.** (1) In suits for judicial separation under section thirty-two if in the opinion of the Court the petitioner's own habits or conduct induced or contributed to the wrong complained of the petition may be dismissed. Under s. 32. 55 Vic. No. 37 ss. 2, 3.

(2) In all other cases under the said last mentioned section the Court if satisfied that the case of the petitioner is established and that there is no legal ground why the petition should not be granted shall pronounce the decree prayed for.

*Reversal of Decree.*

**36.** Any husband or wife upon the application of whose wife or husband as the case may be a decree of judicial separation has been pronounced may at any time thereafter present a petition to the Court praying Decree of separation obtained during absence may be reversed. 36 Vic. No. 9 s. 18.

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praying for a reversal of such decree on the ground that it was obtained in his or her absence and that there was reasonable ground for the alleged desertion where desertion was the ground of such decree.

(2) The Court may on being satisfied of the truth of the allegations of such petition reverse the decree accordingly.

(3) The reversal of the decree shall not prejudice nor affect the rights and remedies which any other person would have had in case such reversal had not been decreed in respect of any debts contracts or acts of the wife incurred entered into or done between the times of the decree of separation and of the reversal thereof.

*Effect of Decree.*

Effect of decree.  
36 Vic. No. 9 s. 2.

**37.** (1) A decree for a judicial separation shall have the same effect as a decree for a divorce a mensâ et thoro would have had in England according to the law in force before the passing of the Imperial Act twentieth and twenty-first Victoria chapter eighty-five and such other effect as herein mentioned.

Effect on after-acquired property.  
*Ibid.* s. 20.

(2) In every case of a judicial separation the wife shall from the date of the decree and whilst the separation continues be considered as a feme sole with respect to property of every description which she may acquire or which may come to her or devolve upon her.

(3) Such property may be disposed of by her in all respects as a feme sole and on her decease the same shall in case she dies intestate go as the same would have gone if her husband had been then dead.

(4) If after a decree of judicial separation a wife again cohabits with her husband all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use subject however to any agreement in writing made between herself and her husband when separate.

(5) The provisions of this section shall be deemed to extend to property to which such wife has become or shall become entitled as executrix administratrix or trustee since the decree of separation and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

Effect upon contracts and torts of wife.  
*Ibid.* s. 21.

**38.** (1) In every case of a judicial separation the wife shall whilst so separated be considered as a feme sole for the purposes of contract and wrongs and injuries and suing and being sued in any civil proceeding.

(2) The husband shall not be liable in respect of any engagement or contract entered into or for any wrongful act or omission by the wife or for any costs incurred by her as plaintiff or defendant.

(3)

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(3) Where upon any such judicial separation alimony is decreed or ordered to be paid to the wife and the same is not duly paid by the husband he shall be liable for necessaries supplied for her use. Husband liable for necessaries. 36 Vic. No. 9 s. 21.

(4) Nothing herein contained shall prevent the wife from joining at any time during such separation in the exercise of any joint power given to herself and her husband. Joint powers. Ibid.

## PART VIII.

## ALIMONY.

*On dissolution of marriage.*

**39.** (1) The Court may on any decree for dissolution of marriage order the husband to secure to the wife for any term not exceeding her life and to the satisfaction of the Court such gross or annual sum of money as it deems reasonable. Permanent alimony: gross or annual sum. Ibid. s. 29.

(2) The Court shall in making such order have regard to the wife's fortune (if any) to the ability of the husband and the conduct of the parties.

(3) The Court may settle and approve or refer it to the proper officer of the Court to settle and approve of a proper deed or instrument to be executed by all necessary parties.

(4) The Court may in such case if it see fit suspend the pronouncing of its decree until such deed or instrument has been duly executed.

**40.** (1) The Court instead of ordering the husband to secure to the wife a gross or annual sum may make an order on the husband for payment to the wife during their joint lives of such monthly or weekly sums for her maintenance and support as the Court thinks reasonable. Monthly or weekly payments. Ibid. 48 Vic. No. 3 s. 8.

(2) If the husband afterwards from any cause becomes unable to make such payments the Court may discharge or modify the order or temporarily suspend the same as to the whole or any part of the money ordered to be paid and again revive the same order wholly or in part as to it seems fit. Ibid.

(3) If the wife marries again the Court may upon proof of that fact discharge the said order or if there be infant children in the wife's custody may vary the order. Ibid.

**41.** Upon any petition for dissolution of marriage the Court shall have the same power to make interim orders for payment of money by way of alimony or otherwise to the wife as it has in a suit instituted for judicial separation. Pendente lite. 36 Vic. No. 9 s. 29.

*On judicial separation.*

**42.** Where the application for judicial separation is by the wife the Court may make any order for alimony which it deems just. Application by wife. Ibid. s. 16.

43.

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General powers.  
55 Vic. No. 37 s. 6.

**43.** Where a decree is made for judicial separation the Court may make all such orders in respect of alimony to the wife as it could make if the decree made was for dissolution of marriage.

*On restitution of conjugal rights.*

36 Vic. No. 9 s. 16.

**44.** Where the application for restitution of conjugal rights is by the wife the Court may make any order for alimony which it deems just.

*Directions as to payment.*

Payment to wife or  
to trustee.  
36 Vic. No. 9 s. 19.

**45.** The Court may in all cases in which it makes any decree or order for alimony direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the Court and may direct any securities to be given and may impose any terms or restrictions which seem expedient and may appoint a new trustee if for any reasons it appears to the Court expedient to do so.

*The Registrar's report.*

Court may consider  
report.  
56 Vic. No. 36 s. 11.

**46.** The Court in determining alimony applications may consider the Registrar's report of the result of his examination of the witnesses.

## PART IX.

## COSTS.

Discretionary.  
36 Vic. No. 9 s. 41.

**47.** (1) On the hearing of any suit proceeding or petition under this Act the Court may make such order as to costs as seems just.

Attorney and client.  
56 Vic. No. 36 ss. 6  
18.

(2) The Court may in all suits and proceedings except proceedings on appeal order costs to be paid as between attorney and client.

Against  
co-respondents.  
36 Vic. No. 9 s. 31.

**48.** Whenever in a petition presented by a husband the alleged adulterer is made a co-respondent and the adultery is established the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

Of proceedings  
under ss. 26, 86.  
36 Vic. No. 9 s. 25.  
56 Vic. No. 36 s. 17.

**49.** (1) The Court may order the costs incurred by the Crown Solicitor and otherwise arising in a proceeding under sections twenty-six or eighty-six of this Act to be paid by the parties or such of them as it sees fit including a wife if she has separate estate.

(2) In case the Crown Solicitor is not thereby fully satisfied his reasonable costs he shall be entitled to charge and be reimbursed the difference as part of the expense of his office.

Costs of intervention  
by Crown Solicitor.  
36 Vic. No. 9 s. 28.  
48 Vic. No. 3 s. 10.

**50.** (1) Where the Crown Solicitor intervenes or shows cause against a decree nisi in any suit or proceeding for dissolution or for nullity of marriage the Court may make such order in respect to the costs of the Crown Solicitor and of all parties occasioned by the intervention or showing cause as seems just. (2)

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(2) The Court may order such costs to be paid by the Crown Solicitor or by the parties or one or other of them including a wife if she has separate estate.

(3) If the Crown Solicitor is not thereby fully satisfied his reasonable costs he may charge and be reimbursed the difference as part of the expense of his office.

(4) The Crown Solicitor and any party may recover such costs in like manner as costs may be recovered in other cases.

(5) The Attorney General may direct that any costs paid to a party by the Crown Solicitor in accordance with any order under this section shall be part of the expense of his office.

51. The Court may make such order as to the costs of any person who intervenes or shows cause against a decree nisi in any suit or proceeding and of all parties thereto occasioned by such intervention or showing cause as aforesaid as seems just. Costs of intervention in other cases. 56 Vic. No. 36 s. 6.

## PART X.

## DAMAGES.

52. (1) A husband may in a petition for dissolution of marriage or for judicial separation claim damages from any person on the ground of his having committed adultery with the petitioner's wife. Claim by husband. 36 Vic. No. 9 s. 30.

(2) Every petition claiming damages shall be served on the alleged adulterer and the wife unless the Court dispenses with such service or directs some other service to be substituted. Service.

(3) Every petition claiming damages shall be heard and tried on the same principles in the same manner and subject to the same or like rules and regulations as formerly applied to the trial and decision of actions for criminal conversation brought in the common law jurisdiction of the Supreme Court. How tried.

(4) The provisions of this Act with reference to the hearing and decision of other petitions shall so far as may be necessary be deemed applicable to petitions claiming damages. Provisions of this Act to apply.

(5) The damages to be recovered shall be ascertained by the verdict of a jury although the respondent or co-respondent does not appear. Jury to ascertain.

53. The Court may after the damages have been ascertained direct in what manner they shall be paid and applied and may order the whole or any part to be settled for the benefit of the children (if any) of the marriage or as a provision for the maintenance of the wife. Application of damages. 36 Vic. No. 9 s. 30.

54. (1) No damages shall be claimed in any petition in respect of an act of adultery committed more than three years before the filing of the petition. Limitation of time. 56 Vic. No. 36 s. 2.

(2)



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(2) 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.

## PART XI.

## SETTLEMENTS.

*Property of wife.*

Court may order  
settlement.  
36 Vic. No. 9 s. 39.

**55.** (1) Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for the adultery of the wife and the wife is entitled to any property either in possession or reversion the Court may if it thinks fit order a reasonable settlement to be made of such property or any part thereof for the benefit of the innocent party and of the children of the marriage or either or any of them.

(2) Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a final decree of dissolution of marriage or judicial separation shall be deemed valid and effectual in law notwithstanding the existence of the disability of coverture at the time of the execution thereof.

*Application of settled property.*

Marriage settlements  
may be varied.  
*Ibid.* s. 40.  
56 Vic. No. 36 s. 7.

**56.** After a final decree of nullity or dissolution of marriage the Court may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree and may make such orders with reference to the application of the whole or a portion of the property settled for the benefit of the parties to and the children if any of the marriage or either or any of them as to the Court seems fit.

General powers.  
55 Vic. No. 37 s. 6.

**57.** Where a decree is made for judicial separation the Court may make all such orders in respect of the wife's property as it could make if the decree was for dissolution of marriage.

## PART XII.

## TRANSACTIONS WITH INTENT TO DEFEAT PETITIONERS.

*Deeds, &c.*

Court may set aside  
deeds &c.  
56 Vic. No. 36 s. 4.

**58.** (1) 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

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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 given as are directed be set aside on such terms as the Court thinks proper.

(2) 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 directs. Property may be taken in execution by petitioner.

(3) On the hearing the Court may make such order for the protection of a bonâ fide purchaser as it thinks just. Protection of purchaser.

(4) The respondent or anyone 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. Respondent ordered to pay costs.

*Sales of Real Property.*

59. (1) Where it appears 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 directs. Sale may be restrained. 56 Vic. No. 36 s. 5.

(2) 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.

(3) The Court may consider the claim of any person interested and may make such order in the premises as appears just.

PART XIII.

CUSTODY AND MAINTENANCE OF CHILDREN.

60. (1) In any suit or other proceeding for obtaining a decree of judicial separation or of nullity or dissolution of marriage the Court may— In suits for separation nullity or dissolution. 36 Vic. No. 9 ss. 33 and 34.

- (a) make such orders as it deems just and proper with respect to the custody maintenance and education of the children the marriage of whose parents is the subject of such suit or other proceedings and
- (b)

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Times when orders  
may be made.  
36 Vic. No. 9 ss. 33  
and 34.

Custody may be  
given to wife.  
56 Vic. No. 36 s. 8.

In applications for  
conjugal rights.  
*Ibid.* s. 16.

(b) if it thinks fit direct proper proceedings to be taken for placing such children under the protection of the Supreme Court in its equitable jurisdiction.

(2) Such orders and directions may be made—

(a) from time to time by interim orders before making the final decree or

(b) by provisions in the final decree or

(c) from time to time after the final decree upon application by petition for the purpose.

**61.** The Court may give the wife the custody of the children—

(a) in undefended cases where the Court is requested under section twenty-two of this Act to make the rule absolute

(b) in defended cases where it is proved that the respondent has had notice of the intention of the petitioner to apply for the custody of the children at the hearing of the motion to make the rule absolute.

**62.** The Court may at any time before final decree on any application for restitution of conjugal rights (or after final decree if the respondent fails 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.

## PART XIV.

## PETITIONS NOTICES AND SERVICE.

Petition to state facts.

36 Vic. No. 9 s. 22.

44 Vic. No. 31 s. 1.

Affidavit in support.

36 Vic. No. 9 s. 35.

**63.** Every petition praying for a dissolution of marriage shall state as distinctly as the nature of the case permits the facts on which the claim to have the marriage dissolved is founded.

**64.** Every person seeking a decree of nullity of marriage or of judicial separation or of dissolution of marriage shall together with the petition or other application for the same file an affidavit verifying such petition or other application so far as he is able to do so and stating that there is not any collusion or connivance between the deponent and the other party to the marriage.

Service.

*Ibid.* s. 36.

**65.** (1) Every petition for nullity of marriage judicial separation or dissolution of marriage shall be served on the party to be affected thereby either within or without New South Wales in such manner as the Court by any general or special order from time to time directs.

Dispensing with  
service.

(2) The Court may dispense with such service altogether in case it seems necessary or expedient to do so. **66.**

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**66.** The Court may from time to time adjourn the hearing of any petition and may require further evidence thereon. Adjournment of petition. 36 Vic. No. 9 s. 38.

**67.** (1) Every petition under section fifteen of this Act shall state the fact of the husband's domicile in New South Wales at the time of the institution of the suit. Petition by wife under s. 15. 44 Vic. No. 31 s. 2.

(2) Proof of such domicile to the satisfaction of the Court shall be given before any decree in the suit is pronounced and any decree for dissolving the marriage shall state that such proof has been so given.

**68.** All notices required to be served in a suit for dissolution of marriage 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. 50 Vic. No. 12 s. 6.

PART XV.

TRIAL OF ISSUES.

**69.** (1) The Court may if it thinks fit direct any issue to be determined before itself or any Judge of the Supreme Court by the verdict of a jury. Power of Court to direct trial by jury. 36 Vic. No. 9 s. 6. 48 Vic. No. 3 s. 3.

(2) Any party to a suit for dissolution of marriage may require the contested issues therein to be tried by a jury. Party may require trial by jury. 36 Vic. No. 9 s. 23. 50 Vic. No. 12 s. 1. 55 Vic. No. 37 s. 3.

(3) The Court may direct any issue to be tried on circuit and may make all necessary orders for the setting down of the case and the return of the findings therein and respecting the costs of the trial. On circuit. 55 Vic. No. 37 s. 5.

**70.** (1) Every issue for trial by jury shall be reduced into writing in such form as the Court directs. Issues to be put into writing. 36 Vic. No. 9 s. 7.

(2) At the trial the jury shall be sworn to try the issue and a true verdict give thereon according to the evidence. Jury how sworn.

**71.** The Court or Judge presiding at the trial shall have the same power jurisdiction and authority as any judge possesses when sitting at nisi prius. Power of Court. Ibid.

**72.** A general or special verdict subject to a special case may be returned in like manner as in any cause tried in the Supreme Court. Verdict may be general or special. Ibid. s. 8.

**73.** (1) Whenever in any cause any issue is to be tried by a jury the Court shall issue a precept directing the sheriff to summon forty-eight special jurors. Forty-eight jurors to be summoned. 48 Vic. No. 3 s. 3.

(2) When there is more than one co-respondent on the record the precept shall direct so many additional special jurors to be summoned as will allow each co-respondent to strike off six names from the jury list. Additional jurors. Ibid.

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Calling the jury.  
48 Vic. No. 3 s. 4.

**74.** (1) The sheriff shall furnish to the clerk of the Court separate cards with the respective names places of abode and additions of the jurors returned in the jury panel written thereon.

(2) At the trial of any issue the clerk or other ministerial officer of the Court shall put the cards together in a box.

(3) Upon the issue being called on to be tried the clerk or officer shall in open Court draw out the cards one after another until such a number of jurors appears as will allow of a jury of twelve being struck therefrom after each party to the record has struck off six names.

Impannelling jury.  
*Ibid.* s. 5.

**75.** (1) A list of the names of such number of jurors so determined as aforesaid shall be delivered by the sheriff or his deputy to the petitioner or his attorney or counsel who may strike off six names.

(2) The list shall then be delivered to the respondent or his attorney or counsel who may strike off an equal number of names.

(3) The list shall then be delivered to the co-respondent or his attorney or counsel who may strike off an equal number of names.

(4) If there be more than one co-respondent the list shall be handed to each or the attorney or counsel of each in turn who may strike off the like number of names.

Twelve remaining jurors to be impannelled.

(5) The jurors whose names then remain upon the list or the first twelve jurors whose names remain thereon as the case may require shall be the jurors for the trial of the issue and shall be sworn and impannelled accordingly.

Challenges.

(6) Every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party on the record on an issue at nisi prius.

General law and practice to apply.  
*Ibid.* s. 7.

**76.** Except as hereinbefore provided the law and practice governing all questions respecting the jury shall be the same as now in force at nisi prius sittings of the Supreme Court.

## PART XVI.

## WITNESSES AND EVIDENCE.

Witnesses to be examined in open Court.  
36 Vic. No. 9 s. 10.

**77.** Subject to the rules hereunder the witnesses in all proceedings before the Court where their attendance can be had shall be sworn and examined orally in open Court

Affidavits.  
*Ibid.*

Provided that the parties may verify their respective cases in whole or in part by affidavit but so that the deponent in every such affidavit may on the application of the opposite party or by direction of the Court be cross-examined orally in open Court and thereafter may be re-examined orally in open Court.

Cross-examination of deponents.  
*Ibid.*

**78.**

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- 78.** In any proceeding under this Act—
- (a) the Court may order the attendance of the petitioner and may examine him or permit him to be examined or cross-examined on oath on the hearing of the petition and
- (b) all parties and the wives and husbands of all parties shall be competent and compellable witnesses.
- 79.** No witness in any proceeding under this Act whether a party to the suit or not shall be liable to be asked or bound to answer any question tending to show that he has been guilty of adultery unless he has already given evidence in the same proceeding in disproof of his alleged adultery.
- 80.** The provisions of section eleven of the Evidence Act 1898 that no husband shall be competent to disclose any communication made to him by his wife during the marriage and that no wife shall be competent to disclose any communication made to her by her husband during the marriage shall not apply to any proceeding under this Act to any husband and wife who are both parties to such proceeding.
- 81.** (1) The Court or any judge presiding at a trial on circuit may in any suit at any stage thereof and from time to time make an order forbidding the publication of the evidence therein or any report or account of such evidence either as to the whole or portions thereof.
- (2) The breach of any such order may be dealt with as contempt of court.

Examination of parties.  
36 Vic. No. 9 ss. 14-37.  
No. 11 1898 s. 8.

Questions tending to show adultery.  
*Ibid.* ss. 14-37.  
*Ibid.* s. 10.  
56 Vic. No. 36 s. 9.

Communications during marriage.  
No. 11 1898 s. 11.  
Proviso.

Publication of evidence may be forbidden.  
55 Vic. No. 37 ss. 4-5.

## PART XVII.

## APPEALS NEW TRIALS &amp;C.

*Appeal from decree or order of the Court.*

- 82.** (1) Any person aggrieved by any decree or order of the Court (including a decree or order respecting costs only) may within fourteen days next after the pronouncing or making of the same enter in the prescribed manner an appeal against such decree or order to the Full Court and on any appeal every decree or order may be reversed or varied as the Full Court thinks proper.
- (2) The appellant shall within twenty-one days after the entry of his appeal give security as prescribed to prosecute his appeal with effect and to obey the decree or order in all things in case of its eventual affirmance and also to pay the costs of the appeal if costs are thereupon awarded against him.
- (3) Any person so aggrieved may limit his appeal to costs only and no security shall be required in appeals so limited.

To Full Court.  
36 Vic. No. 9 s. 5.  
42 Vic. No. 3 s. 2.  
55 Vic. No. 37 s. 3.

Security required.  
36 Vic. No. 9 s. 5.

Appeals as to costs only.  
42 Vic. No. 3 s. 2.

*Appeal from decision of the Registrar.*

- 83.** An appeal shall lie to the Court as defined in section three
- (1) from any decision order or direction of the Registrar.

To the Court.

*New* 56 Vic. No. 36 s. 11.

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Who may apply.  
36 Vic. No. 9 ss. 8 9.

**84.** The parties may apply in the prescribed manner to the Full Court for the new trial of any issue which under this Act may be tried before a jury and every such application shall be heard and determined by the Full Court.

*Special Verdict and Special Case.*

Case how stated.  
*Ibid.* s. 8.

**85.** (1) Every special verdict or special case shall be stated and settled in like manner as in any cause tried in the Supreme Court.  
(2) The matter of law in every special verdict or special case shall be heard and determined before the Full Court.

*Referring Points of Law.*

56 Vic. No. 36 s. 17.

**86.** The Court may if it thinks fit refer any matter of law for the decision of the Full Court and the Full Court may if it thinks fit 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-six.

## PART XVIII.

## ENFORCEMENT OF DECREES AND ORDERS.

*Generally.*

Decrees enforced  
as in equity.  
36 Vic. No. 9 s. 42.

**87.** All decrees and orders made by the Court in any suit proceeding or petition instituted under the authority of this Act shall be enforced and put in execution in the same or the like manner as the judgments orders and decrees of the Supreme Court in the exercise of its equitable jurisdiction may now be enforced and put in execution.

Bankruptcy laws not  
to affect liability  
under this Act.  
*Ibid.* s. 45.

**88.** (1) No law now or hereafter to be in force for the relief of insolvent debtors or for the abolition of imprisonment for debt shall extend to affect or discharge from his liability any person who shall be charged with the payment of alimony or who shall be indebted for any damages or costs adjudged against him as respondent or co-respondent in any proceeding under this Act.

Bankruptcy Act  
1898 not affected.

(2) This section shall not be taken to repeal or affect the operation of any portion of the Bankruptcy Act 1898 and shall be construed as if passed into law immediately before the said Act.

*Orders in respect of alimony maintenance costs or damages.*

Writ of capias ad  
respondendum.  
50 Vic. No. 12 s. 7.

**89.** (1) A writ of capias ad respondendum may be issued in respect of alimony costs or damages against a respondent or co-respondent in a suit for dissolution of marriage in all cases in which such

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such writ could on the eighth day of September one thousand eight hundred and eighty-six be issued in an action at law against a defendant.

(2) The issue of such writ shall be subject to such special directions as the Court in any case thinks fit to give in order to prevent injustice or oppression. 50 Vic. No. 12 s. 7.

**90.** (1) The Court may enforce by attachment any order made by it for payment of costs or of any sum due in respect of alimony or the maintenance of children. Attachment. Ibid. s. 8.

(2) No person adjudicated bankrupt in whose statement of affairs all sums due in respect of such costs alimony or maintenance are included shall remain imprisoned under such writ during a longer period than is hereinafter mentioned— Bankruptcy of person ordered to pay. Ibid. s. 8. Proviso.

(a) for non-payment of costs six months

(b) for non-payment of alimony or maintenance twelve months.

PART XIX.

MISCELLANEOUS.

**91.** (1) The Court may make general rules for regulating the practice and procedure under this Act for fixing and regulating the fees payable upon all proceedings before the Court for enabling persons to sue in the Court in formâ pauperis and for regulating the exercise by the Registrar of the powers hereby conferred upon him. General Rules. 36 Vic. No. 9 ss. 43 44 48. 50 Vic. No. 12 s. 8. 56 Vic. No. 36 s. 11.

(2) A copy of every such rule shall be laid before both Houses of Parliament within one month from the making thereof if Parliament be then sitting or otherwise within one month after the commencement of the next ensuing session.

**92.** No action shall be maintainable for criminal conversation. Action of Crim. Con. abolished. 36 Vic. No. 9 s. 47.

**93.** The Court shall have the same power of granting Orders to sue or defend in formâ pauperis in any suit under this Act as in cases at law or in equity. Pauper suits or defences. 55 Vic. No. 37 s. 4.

**94.** The Registrar shall subject to the rules of Court have the following powers— Power of Registrar. 56 Vic. No. 36 s. 11.

(a) to tax costs subject to review by the Court as at common law

(b) to settle issues

(c) to settle deeds directed by the Court to be executed by the parties

(d) to extend the time within which proceedings may be filed in undefended suits

(e) to allow proceedings to be taken or defended in formâ pauperis

(f) to examine witnesses in alimony applications and report the result of the said examinations to the Court

(g)



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(g) to discharge such other administrative functions in the matrimonial causes jurisdiction as are discharged by the Prothonotary at common law.

Testing proceedings.  
56 Vic. No. 36 s. 10.

**95.** All proceedings in the matrimonial causes jurisdiction of the Supreme Court shall be tested in the name of the Judge appointed to exercise jurisdiction under this Act.

Sec. 2.

## SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
36 Vic. No. 9	The "Matrimonial Causes Act" ...	The whole unrepealed portion, except ss. 3, 4, 12.
42 Vic. No. 3	An Act to amend the law as to costs in matrimonial causes.	The whole.
44 Vic. No. 31	The "Matrimonial Causes Act Amendment Act of 1881."	The whole.
48 Vic. No. 3	The "Matrimonial Causes Act Amendment Act of 1884."	The whole except s. 2.
50 Vic. No. 12	The "Divorce Procedure Amendment Act"	The whole.
55 Vic. No. 37	The "Divorce Amendment and Extension Act of 1892."	The whole.
56 Vic. No. 36	The "Matrimonial Causes Procedure Amendment Act."	The whole unrepealed portion.
No. 11 1898	"Evidence Act 1898" ...	Ss. 8 10 and proviso to 11.