

# Matrimonial Causes Act 1899 No 14

[1899-14]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 January 2000 to 7 January 2010 (accessed 26 July 2024 at 16:25)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Note**  
This Act was superseded by the [Matrimonial Causes Act 1959 No 104](#) of the Commonwealth with effect from 1.2.1961 — see section 8 of that Act.
- **Repeal**  
The Act was repealed by Sch 6 to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2009 No 106](#) with effect from 8.1.2010.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 8 January 2010

# Matrimonial Causes Act 1899 No 14



New South Wales

## Contents

<b>Long title</b> .....	7
<b>Part 1 Preliminary</b> .....	7
1 Name of Act .....	7
2 Repeal and saving .....	7
3 Definitions .....	7
<b>Part 2 Jurisdiction</b> .....	8
4 Composition and jurisdiction of Court .....	8
5 Court to act on principles of the Ecclesiastical Courts .....	8
<b>Part 3 Restitution of conjugal rights</b> .....	8
6 Applications by petition .....	8
7 Power to decree .....	9
8 (Repealed) .....	9
9 Where husband is applicant wife's property may be settled .....	9
10 (Repealed) .....	9
11 Failure to comply with decree equivalent to desertion .....	9
<b>Part 4 Dissolution of marriage</b> .....	9
<b>Division 1 Dissolution on petition by husband</b> .....	9
12 Adultery .....	9
13 Where husband domiciled in New South Wales .....	9

<b>Division 2 Dissolution on petition by wife</b> .....	10
14 Incestuous adultery &c .....	10
15 Adultery where husband domiciled in New South Wales .....	11
16 Where wife domiciled in New South Wales .....	11
<b>Division 3 Hearing of petition</b> .....	11
17 Duty of Court .....	11
<b>Division 4 Dismissal of petition</b> .....	12
18 Petition under ss 12, 14, 15 .....	12
<b>Division 5 When decree to be pronounced</b> .....	12
19 Petitions under ss 12, 14, 15 .....	12
20 Petitions under ss 13, 16 .....	13
<b>Division 6 Decrees nisi</b> .....	13
21 Nisi in first instance .....	13
<b>Division 7 Decrees absolute</b> .....	13
22 Application by petitioner .....	13
23 Application by respondent .....	14
<b>Division 8 Co-respondents</b> .....	14
24 To petition by husband .....	14
<b>Division 9 Relief given to respondent</b> .....	14
25 Relief given to Respondent .....	14
<b>Division 10 Questions to be fully argued</b> .....	14
26 Power to direct questions to be argued .....	15
<b>Division 11 Re-marriage</b> .....	15
27 Before decree absolute .....	15
28 After decree absolute .....	15
<b>Part 5 Nullity of marriage</b> .....	15
29 Decrees and suits .....	15

<b>Part 6 Intervention by Crown Solicitor</b> .....	15
30 In suits for Dissolution or Nullity .....	15
<b>Part 7 Judicial separation</b> .....	16
<b>Division 1 Separation on petition by husband or wife</b> .....	16
31 Adultery cruelty desertion .....	16
32 Where petitioner domiciled for three years .....	16
<b>Division 2 Decrees</b> .....	16
33 Power to pronounce .....	16
34 Under s 31 .....	16
35 Under s 32 .....	17
36 Decree of separation obtained during absence may be reversed .....	17
37 Effect of decree .....	17
38 Effect upon contracts and torts of wife .....	18
<b>Part 8 Alimony</b> .....	18
39 Alimony .....	18
40 Specific powers of Court .....	20
41 Execution of instruments by order of Court .....	21
42 Pending proceedings .....	22
43-46 (Repealed) .....	22
<b>Part 9 Costs</b> .....	22
47 Court may order payment of costs .....	22
48 Against co-respondents .....	22
49 Of proceedings under ss 26, 86 .....	22
50 Costs of intervention by Crown Solicitor .....	22
51 Costs of intervention in other cases .....	23
<b>Part 10 Damages</b> .....	23
52 Claim by husband for damages .....	23
53 Application of damages .....	23
54 Limitation of time .....	24

<b>Part 11 Settlements</b> .....	24
55 Court may order settlement .....	24
56 Marriage settlements may be varied .....	24
57 General powers .....	24
<b>Part 12 Transactions with intent to defeat petitioners</b> .....	24
58 Court may set aside deeds &c .....	24
59 Sale may be restrained.....	25
<b>Part 13 Custody of children</b> .....	25
60 In suits for separation, nullity or dissolution .....	25
61 Custody may be given to wife .....	26
62 In applications for conjugal rights.....	26
<b>Part 14 Petitions notices and service</b> .....	26
63 Petition to state facts.....	26
64 Affidavit in support .....	26
65 Service .....	26
66 Adjournment of petition.....	27
67 Petition by wife under s 15 .....	27
68 Service of notices .....	27
<b>Part 15 Trial of issues</b> .....	27
69 Trial by jury.....	27
70 Issues to be put into writing .....	27
71 Power of Court.....	28
72 Verdict may be general or special .....	28
73 Summoning of jurors .....	28
74 Calling the jury .....	28
75 Impannelling jury.....	28
76 General law and practice to apply .....	29
<b>Part 16 Witnesses and evidence</b> .....	29
77 Witnesses to be examined in open Court .....	29
78 Examination of parties.....	29

79 Questions tending to show adultery .....	29
80 (Repealed) .....	29
81 Publication of evidence may be forbidden.....	29
<b>Part 17 Appeals new trials &amp;c.....</b>	<b>30</b>
82 Appeal to Full Court from decree or order of Court.....	30
83 Appeal to Court from decision of Registrar .....	30
84 Who may apply for a new trial? .....	30
85 How special verdict and special case stated .....	30
86 Referring points of law.....	30
<b>Part 18 Enforcement of decrees and orders .....</b>	<b>31</b>
87 Decrees enforced as in equity .....	31
88 Bankruptcy laws not to affect liability under this Act .....	31
89 Writ of capias ad respondendum .....	31
90 Attachment.....	31
90A Summary proceedings to enforce orders for alimony and maintenance .....	32
90B Enforcement of order by means of certificate of amount due and judgment thereon.....	34
<b>Part 19 Miscellaneous .....</b>	<b>35</b>
91 Power to make rules .....	35
92 Action of Criminal Conversation abolished .....	36
93 Pauper suits or defences .....	36
93A Decrees in certain cases to be pronounced by registrar .....	36
93B Registrar to refer certain matters to Judge.....	37
94 Power of Registrar .....	37
95 Testing proceedings.....	38
<b>Schedule .....</b>	<b>38</b>

# Matrimonial Causes Act 1899 No 14



New South Wales

An Act to consolidate the Acts relating to Divorce and Matrimonial Causes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Matrimonial Causes Act 1899*.

### 2 Repeal and saving

- (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.
- (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.
- (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.

### 3 Definitions

In this Act unless the context or subject matter otherwise indicates or requires:

**Alimony** includes maintenance.

**Marriage** includes a union which is ostensibly a marriage and which is the subject of judicial proceedings to determine its validity.

**The Court** means:

- (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
- (2) in the case of an appeal the Full Court
- (3) in the case of any proceeding to which section 93A of this Act applies the registrar or any deputy registrar.

**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.

## **Part 2 Jurisdiction**

### **4 Composition and jurisdiction of Court**

- (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).
- (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.
- (4) The registrar, when exercising the jurisdiction and powers conferred upon or delegated to him under this Act, shall be deemed to be exercising the jurisdiction and powers of the Supreme Court.

### **5 Court to act on principles of the Ecclesiastical Courts**

In all suits and proceedings, other than proceedings to dissolve any marriage or proceedings under Part 8 of this Act, 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.

## **Part 3 Restitution of conjugal rights**

### **6 Applications by petition**

Application for restitution of conjugal rights may be made by either husband or wife by petition to the Court.

## **7 Power to decree**

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

## **8 (Repealed)**

## **9 Where husband is applicant wife's property may be settled**

- (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.
- (2) (Repealed)

## **10 (Repealed)**

## **11 Failure to comply with decree equivalent to desertion**

- (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.
- (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.

## **Part 4 Dissolution of marriage**

### **Division 1 Dissolution on petition by husband**

#### **12 Adultery**

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 Where husband domiciled in New South Wales**

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 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.

## **Division 2 Dissolution on petition by wife**

### **14 Incestuous adultery &c**

- (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)

***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.

### **15 Adultery where husband domiciled in New South Wales**

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.

### **16 Where wife domiciled in New South Wales**

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:

- (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
- (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
- (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 imprisonment for seven years or upwards
- (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
- (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
- (f) that during one year previously her husband has repeatedly assaulted and cruelly beaten the petitioner.

## **Division 3 Hearing of petition**

### **17 Duty of Court**

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.

## **Division 4 Dismissal of petition**

### **18 Petition under ss 12, 14, 15**

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.

## **Division 5 When decree to be pronounced**

### **19 Petitions under ss 12, 14, 15**

- (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.

## **20 Petitions under ss 13, 16**

- (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.
- (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.
- (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.

## **Division 6 Decrees nisi**

### **21 Nisi in first instance**

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

## **Division 7 Decrees absolute**

### **22 Application by petitioner**

- (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*.

### **23 Application by respondent**

- (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) The Court may order accordingly and may make the order subject to such conditions as to the payment of costs as it thinks proper.

## **Division 8 Co-respondents**

### **24 To petition by husband**

- (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.
- (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.
- (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.

## **Division 9 Relief given to respondent**

### **25 Relief given to Respondent**

- (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.
- (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.

## **Division 10 Questions to be fully argued**

## **26 Power to direct questions to be argued**

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

## **Division 11 Re-marriage**

### **27 Before decree absolute**

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.

### **28 After decree absolute**

- (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 5 Nullity of marriage**

### **29 Decrees and suits**

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

## **Part 6 Intervention by Crown Solicitor**

### **30 In suits for Dissolution or Nullity**

- (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 subpoena witnesses to prove the alleged collusion.

## **Part 7 Judicial separation**

### **Division 1 Separation on petition by husband or wife**

#### **31 Adultery cruelty desertion**

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.

#### **32 Where petitioner domiciled for three years**

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.

### **Division 2 Decrees**

#### **33 Power to pronounce**

A decree for a judicial separation may be pronounced in all cases in which

- (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.

#### **34 Under s 31**

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.

### **35 Under s 32**

- (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.
- (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.

### **36 Decree of separation obtained during absence may be reversed**

- (1) 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 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.

### **37 Effect of decree**

- (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.
- (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.

### **38 Effect upon contracts and torts of wife**

- (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) 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.
- (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.

## **Part 8 Alimony**

### **39 Alimony**

- (1) In any proceedings under this Act (other than proceedings for jactitation of marriage), the Court may make such order as it deems just and proper, having regard to the means and conduct of the parties to the marriage and all other relevant circumstances, for the payment of alimony to one party to the marriage by the other party, or for the maintenance of the children the marriage of whose parents is the subject of the proceedings, including an order in favour of a party against whom a decree in the proceedings is made.

- (2) An order for alimony:

- (a) pending the hearing of a petition for restitution of conjugal rights, and
- (b) made before or after the commencement of the *Matrimonial Causes (Amendment) Act 1958*,

shall, if a decree is made in favour of the party in whose favour the order was made, but subject to any special terms of the order, continue in force after the time in that behalf limited by the Court for compliance with the decree until varied or revoked:

Provided that in the case of any such order made before the commencement of the *Matrimonial Causes (Amendment) Act 1958* this subsection applies only where the time so limited expires after that commencement.

(3) An order for alimony:

- (a) pending the hearing of a petition for judicial separation, and
- (b) made before or after the commencement of the *Matrimonial Causes (Amendment) Act 1958*,

shall, if a decree is made in favour of the person in whose favour the order was made, but subject to any special terms of the order, continue in force after the decree until varied or revoked:

Provided that in the case of any such order made before the commencement of the *Matrimonial Causes (Amendment) Act 1958* this subsection applies only where the decree in the suit is made after that commencement.

(4) An order for alimony:

- (a) pending the hearing of a petition for dissolution of marriage, and
- (b) made before or after the commencement of the *Matrimonial Causes (Amendment) Act 1958*,

shall, where that order is in force immediately before the decree *nisi* in the suit is made absolute, but subject to any special terms of the order, continue in force after the decree absolute until varied or revoked:

Provided that in the case of any such order made before the commencement of the *Matrimonial Causes (Amendment) Act 1958* this subsection applies only where the decree *nisi* is made absolute after that commencement.

(5) An order for the maintenance of a child:

- (a) pending the hearing of a petition for restitution of conjugal rights, judicial separation, dissolution of marriage or nullity of marriage, and
- (b) made before or after the commencement of the *Matrimonial Causes (Amendment) Act 1958*,

shall, subject to any special terms of the order, but in so far only as it relates to the maintenance of the child, continue in force:

- (i) in a case of restitution of conjugal rights—after the time in that behalf limited by the Court for compliance with the decree in the suit until varied or revoked,
- (ii) in any other case—after the final decree or decree absolute in the suit until varied or revoked:

Provided that in the case of any such order made before the commencement of the *Matrimonial Causes (Amendment) Act 1958* this subsection applies only where:

(i) in a case of restitution of conjugal rights—the time so limited expires after that commencement,

(ii) in any other case—the final decree or decree absolute is made after that commencement.

Nothing in this subsection affects the operation of subsection two, three or four of this section.

#### **40 Specific powers of Court**

(1) The Court, in exercising its powers under this Part of this Act, may:

(a) order that a gross sum or a weekly, fortnightly, monthly or other periodic sum be paid or secured and order that any security is to be in addition to or wholly or partly in substitution for a periodic payment,

(b) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be effectively carried out or to provide security for the due performance of an order,

(c) settle and approve any deed or instrument so ordered to be executed,

(d) order that payments be made direct to a party to the marriage, to a trustee to be appointed or to any public authority for the benefit of a party to the marriage,

(e) order that payments of maintenance in respect of a child be made to such person as the Court may specify,

(f) make a permanent order, an order pending the disposal of the proceedings or an order for a fixed term, for a life or during joint lives,

(g) impose terms and conditions,

(h) discharge an order if the party in whose favour the order is made marries again or if there is any other just cause for so doing,

(i) modify an order under this Part or suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event,

(j) revive an order wholly or in part,

(k) increase or decrease the amount payable under an order other than an order pursuant to which a gross or periodic sum is secured,

(l) sanction an agreement for the acceptance of a gross sum or periodic sums in lieu of rights under this Part,

(m) deal with any two or more matters mentioned in this subsection in the same order,

(n) include its order under this Part in a decree *nisi*, decree absolute, or final decree, or make any order under this Part on, or at any time before or after, the pronouncement of any such decree.

(2) Notwithstanding anything contained in this Part:

(a) where no alimony was payable:

(i) in a case of restitution of conjugal rights, immediately before the expiration of the time limited by the Court for compliance with the decree in the proceedings, or

(ii) in any other case, immediately before the pronouncement of the decree absolute or final decree in the proceedings, or

(b) where alimony was so payable but the order therefor was not continued in force by virtue of the operation of subsection two, three or four of section thirty-nine of this Act,

the Court shall not make an order for permanent alimony in respect of the proceedings unless application therefor was or is made before, on, or, having regard to all the circumstances of the case, within a reasonable time after, the pronouncement of the decree absolute or final decree.

(3) The Court may exercise the powers conferred by this Part in relation to an order for alimony or maintenance made before the commencement of the *Matrimonial Causes (Amendment) Act 1958*, as well as in relation to an order for alimony or maintenance made after that commencement.

#### **41 Execution of instruments by order of Court**

(1) Where any person, directed by an order under this Part to execute any deed or other instrument or make a surrender or transfer, refuses or neglects to do so, the Court may appoint the Chief Clerk in Divorce, or some other person, to execute the deed or instrument or to make the surrender or transfer in his name, and to do all acts necessary to give validity and operation thereto.

(2) The execution of the deed or instrument and the surrender or transfer so made by the person so appointed shall in all respects have the same force and validity as if it had been executed or made by the person directed by the order to execute or make it.

(3) The Court shall make such order as may be just touching the payment of the costs of, or attending the execution of, any such deed, transfer, surrender or instrument.

## **42 Pending proceedings**

This Part applies to proceedings under this Act (other than proceedings for jactitation of marriage) pending at the commencement of the *Matrimonial Causes (Amendment) Act 1958*, as well as to proceedings under this Act (other than proceedings for jactitation of marriage) instituted after that commencement.

## **43-46 (Repealed)**

## **Part 9 Costs**

### **47 Court may order payment of costs**

- (1) The court may make any order as to the costs of any proceedings under this Act which it deems just, and except in the case of proceedings on appeal may order payment of costs as between solicitor and client.
- (2) The court may by consent of all parties appearing at the hearing before the court assess the costs of any proceedings, and in the case of interlocutory proceedings may do so without the consent of the parties, and the costs so assessed shall be recoverable from the person ordered to pay the same in the same manner as if they had been duly taxed and certified by the taxing officer.

### **48 Against co-respondents**

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.

### **49 Of proceedings under ss 26, 86**

- (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.

### **50 Costs of intervention by Crown Solicitor**

- (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) 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 Costs of intervention in other cases**

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.

### **Part 10 Damages**

#### **52 Claim by husband for damages**

- (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.
- (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.
- (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.

Provided that, subject to section sixty-nine of this Act, any issue arising upon the hearing of any such petition (including the amount of damages) may be determined by the Court.

- (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.
- (5) (Repealed)

#### **53 Application of damages**

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.

#### **54 Limitation of time**

- (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.
- (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 11 Settlements**

#### **55 Court may order settlement**

- (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.

#### **56 Marriage settlements may be varied**

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.

#### **57 General powers**

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 12 Transactions with intent to defeat petitioners**

#### **58 Court may set aside deeds &c**

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

### **59 Sale may be restrained**

- (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.
- (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 13 Custody of children**

### **60 In suits for separation, nullity or dissolution**

- (1) In any suit or other proceeding for obtaining a decree of judicial separation or of nullity or dissolution of marriage the Court may:
  - (a) make such orders as it deems just and proper with respect to the custody and education of the children the marriage of whose parents is the subject of such suit or other proceedings and
  - (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 Custody may be given to wife**

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 In applications for conjugal rights**

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 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 14 Petitions notices and service**

#### **63 Petition to state facts**

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 Affidavit in support**

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.

#### **65 Service**

(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.

(2) The Court may dispense with such service altogether in case it seems necessary or

expedient to do so.

#### **66 Adjournment of petition**

The Court may from time to time adjourn the hearing of any petition and may require further evidence thereon.

#### **67 Petition by wife under s 15**

- (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.
- (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 Service of notices**

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.

### **Part 15 Trial of issues**

#### **69 Trial by jury**

- (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.
- (2) Any party to a suit for dissolution of marriage may require the contested issues therein to be tried by a jury.
- (2A) A husband claiming damages may require the issues in the suit to be tried by a jury and the amount of the damages to be recovered to be ascertained by the verdict of a jury, although the respondent or co-respondent, or both the respondent and co-respondent, do not appear.
- (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.

#### **70 Issues to be put into writing**

- (1) Every issue for trial by jury shall be reduced into writing in such form as the Court directs.
- (2) At the trial the jury shall be sworn to try the issue and a true verdict give thereon according to the evidence.

### **71 Power of Court**

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.

### **72 Verdict may be general or special**

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.

### **73 Summoning of jurors**

For the purposes of this Act the Court may, as occasion requires, issue such precepts directing the sheriff to summon jurors and make such orders upon the sheriff for the attendance of such number of jurors as such Court may consider requisite.

### **74 Calling the jury**

- (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 four being struck therefrom after each party to the record has struck off two names.

### **75 Impannelling jury**

- (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 two 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.
- (5) The jurors whose names then remain upon the list or the first four 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.

- (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.

#### **76 General law and practice to apply**

Except as hereinbefore provided the law and practice governing all questions respecting the jury shall be the same as that for the time being in force at nisi prius sittings of the Supreme Court.

### **Part 16 Witnesses and evidence**

#### **77 Witnesses to be examined in open Court**

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

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.

#### **78 Examination of parties**

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 Questions tending to show adultery**

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.

Notwithstanding the foregoing provisions of this section a party to any proceeding under this Act may be asked and shall be bound to answer any question tending to show that he has been guilty of adultery if he is asked that question for the purpose of determining his fitness to be given custody of, or access to, children.

#### **80 (Repealed)**

#### **81 Publication of evidence may be forbidden**

- (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.

## **Part 17 Appeals new trials &c**

### **82 Appeal to Full Court from decree or order of Court**

- (1) Any person aggrieved by any decree or order of the Court (including a decree or order respecting costs only) may within twenty-one 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.

### **83 Appeal to Court from decision of Registrar**

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

### **84 Who may apply for a new trial?**

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.

### **85 How special verdict and special case stated**

- (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.

### **86 Referring points of law**

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 18 Enforcement of decrees and orders**

### **87 Decrees enforced as in equity**

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.

### **88 Bankruptcy laws not to affect liability under this Act**

- (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.
- (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.

### **89 Writ of *capias ad respondendum***

- (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 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.

### **90 Attachment**

- (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.
- (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:
  - (a) for non-payment of costs six months
  - (b) for non-payment of alimony or maintenance twelve months.
- (3) This section has effect notwithstanding section ninety-eight of the [Supreme Court Act 1970](#).

**90A Summary proceedings to enforce orders for alimony and maintenance**

- (1) Where the court has made an order for the payment of any monthly, fortnightly or weekly sum by a husband or father in respect of alimony or the maintenance of his wife or child, any justice may, upon complaint on oath being made by the wife or by any reputable person on behalf of the wife or child that any sum due under the order is unpaid:
  - (a) issue his summons requiring the husband or father to appear before two justices to show cause why he should not pay such sum, or
  - (b) issue his warrant for the apprehension of the husband or father.
- (2) The complaint shall be dealt with in like manner as a complaint under Part 2 of the *Maintenance Act 1964*, and the provisions of that Part shall apply accordingly.
- (3)
  - (a) Upon the hearing the justices shall inquire into the complaint, and if they are satisfied that any sum due under the order is unpaid, they may order the defendant to pay to such person as they may think fit the sum unpaid, together with such further sum for costs as they may deem proper and in default of payment may order that the defendant be committed to prison for a period of one day for every pound or part of a pound found to be due, including the costs incidental to the hearing of the complaint, unless the said order be complied with; but no defendant shall be detained for a longer period than twelve months, and the period of detention shall in every case be subject to the provisions of section ninety-four of the *Justices Act 1902*, as amended by subsequent Acts.
  - (b) Subject to the provisions of section twenty-one of the *Prisons Act 1952*, the period of imprisonment served by a defendant in accordance with the provisions of this subsection shall not be deemed to discharge the arrears for the non-payment of which he has been committed, but during such period the order for payment of alimony or maintenance shall be deemed to be suspended.
  - (c) No defendant shall be liable to be imprisoned a second time for, and no writ of attachment may issue in respect of any arrears for which he shall have actually suffered imprisonment as provided in this subsection, but such arrears shall thereafter be a civil debt only, recoverable in any court of competent jurisdiction by the person to whom the arrears are due.
  - (d) Where it appears that the amount of arrears has been paid since the service of the summons or the issue of a warrant the justices may order the persons summoned or apprehended to pay the costs of and incidental to the proceedings, and such costs may be recovered in a summary way under the provisions of the *Justices Act 1902*, as amended by subsequent Acts.

(3A) The justices may direct that the warrant committing the defendant to prison shall lie in the office of the court for such time as they think proper, or may order the amount found to be due, and any costs awarded, to be paid by such instalments and upon such conditions as they think fit, to the person to whom the amount due under the order is payable.

Upon the production of a certificate by such person that any instalment has not been paid, or that any condition of the direction has not been complied with, and of the amount then due on the order, any justice may direct that the warrant committing the defendant to prison be executed.

(3B) Any justice to whom an application is made for a direction that the warrant be executed may postpone the execution of the warrant upon such terms and conditions as he thinks fit, and if the defendant breaks any term or condition upon which such a postponement is made, the justice may then direct the execution of the warrant.

(3C) Where before a justice directs, under subsection (3A) or (3B) of this section, the execution of a warrant committing a person to prison, it appears to the justice that by payment of part of the arrears for the non-payment of which such person has been committed those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears would have subjected such person to a maximum term of imprisonment less than the term of imprisonment in which he is liable under such warrant, the justice shall, by his warrant of commitment, revoke the term of imprisonment and may order such person to be imprisoned for a period calculated in accordance with subsection three of this section, having regard to the unsatisfied balance, instead of for the term originally mentioned in the order.

(3D) A justice may refuse to enforce an order or may enforce it to such extent as the justice thinks fit having regard to all the circumstances of the case, particularly with reference to the inability of the offender to obtain employment, or to comply with the order owing to continued ill health.

(4) The justices may in and by and order made under this section do all or any of the things that justices may do under section eighty-three of the *Justices Act 1902*, and that section and section eighty-four of that Act shall apply accordingly.

(5) For the purposes of this section a certificate of the registrar or deputy-registrar in divorce that any sum which was to be paid into court had not been so paid shall be prima facie evidence of such fact.

(6) Where any order is made under the provisions of this section the justices making the order shall notify the registrar in the prescribed manner.

(7) The court may on application made in the prescribed manner amend, set aside, or vary any order made by justices under this section.

- (8) In this section **husband** includes a male person against whom the court has made an order for payment in respect of alimony and **wife** includes a female person in whose favour the court has made such an order, and **justice** means justice of the peace.

**90B Enforcement of order by means of certificate of amount due and judgment thereon**

- (1) This section applies to an order made by the Court before or after the commencement of the *Matrimonial Causes (Amendment) Act 1958* for the payment by any person of alimony or maintenance to any other person.
- (2) Notwithstanding anything contained in this or any other Act an order to which this section applies made against a female shall be enforced only in the manner provided in this section.
- (3) Where it is made to appear upon oath to the registrar or a deputy-registrar in divorce that default has, before or after the commencement of the *Matrimonial Causes (Amendment) Act 1958*, been made by a person against whom an order to which this section applies has been made in making the payments directed by the order and that an amount of more than twenty dollars is due thereunder, the registrar or deputy-registrar may grant a certificate in the prescribed form stating the amount due under the order at the date of the certificate without requiring notice of the application to be given to that person.
- (4) The person entitled to receive the money ordered to be paid may file or cause to be filed the certificate in the Supreme Court or in any District Court having jurisdiction within the district wherein the person against whom the order was made resides or wherein any real property of the last-mentioned person is situated, and the Prothonotary or the registrar of the District Court in which the certificate is so filed, as the case may be, shall enter judgment for the person so entitled for the amount stated to be due in the certificate together with the fees paid therefor and for filing the certificate and entering the judgment.

The judgment may, subject to subsection five of this section, be enforced in any manner in which a final judgment in an action may be enforced.

- (5)
- (a) On the application of the person against whom the order was made or his executor or administrator, the Court, if it deems it just and proper to do so, may, whether or not proceedings to enforce the judgment have been commenced:
- (i) order that the judgment shall not be enforced, or
  - (ii) order that the judgment be paid at such time or times and by such instalments, if any, as the Court thinks fit,
- and, where proceedings to enforce the judgment have been commenced, may:

- (iii) set aside or stay execution if execution has issued,
  - (iv) set aside an order made in those proceedings attaching debts due, owing or accruing to that person and order that any moneys that have already been received by the judgment creditor under the order firstmentioned in this subparagraph or that have been paid into court under the order firstmentioned in the subparagraph but have not been paid to the judgment creditor be paid to the person firstmentioned in this subparagraph or his executor or administrator,
  - (v) make such other or further order in relation to those proceedings as may be just.
- (b) The powers conferred on a Court by this subsection shall not be construed as limiting or affecting any power possessed by the Court apart from this subsection.
- (c) In this subsection **Court** means:
- (i) where the certificate is filed in the Supreme Court—the Supreme Court in its common law jurisdiction or a Judge of that Court exercising that jurisdiction,
  - (ii) where the certificate is filed in a District Court—a Judge of that Court.
- (6) Rules of court may prescribe the practice and procedure, to be observed in the Supreme Court and in District Courts, for carrying out or giving effect to this section and, without limiting the generality of the power conferred by the foregoing provisions of this subsection, may prescribe the practice and procedure to be so observed in connection with the filing of certificates and entering up of judgments thereon in pursuance of this section, and the fees to be paid.

## Part 19 Miscellaneous

### 91 Power to make rules

- (1) The judges of the Supreme Court, or any three of them, may make general rules:
- (a) for regulating the pleading, practice, and procedure of the court, and may by such rules amend, vary, or dispense with any provisions of this Act regulating such pleading, practice, or procedure,
  - (b) for fixing the amount of all fees and allowances to officers of the court and solicitors in respect of proceedings under this Act,
  - (c) for enabling persons to sue in the court in forma pauperis, and for regulating the exercise by the registrar of the jurisdiction and powers conferred upon or delegated to the registrar under this Act, and the right of appeal from the registrar,

(d) generally as to all matters necessary or expedient for giving effect to the provisions of this Act.

- (2) The judges of the Supreme Court or any three of them may by rules of court made in that behalf delegate to the registrar power to do such things and transact such business and to exercise any such authority and jurisdiction as is now done, transacted, or exercised by the court except in respect of the hearing of suits or in respect of matters relating to the liberty of the subject:

Provided that the registrar may in case of doubt or difficulty refer any matter to the court:

Provided also that the court may direct any matter in which an order has been made by the registrar to be re-argued before the court upon giving a direction to that effect within the prescribed time after such order has been made by the registrar.

- (3) In this section **registrar** includes a deputy-registrar.

- (4) All rules made under this section shall:

(a) be published in the Gazette,

(b) take effect from the date of publication or from a later date to be specified in the rules, and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

## **92 Action of Criminal Conversation abolished**

No action shall be maintainable for criminal conversation.

## **93 Pauper suits or defences**

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.

## **93A Decrees in certain cases to be pronounced by registrar**

Where questions in any suit have been remitted for trial pursuant to section 133A of the *District Courts Act 1912*, as amended by subsequent Acts, the power, authority and jurisdiction in or in respect of such suit (including power, authority and jurisdiction in matters of costs, custody and access) which, but for this section, would be exercisable by

the Judge appointed to exercise jurisdiction under this Act or by any Judge acting in his place or having co-ordinate jurisdiction with him, shall be exercisable by the registrar or any deputy registrar.

### **93B Registrar to refer certain matters to Judge**

- (1) Notwithstanding anything contained in section 93A of this Act, where in any matter coming before the registrar or any deputy registrar after the commencement of the *Matrimonial Causes (Amendment) Act 1951*, pursuant to section 93A of this Act, it appears to him:
  - (a) that any respondent party is desirous of being let in to defend the suit,
  - (b) that there is ground on which a finding that the petitioner has been an accessory to or has connived at or condoned the matrimonial offence alleged or that the petition is presented or prosecuted in collusion with a respondent might be made,
  - (c) that there is ground on which a decree might not be pronounced or the petition might be dismissed pursuant to section nineteen or subsection one of section twenty of this Act,
  - (d) that the making of any order for costs, custody or access is opposed by any party to the suit appearing before him, or
  - (e) that a special order under subsection two of section twenty-one upon the pronouncement of a decree *nisi*, is sought by any party,

the registrar or deputy registrar shall not deal with the matter but shall refer the same to the Judge appointed to exercise jurisdiction under this Act or to any Judge acting in his place or having co-ordinate jurisdiction with him.

- (2) The power to make general rules conferred by subsection one of section ninety-one of this Act shall, without limiting the generality thereof, extend to include power to make general rules for the purpose of carrying out or giving effect to the provisions of this section and of section 93A of this Act.

### **94 Power of Registrar**

- (1) The Registrar shall subject to the rules of Court have the following powers:
  - (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) to discharge such other administrative functions in the matrimonial causes jurisdiction as are discharged by the Prothonotary at common law
- (h) to exercise the powers and jurisdiction delegated to him under this Act.

(2) In this section **registrar** includes deputy-registrar.

## 95 Testing proceedings

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.

## Schedule

(Section 2)

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 <i>Matrimonial Causes Act Amendment Act of 1881</i> .	The whole.
48 Vic No 3	The <i>Matrimonial Causes Act Amendment Act of 1884</i> .	The whole except s 2.
50 Vic No 12	The Divorce Procedure Amendment Act	The whole.
55 Vic No 37	The <i>Divorce Amendment and Extension Act of 1892</i> .	The whole.
56 Vic No 36	The Matrimonial Causes Procedure Amendment Act.	The whole unrepealed portion.
No 11 1898	<i>Evidence Act 1898</i>	Ss 8 10 and proviso to 11.