



ANNO VICESIMO

GEORGII V REGIS.

A.D. 1929.

No. 1946.

An Act to consolidate and amend the Law relating to Divorce and Matrimonial Causes in South Australia.

[*Reserved, December 12th, 1929.*
[*Royal Assent Proclaimed, March 19th, 1930.*]]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Matrimonial Causes Act, 1929", and shall come into operation on a day to be fixed by proclamation. Short title and commencement.

2. This Act is divided into Parts as follows :— Division of Act.

PART I.—Preliminary Matters.

PART II.—Divorce, Judicial Separation, and other Relief.

PART III.—Adulterers.

PART IV.—Intervention.

PART V.—Maintenance and Children.

PART VI.—Property, Settlements, and like matters.

PART VII.—Transactions to Defeat Claims.

PART VIII.—Miscellaneous.

PART I.

Matrimonial Causes Act, 1929.

Repeal and saving provision.

3. (1) The Acts mentioned in the First Schedule are repealed.

(2) Subject to this section the provisions of the Acts Interpretation Act, 1915, relating to repeals shall apply to the repeals effected by this section.

(3) All proceedings after the commencement of this Act in any cause pending at the said commencement shall be in accordance with the provisions of this Act and the rules.

(4) If in any such proceeding circumstances arise not provided for or if there is any doubt or dispute as to the procedure to be adopted the Judge may direct what shall be done in the particular instance, or that the procedure already adopted shall be deemed proper, and his direction shall be of the same validity as if incorporated in this Act.

Interpretation.

4. In this Act, unless the context otherwise requires, or some other meaning is clearly intended—

“ Plaintiff ” includes a defendant counter-claiming :

“ Claim ” includes a counter-claim :

“ Defendant ” includes a plaintiff against whom there is a counter-claim :

“ Court ” includes a single Judge or the Master when exercising, in accordance with the rules, the jurisdiction of the Court :

“ Order ” includes judgment :

“ The Rules ” means The Rules of Court, 1913, made under the Supreme Court Act, 1878, as amended by the Rules in the Second Schedule to this Act.

Jurisdiction.

5. The Supreme Court, in addition to the jurisdiction conferred by this Act and the rules, shall have the jurisdiction in relation to all matrimonial matters (except marriage licences) which was vested in any Ecclesiastical Court or person in England immediately prior to the Imperial Matrimonial Causes Act, 1857.

PART II.

PART II.

DIVORCE, JUDICIAL SEPARATION, AND OTHER RELIEF.

Grounds for divorce.

6. Any married person domiciled in the State may claim an order for divorce on any of the following grounds existing or occurring after the marriage :—

(a) Adultery :

(b) Habitual cruelty for one year :

(c) Desertion for five years :

(d) Habitual

Matrimonial Causes Act, 1929.

PART II.

- (d) Habitual drunkenness for three years together with—
- (i.) if the husband is the defendant, habitually leaving his wife without sufficient means of support :
 - (ii.) if the wife is the defendant, habitual neglect of her domestic duties :
- (e) Imprisonment for the three years preceding the commencement of the action under a commuted sentence for a capital crime or under a sentence of at least seven years :
- (f) A conviction during the year preceding the commencement of the action for having attempted to murder or having assaulted with intent to inflict grievous bodily harm or caused grievous bodily harm to the other party :
- (g) If the husband is the defendant, frequent convictions within the five years preceding the commencement of the action, the sentences for which aggregate three years, together with habitually leaving his wife without means of support :
- (h) Sodomy, rape, or bestiality :
- (i) Confinement under the Mental Defectives Act, 1913, in any institution for a period or periods aggregating five out of the six years preceding the commencement of the action, coupled with the improbability of recovery :
- (j) If the husband is the defendant, habitual and wilful failure during the five years preceding the commencement of the action to pay the maintenance for his wife which he has been ordered to pay by an order of any Court or has agreed to pay pursuant to any instrument providing for a separation between him and his wife.

7. Any married person domiciled in the State may claim an order for judicial separation on any of the following grounds existing or occurring after the marriage :—

Grounds for
judicial separation.

- (a) Adultery :
- (b) Cruelty :
- (c) Desertion for two years :
- (d) Failure to comply with an order for restitution of conjugal rights :
- (e) Any ground on which a decree for divorce *a mensa et thoro* might have been pronounced prior to the Imperial Matrimonial Causes Act, 1857.

8. An order may be made under either of the preceding two sections notwithstanding that the acts or circumstances constituting the grounds therefor commenced or took place before the commencement of this Act, or outside the State.

Retrospective
provision.

9. Proceedings

PART II.

Matrimonial Causes Act, 1929.

Restitution of conjugal rights and nullity.

9. Proceedings for restitution of conjugal rights and nullity of marriage, and all other proceedings invoking the jurisdiction of the Court mentioned in section 5 shall be brought by action under this Act.

Duty of Court at hearing.

10. Upon the hearing the Court shall as far as possible satisfy itself that there is no reason why the order claimed should not be made.

Absolute bars to relief.

11. No order shall be made—

- (a) if the plaintiff has condoned, been accessory to, or connived at all the grounds proved :
- (b) if there has been collusion by the plaintiff in bringing or prosecuting the action.

Discretionary bars of relief.

12. (1) The Court may refuse to make an order if the plaintiff has been guilty of—

- (a) adultery not condoned :
- (b) unreasonable delay :
- (c) cruelty :
- (d) habits or conduct inducing or contributing to the existence of the ground relied upon :
- (e) desertion before the commencement or happening of the said ground :
- (f) wilful neglect or misconduct conducing to the existence of the said ground.

(2) Where an order for divorce is claimed on the ground set out in paragraph (i) of section 6 the Court may refuse to make the order until the plaintiff has made such provision for the maintenance of the defendant as the Court thinks proper.

Duty of Court to make orders.

13. Subject to the two preceding sections the Court, upon being satisfied as to the existence of any ground, shall make the order or the order *nisi* claimed as the case may be.

Alteration of claim.

14. If, in an action for divorce, a ground is proved sufficient to justify an order for divorce, the plaintiff shall not obtain an order for judicial separation.

Order *nisi*.

15. Every order for divorce or nullity of marriage shall in the first instance be an order *nisi* not to be made absolute until the expiration of six months or such shorter time as the order *nisi* directs.

Order absolute.

16. An order *nisi* shall become absolute upon the expiration of six months or the time fixed therein or upon the dismissal of any appeal or intervention as regards such order *nisi*, whichever happens last and when an order *nisi* becomes absolute the Master shall issue the order absolute as of course.

17. The

Matrimonial Causes Act, 1929.

PART II.

17. The parties to a marriage may re-marry after the expiration of three months from the order absolute or upon the dismissal of any appeal against that order, whichever happens last.

Re-marriage.

18. An order for judicial separation shall have the same force and effect as a decree for divorce *a mensa et thoro* prior to the imperial Matrimonial Causes Act, 1857.

Effect of judicial separation.

19. An order for restitution of conjugal rights shall not be enforceable by attachment, but failure to comply therewith shall constitute desertion as from the date of the order.

Abolition of attachment.

PART III.

ADULTERERS.

PART III.

20. If there is a claim by either party to the marriage for damages or costs against an adulterer the latter shall be made a defendant in the action but not otherwise.

Joinder of adulterer.

21. In every other case unless an order to the contrary is made a person (other than a party to the marriage) charged with adultery shall be served with a notice, in the form prescribed by the rules, that the charge has been made and that person shall be entitled to intervene in the action.

Notice to and intervention by adulterer.

22. Either party to a marriage may in an action claiming an order for divorce or judicial separation, but not otherwise, claim damages from any person on the ground of adultery (not condoned) with the other party to the marriage.

Claim for damages.

23. The action for criminal conversation is abolished, but the principles relating thereto shall be applicable to the said claim for damages.

Abolition of criminal conversation.

24. The Court may direct in what manner the damages awarded shall be paid or applied and that they shall be settled as it thinks proper for the benefit of the wife or of any child of hers.

Application of damages.

PART IV.

INTERVENTION.

PART IV.

25. The Crown Solicitor with the approval of the Attorney-General shall be entitled to intervene and contest or argue any question arising in any action if the Court requests him to do so.

Intervention by Crown Solicitor on request from Court.

26. At any time prior to the making of a final order or order absolute the Crown Solicitor with the approval of the Attorney-General shall be entitled to intervene in any action if he files an affidavit

Intervention of Crown Solicitor in other cases.

PART IV.

Matrimonial Causes Act, 1929.

affidavit that he has that approval and has reason to believe that there are matters relevant to the action which have not been or may not be but which ought to be made known to the Court.

Intervention by other persons.

27. During the said period the Court may make an order entitling any person to intervene if in the opinion of the Court he may be able to prove facts relevant in the action which have not been, or may not be, but which ought to be made known to the Court.

Procedure on intervention.

28. Any person intervening under Part III. or this Part shall be deemed a defendant in the action with all the rights, duties, and liabilities of a defendant.

Powers of Crown Solicitor.

29. The Crown Solicitor shall have the rights, duties, and liabilities which the Crown Proctor had prior to the commencement of this Act.

PART V.

PART V.

MAINTENANCE AND CHILDREN.

Custody.

30. In any action the Court may make such order as it thinks proper as regards the custody, education, and maintenance of and access to the children of the marriage which is the subject of the action, and may direct proper proceedings to be taken for placing such children under the protection of the Court.

Interpretation of "child".

31. A child adopted under the Adoption of Children Act, 1925, by the husband and wife or either of them shall be deemed to be a child of the marriage.

Maintenance.

32. (1) In any action the Court may make any order which it thinks proper for the maintenance of one party to the marriage by the other party and may make an order in favour of a guilty party.

(2) The Court shall have regard to the means of the husband and wife and to the conduct of the parties.

Powers of Court as to maintenance.

33. The Court in exercising its power under this Part may—

(a) order that a gross or a weekly, monthly, yearly, or any other periodic sum shall be paid or secured :

(b) order that any necessary deed or instrument should be executed and that such documents of title should 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 any order :

(c) order that payments should be made to the wife or to a trustee to be appointed or to any public body :

(d) make

Matrimonial Causes Act, 1929.

PART V.

- (d) make a permanent order or an order pending the disposal of the action or for a fixed term or until some future event occurs, or for a life or during joint lives, or until further order:
- (e) impose terms and conditions and suspend any final order or order *nisi* until compliance with an order under this Part:
- (f) discharge or modify any 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:
- (g) revive any order wholly or in part:
- (h) increase or decrease the amount payable under any order:
- (i) make any other order (whether of the same nature as those mentioned in the preceding paragraphs or not and whether or not it is in accordance with the practice prior to the passing of this Act) which it thinks is necessary to do justice:
- (j) deal with any two or more of the matters mentioned in this section in the same order.
- (k) include its order under this Part in an order *nisi*, order absolute, or final order, or may make an order under this Part at any time before or after the final order or order absolute.

34. (1) A copy certified by the Master of the Supreme Court of any order whether made before or after the commencement of this Act which contains directions as to the maintenance of a wife or child, or of any further order of a like nature may be filed with the Clerk of the Court of Summary Jurisdiction at Adelaide.

Enforcement of order for maintenance.

(2) Upon the filing of the order those parts thereof which relate to maintenance and are in force for the time being may be enforced, and non-compliance therewith punished under Division IV. of the Maintenance Act, 1926.

PART VI.

PART VI.

PROPERTY, SETTLEMENTS, AND LIKE MATTERS.

35. (1) Upon the making of an order for judicial separation and for so long as the separation continues—

Effect of judicial separation.

- (a) the wife shall be considered as a single woman for the purpose of contracts, wrongs, and injuries, and with respect to any property which she acquires or which devolves upon her:

(b) such

(b) such property may be disposed of by her as a single woman, and shall upon intestacy devolve as if her husband had predeceased her :

(c) the husband shall not be liable in respect of any act or omission of the wife.

(2) Subject to any arrangement in writing made between the wife and her husband while separate any property to which the wife is entitled at the date of her return to cohabitation with her husband shall be her separate property.

(3) Nothing in this section shall prevent the wife from joining at any time during the separation in the exercise of any joint power given to herself and her husband.

(4) Where the order for judicial separation is obtained by the wife, any property to which she is entitled for an estate in remainder or reversion at the date of the order and any property to which she becomes entitled as executrix, administratrix, or trustee after the date of the order shall be deemed to be property to which this section applies and for the purposes aforesaid the death of the testator or intestate shall be deemed to be the date when the wife became entitled as executrix or administratrix.

Protection to
third parties.

36. (1) Until an order for judicial separation is discharged it shall protect any person having any transaction with the wife.

(2) The discharge or variation of such an order shall not affect the position of a person who has had any transaction with the wife prior to the discharge or variation.

(3) Neither the discharge nor the variation of such an order nor the cessation of the separation shall affect the position of a person who subsequently has any transaction with the wife in reliance upon such order and without notice of the discharge or variation of it or the cessation of separation.

Power as to varia-
tion of settlements.

37. Upon the application of either party to the marriage whether plaintiff or defendant the Court after final order or order absolute may make such orders as it thinks proper with reference to the application of the whole or part of the property dealt with by ante-nuptial or post-nuptial settlements on the parties either for the benefit of the children or of the parties or any of them, and in relation thereto may exercise any of the powers of the Court under Part V. which are applicable.

Matrimonial Causes Act, 1929.

PART VII.

PART VII.

TRANSACTIONS INTENDED TO DEFEAT CLAIMS.

38. (1) The Court may set aside or restrain the making of any instrument or sale by or on behalf of or by direction or in the interest of a party, if it is made or intended to be made to defeat an existing or anticipated order for costs, damages, or maintenance. Transactions to defeat claims.

(2) The Court may order that any money or real or personal property dealt with by such instrument or sale may be taken in execution or charged with the payment of such sums for costs, damages, or maintenance, as the Court directs, or that the proceeds of a sale shall be paid into Court to abide its order.

(3) The Court shall have regard to the interests of and shall make any order proper for the protection of a *bona fide* purchaser or other person interested.

(4) A party or any one acting in collusion with a party may be ordered to pay the costs of any other party or of a *bona fide* purchaser of and incidental to such instrument or sale and of the setting aside or restraining thereof.

PART VIII.

PART VIII.

MISCELLANEOUS.

39. (1) Proceedings under this Act shall not be instituted by petition, but shall be commenced by writ of summons, and shall be conducted in accordance with the rules. Procedure.

(2) Rule 7 of the preliminary part of the Rules of Court, 1913, is amended by striking out paragraph IV. thereof.

(3) The Rules of Court, 1913, are amended by inserting therein order LXVIII. as set out in the Second Schedule to this Act.

40. In any proceedings under this Act either party to a marriage may give evidence proving or tending to prove that the said parties did not have sexual relations with each other at any particular time notwithstanding that such evidence would show or tend to show that any child born to the wife during the marriage was illegitimate. Evidence of non-access.

41. On the hearing of a claim for divorce on the ground of failure to pay maintenance if it is proved that the husband has failed to pay the maintenance ordered or agreed to be paid, the onus shall be on the husband of proving that the failure was not wilful. Proof of wilful failure to pay maintenance.

42. The

Matrimonial Causes Act, 1929.

PART VIII.

Proof of
births, deaths,
and marriages.

42. The Court may receive as evidence of the facts therein stated any document purporting to be either the original or a certified copy of a certificate entry or record of a birth, death, or marriage alleged to have taken place outside the State.

Retention of
wife's domicile.

43. For the purposes of this Act a deserted wife who was domiciled in the State at the time of desertion shall be deemed to have retained her South Australian domicile although since the desertion her husband may have acquired another domicile, and a husband confined under the Mental Defectives Act, 1913, in any institution for an unbroken period of five years shall be deemed to have acquired a South Australian domicile.

Position of clergy
as to re-marriage.

44. No minister of religion shall be compelled to solemnise the marriage of any person whose former marriage has been dissolved.

Power to take
evidence in
private.

45. If in the opinion of the Court a witness might be adversely affected in giving evidence by the presence in the Court-room of members of the public, or if the Court has reason to believe that the evidence will be of such a nature that it is proper to do so, the Court may exclude the public during the whole or any part of the hearing.

Reserved for the signification of His Majesty the King's pleasure thereon.

G. J. R. MURRAY, Deputy Governor.

Matrimonial Causes Act, 1929.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS REPEALED.

No. and Year of Act.	Title of Act.
3 of 1866	The Matrimonial Causes Act, 1867.
1356 of 1918.....	Matrimonial Causes Act Amendment Act, 1918.
1889 of 1928.....	Matrimonial Causes Act, 1928.

THE SECOND SCHEDULE.

ORDER LXVIII.

MATRIMONIAL ACTIONS.

Interpretation.

1. (1) This order shall apply only to matrimonial actions.
- (2) In this order unless the contrary intention appears—
 - “Plaintiff” includes a defendant counter-claiming:
 - “Claim” and “Statement of claim” include counter-claim:
 - “Defendant” includes a plaintiff against whom there is a counter-claim.

Writ of Summons and Statement of Claim.

2. The writ of summons shall have annexed thereto a statement of claim which shall contain such of the following as may be appropriate in the particular action:—

- (a) The place and date of marriage:
- (b) The name and ages of the children of the marriage living and under the age of 18 years:
- (c) The domicile of the parties and the ground thereof:
- (d) The result of any previous proceedings relating to the marriage:
- (e) The material facts upon which the plaintiff relies, with particulars thereof:
- (f) The relief claimed:

(g) The

Matrimonial Causes Act, 1929.

- (g) The amount of damages claimed :
- (h) Whether costs are claimed :
- (i) Whether maintenance will be claimed :
- (j) The names of the children of whom custody is claimed :
- (k) The name and address of the plaintiff's solicitor and the address for service.

3. At the end of every statement of claim shall appear in the same type as the body of the claim a memorandum similar to Form 1 and if the claim states that maintenance will be claimed a memorandum similar to Form 2 shall also be added.

Service.

4. Service may be effected outside the State without leave and if service is so effected the time for entering an appearance or intervention shall be such as the Master shall in each case enter in the writ or notice prior to the issue of the writ.

5. Where an order for substituted service directs advertisement, the advertisement shall be in Form 3A. or 3B. with any necessary modifications.

6. It shall not be necessary to make any writ, statement of claim, notice or copy thereof an exhibit to the affidavit of service thereof.

7. An affidavit of service shall state the deponent's means of knowledge of the identity of the person served.

8. Service of an order on the solicitor on the record for a party shall be good service for all purposes including attachment, unless in the case of attachment the Court has reason to believe that the order has not come to the notice of the party.

9. A party or person served who has not entered an appearance need not, unless the Act or these rules otherwise direct, be served with any document or given any notice.

Mental Defectives.

10. Without any order for the purpose the Public Trustee shall be the guardian, *ad litem*, of every person confined in an institution under the Mental Defectives Act, 1913.

Appearance under Protest.

11. A party may enter a conditional appearance stating in the appearance his reasons for making it conditional and shall forthwith apply in Chambers to have the question so arising decided, and unless he obtains an order in his favour the appearance shall become unconditional.

Appearance.

12. The appearance may state that the party desires to be heard only on certain proceedings in the action to be specified in the appearance such as taxation of costs, maintenance or custody, and the other party need serve on the person filing such an appearance only the documents relating to the specified proceedings.

13. An appearance may be entered at any time by leave.

Defence.

Matrimonial Causes Act, 1929.

Defence.

14. A party shall not plead an affirmative defence unless his counsel adds a certificate that on his instructions there are reasonable grounds for setting up the defence.

Intervention.

15. A person served with notice of a charge of adultery shall intervene by filing an appearance and proceed as if originally a party to the action.

16. The Crown Solicitor or other person intervening under Part IV. shall do so by filing his objection within eight days from the time when he becomes entitled to do so in which he shall set out the matters on which he relies and the action shall proceed as though such objection were a defence filed by an original party.

17. If the plaintiff does not file any reply to such objection the party intervening may apply to the Master to dismiss the claim and rescind any order made.

18. When any person intervenes in an action the title shall be altered by adding the name of the person intervening as "intervener".

Amendment.

19. Any writ or other document filed or served may be amended at any time by leave, and the statement of claim may be so amended to include further material facts on which the plaintiff relies and a claim for further relief based thereon notwithstanding that those facts occurred after the issue of the writ.

20. It shall not be necessary to serve notice of any application to amend or of any amendment on any party or person who has not appeared unless the Judge or Master directs such service on the ground that the party or person would in his opinion have entered an appearance and filed a defence if such amendment had been included in the documents served or that he will probably be prejudiced in some way by the amendment.

Particulars.

21. The costs of and incidental to any application and order for particulars shall be borne by the party ordered to give them unless it is otherwise ordered.

Discovery.

22. No security for the costs of discovery need be given.

23. An application for leave to deliver interrogatories shall be accompanied by the interrogatories intended to be delivered which shall be settled on the application, and no interrogatory shall be allowed unless the Master is satisfied that its purpose can not be effected by admissions or other reasonable means.

Leave

*Matrimonial Causes Act, 1929.**Leave to Proceed.*

24. If a party alleging adultery does not name, or having named does not serve notice of the charge upon the person with whom the adultery is alleged to have been committed, that allegation of adultery shall not be inquired into by the Court unless the party obtains an order from the Master permitting him to proceed without naming or, as the case may be, serving the adulterer. Such an order may be obtained on any of the following grounds:—

- (a) because he has no evidence or not sufficient evidence admissible against such person ; or
- (b) because such person or his name is unknown and he cannot be found or his name ascertained on proper inquiry ; or
- (c) on the ground of the difficulty of service ; or
- (d) on any other ground which appears to the Master to be sufficient.

Application for leave under this rule may be made *ex parte*.

Setting Down for Hearing.

25. No action shall be set down for hearing—

- (a) unless service of the notice under section 21 of the Act has been proved in the same way as service of the writ and until the time for appearance by a person served has elapsed ; or
- (b) service of the notice has been dispensed with under the last preceding rule.

26. By consent or if there has been no appearance as regards any matter which may be dealt with at the hearing the action may be set down for hearing immediately after the said time, and without any notice of trial.

27. In undefended actions no copy of the pleadings for the use of the Judge need be lodged.

Proceedings in Chambers.

28. Unless the Act, these Rules or the Master or Judge in a particular case otherwise directs all applications and proceedings other than the hearing of the action or appeals shall be made to the Master in Chambers, and unless otherwise directed evidence on applications in Chambers shall be on affidavit.

29. No interlocutory summons need be issued, and all applications shall be made by notice served and filed. The provisions of Order LIII. relating to default of attendance on an interlocutory summons shall apply in cases of default of appearance on an application on notice.

30. (1) There shall be an appeal from any decision made by the Master. The appeal shall be to a Judge in Chambers by an application without summons. One clear day's notice of the appeal shall be given within seven days of the decision appealed against.

(2) The Master may refer any application to a Judge in Chambers or to the Full Court.

Matrimonial Causes Act, 1929.

31. The appeal from a decision of the Master shall be by way of re-hearing, and further evidence may be given without leave, and in matters involving the exercise of a discretion the Judge shall exercise his own discretion without regard to the manner in which the discretion has been exercised by the Master.

32. When hearing applications in Chambers the Master shall have all the powers as to contempt, production of documents, and attendance of witnesses which a Judge hearing the action would have, and all other powers of a Judge in Chambers.

33. If the Master directs that no order need be drawn up the fiat indorsed on the notice of application shall be sealed and shall operate as the order, and no notice of any order not drawn up need be given to any party attending on the application, and time shall run from the date of the fiat.

Order nisi.

34. The order *nisi* shall be similar to Form 5 and in relation to maintenance, custody, and other matters therein mentioned except the dissolution of the marriage shall operate as an interim order from the date of the order *nisi* until it is made absolute.

35. The order *nisi* may include the costs to be incurred thereafter in the action.

36. On the application of any party to an action the Judge may direct that the order *nisi* shall become absolute in less than six months. An application for such a direction may be made either at the hearing or in Chambers after the hearing.

Discontinuance of Action.

37. Any application for leave to discontinue an action shall be made to the Master.

Wife's Costs.

38. At any stage of the action on the application of a wife, the Master may order that the husband shall give security either by payment of money into Court or otherwise for the costs of the wife of the hearing or of any other proceedings in the action.

39. No such order shall be made unless the Master is satisfied—

- (a) that the absence of an order might result in hardship to the wife; and
- (b) on the affidavit of the solicitor that it is proper for the wife to proceed in the action; and
- (c) that having regard to the assets and income of both the husband and wife it is proper to make the order.

40. The assets and income of both the husband and the wife shall be taken into account in deciding the amount for which security is to be given.

41. Unless otherwise ordered no costs shall be payable to the wife until the particular proceeding in respect of which they are ordered or secured has been disposed of.

42. The

Matrimonial Causes Act, 1929.

42. The Master without taxing any bill shall order the amount for which and the manner in which security shall be given, and for that purpose may require the solicitor for any party to give any information which the Master deems necessary.

43. The Master in his order shall state the period which he estimates will be occupied in the hearing, and may direct therein whether and what further security shall be given at the beginning of each actual day's hearing after the expiration of that period, and such security shall be given by the husband accordingly.

44. The solicitor on the record for a wife may, in the action and in the name of the wife without any authority from or expense to his client, enforce an order for costs in her favour against the husband to the extent to which the wife is then indebted to the solicitor.

Public Trustee Costs.

45. When the Public Trustee is guardian *ad litem* for a mental defective, as provided in this order, the Master may, on the application of the Public Trustee, order that the opposite party shall pay in any event such amount as the Master thinks proper for the Public Trustee's costs as such guardian and shall give such security for payment as the Master thinks proper.

Costs.

46. All bills of costs whether between party and party or as between solicitor and own client shall be taxed by the Master without any reference or special order for that purpose.

47. All costs reserved to the hearing shall abide the event unless the Judge otherwise orders.

48. Costs ordered to be paid to a party by an order *nisi* shall be paid into Court, to the credit of that party, and shall not be paid out until the order becomes absolute or until further order.

Subpoenas.

49. The praecipe for a subpoena need not disclose the names of the witnesses, and a subpoena shall remain in force from the date of issue until the completion of the hearing of the action.

Children.

50. Applications relating to the custody of children shall be made to a Judge in Chambers or at the hearing, and applications relating to the education and maintenance of and access to children may be made to the Master.

51. Any such application may be made by any party to the action or by any guardian of an infant or by any person desiring to be appointed guardian or by any person having the custody or control of an infant as if that guardian or person were a party.

52. The Master may vary his own or any other order as to education maintenance of and access to children at any time if he deems it proper to do so.

53. In

Matrimonial Causes Act, 1929.

53. In making any order relating to children the Judge or the Master may act upon evidence given in any previous application in the action or at the hearing or upon the reasons for judgment, without further proof.

Maintenance.

54. Applications relating to maintenance shall be made to the Master.

55. If the claim states that maintenance will be asked for and no appearance has been entered no notice of the application nor of the order made need be served unless specially directed.

56. If the claim does not state that maintenance will be asked for and no appearance has been entered, the application either for an interim or for a permanent order or for a variation shall be made by notice signed by the applicant or the applicant's solicitor and sealed with the seal of the Court and served as if it were a writ, but any order made on the application need not be served unless specially directed.

57. A party not served with notice of an application for maintenance and against whom an order for maintenance has been made in the party's absence may enter an appearance limited to maintenance at any time without leave, and may thereupon apply for a variation of any order.

58. The notice of application shall state whether an interim or permanent order is claimed and the amount of maintenance and the facts on which the applicant relies and the applicant's income and assets.

59. An order for maintenance shall direct from what date maintenance shall be paid under it, but that date shall not be prior to the service or filing of the notice of application, whichever is later.

60. The hearing of any application of which notice has been served shall take place not earlier than fourteen days after service of notice of application.

61. Within ten days of the service of the notice of application the respondent to the application shall file an affidavit setting out his assets and income and the other matters relied on. If the respondent makes default in filing such an affidavit the hearing of the application may be proceeded with and an order made thereon.

62. The Master may order any party to attend on the hearing and that party shall be liable to be examined by the other party. Such attendance may be enforced by subpoena.

63. Matters disclosed on applications relating to maintenance shall not be made public.

64. On any application relating to maintenance the Master may act upon the evidence given on any previous application in the action or at the hearing or upon the reasons for judgment without further proof.

Matrimonial Causes Act, 1929.

65. On the first day of hearing of an application for maintenance the Master may order the payment of such weekly amount as without evidence and in his absolute discretion he thinks proper to be paid from week to week until the application is disposed of, and may vary any such order, and such order and payment shall be without prejudice to any order to be made or to any right of either party.

66. In any application relating to maintenance the Master shall take into consideration any agreement or order in existence as regards the parties.

67. After the expiration of three months from the final order or order absolute proceedings relating to the maintenance of children may be taken under the Maintenance Act, 1926, if there is no order in force in the Supreme Court with reference to such maintenance.

68. Upon the expiration of the said period of three months all applications under Part V. of the Act shall be upon notice signed by the applicant or the applicant's solicitor and sealed with the seal of the Court and served on the other party as if it were a writ.

Affidavits.

69. It shall not be necessary to file affidavits of search or non-appearance or non-intervention, but the Master shall not allow an action to be set down for hearing nor issue an order absolute unless from the examination of the records of the Court he ascertains that it is then proper to do so.

70. It shall not be necessary to make any document an exhibit to an affidavit, but the relevant portion of any document may be included in the body of the affidavit, and the party filing the affidavit shall produce the document whenever it is likely that the affidavit may be used.

Evidence on Affidavit.

71. The Master may order that any particular fact may be proved by affidavit either in a proceeding in Chambers or at the hearing.

Settlements.

72. Applications relating to settlements shall be made to the Master after and within three months of the final order or order absolute and shall be upon notice signed by the applicant or the applicant's solicitor and sealed with the seal of the Court and served on the other party as if it were a writ.

73. A *dum casta* or *dum sola et casta* clause or term whichever is applicable shall be a usual clause or term in any settlement in favour of or order relating to maintenance of a wife.

Transactions to Defeat Claims.

74. Every application under Part VII. shall be to a Judge in Chambers. If notice of such an application is to be given to a person not a party the notice shall be signed by the applicant or his solicitor and sealed with the seal of the Court and served as if it were a writ.

75. Before

Matrimonial Causes Act, 1929.

75. Before filing notice of the application the applicant may apply *ex parte* on affidavit for directions as to the persons to be served as to service and as to the date of hearing.

Applications in Emergency.

76. If by proceeding in the ordinary way the applicant would or might be seriously prejudiced the Master may make any order *ex parte*, and any person affected thereby may apply within a reasonable time to set it aside or vary it, but it shall be binding on all persons to whom it is directed and on whom it is served until so set aside or varied.

Proceedings in forma pauperis.

77. (1) The Master may at any time order that any person may proceed *in forma pauperis* if he is satisfied—

- (a) that the person has good cause for proceeding ; and
- (b) that the person has not or will not have sufficient means to proceed ; and
- (c) that it is unlikely that the husband (if the applicant is the wife) will be ordered to give or able to comply or will comply with any order for security for costs.

(2) The Master may make it a condition of an order under this rule that the applicant shall pay all fees fixed by the rules and, in addition, any lump sum or periodical sum which the Master thinks the applicant is able to pay.

78. The order of the Master shall for the purposes of the Poor Persons Legal Assistance Act, 1925, be regarded as the order of a Judge.

79. No person shall be entitled to an order under the Poor Persons Legal Assistance Act, 1925, entitling him to proceed *in forma pauperis* in any matrimonial proceeding unless he is also so entitled under these rules.

80. The order shall cease to operate if the person fails to comply with the conditions thereof, and may be rescinded at any time if the person does not duly proceed or ceases to be entitled to an order or for any other proper reason.

81. If the Court or Master thinks proper it may order a person proceeding *in forma pauperis* to pay all or any part of the costs of an action though the person be not dispaupered.

82. The Master or the Court may order that the costs of a person proceeding *in forma pauperis* shall be paid by the other party as if the proceedings were not *in forma pauperis*. Costs so ordered shall be paid into Court and paid out to the solicitor on the record for the party in whose favour the order is made. An order for such costs may be enforced by the solicitor on the record in the name of but without expense to his client.

83. The

Matrimonial Causes Act, 1929.

83. The Master may assign as solicitor to a person proceeding *in forma pauperis* some solicitor other than the Public Solicitor if there is any reason why the Public Solicitor should not act.

Staying Proceedings for Restitution.

84. The Master may stay an action for restitution of conjugal rights if he is satisfied that the defendant is willing to resume or return to cohabitation.

Costs and Terms of Orders.

85. The Master may make such order as to costs of any proceedings dealt with by him as he thinks proper, and in making any order he may impose such terms as he thinks fit.

Powers of Judge.

86. In addition to all other powers exercisable by him a Judge in Chambers or at the hearing may exercise all the powers by these rules given to the Master.

Forms.

87. The forms contained in the Schedule to this order may be used where applicable with such alterations as are necessary in any particular case.

88. In any case not provided for in these rules the Master may give either a general direction or a direction limited to a particular case as to what forms are to be used.

89. The Master may direct that printed forms shall be used in relation to any proceedings in an action and may make a reasonable charge for the sale of such forms.

Notes of Evidence.

90. If on any application or at the hearing notes of the evidence are taken by means of a typewriter any party may have a copy of the notes upon request and the solicitor for the party shall pay for the notes at the rate of Six Pence a foolscap page, and the money so paid shall be allowed as costs in the action if all parties request copies or if it is so ordered.

Dispensation from Rules.

91. The Master may dispense with compliance with any rule if he thinks it proper to do so, and may extend the time for making any application, although the extension is applied for after the said time has expired.

Cases not Provided for.

92. If any circumstances arise for which no provision is made by the Act or rules, or if there is any doubt as to what is the correct procedure to be adopted, the Master having regard to the practice under the Rules of Court, 1913, and under this order may direct (and *ex parte* if he thinks fit) what shall be done in each particular instance or that the procedure which has been adopted shall be proper, and his direction shall be of the same validity as if specifically included in these rules.

*Matrimonial Causes Act, 1929.**The Schedule.*

FORM I.

Memorandum to be inserted at the end of Statement of Claim.

If a party wishes to be heard in denial of the above allegations or in any proceeding in the action relating to costs (or damages or the children of the marriage as the case may be) an appearance by that party must be filed in the office of the Master of the Supreme Court within the time directed by the writ annexed hereto. The appearance must state a place within three miles of Adelaide G.P.O. at which notices may be served on the party appearing.

The appearance may be limited to any one or more of the above-mentioned matters and if it is so limited notice in connection with those proceedings only which relate to the specified matters will be given.

If no appearance is filed by a party no further notice need be given to him of any application and orders may be made in his absence.

FORM II.

Memorandum to be inserted at the end of a Statement of Claim which states that Maintenance will be claimed.

As the above claim gives notice that maintenance will be claimed from the husband by the wife, no further notice need be served of any application for such maintenance, and if the husband desires to be heard on the application for maintenance either as to the amount of the order or as to whether any order should be made, an appearance (which may be limited to questions relating to maintenance) must be filed in the Master's Office as directed by the writ, otherwise an order may be made in the absence of the husband.

FORM III. (A).

Form of Advertisement pursuant to Order for Substituted Service.
[Number and Title of Action.]

To A.B.

Notice is hereby given to A.B. whose last known address was at that a writ has been issued in the Supreme Court of South Australia in an action in which his wife C.B. claims an order for divorce on the ground of his adultery and in such action his wife intends to ask for an order for custody of the children and for maintenance, and if A.B. desires to be heard in opposition to the claim for any of such orders he must file an appearance in the office of the Master of the Supreme Court of South Australia within _____ days of the publication of this advertisement otherwise orders may be made against him in his absence.

D.E.F.,

[Address]

Solicitor for the Plaintiff.

FORM III. (B).

Form of Advertisement pursuant to Order for Substituted Service.
[Number and Title of Action.]

To A.B.

Notice is hereby given to A.B. whose last known address was at that C.D. of _____ has issued a writ in the Supreme Court of South Australia in an action in which C.D. claims an order for divorce from his wife on the ground of her adultery with A.B., but is not claiming damages or costs against him. If A.B. desires to be heard in opposition to the claim for the order he must file an appearance in the office of the Master of the Supreme Court of South Australia within _____ days of the publication of this advertisement otherwise he may be found guilty of adultery in his absence, but no costs or damages will be awarded against him if he does not file an appearance.

D.E.F.

[Address]

Solicitor for the Plaintiff.

Matrimonial Causes Act, 1929.

FORM IV.

Notice to Person charged with Adultery.[*Number and Title of Action.*]

To A.B. of

Take notice that of is claiming an order for a divorce from his wife C.B. on the ground that she has been guilty of adultery with you and a copy of the writ and claim in the action is served on you herewith. If you wish to deny the adultery you must file an appearance in the Master's Office at the Supreme Court House, Victoria Square, Adelaide, within days of the service upon you of this notice. The appearance must give an address within three miles of the G.P.O., Adelaide, at which all notices and proceedings in the action must be served on you and subsequently within eight days you must file your defence. You need not file an appearance or defence. If you do not do so you will not be liable for any costs or damages as none are claimed against you in the action but you may then be found guilty of adultery in your absence. If however you do file an appearance and defence you will become a defendant in the action and can be heard and shall be subject to the liability to be ordered to pay costs as any other party.

FORM V.

Order nisi for Divorce.

South Australia.
In the Supreme Court.

No. of 1929.

Before The Honorable Mr. Justice

Plaintiff
and
Defendant
and
Intervener.

The day of 19 .
This action was heard on the day of , 19 ,
Mr. being counsel for the plaintiff, Mr. for the
defendant, and Mr. for , a person with whom
adultery was alleged by the plaintiff and who intervened in the action. The Court
was satisfied that the plaintiff was domiciled in the State and that the defendant
and the intervener had committed adultery as alleged in the Statement of Claim
and the Court ordered:—

1. That the marriage between the plaintiff and defendant which was celebrated at on the day of , 19 , be dissolved upon the expiration of six calendar months from the date of this order unless sufficient cause to the contrary be shown within that period.
2. That the plaintiff have the custody of and children of the marriage.
3. That the plaintiff pay to the defendant her costs of the action, but not to exceed the amount for which security was ordered to be given.
4. That the intervener pay to the plaintiff his costs of action and the costs payable by the plaintiff to the defendant.

By the Court,

Master.

This *order nisi* does not enable either party to the marriage to re-marry.