

## MARRIAGE ACT 1890.

54 VICTORIA, No. 1166. **An Act to consolidate the Laws relating to Marriage and to Custody of Children and to Deserted Wives and Children and to Divorce and Matrimonial Causes.**

[Reserved, 10th July, 1890. Royal Assent proclaimed, 8th December, 1890.]

"The Marriage and Mat. Causes Stat. 1864."

**BE** it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title commencement and division.

1. This Act may be cited as the *Marriage Act 1890*, and shall come into operation on the first day of August One thousand eight hundred and ninety, and is divided into Parts as follows:—

PART I.—The Celebration of Marriage ss. 4–21.

PART II.—Offences relating to the Celebration of Marriage ss. 22–30.

PART III.—Custody of Children ss. 31–41.

PART IV.—Maintenance of Destitute or Deserted Wives and Children ss. 42–54.

PART V.—Orders of Protection for Deserted Wives ss. 55–59.

PART VI.—Aggravated Assaults on Wife s. 60.

PART VII.—Decrees for Judicial Separation ss. 61–73.

PART VIII.—Decrees for Dissolution of Marriage ss. 74–91.

PART IX.—Remedies against Adulterer ss. 92–95.

PART X.—Provision for benefit of Children in case of Separation or Divorce ss. 96–100.

PART XI.—Procedure in Matrimonial Causes ss. 101–130.

Repeal.  
First Schedule.

2. The Acts mentioned in the First Schedule to this Act to the extent to which the same are thereby expressed to be repealed are hereby repealed. Provided that such repeal shall not affect any marriage celebrated, or any appointment rule regulation order decree complaint application affidavit affirmation declaration or registration made, or any fee fixed, or any notification notice certificate or surety, given, or any petition filed, or any commission summons or warrant issued or granted,

or any service effected, or any agreement deed or instrument entered into or executed, or any appeal pending under the said Acts or any of them before the commencement of this Act. "The Marriage and Mat. Causes Stat. 1864."

3. In the construction of this Act—

"Full Court" shall mean three or more judges of the Supreme Court holding court, and Interpretation. *Ib.* s. 105.  
 "The Court" shall mean the Full Court or two judges or a single judge of the Supreme Court as the case may be holding court as by this Act authorized. "The Marriage and Mat. Causes Stat. Amend. Act 1888" s. 24. "Full Court." "The Court."

PART I.—CELEBRATION OF MARRIAGE.

4. The following persons and none other may celebrate marriages:— Persons who may celebrate marriage.

(I.) A minister of religion ordinarily officiating as such whose name designation and usual place of residence together with the church chapel or other place of worship in which he officiates is at the time of the celebration of the marriage duly registered according to law in the office of the Registrar-General:<sup>(a)</sup> "The Marriage and Mat. Causes Stat. 1864" s. 4.

(II.) A minister of religion being the recognised head of a religious denomination:

(III.) A minister of religion holding a registered certificate that he is a duly authorized minister priest or deacon from the head of the religious denomination to which he belongs or if there be no such recognised head from two or more officiating ministers of places of worship duly registered according to law:

(IV.) The Registrar-General or other officer appointed for that purpose as hereinafter mentioned.

5. The Registrar-General shall register without fee or reward any church chapel or other place of worship and certificate as aforesaid.<sup>(b)</sup> Churches and certificates to be registered without charge. *Ib.* s. 5.

6. If any minister priest or deacon whose name has been registered with the Registrar-General as aforesaid die or depart from Victoria or cease to exercise the functions of an officiating minister or be degraded or deprived of his authority as a minister by his superior or by the recognised church court or tribunal of the denomination to which he belongs or in case he hold a certificate from officiating ministers if such certificate be cancelled by the persons who granted the same, the fact of such death departure cessation of ministry degradation or deprivation or withdrawal of certificate shall within ninety days thereafter be registered in like manner with the Registrar-General either by the head of the denomination or by the trustees of the church or where the minister has acted under a registered certificate by the persons who granted such certificate. Loss of ecclesiastical qualification for celebration of marriage to be registered. *Ib.* s. 6.

7. The Governor in Council may from time to time make rules and regulations and alter and repeal the same for more effectually carrying out the provisions of this Part of this Act; and may from time to time subject to the provisions of the *Public Service Act 1890* appoint and Governor may make rules and appoint officers. *Ib.* s. 7.

(a) Upon a trial for bigamy, where the second marriage was proved to have been solemnized by a minister of religion ordinarily officiating as such, the court will presume that all the preliminaries

to the ceremony have been rightly performed.—*The Queen v. Young*, 5 A.J.R., 19.

(b) See *Registration of Births Deaths and Marriages Act 1890*, sections 39 and 40.

"The Marriage and Mat. Causes Stat. 1864."

remove officers for the purpose of celebrating marriages; and every such appointment and removal shall be notified in the *Government Gazette* and shall take effect from the publication of such notice.

Form of marriage by Registrar-General or other officer.  
*Ib. s. 8.*  
Second Schedule.

8. Every marriage performed by the Registrar-General or other officer under the provisions of this Part of this Act shall be in and by the form of words set forth in the Second Schedule hereto; which words shall be repeated and the declaration shall be signed by the parties to such marriage respectively.

Hours and notice of marriage by Registrar-General or other officer.  
*Ib. s. 9.*

9. It shall not be lawful for the Registrar-General or any officer appointed as aforesaid to celebrate any marriage except between the hours of eight o'clock in the forenoon and four in the afternoon; or unless the parties about to be married have given him written notice of their intended marriage, and unless such notice have been posted in his office at least three days before the performance of such marriage.

Declaration by parties to the marriage.  
*Ib. s. 10.*

10. No marriage shall be celebrated under the provisions of this Part of this Act unless and until the parties about to be married have made before the minister officiating at such marriage the Registrar-General or other officer as aforesaid a declaration upon oath or solemn affirmation in the form set forth in the Third Schedule hereto; and such declaration shall be delivered to and kept by the person officiating at such marriage.<sup>(a)</sup>

Third Schedule.

Essentials for valid marriage.  
*Ib. s. 11.*

11. Every marriage celebrated by any such minister Registrar-General or other officer as aforesaid after oath or solemn affirmation so made shall be a legal and valid marriage to all intents and purposes; and no other marriage except as hereinafter provided shall be valid for any purpose.

Witnesses to marriage.  
*Ib. s. 12.*

12. Every marriage shall be celebrated in presence of two or more witnesses of full age, and shall be registered according to law.

Sec 4 Geo. IV. c. 76 s. 28.  
Certificate of marriage.  
*Ib. s. 13.*  
Fourth Schedule.  
Sec 6 & 7 Will. IV. c. 86 s. 31.

13. A certificate of marriage in triplicate in the form contained in the Fourth Schedule hereto shall be signed by the person celebrating the marriage and by the witnesses and the parties thereto; and such person shall deliver one of such certificates immediately after the marriage to one of the parties to the marriage, and shall transmit another of such certificates to the Registrar-General at the times prescribed by any law now or hereafter in force in Victoria respecting the registration of marriages, and shall keep the remaining certificate as a record of the marriage.

Consent in case of minority.  
*Ib. s. 14.*  
Cl. 4 Geo. IV. c. 76 s. 16.

14. If either party to any intended marriage not being a widow or widower be under the age of twenty-one years, such marriage shall not take place unless and until there be produced to the person about to celebrate the same the written consent<sup>(b)</sup> of the father of such party if he be within Victoria, or if he be not within Victoria of a guardian appointed by the father, or if there be no such guardian in Victoria of the mother of such party if she be within Victoria, or if there be no

(a) This section gives an option, and it is not necessary to proffer the oath first, and afterwards, on the parties objecting, the affirmation.—*Reg. v. Metcalf*, 5 A.J.R., 76.

(b) The marriage of a minor, without the written consent required by this section, is

valid.—*Reg. v. Griffin*, 3 V.L.R. (L.), 278.

*Semble*, the marriage of a minor, without the required consent, and on a false declaration, is valid.—*Gullifer v. Gullifer and Foley*, 6 V.L.R. (L.P. & M.), 109.

such parent or guardian in Victoria or if he or she be incapable of duly consenting by reason of absence mental incapacity or other substantial cause, the written consent (after inquiry on oath previously made as to the facts and circumstances of the case) of some justice appointed for that purpose as hereinafter mentioned.

"The Marriage and Mat. Causes Stat. 1864."

15. The chief justice or in his absence any judge of the Court shall from time to time appoint in every district of a registrar or deputy registrar for births deaths and marriages some justice or justices, who shall by virtue of such appointment be authorized to give consent in such cases as aforesaid; and every such appointment shall be notified in the *Government Gazette* by the judge who makes the same.

Judges to appoint persons to consent in certain cases.  
*Ib.* s. 15.

16. When any marriage is celebrated upon the production of any such written consent as aforesaid, a statement of the fact of such consent with the name of the parent or guardian or justice so consenting shall be endorsed on the triple certificates of such marriage signed by the person celebrating such marriage.

Consent to be endorsed on certificate.  
*Ib.* s. 16.

17. No marriage in fact shall be avoided by reason only of the same having been celebrated by a person not being a minister or ordinarily officiating minister of religion Registrar-General or other officer appointed as aforesaid, if either of the parties to the marriage shall at the time *bonâ fide* have believed that he was such minister ordinarily officiating minister Registrar-General or other such officer; and no marriage shall be deemed to have been unduly celebrated by reason of any mere defect or error in the declaration made respecting the same where the identity of the parties to the marriage is not in question, nor by any informality or irregularity in the appointment of the magistrate consenting provided the said appointment has been published in the *Government Gazette* as aforesaid, and no marriage shall be affected by reason of the omission of the minister celebrating the same to cause his name designation usual residence church chapel or other place of worship or certificate to be registered as hereinbefore directed.

Defect in declaration not to invalidate marriage.  
*Ib.* s. 17.

18. No marriage between any man and the sister of his deceased wife shall within Victoria be voidable or in anywise impeachable upon the ground only of such affinity between the parties thereto, any law usage or custom to the contrary notwithstanding.

Marriage between a man and the sister of deceased wife not voidable.  
*Act No. 463 s. 1.*

19. Nothing in this Part of this Act shall extend to any marriage both the parties to which are members of or in profession with the religious society of Friends commonly called Quakers or are Jews, but every such marriage shall be as legal and valid as if duly solemnized under the provisions of this Part of this Act if such marriage was when celebrated a valid marriage according to the usages of the Quakers or the Jews as the case may be.

Marriages of Quakers and of Jews excepted from this Part of this Act.  
"The Marriage and Mat. Causes Stat. 1864" s. 18.  
4 Geo. IV.  
c. 76 s. 31.

20. A certificate of every such marriage between such parties as are mentioned in the last preceding section shall within three months next following be transmitted to the Registrar-General by the person celebrating or witnessing the marriage or by one of the parties thereto, stating the date and place of such marriage and the name designation and usual residence of each of these parties.

Such marriages to be registered.  
*Ib.* s. 19.  
See 6 & 7 Will. IV.  
c. 86 s. 31.

21. In all proceedings civil and criminal a copy of the registry of any marriage in the office of the Registrar-General under his hand shall be *primâ facie* evidence of the fact of such marriage.

Registration *primâ facie* evidence of marriages.  
*Ib.* s. 20.  
See *ib.* s. 33.

## PART II.—OFFENCES RELATING TO THE CELEBRATION OF MARRIAGE.

"The Marriage and Mat. Causes Stat. 1864" s. 21.

Penalty on celebration of marriage by minister after he has ceased to be qualified.

Penalty for unlawful celebration of marriage.  
Ib. s. 22.

Penalty for unlawfully marrying minors.  
Ib. s. 23.

Penalty for an unregistered minister celebrating marriage.  
Ib. s. 24.

Penalty for misdemeanors.  
Ib. s. 25.

Penalty on officer not posting notice of marriage.  
Ib. s. 26.

Penalty on person celebrating marriage for omission to transmit certificate of marriage.  
Ib. s. 27.

Penalty for omission to transmit certificate in marriage of Jews and of Quakers.  
Ib. s. 28.  
False statement to be deemed perjury.  
Ib. s. 29.

**22.** If any minister of religion who has been duly qualified under Part I. of this Act cease to possess such qualification and after he has so ceased perform contrary to the provisions of the said Part any marriage ceremony, he shall be guilty of a misdemeanor.

**23.** If any minister Registrar-General or other officer or other person celebrate or profess or attempt to celebrate marriage in the case of any person under the age of twenty-one years not being a widower or widow without some such written consent as aforesaid knowing him or her) to be under that age or knowing that the consent produced is not by the appropriate person or wilfully celebrate or profess or attempt to celebrate any marriage in any other case contrary to any of the provisions in Part I. of this Act or where any provision of such Part has not been complied with knowing the same not to have been complied with, every person so offending shall be guilty of a misdemeanor.

**24.** If any person marry a person under the age of twenty-one years without having previously obtained the written consent of the father or guardian or (where the mother is competent) of the mother of the person so under age or the written consent of some justice appointed in that behalf, or induce or endeavour to induce any minister Registrar-General or other officer to celebrate marriage between parties one of whom is under age without such consent, or abet or assist in any illegal marriage, every person so offending shall be guilty of a misdemeanor.

**25.** If any minister or person officiating as such celebrate any marriage knowing that his name designation usual residence church or chapel or certificate has not been registered as aforesaid, or is not then duly registered, he shall be guilty of a misdemeanor; or if the omission was accidental or by inadvertence he shall forfeit a sum not exceeding Twenty pounds, to be recovered by proceeding in a summary way before two justices.

**26.** Every misdemeanor hereinbefore mentioned shall be punishable by fine not exceeding Five hundred pounds, or by imprisonment for a term not exceeding five years, or by both such fine and imprisonment as the court before whom the person offending is convicted may award.

**27.** If any officer appointed to celebrate marriages neglect delay or refuse to post in his office any notice of marriage given to him as hereinbefore directed, he shall be guilty of a misdemeanor.

**28.** If any minister or person having celebrated any marriage fail to comply with any provision of Part I. of this Act respecting the certificate of such marriage to be transmitted to the Registrar-General, he shall forfeit a sum of not less than Ten or more than Fifty pounds to be recovered by proceeding in a summary way before two justices.

**29.** In marriages between Quakers or between Jews, if the certificate of such marriage be not transmitted to the Registrar-General as hereinbefore required, the husband shall forfeit a sum not less than Ten or more than Fifty pounds.

**30.** Every person who objects to take an oath under the provisions of Part I. of this Act may in lieu thereof make a solemn affirmation

or be examined as the case may be upon his solemn affirmation. “The Marriage and Mat. Causes Stat. 1864.”  
 And any person who shall wilfully make any false statement on oath or by solemn affirmation before any minister Registrar-General or other officer or before any justice appointed as aforesaid under any of the provisions of Part I. of this Act or intending or purporting so to be shall be deemed to be guilty of perjury and be liable to prosecution and punishment accordingly.

PART III.—CUSTODY OF CHILDREN.

31. Upon hearing the petition by her next friend of the mother of any legitimate infant under sixteen years of age the Court may order— Court may make order as to mother's access to or custody of infant.

- (1) That the petitioner shall have access to such infant at such times and subject to such regulations as the Court deems proper; or “The Marriage and Mat. Causes Stat. Amend. Act 1888” s. 2.
- (2) That such infant shall be delivered to the mother and remain in her custody or under her control, or shall if such infant be already in her custody or under her control remain therein until such infant attain such age not exceeding sixteen as the Court directs; and 26 & 37 Vict. c. 12 s. 1.
- (3) That such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant and otherwise as the Court deems proper.

32. When making any order in favour of the mother for the custody and control of any infant the Court may further provide in such order— Such order may also provide for infant's maintenance. Ib. s. 3.

That the father or guardian shall pay to the mother for the maintenance and education of such infant such weekly sum as the Court may think fit having regard to the means of the father or the property in the guardian's hands legally available for such purpose respectively and to the means that the wife may have for her support; and such order shall be enforceable and enforced against such father or guardian and varied on the application of such father guardian or mother respectively in manner and in all respects as hereinafter provided in Part VI. of this Act.

33. Any such order as aforesaid may be discharged by the Court upon application by the father or guardian of such infant upon proof that the mother has since the making thereof been guilty of adultery habitual intemperance or any misconduct which in the opinion of the Court disentitles her to the custody or control any longer of such infant. Grounds on which order for custody and maintenance of infant may be discharged. Ib. s. 4.

The powers and authorities granted to the court by this and the last two preceding sections may also be exercised by the court upon the return to any writ of *habeas corpus* in regard to the custody of any legitimate infant. “The Divorce Act 1889” s. 9.

34. No agreement contained in any separation deed made between the father and mother of an infant shall be held to be invalid by reason only of its providing that the father of such infant shall give up the custody or control thereof to the mother. Provided that no court shall enforce any such agreement if such court be of opinion that it will not be for the benefit of the infant to give effect thereto. Custody of children under separation deed. “The Marriage and Mat. Causes Stat. Amend. Act 1888” s. 5. Ib. s. 2.

"The Marriage and Mat. Causes Stat. Amend. Act 1883" s. 6.  
Maintenance and custody of illegitimate child.

35. The mother of an illegitimate infant shall with or without assistance from its putative father maintain such infant and shall have the custody thereof until it attain sixteen years of age; but the Court if it be of opinion that it is for the infant's benefit so to do may refuse to restore such infant to the custody of such mother or may remove it therefrom or may make such order as to the custody or control of such infant or as to access thereto as it thinks fit.

Mother of illegitimate infant may appoint guardian.  
*Id.* s. 7.

36. The mother of an illegitimate infant shall have power to appoint a guardian or guardians of such infant in the same manner and with the same rights and powers and as fully as by law the father of a legitimate infant now has.

Infant's remedies for ill-treatment.  
*Id.* s. 8.

37. Upon hearing the petition by the next friend of any infant alleging cruelty ill-treatment or gross abuse of parental authority towards such infant by the father mother or guardian thereof the Court may order—

- (1) That such infant shall be freed from the custody and control of such father mother or guardian as the case may be:
- (2) That the custody or control of such infant shall be given to some suitable person to act as the guardian either of the person or estate or of both the person and the estate of such infant:
- (3) That the father mother or guardian shall pay to the acting guardian appointed under this section such weekly sum for the maintenance and education of such infant as the Court having regard to the means of the father or mother or the property in the guardian's hand legally available for such purpose respectively may think fit; and such order shall be enforceable and enforced against such father mother or guardian and varied on the application of such father mother guardian or such guardian appointed under this section respectively in manner and in all respects as hereinafter provided under Part VI. of this Act.

Earnings of child.  
*Id.* s. 9.

38. No father shall have any right to the wages or earnings of any infant child while such child is in the control and custody of the mother thereof.

Religion of children after death of father  
*Id.* s. 10.

39. Where a father has died without having by deed or will left directions regarding the religious faith of his infant child it shall be lawful for the mother if she be the only guardian of such infant child and if such child have not in the lifetime of the father formed distinctive religious opinions, to bring such child up in her own religious faith, and by deed or will to leave directions regarding the religious faith of such child after her own decease.

Mother's rights as guardian of children when father dead.  
*Id.* s. 11.  
See 49 & 50 Vict. c. 27 ss. 2 and 3.

40. Where a father has died without having legally appointed or made legal provision for the appointment of a guardian of any infant child, the mother shall be deemed to be the lawful guardian and shall have power to appoint a guardian or guardians of such child with the same rights and powers and as fully as by law the father now has.

41. All petitions or proceedings in the Court relating to the custody control or religious faith of any infant child or to any matter or thing authorized or permitted under any of the preceding sections of this Part of this Act may on the application of either party and in the discretion of the Court be heard and determined by a judge sitting in chambers; and such judge when so sitting shall have and exercise the same powers and jurisdiction and be subject to the same right of appeal in respect of the business to be brought before him as if sitting in open court.

*"The Marriage and Mat. Causes Stat. Amend. Act 1883" s. 12.*  
 Petitions relating to custody or religion of children may on application be heard in chambers.  
 Powers of judges in chambers.  
 21 & 22 Vict. c. 108 s. 3.

#### PART IV.—MAINTENANCE OF DESTITUTE OR DESERTED WIVES AND CHILDREN.

42. When any husband unlawfully deserts his wife, or leaves her without means of support, or when any father deserts his children whether illegitimate or born in wedlock, or leaves them without adequate means of support, if complaint thereof be made on oath to any justice by the wife or by any reputable person on her behalf or in case of the children by the mother or any reputable person, such justice may issue his summons to such husband or father to show cause why he should not support his wife or children;<sup>(a)</sup> and in cases of desertion, upon proof thereof on oath, may issue his warrant for the apprehension of such husband or father.<sup>(b)</sup>

Justices to have jurisdiction in cases of deserted or destitute wives and children.  
*"The Marriage and Mat. Causes Stat. 1864" s. 30.*

43. Upon the day appointed for the hearing whether the defendant be then present or not any two justices present shall inquire into the matter of the complaint; and if they be satisfied that the wife or the children as the case may be are in fact without means of support and that the husband or the father is able to maintain her or them or to contribute to her or their maintenance, such justices shall make an order in writing directing him to pay either weekly or monthly at their discretion and to such person or in such manner for her or their use as the justices think fit such moderate sum or allowance as they consider proper;<sup>(c)</sup> and may in and by the same or a separate order require the

Order of maintenance may be made.  
 Ib. s. 31.

(a) In complaints under this Part, the child and the father are the real parties; so where two maintenance orders were obtained against the father by the child's mother, and a third was afterwards obtained against him by the father of the mother (she being then dead, though that fact was not in evidence before the justices), the parties are the same, and the two former orders can be adduced as *res judicata* at the application for the third.—*Hanley v. McMasters*, 15 V.L.R., 322.

(b) A husband who has been guilty of violence to his wife, in consequence of which she has left him, but who is ready to take her back, cannot be considered as deserting her so as to justify justices in directing him to pay a sum of money for her maintenance.—*Mackenzie v. Mackenzie*, 3 V.R. (L.), 248.

Upon a complaint against a father for leaving his child without adequate means of support, if the father offer to receive the child and support it himself, justices have no power to make an order against him.—*McFarland v. McFarland*, 1 V.L.R. (L.), 303.

(c) A bastardy order is merely personal, and cannot be made after the death of the father; and

there cannot be a supplemental order upon the representatives of the father after the original order has expired.—*Reg. v. Sturt*, 5 W.W. & A.B. (L.), 174.

An order of justices under this section for maintenance which does not state that the husband deserted his wife, but, on the contrary, states that she left him, though for good cause, is a good order, and shows sufficient grounds for awarding maintenance.—*Moncrieff v. Moncrieff*, 5 A.L.T., 192.

It was held, that an order for maintenance of a bastard was sufficient if it followed the general form of order given by "*The Justices of the Peace Statute 1865*." It was not objectionable in omitting to make its duration contingent upon the life of the child. But it would be bad if it included the costs in the amount for which surety was required, or if it ordered the costs to be paid to the mother when another person was complainant.—*Reg. v. Bindon, ex parte Fitzpatrick*, 3 V.L.R. (L.), 3.

An order of justices on M., for maintenance of his children, should recite that the children are without means of support, and that the



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defendant to find such good and sufficient surety as the said justices shall think fit that he will comply with such order of maintenance or that he will not desert or leave without adequate means of support his said wife or children; and such justices may in default of such surety being found commit the defendant to gaol until such order be complied with.<sup>(a)</sup>

Goods of deserting husband or father may be sold and rents received.  
*Ib. s. 32.*

44. If it appear to the justices in addition to the particulars last aforesaid that the husband or the father has deserted his wife or his children, they may by their order authorize and direct some person forthwith to seize the goods and chattels<sup>(b)</sup> of such husband or father and to demand and receive his rents or such portion of them respectively as the justices think fit,<sup>(c)</sup> and to appropriate the proceeds towards the payment of such allowance in such manner as they from time to time direct.

Summary process where deserter has left Victoria.  
*Ib. s. 33.*

45. When any such husband or father has left Victoria, if the fact be proved on oath, any two justices on complaint made to them for that purpose may make the order and give the authority hereinbefore mentioned without the previous issue of any warrant or summons.

Complaining wife to prove her marriage.  
*Ib. s. 34.*

46. Upon the hearing of the complaint of any woman that she has been actually deserted by her husband or has been left by him without sufficient means of support, the woman so complaining shall produce direct evidence of her marriage with the person against whom such complaint is made; or, if she cannot produce such direct evidence to the satisfaction of the justices, shall make before the justices an affidavit

father was able to maintain them or to contribute to their maintenance.—*Moran v. Connors*, V.R. (L.), 105.

Upon making an order for the maintenance of a wife under this section, if authority to seize the goods of a deserting husband under the next succeeding section be also sought, it must be given by the order awarding maintenance; a subsequent separate order for such purpose is bad.—*Mitchell v. Wentworth*, 1 V.L.R. (L.), 258.

Upon a complaint by a wife against her husband that he has left her without means of support, if at the hearing he makes an offer to take her back to his home, which offer is not then refused by the wife, it is a question of fact for the justices to determine upon the evidence whether such offer is *bond fide*.—*Jolly v. Jolly*, 5 V.L.R. (L.), 145.

To sustain proceedings against a husband for maintenance, desertion is not a necessary element. The conditions of jurisdiction are proof of marriage, of the wife being without means of support, and of the ability of the husband to maintain or contribute to the maintenance of his wife. An offer which the justices believe to have been made *bond fide* by the husband to take back his wife, or by the wife to return to the husband, which he accepts, deprives the bench of jurisdiction to make an order for maintenance, as the wife is not then without means of support. Where a wife has for a considerable time, and without remonstrance on her part, been living apart from her husband, the presumption is that she is not without means of support.

*Seemle*, where there has been desertion in one colony, and the wife follows her husband to another to take proceedings against him for maintenance, slight evidence would be sufficient to warrant the justices in finding that her desertion continued.—*Reg. v. Collins, ex parte Collins*, 7 V.L.R. (L.), 74.

Where a complaint for maintenance has been dismissed for want of corroborative evidence, a fresh complaint may be entertained when such evidence is procured.—*Reg. v. McCormick, ex parte Brennan*, 4 V.L.R. (L.), 36.

In making an order upon a husband for maintenance of his wife, justices have no power to fix a definite period during which such maintenance is to be paid. *Seemle*, that an error in the minute of the order as to the name of the complainant may be corrected by the justices in drawing up the formal order, also that an omission to name the person to whom the costs awarded are to be paid does not invalidate such an order.—*Reg. v. Smith, ex parte Smith*, 9 V.L.R. (L.), 112.

(a) A warrant of commitment for not finding security for payment of maintenance must recite service of the order upon which it is based.—*Reg. v. McCormick, ex parte Brennan*, 4 V.L.R. (L.), 36.

(b) Money in a bank to the credit of a customer is not "goods or chattels" within the meaning of this section.—*Curtayne v. Mitchell*, 5 A.J.R., 134.

(c) The justices have jurisdiction to attach all the property of the husband to answer an order for maintenance obtained by the wife, irrespective of the amount.—*Mitchell v. Mitchell*, 5 A.J.R., 44.

setting forth the time place and circumstances of the said marriage; and such affidavit shall be deemed sufficient to authorize the justices to make an order as aforesaid for her maintenance by her husband; and such order shall continue in force until it be rescinded by the same or any two other justices upon such proof as they deem sufficient being given before them of the falsity of the averments sworn to by the woman as herein directed. If any reasonable cause be shown for such desertion or refusal of maintenance as aforesaid, the justices may in their discretion decline to make any order.<sup>(a)</sup>

*"The Marriage and Mat. Causes Stat. 1864."*

Order to be in discretion of justices.

47. If complaint be made on oath to a justice by any woman or by any reputable person on her behalf that there is reasonable ground to believe that the husband of such woman intends to desert her or to leave her without adequate means of support, or by the mother of any child whether illegitimate or born in wedlock or by any reputable person that there is reasonable ground to believe that the father of such child intends to desert it or to leave it without adequate means of support, such justice may issue his summons to such husband or father to show cause why he should not support his wife or child; or may in his discretion issue his warrant for the apprehension of such husband or father. And upon the day appointed for the hearing whether the defendant be then present or not, any two justices shall inquire into the matter of such complaint; and if they be satisfied that the defendant intends or that there is any reasonable ground to believe that he intends to desert or to leave without adequate means of support such wife or child, such justices may make an order for maintenance as hereinbefore mentioned and may in and by the same or a separate order require the defendant to give such good and sufficient surety as the said justices shall think fit that he will pay the allowance directed to be paid by such order of maintenance or that he will not desert or leave without adequate means of support his said wife or child; and such justices may in default of such surety being found commit the defendant to gaol until such order has been obeyed.

Order may be made upon husband or father intending to desert.  
Ib. s. 35.

48. In any proceedings under this Part of this Act, no man shall be taken to be the father of an illegitimate child upon the oath of the mother only.<sup>(b)</sup>

Uncorroborated oath of mother insufficient in bastardy cases.  
Ib. s. 36.  
8 & 9 Vict. c. 10 s. 6.

49. Where it appears to the justices that the mother of an illegitimate child is able to contribute to its support, the justices may direct

Mother of bastard may be required to support it.

(a) On the hearing of a complaint for desertion under this section, the husband's evidence must be received if he tender it. On such hearing it is for the justices to be satisfied of the existence of the marriage as a fact and an order for maintenance of a wife will not be disturbed because of the marriage not having been proved in the form mentioned in this section.—*Reg. v. Pope, ex parte Pope*, 5 V.L.R. (L.), 25.

(b) In a complaint before justices against the putative father for the maintenance of an illegitimate child, former orders made against the father are evidence of his paternity in a subsequent proceeding, even though such orders are bad, and might have been quashed, and these former orders are estoppel against the alleged father denying that he was the father. *Per Higinbotham, C.J.*—"An order for maintenance may be made by justices

without the evidence of the mother herself. This section does not mean that either the evidence of the mother or the corroboration of her evidence is required to give the justices jurisdiction." *Semble, per Holroyd, J.*—"The mother's evidence, when it can be obtained, is the best evidence of the paternity: and unless the putative father is estopped from denying his paternity, it ought to be produced. Although this section does not expressly say that the mother should be called to give evidence, it takes for granted that she would."—*Hanley v. McMasters*, 15 V.L.R., 322.

It is not sufficient corroborative evidence that the alleged father drove the mother home in a cart on the evening of the 16th March, and that the child was born on the 13th December following.—*Phillips v. Tomlinson*, 2 W.W. & a'B. (L.), 92.

"*The Marriage and Mat. Causes Stat. 1804*" s. 37.

that she as well as the father shall so contribute in such proportions respectively and in such manner as such justices think fit; and if it appear that such mother only is of such ability, the justices may make an order in respect of her alone.

Supplemental orders may be made.  
*Ib.* s. 38.

50. When any order has been made touching the support of any wife or child, any two justices may in a summary way with or without any application for that purpose make from time to time such order in writing as they think necessary for better securing the payment and regulating the receipt of the allowance directed for such wife or child's support, or for investing and applying the proceeds of the goods or rents (if any) directed to be sold or collected, or for ensuring the due appropriation of such allowance for the *bonâ fide* purposes of maintenance, or for causing the children to be properly brought up and educated.

Single justice may enforce orders.  
*Ib.* s. 39.

51. Any one justice may at any time inquire in a summary way into any allegation of disobedience of any such order as aforesaid or of any order made by the court of general sessions of the peace as hereinafter mentioned; and may for that purpose summon and examine all proper parties and witnesses, and may either commit the offender until the order has been obeyed or may impose upon such offender a fine of not less than Five or more than Fifty pounds.<sup>(a)</sup>

Orders subject to review of general sessions.  
*Ib.* s. 40.

52. When any two justices have made any such order as aforesaid, they shall transmit the same under their hands and seals within twenty days next after the making thereof to the clerk of the peace of the district within which such order is made; and the court of general sessions of the peace holden for such district, whether an appeal against the same has been entered or not, may quash confirm or vary such order either in whole or in part at its discretion and may substitute a new order in lieu thereof.<sup>(b)</sup> Provided that it shall be lawful for the Governor to

(a) An insolvent committed to prison by an order of justices under this section till he should pay arrears of maintenance of his wife is not entitled to his discharge under section 78 of the *Insolvency Act 1890*.—*Re Harris*, 6 V.L.R. (L.), 47.

The refusal of a bank manager to hand over money standing to the credit of a customer to a person authorized by justices by section 45 is not an offence under this section.—*Curlayne v. Mitchell*, 5 A.J.R., 134.

(b) It was held, that an application to the general sessions under this section to quash or vary an order of justices for the maintenance of a bastard was not an appeal within "*The Justices of the Peace Statute 1865*," section 147; and the general sessions had no jurisdiction to award costs against the person not prosecuting such application.—*Reg. v. The Justices of the Central Bailiwick, ex parte Moline*, 1 V.L.R. (L.), 302; and see now *Justices Act 1890*, section 131.

Under this section the court of general sessions has jurisdiction to quash, confirm, or vary a bastardy order whether an appeal as to it has been entered or not.—*Ludgrave v. Belcher*, 5 A.L.T., 72.

Omission to transmit an order of justices for maintenance to the clerk of the peace does not

render the order a nullity, nor is the omission a ground for quashing a conviction for disobedience.—*Reg. v. King, ex parte King*, 6 V.L.R. (L.), 256.

Though no appeal from an order of justices for maintenance is expressly given by this Act, the power given to general sessions by this section to quash, &c., the order, "whether an appeal against the same has been entered or not," gives a right of appeal by reasonable implication. If no machinery is provided for carrying out such appeal, it is the duty of the court of general sessions to endeavour to work it out, moulding its own procedure and practice if necessary for that purpose.—*Reg. v. The Justices of the Central Bailiwick, ex parte McEvoy*, 7 V.L.R. (L.), 90.

Upon an application to general sessions to review an order for maintenance, if the appellant does not appear, the court may confirm the order without hearing evidence, and may award costs to the respondent.—*Reg. v. The Chairman, &c., of General Sessions, Melbourne, ex parte Kemball*, 10 V.L.R. (L.), 40.

Under this section the court of general sessions has power when confirming an order of justices under section 44 hereof to award costs.—*Moncrieff v. Moncrieff*, 5 A.L.T., 192.

order the discharge from prison of any person who may be imprisoned in default of compliance with any order made under the provisions of this Part of this Act. "The Marriage and Mat. Causes Stat. 1864."

53. No action shall lie against any justice for any matter or thing done or commanded by him in pursuance of this Part of this Act, unless there be direct proof of corruption or malice and unless such action be commenced within three months after the cause of action has arisen. Limitation of actions against justices. Ib. s. 41.

54. One moiety of every fine shall be applied as the justice or justices may in his or their discretion direct either wholly for the use of the wife or child in respect of whose maintenance the original order has been made or partly for that use and partly for the use of the informer or party prosecuting. Application of fines. Ib. s. 42.

#### PART V.—ORDERS OF PROTECTION FOR DESERTED WIVES.

55. A wife deserted<sup>(a)</sup> by her husband may at any time after such desertion apply to the Court or to a judge of county courts or to a police magistrate or to justices in petty sessions for an order to protect any money or property which she may become possessed of after such desertion against her husband or his creditors or any person claiming under him; and such Court judge magistrate or justices, if satisfied of the fact of such desertion and that the same was without reasonable cause and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order in the form contained in the Fifth Schedule hereto or to the like effect protecting her earnings and property acquired since the commencement of such desertion from her husband and all creditors and persons claiming under him; and such earnings and property shall belong to the wife as if she were a *feme sole*. Deserted wife may obtain order of protection. Ib. s. 43. 20 & 21 Vict. c. 85 s. 21. And see 21 & 22 Vict. c. 103 s. 6. Fifth Schedule.

56. Every such order of protection, if made by a judge of county courts or a police magistrate or justices in petty sessions, shall within thirty days after the making thereof be deposited with the Registrar-General; and the husband and any creditor or person claiming under him may apply to the Court or to the judge magistrate or justices by whom such order was made for the discharge thereof. Registration of order of protection. Ib. s. 44. 20 & 21 Vict. c. 85 s. 21. Proviso 1.

57. If the husband or any creditor of or person claiming under the husband seize or continue to hold any property of the wife after notice of any such order, the wife may bring a suit or make an application touching the same in or to any Court or judge having jurisdiction in the matter: and such husband creditor or other person shall be liable to restore the specific property and also to pay a sum equal to double the value of the property so seized or held after such notice as aforesaid. Remedy for disobedience of order of protection. Ib. s. 45. Ib. Proviso 2.

58. Where any such order of protection is made, the wife shall during the continuance thereof be and be deemed to have been during such desertion of her in the like position in all respects with regard to Status of protected wife Ib. s. 46. Ib. Proviso.

(a) Desertion means that the husband leaves the wife against her wish, and does not arise in

cases of separation by mutual consent.—*Beck v. Beck*, 1 W. & W. (L.R. & M.), 199.

"The Marriage and Mat. Causes Stat. 1864."

Order to state and be conclusive evidence of the time of desertion.  
Ib. s. 47.  
21 & 22 Vict. c. 108 s. 9.

property and contracts and suing and being sued as she would be under this Act if she obtained a decree of judicial separation.<sup>(a)</sup>

59. Every such order of protection shall state the time at which the desertion in consequence of which the order is made commenced; and the order shall as regards all persons dealing with such wife in reliance thereon be conclusive as to the time when such desertion commenced.

#### PART VI.—AGGRAVATED ASSAULTS ON WIFE.

If husband convicted of aggravated assault, court may order that wife be not bound to cohabit.

"The Marriage and Mat. Causes Stat. Amend. Act 1833" s. 14.  
41 & 42 Vict. c. 19 s. 4.

Force of order. As to weekly sum to wife.

60. If a husband be convicted summarily or otherwise of an aggravated assault within the meaning of section thirty-nine of the *Crimes Act 1890* upon his wife, the court or justices of whom a police magistrate shall be one before whom he is so convicted may, if satisfied that the future safety of the wife is in peril, order that the wife shall no longer be bound to cohabit with her husband; and such order shall have the force and effect in all respects of a decree of judicial separation on the ground of cruelty. Such order may further provide—

(1) That the husband shall pay to his wife such weekly sum as the court or justices may consider to be in accordance with his means and with any means which the wife may have for her support, and the payment of any sum of money so ordered shall be enforceable and enforced against the husband in the same manner as the payment of money is enforced under an order of affiliation; and the court or justices by whom any such order for payment of money shall be made shall have power from time to time to vary the same on the application of either the husband or the wife upon proof that the means of the husband or wife have been altered in amount since the original order or any subsequent order varying it shall have been made:

(2) That the legal custody of any children of the marriage under the age of sixteen years shall, in the discretion of the court or justices, be given to the wife.

Custody of children.

Order dependent on wife's conduct.

Provided always that no order for payment of money by the husband, or for the custody of children by the wife, shall be made in favour of a wife who is proved to have committed adultery, unless such adultery has been condoned; and that any order for payment of money or for the custody of children may be discharged by the court or justices by whom such order was made upon proof that the wife has since the making thereof been guilty of adultery; and provided also that all orders made under this section shall be subject to appeal to the Supreme Court in such manner and under such conditions as the said Court by any general rule may from time to time provide.

#### PART VII.—DECREES FOR JUDICIAL SEPARATION.

Judicial separation substitute for divorce *a mensâ et thoro*.

61. No decree for a divorce *a mensâ et thoro* shall be made, but in all cases in which such a decree might have previously to the thirteenth day of June One thousand eight hundred and sixty-five been pronounced

(a) It was held before "The Married Women's Property Act 1884" that a married woman having separate property, and deserted by her husband, and who had obtained a protection order, was

not entitled without his consent to take out probate of a will, by which she was appointed sole executrix.—*In the will of Woodhead*, 7 V.L.R. (L.P. & M.), 42.

in England by any court having jurisdiction in the matter the Court may pronounce a decree for a judicial separation.

*"The Marriage and Mat. Causes Stat. 1864" s. 48. See 20 & 21 Vict. c. 85 s. 7.*

62. A decree for a judicial separation shall have the effect of a divorce *a mensâ et thoro* under the law existing previously to the thirteenth day of June One thousand eight hundred and sixty-five in England, and such other legal effect as herein mentioned; and may be obtained either by the husband or wife on the ground of adultery or of cruelty<sup>(a)</sup> or of desertion without cause for a period of two years.<sup>(b)</sup>

Effects of and grounds for decree for a judicial separation. *Ib. s. 49. Ib. s. 16.*

63. Application for judicial separation on any one of the grounds aforesaid may be made by either husband or wife by petition to the Court; and the Court, on being satisfied of the truth of the allegations therein contained and that there is no legal ground why the same should not be granted, may decree such judicial separation accordingly; and where the application is by the wife may make any order for alimony which shall be deemed just.

Husband or wife may petition for judicial separation. *Ib. s. 50. "The Divorce Act 1839" s. 10. Ib. s. 17.*

64. In all suits and proceedings other than proceedings to dissolve any marriage, the Court shall proceed and act and give relief on principles and rules which in the opinion of the Court shall be as nearly as may be conformable to the principles and rules on which the ecclesiastical courts of England previously to the thirteenth day of June One thousand eight hundred and sixty-five acted and gave relief, but subject to the provisions herein contained and to any rules and orders made by the said Court under the authority of any Act now or hereafter in force authorizing the same.<sup>(c)</sup>

Court to act on principles of the ecclesiastical courts. *"The Marriage and Mat. Causes Stat. 1864" s. 51. Ib. s. 22.*

65. 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; and the Court may on being satisfied of the truth of the allegations of such petition reverse the decree accordingly; but the reversal thereof shall

Decree of separation obtained during the absence of husband or wife may be reversed. *Ib. s. 52. Ib. s. 23.*

(a) Judicial separation will not be granted on the ground of cruelty, unless there is a reasonable apprehension of bodily harm. Cruelty to the children will not be sufficient, unless done with an intention to annoy the wife.—*Kennedy v. Kennedy*, 4 A.J.R., 106.

Cruelty must consist of some ill-treatment which endangers the life, the person, or the health, or renders cohabitation unsafe. Habitual drunkenness, frequent abuse, and occasional acts of violence not of a grave character do not constitute cruelty. Evidence that the husband has been bound over to keep the peace towards his wife is admissible in support of a charge of cruelty.—*Macartney v. Macartney*, 3 V.L.R. (I.P. & M.), 81.

If the wife becomes the assailant and uses such violence as is likely to cause the husband to retaliate and to use violence in self-defence, that is sufficient cruelty.—*Terry v. Terry*, 5 A.J.R., 50.

(b) In a suit for judicial separation, the court will not at the original hearing hear any evidence as to the custody of the children. Any applica-

tion as to their custody, and as to alimony and costs, should be made in Chambers after the hearing. *Semble*, in a suit for judicial separation when the pleadings do not raise the question of the wife's character, the court, in considering who is entitled to the custody of the children, will not hear any evidence against her character. *Semble*, it being the petitioner's proctor's duty to show what is a sufficient sum to pay into court for the wife's expenses of bringing a suit of judicial separation, the court will not increase the amount so paid in.—*Cavokwell v. Cavokwell*, 10 V.L.R. (I.P. & M.), 69.

(c) In a suit by husband for divorce he failed to prove his charges. The respondent alleged and proved counter-charges of adultery and cruelty, and asked, but not in her answer, for a decree for judicial separation. *Held*, that looking at the English Statute 29 & 30 Vict. c. 32, which was not in force in Victoria, the court could not grant the relief sought for.—*Smith v. Smith*, 4 A.J.R., 129.

*Semble*, this section does not apply to procedure.—*Bishop v. Bishop*, 5 A.J.R., 43.

"The Marriages and Mat. Causes Stat. 1864."

not prejudice or affect the rights or 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 sentence of separation and of the reversal thereof.

Court may direct payment of alimony to wife or to her trustee.  
Ib. s. 53.  
Ib. s. 24.

66. In all cases where the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the court; and may impose any terms or restrictions which to the court may seem expedient; and may from time to time appoint a new trustee if for any reason it shall appear to the Court expedient so to do.

During judicial separation the wife to be considered a *feme sole* with respect to certain property.  
Ib. s. 64.  
Ib. s. 25.

67. In every case of 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 or devolve upon her<sup>(a)</sup> and 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 die intestate go as the same would have gone if her husband had been then dead.

In case of renewed cohabitation such property of wife to be held to her separate use.  
Ib. s. 55.  
Ib. Proviso.

68. If any wife after judicial separation again cohabit 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 whilst separate.

During judicial separation husband not liable for wife's contracts or torts.  
Ib. s. 56.  
Ib. s. 26.

69. In every case of a judicial separation, the wife shall whilst so separated be considered as a *feme sole* for the purposes of contracts and wrongs and injuries and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any engagement or contract she may have entered into or for any wrongful act or omission by her or for any costs she may incur as plaintiff or defendant. Provided that where upon any such judicial separation alimony has been 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.

During separation husband and wife may jointly exercise joint power.  
Ib. s. 57.  
Ib. Proviso.

70. Nothing herein contained shall prevent the wife from joining at any time during a judicial separation in the exercise of any joint power given to herself and her husband.

Wife's property in trust or in expectancy included in decree or protecting order.  
Ib. s. 58.

71. The provisions contained in this Act respecting the property of a wife who has obtained a decree for judicial separation, or an order for protection 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 for separation or the commencement of the desertion as the case may be; and the death of the testator or intestate

(a) By ante-nuptial settlement, real and personal property of the wife was settled so that the income during joint lives of husband and wife was payable to her for her separate use without power of anticipation. The wife, having obtained a decree of judicial separation, instituted a suit against the trustees of the settlement, praying for an absolute conveyance to her of all the settled property. *Held*, that the property was

not acquired, and had not come to or devolved upon her since the decree, within the meaning of this section; that, although a woman entitled to property, with a clause against anticipation, &c., may, whilst unmarried, require it to be discharged of this restriction, yet a woman judicially separated is not for all purposes to be deemed unmarried.—*Mackintosh v. Clarke*, 3 W.W. & a'B. (Eq.), 77; affirmed on appeal, 3 W.W. & a'B. (Eq.), 123.

shall be deemed to be the time when such wife became entitled as executrix or administratrix. "The Marriage and Mat. Causes Stat. 1864." 21 & 22 Vict. c. 108 s. 7.

**72.** In every case in which a wife obtains an order to protect her earnings or property or a decree for judicial separation, such order or decree until reversed or discharged shall so far as shall be necessary for the protection of any person dealing with the wife be deemed valid and effectual; and no discharge variation or reversal of such order or decree shall prejudice or affect any rights or remedies which any person would have had in case the same had not been so reversed varied or discharged in respect of any debts contracts or acts of the wife incurred entered into or done between the times of the making such order or decree and of the discharge variation or reversal thereof; and property of or to which the wife is possessed or entitled for an estate in remainder or reversion at the date of the desertion or decree as the case may be shall be deemed to be included in the protection given by the order or decree. Discharge of decree or protecting order not to affect creditors. Jb. s. 50. Ib. s. 8.

**73.** If any person in reliance on any such order or decree as aforesaid make any payment to or permit any transfer or act to be made or done by the wife who has obtained the same, notwithstanding such order or decree may then have been discharged reversed or varied or the separation of the wife from her husband may have ceased or at some time since the making of the order or decree have been discontinued, every such person shall be protected and indemnified in the same way in all respects as if at the time of such payment transfer or other act such order or decree were valid and still subsisting without variation in full force and effect and the separation of the wife from the husband had not ceased or been discontinued: unless at the time of such payment transfer or other act such person had notice of the discharge reversal or variation of such decree or of the cessation or discharge of such separation. Indemnity to parties making payments under reversed decrees or orders. Jb. s. 80. Ib. s. 10.

**PART VIII.—DECREES FOR DISSOLUTION OF MARRIAGE.<sup>(a)</sup>**

**74.** Any married person who at the time of the institution of the suit or other proceeding shall have been domiciled in Victoria for two years and upwards may present a petition to the Court praying on one or more of the grounds in this section mentioned that his or her marriage with the respondent may be dissolved— Divorce in what cases. "The Divorce Act 1869" s. 11.

(a) On the ground that the respondent has without just cause or excuse wilfully deserted the petitioner and without any such cause or excuse left him or her continuously so deserted during three years and upwards: Desertion.

(b) On the ground that the respondent has during three years and upwards been an habitual drunkard and either habitually left his wife without the means of support, or habitually been guilty of cruelty towards her, or being the petitioner's wife has for a like period been an habitual drunkard and habitually neglected her domestic duties or rendered herself unfit to discharge them: Habitual drunkenness with cruelty or neglect &c.

(a) Inasmuch as this Statute gives the court jurisdiction in the main object of a suit for dissolution of marriage, it has jurisdiction in all

collateral incidents of the suit.—*Splatt v. Splatt*, 11 V.L.R., 300.



"The Divorce Act 1880." Sentence for crime.

(c) On the ground that at the time of the presentation of the petition the respondent has been imprisoned for a period of not less than three years and is still in prison under a commuted sentence for a capital crime or under sentence to penal servitude for seven years or upwards, or being a 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 his wife habitually without the means of support:

Violent assaults &c.

(d) On the ground that within one year previously the respondent has been convicted of having attempted to murder the petitioner or of having assaulted him or her with intent to inflict grievous bodily harm or on the ground that the respondent has repeatedly during that period assaulted and cruelly beaten the petitioner:

Adultery.

(e) On the ground that the respondent being a husband has since the celebration of his marriage and the eighth day of May One thousand eight hundred and ninety been guilty of adultery in the conjugal residence or coupled with circumstances or conduct of aggravation or of a repeated act of adultery.

When divorce may be pronounced. *Id.* s. 12.

If in the opinion of the Court the petitioner's own habits or conduct induced or contributed to the wrong complained of, such petition may be dismissed; but in all other cases under this section if the Court is satisfied that the case of the petitioner is established, the Court shall pronounce a decree dissolving the marriage.

Application of the word "domiciled." *Id.* s. 15.

A domiciled person shall for the purposes of this section include a deserted wife who was domiciled in Victoria at the time of desertion, and such wife shall be deemed to have retained her Victorian domicile notwithstanding that her husband may have since the desertion acquired any foreign domicile. No person shall be entitled to petition under this section who shall have resorted to Victoria for that purpose only.

Grounds for petition by husband for dissolution of marriage.

75. It shall be lawful for any husband<sup>(a)</sup> to 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.

"The Marriage and Mat. Causes Stat. 1884" s. 61.

20 & 21 Vict. c. 85 s. 27.

Grounds for petition by wife for dissolution of marriage.

76. It shall be lawful for any wife<sup>(b)</sup> to 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 incestuous adultery or of bigamy with adultery or of rape or of sodomy

(a) Proceedings for a dissolution of marriage are not authorized when the complainant is the committee of a lunatic, but a judicial separation may be granted.—*Millar v. Annand*, 2 W. & W. (L.E. & M.), 137.

(b) The court has jurisdiction to dissolve a marriage celebrated in Victoria between a woman domiciled there and a foreigner who has not abandoned his domicile of origin, though such foreigner be resident and domiciled in his own country at the commencement of and during the suit.—*Ho-a-mie v. Ho-a-mie*, 6 V.L.R. (L.P. & M.), 113.

A husband and wife left the country of their

domicile under an engagement as members of a theatrical company, with no intention of returning to that country, but with the intention of making a tour of the Australian colonies, and making Victoria their head-quarters. In the course of making such tour they remained in Melbourne a short time on two occasions. On a suit for dissolution of marriage, instituted by the wife against her husband, who was then in New Zealand: *Held*, that the facts warranted the conclusion that the parties were *bonâ fide* domiciled in Victoria, and that the court had jurisdiction to grant the relief prayed.—*Cremer v. Cremer*, 12 V.L.R., 738.

or of bestiality or of adultery coupled with such cruelty<sup>(a)</sup> as without adultery would have entitled her to a divorce *a mensâ et thoro* under the law existing previously to the thirteenth day of June One thousand eight hundred and sixty-five in England or of adultery coupled with desertion without reasonable excuse for two years or upwards.<sup>(b)</sup> And every petition under this and the last two preceding sections shall state as distinctly as the nature of the case permits the facts on which the claim to have such marriage dissolved is founded.

**77.** For the purposes of this Act incestuous adultery shall be taken to mean 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; and bigamy shall be taken to mean 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 shall have taken place within the dominions of Her Majesty or elsewhere.

**78.** Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition unless on special grounds to be allowed by the Court he shall be excused from so doing.<sup>(c)</sup> And on every petition presented by a wife for dissolution of marriage the court if it see fit may direct that the person with whom the husband is alleged to have committed adultery be made a respondent. And the parties or either of them may insist on having the contested matters of fact tried by a jury as hereinafter mentioned.

**79.** It shall be lawful for a law officer if he think fit to oppose the petitioner's obtaining a decree of dissolution of marriage.<sup>(d)</sup>

**80.** By leave of the Court or of a judge any other person may oppose the petitioner's obtaining a decree of dissolution of marriage; but no such leave shall be granted except upon an affidavit showing to the satisfaction of such Court or judge that there is reasonable ground to believe that the petitioner has been in some manner accessory to or conniving at the adultery.

(a) Acts of violence exercised by a husband towards his wife while in a state of intoxication, frequently repeated during a long interval of time, and constituting a cumulative series of acts of misconduct, leading to the inference that the same state of things will be continued in future, amount to such legal cruelty as will support a petition for dissolution of marriage on the ground of adultery and cruelty.—*Cremar v. Cremar*, 12 V.L.R., 738.

(b) A husband separated from his wife and remained away for three years. He furnished her with some money, but she declined to live with him again unless he prepared a home for her. In a suit against him for divorce on the ground of adultery and desertion, the court held that the wife was entitled to more than mere support; that it must be such as would enable them to live together.—*Nimmo v. Nimmo*, 3 A.J.R., 132.

A wife is entitled to more than pecuniary support; she is entitled to the society and protection of her husband, and the support must be such as to enable them to live together.—*Wilkinson v.*

*Wilkinson*, 13 V.L.R., 568.

(c) A petitioner in his petition charged his wife with having committed adultery "with one T., and other persons unknown to him." No order had been obtained excusing the petitioner from making these other persons co-respondents. Before the answer was delivered the respondent applied to have the petition dismissed, on the ground that the petitioner had not obtained the order of the court excusing him from making these unknown persons co-respondents. *Held*, that the suit had not reached the stage at which it was too late to obtain an order dispensing with these unknown persons as co-respondents.—*Bowring v. Bowring*, 14 V.L.R., 119.

(d) After a decree for dissolution of marriage had been pronounced by the court, but before the decree had been drawn up, it is too late for the Attorney-General to intervene on the ground of collusion. The words "obtaining a decree" in the section refer to the pronouncing of the decree, and not the drawing up, which is merely a formal act to be done after the decree is obtained.—*Bury v. Bury*, 1 V.R. (I.E. & M.), 20, 33.

"The Marriage and Mat. Causes Stat. 1884" s. 62. 20 & 21 Vict. c. 85 s. 27.

Meaning of incestuous adultery and of bigamy. *Ib.* s. 63. *Ib.* Proviso.

Adulterer to be a co-respondent. *Ib.* s. 64. *Ib.* s. 28.

Cause may be tried by a jury.

Law officer may oppose petition. *Ib.* s. 65.

Strangers may be admitted in cases of connivance to oppose dissolution of marriage. *Ib.* s. 66.

"The Marriage and Mat. Causes Stat. 1894" s. 67.  
Court to be satisfied of absence of collusion.  
20 & 21 Vict. c. 86 s. 20.

81. Upon any such petition for the dissolution of a marriage, it shall be the duty of the Court to satisfy itself so far as it reasonably can not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to or conniving at the adultery or has condoned the same,<sup>(a)</sup> and shall also inquire into any counter charge which may be made against the petitioner.<sup>(b)</sup>

Cases in which petition is dismissed.  
Ib. s. 68.  
Ib. s. 30.

82. In case the Court on the evidence in relation to any such petition is not satisfied that the alleged adultery has been committed, or 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 that the petition is presented or prosecuted in collusion with the respondents or either of them or with any person liable to be made a respondent under the provisions hereinbefore contained, the Court shall dismiss the said petition.<sup>(c)</sup>

Cases in which dissolution of marriage may be decreed.  
Ib. s. 69.  
Ib. s. 31.

83. In case the Court is satisfied on the evidence that the case of the petitioner has been proved,<sup>(d)</sup> and does not find that the petitioner has been in any manner accessory to or conniving<sup>(e)</sup> at the adultery of the other party to the marriage or has condoned the adultery complained of or that the petition is presented or prosecuted in collusion with the respondents or either of them or with any person liable to be made a respondent under the provisions hereinbefore contained, the Court shall pronounce a decree declaring such marriage to be dissolved.

(a) In a suit by a wife against her husband for dissolution of marriage on the ground of adultery and desertion, the court will act on a clear, distinct, and unequivocal admission of adultery by the husband, deposed to only by the wife and her father, if satisfied that the evidence is trustworthy.—*Arnold v. Arnold*, 13 V.L.R., 249.

Great and even suspicious caution will be observed by the court in dealing with the uncorroborated evidence of a petitioner in suits for dissolution of marriage or for judicial separation, as to adultery or cruelty alleged, more especially in cases when further evidence is easily procurable, or where the charge is denied by the respondent. In a suit for dissolution of marriage on the ground of adultery and cruelty, where neither is the suit defended nor the charge of cruelty denied by the respondent, and where there is no reason to suspect collusion, the uncorroborated testimony of the petitioner may be sufficient to support the charge.—*Cremar v. Cremar*, 12 V.L.R., 738.

(b) This section, together with sections 67, 101, and 124, place the judge to whom application is made for a new trial, on the ground of the verdict being against evidence, in a similar position with similar duties and powers as the court to which an application used to be made in its common law jurisdiction, and the court ought to be satisfied with the verdict of a jury in the divorce jurisdiction, unless it can assign definite and strong reasons for dissatisfaction, amongst which is not to be included the fact that the court itself would have come to a different conclusion.—*Malpas v. Malpas*, 11 V.L.R., 671.

The court in an unopposed petition by a hus-

band for dissolution of marriage on the ground of the adultery of his wife has jurisdiction to cross-examine the petitioner and to call witnesses to prove his collusion with his wife, and that he himself has been guilty of adultery, if, on communication with the court by the husband of the woman with whom the petitioner is said to have committed adultery, it has reason to suspect anything of the kind, and if upon such examination of witnesses it believes that there has been such collusion and such adultery by the petitioner, it will refuse to make a decree nisi.—*Kirk v. Kirk*, 15 V.L.R., 118.

(c) The fact that a petitioner has had a previous petition against his wife dismissed on the ground that he had been guilty of adultery is no bar to a fresh petition against his wife and the same co-respondent wherein fresh acts of adultery are charged since the dismissal of the first petition.—*Weeding v. Weeding and Rose*, 16 V.L.R., 134.

(d) The court will not in an undefended suit grant a decree for the dissolution of a marriage if the marriage be proved only by the evidence of the husband or wife alone, without corroboration.—*Dowling v. Dowling*, 10 V.L.R. (I.P. & M.), 46.

The uncorroborated evidence of the petitioner is insufficient to support a charge of cruelty or adultery when denied by the respondent.—*Little v. Little*, 4 A.J.R., 143; following *Casey v. Casey*, 1 W. & W. (I.E. & M.), 34; and *Beck v. Beck*, 1 W. & W. (I.E. & M.), 199.

(e) Connivance implies consent, active or passive, and an intention on the part of the person charged with conniving that guilt should ensue.—*Hayle v. Hayle*, 10 V.L.R. (I.P. & M.), 59.

84. Every decree for a divorce shall in the first instance be a decree *nisi* not to be made absolute till after the expiration of such time not less than three months from the pronouncing thereof as the Court shall by general or by special order from time to time direct; and during that period any person shall be at liberty in such manner as the Court shall by general or by special order in that behalf from time to time direct to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not having been brought before the Court, and on cause being so shown the court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry or otherwise as justice may require; and at any time during the progress of the cause or before the decree is made absolute any person may give information to the Attorney-General of any matter material to the due decision of the case, and the Attorney-General may thereupon take such steps as he may deem necessary or expedient; and if from any such information or otherwise the Attorney-General suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case he may by leave of the Court intervene in the suit alleging such cause of collusion and subpoena witnesses to prove it; and it shall be lawful for the Court to order the costs arising from such intervention to be paid by the parties of such of them as it shall see fit, including a wife if she have separate property.

*"The Marriage and Mat. Causes Stat. Amend. Act 1883" s. 20.*  
 Decrees.  
 See 23 & 24 Vict. c. 144 s. 7.

Collusion.

Intervention.

Costa.

85. On every decree *nisi* in any suit or other proceeding for dissolution of marriage pronounced after the coming into operation of this Act the Prothonotary shall endorse a notice that if the petitioner or respondent shall contract marriage before such decree has been made absolute he or she will be guilty of bigamy; but it shall not be necessary for the petitioner to move to make any decree *nisi* hereafter pronounced absolute. After the expiration of the time limited in that behalf the Prothonotary on the request in writing of the petitioner and if no matter in opposition to the final decree is then pending may issue the decree absolute as of course.

Making decree absolute.  
*"The Divorce Act 1889" s. 4.*

86. The Court shall not be bound to pronounce such decree of dissolution if it find that the petitioner has during the marriage been guilty of adultery, or if the petitioner in the opinion of the Court have been guilty of unreasonable delay in presenting or prosecuting such petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of and without reasonable excuse, or of such wilful neglect or misconduct as has conduced to the adultery.<sup>(a)</sup>

Cases in which Court may refuse to decree dissolution.  
*"The Marriage and Mat. Causes Stat. 1864" s. 70.*  
 20 & 21 Vict. c. 85 s. 31. Proviso.

(a) A husband is not bound to entertain suspicions, but he ought not to put his wife in a position of temptation, and if he is aware that she has fallen into such a position, and is meditating to do wrong, he is bound to take steps to the utmost of his ability to remove her from that position or prevent her from carrying out any wrong intentions. His omission to do so amounts to misconduct within the meaning of

the Act.—*Bathgate v. Bathgate*, 2 W. & W. (L.E. & M.), 129.

In a suit for dissolution of marriage by husband against wife, on the ground of adultery, the court, in exercising its discretion under this section, where the petitioner himself has been guilty of adultery, will have regard to condonation thereof by the respondent, if proved in evidence, although not pleaded by the petitioner. To

"*The Marriage and Mat. Causes Stat. 1864*" s. 71.  
Alimony.  
20 & 21 Vict.  
c. 83 s. 32.

87. The Court may if it think fit on any such decree order that the husband shall to the satisfaction of the Court secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her own life as, having regard to her fortune (if any) to the ability of the husband and to the conduct of the parties, it deems reasonable; and for that purpose may settle and approve or refer it to the Master of the said Court to settle and approve of a proper deed or instrument to be executed by all necessary parties; and the said Court may in such case if it see fit suspend the pronouncing of its decree until such deed shall have been duly executed; and upon any petition for dissolution of marriage the Court shall have the same power to make interim orders for payment of money by way of alimony or otherwise to the wife as it would have in a suit instituted for judicial separation.<sup>(a)</sup>

establish condonation against the wife much stronger evidence is required than to establish it against the husband. Adultery of the husband petitioner, proved in a suit for dissolution of marriage, may form a discretionary bar to the petitioner's relief, although it has been condoned by the respondent. As a general rule, where the petitioner has himself been guilty of adultery, the petition should be dismissed, relief only being given where there are palliating circumstances, or something special in the particular case to call for the exceptional interposition of the court in the petitioner's favour.—*Weeding v. Weeding and Rose*, 13 V.L.R., 215.

The mere mistake of a husband in allowing his wife, suffering from habitual drunkenness, to leave his protection for four years, even though it has led to her subsequent infidelity, is not such wilful neglect or misconduct within the meaning of this section as to disentitle him to relief; nor is the allowing her, after he believes her to have committed adultery, to keep a boarding house for male boarders apart from him necessarily such an act as to disentitle him to relief, where the adultery complained of was not with any of the boarders, though it took place at the boarding house.—*White v. White*, 13 V.L.R., 239.

Where a husband leaves his wife, absents himself for several years, and neglects to provide her with means of livelihood, such absence not being necessary in the pursuit of his ordinary avocation—this is desertion or wilful separation without reasonable excuse, and is wilful neglect conducing to her adultery (first committed after such desertion) within the meaning of this section, even though the wife had a father with whom she could have lived, the husband being aware that she did not and would not remain in her father's house. Where a husband has waited several years after the discovery of his wife's adultery, and the court has reason to believe that his real motive for not at once instituting proceedings was that his church would not allow him to marry again after procuring a divorce, such conduct will be regarded as "unreasonable delay" within the meaning of this section. *Quare*, whether religious scruples, entertained *bonâ fide* at the time of the discovery of the adultery, as to the propriety of the dissolution of the marriage, would excuse a delay otherwise unreasonable.—*O'Connor v. O'Connor*, 12 V.L.R., 324.

For circumstances where the husband's misconduct was not considered to conduce to the adultery

of the wife, see *Maxwell v. Maxwell*, 6 V.L.R. (I.P. & M.), 117.

Facts constituting wilful neglect or misconduct within the meaning of this section.—See *Myles v. Myles*, 1 W. & W. (I.E. & M.), 204; *Roulston v. Roulston*, 1 W. & W. (I.E. & M.), 206; *Terry v. Terry*, 1 W. W. & a'B. (I.E. & M.), 78.

A wife obtained a decree against her husband for judicial separation on the ground of cruelty. Subsequently she committed adultery. On petition by the husband for divorce, *Held*, that the decree of separation had not conduced to the subsequent adultery of the wife, and decree granted for the dissolution of the marriage.—*Bailey v. Bailey*, 2 W. W. & a'B. (I.E. & M.), 89.

The court has discretion to refuse a divorce where there is misconduct conducing to the adultery, though there may not have been absolute cruelty conducing thereto.—*Bythell v. Bythell*, 3 A.J.R., 68.

When the adultery took place before the passing of "*The Marriage and Matrimonial Causes Statute 1865*," and at the time it came into force the petitioner was nearly blind and unable to work at his trade, the delay was held to be sufficiently excused.—*Daniel v. Daniel*, 3 A.J.R., 132.

Adultery by the husband petitioner, although condoned by the respondent, does not relieve the Court from the duty of inquiry and the exercise of the judicial discretion imposed on it by law.—*Hayle v. Hayle*, 10 V.L.R. (I.P. & M.), 59.

(a) Where a deed of separation had been entered into, making a provision for the wife, but it was doubtful whether such deed could be enforced after a dissolution of marriage by reason of the wife's adultery, and where the wife had brought no fortune to the husband, the court refused to grant her permanent alimony.—*Fisher v. Fisher*, 3 V.L.R. (I.P. & M.), 86.

A wife against whom a decree for dissolution has been pronounced may apply for permanent alimony, notwithstanding that she has filed no petition for permanent alimony, and her answer does not state that any such application will be made. At common law, a wife, by her adultery, deprives herself of any right to bind her husband for her support, and the same rule should be followed by this court, save in exceptional cases, or where the wife has brought a fortune to her husband.—*Carnaby v. Carnaby*, 1 W. & W. (I.E. & M.), 195.

Principles upon which alimony *pendente lite* is allotted, considered. As in England the practice

88. Wherever a decree for a dissolution of marriage is obtained against a husband who has no property on which the payment of any gross or annual sum can be secured to the wife, it shall be lawful for the Court to make an order on the husband for payment to the wife during their joint lives of such monthly or weekly sums for her maintenance and support as the Court may think reasonable. Provided always that if the husband shall afterwards from any cause become unable to make such payments, it shall be lawful for the Court to discharge or modify the order or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid and again to revive the same order wholly or in part as to the Court may seem fit. Provided also that if the wife shall marry again or if there be any other just cause for so doing, the Court may on proof of that fact discharge the said order, or if there be infant children in her custody may vary the same.

*"The Divorce Act 1839" s. 5.*  
Power to order monthly or weekly payments to wife from husband on dissolution of marriage.  
29 Vict. c. 32 s. 1.

89. Where on the petition of a husband for a divorce the alleged adulterer is made a co-respondent, or where on the petition of a wife the person with whom her husband is alleged to have committed adultery is made a respondent, it shall be lawful for the Court after the close of the evidence on the part of the petitioner to direct such co-respondent or respondent to be dismissed from the suit, if it shall think there is not sufficient evidence against him or her; and in its discretion to award him or her costs.

When alleged adulterer a co-respondent he may be dismissed from suit.  
*"The Marriage and Mat. Causes Stat. 1894" s. 72.*  
21 & 22 Vict. c. 108 s. 11.

90. When the time limited for appealing against any decree dissolving a marriage shall have expired and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death.

Liberty to parties to marry again.  
*Ib. s. 73.*  
20 & 21 Vict. c. 85 s. 57.

In cases where under this Act there shall be no right of appeal, the parties respectively shall be at liberty to marry again at any time after the pronouncing or issue of the decree absolute.

*"The Marriage and Mat. Causes Stat. 1883" s. 19.*  
31 & 32 Vict. c. 77 s. 3.

of decreeing alimony to be paid quarterly appears to have grown out of the circumstances that incomes there are mostly received quarterly; and as incomes in this colony are mostly received monthly, the principle laid down in England is best preserved by departing from the practice, and by directing the alimony here to be paid monthly.—*Molesworth v. Molesworth*, 1 W. & W. (I.E. & M.), 57.

Alimony *pendente lite* is payable from the service of the citation, and not from the date of its return. A discretion is to be exercised by the court as to the intervals at which alimony is made payable. Some place should be fixed by the court at which the alimony should be payable.—*Davies v. Davies*, 2 W. & W. (I.E. & M.), 124.

An attachment will be granted for non-payment of arrears due under a decree for alimony *pendente lite*.—*Hunter v. Hunter*, 2 W. & W. (I.E. & M.), 123.

The Court has jurisdiction to award alimony *pendente lite* where the wife is the respondent in a suit for divorce. A petition for alimony *pendente lite* need not be signed by the petitioner. Where the wife is respondent in the main cause, her petition for alimony *pendente lite* need not be

personally served on the husband, *A liter* where the wife is petitioner in the main cause. Where a petition for alimony *pendente lite* was served upon the husband's proctor two days after it was filed—*Held*, that such service was sufficient, but that the time for answering should run from the service, and not from the filing.—*Fowler v. Fowler*, 2 W. & W. (I.E. & M.), 126.

The proportion of one-fifth of the husband's income is not always to be observed in allowing alimony; the sources from which his income is derived are to be considered. Where that income arises chiefly from trade profits, the proportion should be lower than where derived from property.—*Parley v. Parley*, 2 W.W. & A.B. (I.E. & M.), 58; see *Smith v. Smith*, 3 A.J.R., 62.

In hearing petitions for alimony, the ordinary rules of pleading are to be followed, and no case is to be heard except that made by the pleadings. Where children of the marriage are kept by the mother, the question of their support should not be regarded in fixing the amount of alimony to be awarded to her; but provision for their maintenance should be made distinct from the alimony allowed to the mother.—*Sansom v. Sansom*, 2 W. & W. (I.E. & M.), 147.

*"The Marriage and Mat. Causes Stat. 1894" s. 74.*  
 No person compellable to solemnize marriage of divorced persons.  
 20 & 21 Vict. c. 85 s. 67. Proviso.

**91.** No person authorized by this Act to celebrate marriage shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved on the ground of his or her adultery, or shall be in any manner liable for solemnizing or refusing to solemnize the marriage of any such person.

#### PART IX.—REMEDIES AGAINST ADULTERER.

Action for crim. con. abolished.  
*Ib.* s. 75.  
*Ib.* s. 59.  
 Husband may claim damages from adulterer.  
*Ib.* s. 76.  
*Ib.* s. 33.

**92.** No action for criminal conversation shall be commenced in Victoria.

**93.** Any husband may either 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 wife of such petitioner; and such petition shall be served on the alleged adulterer and the wife unless the Court dispense with such service or direct some other service to be substituted; and the claim made by every such petition shall be heard and tried on the same principles in the same manner and subject to the same or the like rules and regulations as actions for criminal conversation were previously to the thirteenth day of June One thousand eight hundred and sixty-five tried and decided in courts of common law; and all the enactments herein contained with reference to the hearing and decision of petitions to the Court shall so far as may be necessary be deemed applicable to the hearing and decision of petitions presented under this enactment.

Damages to be ascertained by a jury and paid according to the direction of the Court.  
*Ib.* s. 77.  
 See *ib.* s. 33.

**94.** The damages to be recovered on any such petition shall in all cases be ascertained by the verdict of a jury although the respondents or either of them may not appear; and after the verdict has been given such damages shall be paid or applied in such manner as the Court directs; and it shall be lawful for the Court to direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage or as a provision for the maintenance of the wife. Provided that if such petition be dismissed, no damages shall be given to or on the behoof of any such petitioner.

Court may order adulterer to pay costs.  
*Ib.* s. 78.  
*Ib.* s. 34.

**95.** When in any petition presented by a husband the alleged adulterer has been made a co-respondent and the adultery has been established, the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

#### PART X.—PROVISIONS FOR THE BENEFIT OF CHILDREN.

Court may make orders as to custody of children.  
*Ib.* s. 79.  
*Ib.* s. 35.

**96.** In any suit or other proceeding for obtaining a judicial separation or a decree of nullity of marriage and on any petition for dissolving a marriage, the Court may from time to time before making its final decree make such interim orders and may make such provision in the final decree as it may deem just and proper with respect to the custody maintenance and education of the children the marriage of whose parents is the subject of such suit or other proceeding; and may if it think fit direct proper proceedings to be taken for placing such children under the protection of the said Court.<sup>(a)</sup>

(a) Interim orders for the custody and maintenance of children may be made under this section where the children have no property. The same presumption as to the wife's innocence

will be made on an application for the custody and maintenance of children as on application for alimony. — *Jones v. Jones*, 1 W.W. & a'B. (I.E. & M.), 86.

97. The Court after a final decree of judicial separation nullity of marriage or dissolution of marriage may upon application (by petition) for this purpose make from time to time all such orders and provisions with respect to the custody maintenance and education of the children the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the Court, as might have been made by such final decree or by interim orders in case the proceedings for obtaining such decree were still pending.

*"The Marriage and Mat. Causes Stat. 1864" s. 80.*  
 Court after final decree may make such order.  
 22 & 23 Vict. c. 61 s. 4.

98. The Court after a final decree of nullity of marriage or dissolution of marriage 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 either for the benefit of the children of the marriage or of their respective parents as to the Court shall seem fit.<sup>(a)</sup> Provided that the Court may exercise the powers vested in it by the provisions of this section notwithstanding that there are no children of the marriage.

Court after final decree may inquire as to settlements and make orders thereon for children.  
*Ib. s. 81.*  
*"The Marriage and Mat. Causes Stat. Amend. Act 1883" s. 22.*  
*Ib. s. 5.*  
 41 & 42 Vict. c. 19 s. 3.

99. Where the Court pronounces a decree of divorce or judicial separation for adultery of the wife, if it be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court if it think proper may order such settlement as it shall think reasonable 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.

Court may settle property of adulterous wife for benefit of innocent party and children of marriage.  
*"The Marriage and Mat. Causes Stat. 1864" s. 82.*  
 20 & 21 Vict. c. 85 s. 45.  
 Coverture not to invalidate instrument executed under order.  
*Ib. s. 83.*  
 23 & 24 Vict. c. 144 s. 6.

100. Any instrument executed pursuant to such order made at the time or after the pronouncing of a decree of divorce or judicial separation shall be deemed valid and effectual in the law, notwithstanding the existence of the disability of coverture at the time of the execution thereof.

PART XI.—PROCEDURE.

101. It shall be lawful for a single judge of the Supreme Court alone to hear and determine all matters arising in the said Court in its divorce and matrimonial jurisdiction, and to exercise all powers and authority whatever which might previously to the seventh day of May One thousand eight hundred and eighty-four have been heard and determined and exercised respectively by the Full Court; or where the single judge deems it expedient in relation to any matter which he might hear and determine alone by virtue of this Act to have the assistance of one other judge of the said Court, it shall be lawful for the single judge to sit and act with such one other judge accordingly and in conjunction with such other judge to exercise all the jurisdiction powers and authority of the said Court.<sup>(b)</sup>

A single judge may exercise powers vested in Full Court.  
*"The Marriage and Mat. Causes Stat. Amend. Act 1883" s. 15.*  
*Ib. s. 1.*  
 Single judge may call in the assistance of another judge.

(a) After a decree of dissolution of marriage on the ground of the wife's adultery, where the wife's settled property realized an income of about £980 per annum, and there were five children of the marriage, one of whom was living with the respondent and four with the petitioner, the husband's salary being £700 per annum, the court made an order that the trustees should pay £250 per annum to the respondent for her own benefit, and £50 per annum for the maintenance and education of the child living with her, and should pay the residue of the income to the petitioner for

the benefit of himself and the four children living with him.—*Hickling v. Hickling*, 10 V.L.R. (I.P. & M.), 44.

(b) Under the combined effect of this section and section 124, a single judge sitting in the divorce jurisdiction has power to hear an application for a rule nisi for a new trial, and to make the rule absolute. The application for a rule should be made before the decree is pronounced.—*Belcher v. Belcher and McKenzie*, 10 V.L.R. (I.P. & M.), 52.

It is unnecessary to obtain a judge's order



"The Marriage and Mat. Causes Stat. Amend. Act 1883" s. 16.  
Judge may direct any matter to be heard by the Full Court.  
Suits may be tried at Assize Courts.  
"The Divorce Act 1889" s. 2.

**102.** Provided always that the single judge may where he shall deem it expedient direct that any such matter as aforesaid shall be heard and determined by the Full Court.

**103.** Any suit or other proceeding under this Act may be heard and tried before a judge of the Court at any sittings of the Court held in the bailiwick in which the husband and wife reside or last resided together, and such judge is hereby authorized and required to hear and determine such suit or other proceeding according to the rules and regulations existing in that behalf, and such judge shall have the same powers and authorities as a single judge of the Court in the divorce and matrimonial jurisdiction in Melbourne.

Questions of fact may be tried before the Court.  
"The Marriage and Mat. Causes Stat. 1864" s. 84.  
20 & 21 Vict. c. 85 s. 30.  
Such question to be tried as an issue.  
Ib. s. 85.

**104.** In questions of fact arising in proceedings under Parts VII. VIII. IX. and X. of this Act it shall be lawful for, but except as hereinbefore provided not obligatory upon, the Court to direct the truth thereof to be determined by the verdict of a jury.<sup>(a)</sup>

**105.** When any such question shall be so ordered to be tried, such question shall be decided in the manner provided by any law now or hereafter in force empowering the Court or a judge thereof to direct an issue.

Mode of commencing proceedings.  
"The Divorce Act 1889" s. 3.

**106.** From and after the coming into operation of this Act it shall not be necessary to present a petition for dissolution of marriage or judicial separation to a judge of the Court for his acceptance or to deliver a copy of such petition to a law officer, but proceedings shall be commenced by filing in the office of the Prothonotary a petition in the form in the Sixth Schedule hereto or to the like effect, together with an affidavit such as is now or may hereafter be prescribed by the rules of court.

Sixth Schedule.

Affidavit in support of a petition.  
"The Marriage and Mat. Causes Stat. 1864" s. 86.  
Ib. s. 41.

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

Service of petition.  
Ib. s. 87.  
Ib. s. 42.

**108.** Every such petition shall be served on the party to be affected thereby either within or without Victoria in such manner as the Court shall by any general or special order from time to time direct; and for that purpose the Court shall have and exercise all the powers it now possesses by law. Provided that the said Court may dispense with such service altogether in case it shall seem necessary or expedient so to do.<sup>(b)</sup>

for the trial of a cause before a single judge. Causes may be set down for trial without a judge's order directing them to be tried by one or more judges.—*Cameron v. Cameron*, 6 A.L.T., 26.

(a) In a suit for nullity the court has a discretionary jurisdiction to direct the trial of questions of fact by a jury.—*Bishop v. Bishop*, 5 A.J.R., 43.

In an undefended suit for dissolution of marriage, the court has no jurisdiction to direct a question of fact raised by the petition to be tried by a jury.—*Dowling v. Dowling*, 9 V.L.R. (I.P. & M.), 58.

Where the respondent left the suit undefended it was held that there could be no "issue of fact" for trial by a jury as between the petitioner and the respondent.—*Bury v. Bury*, 1 V.R. (I.E. & M.), 20.

(b) *Higinbotham, J.* (in Chambers), made an order dispensing with service of the citation and petition upon a respondent who had deserted his wife and gone to live in China, where he had married again.—*Ah Nang v. Ah Nang*, 4 A.L.T., 178.

In a suit by the wife for judicial separation, where the respondent has absconded—and the petitioner stated, upon affidavit, that she had been

109. The Court may if it think fit order the attendance of the petitioner or respondent, and may examine him or her or permit him or her to be examined or cross-examined on oath on the hearing of any petition; but no such petitioner shall be bound to answer any question tending to show that he or she has been guilty of adultery.

"The Marriage and Mat. Causes Stat. 1864" s. 83.  
Examination of petitioner.  
20 & 21 Vict. c. 85 s. 43.

110. In any suit or other proceeding instituted for dissolution of marriage or judicial separation if the respondent shall oppose the relief sought on the ground of any cause entitling either husband or wife to any relief under this Act, the Court may in such a suit give to the respondent on his or her application the same relief to which he or she would have been entitled in case he or she had filed a petition seeking such relief.

Power to grant relief to respondent.  
"The Divorce Act 1859" s. 6.  
29 Vict. c. 32 s. 2.

111. When a wife in any such suit or other proceeding has as petitioner duly filed her petition or as respondent has duly entered an appearance, the Court if it considers she has not sufficient separate estate may order the husband to pay into court a sum of money sufficient to enable her to have the merits of her case investigated by a proctor, and such sum or part thereof may on the certificate of the taxing master be paid to the wife or her proctor on such master being satisfied that such sum has been properly incurred or spent in ascertaining whether the wife has a good cause of suit or defence on the merits thereof; and if after investigating the case the wife's proctor is of opinion that she has a good cause of action or defence on the merits, he may file a certificate to that effect in the office of the Prothonotary and thereupon the husband shall pay into court a sum not exceeding Twenty pounds to be fixed by the taxing master; and no order shall be made for the taxation and payment of costs *de die in diem*, or for the payment before hearing or trial of any costs of or incidental to the hearing of the cause or for the giving of security for such costs by the husband. The costs of the wife of or incidental to any such suit or proceeding in which she is either petitioner or respondent shall be in the discretion of the Court, and when the decision of the Court or the verdict of the jury is against the wife, the Court may notwithstanding if it thinks the suit was a reasonable one to maintain or defend order that she shall receive the costs of or incidental to the suit or at or after such decision or verdict fix an amount to be paid to her for such costs in accordance with the husband's ability to pay such costs.

Power to order husband to pay money to wife to have her case investigated.  
18. s. 7.

Costs of wife to be in discretion of the Court even when she is unsuccessful.

112. The Court may from time to time adjourn the hearing of any such petition, and may require further evidence thereon if it see fit so to do.

Adjournment.  
"The Marriage and Mat. Causes Stat. 1864" s. 89.  
20 & 21 Vict. c. 85 s. 44.

unable, after diligent inquiries, to gain any intelligence of him, and believed, from the answers to her inquiries, that he had left Victoria—the court refused to dispense with service upon the respondent; but, upon further affidavits, stating where the respondent was supposed to be, directed substituted service by advertisements in that place.—*McNulty v. McNulty*, 1 W. W. & a'B. (I.E. & M.), 85.

No special order is required for personal service of the petition and citation on the respondent out

of the jurisdiction—*Parke v. Parke*, 6 W.W. & a'B. (I.E. & M.), 51; N.C., 28.

On a petition for dissolution by wife, the court has no jurisdiction to grant leave to serve the citation upon the husband, who is not and has never been within the jurisdiction of the court.—*Kretzschmar v. Kretzschmar*, 4 A.J.R., 131.

Evidence by the petitioner alone of the service of the petition and citation on the respondent and co-respondent is not sufficient to identify them.—*Russell v. Russell*, 4 A.J.R., 183.

"The Marriage and Mat. Causes Stat. 1894" s. 90.  
Mode of taking evidence.  
See 20 & 21 Vict. c. 86 s. 40.

113. The witnesses in all proceedings before the Court where their attendance can be had shall be sworn and examined orally in open Court; and such attendance and the production of documents by them shall be compelled in the same manner as in an action at law; but the parties shall be at liberty to verify their respective cases in whole or in part by his or her own affidavit, but so that the deponent in every such affidavit shall on the application of the opposite party or by direction of the Court be subject to be cross-examined by or on behalf of the opposite party orally in open court, and after such cross-examination may be re-examined orally in open court as aforesaid on his or her own behalf.

Commissions or orders for examination of witnesses.  
Ib. s. 91.  
See ib. s. 47.

114. It shall be lawful for the Court or a judge to order the examination of witnesses, and also to order a commission to issue for the examination of witnesses, in the same way to all intents as if the matter before it were an action pending in the civil jurisdiction.<sup>(a)</sup>

Costs of intervention.  
"The Marriage and Mat. Causes Stat. Amend. Act 1883" s. 21.  
41 & 42 Vict. c. 19 s. 2.

115. Where the Attorney-General or any other person intervenes or shows cause against a decree *nisi* in any suit or proceeding for divorce or for nullity of marriage, the Court may make such order as to the costs of the Attorney-General or of such other person as aforesaid or of all and every party or parties thereto occasioned by such intervention or showing cause as aforesaid, as may seem just; and the Attorney-General, any other person as aforesaid, and such party or parties shall be entitled to recover such costs in like manner as in other cases.

Costs.  
"The Marriage and Mat. Causes Stat. 1894" s. 92.  
See 20 & 21 Vict. c. 86 s. 51.

116. The Court on the hearing of any suit proceeding or petition under this Act may make such order as to costs as to such Court may seem just.<sup>(b)</sup>

Enforcement of orders and decrees.  
Ib. s. 93.  
Ib. s. 52.  
Fees to be regulated.

117. All decrees and orders to be made by the Court in any suit proceeding or petition to be instituted under the authority of this Act shall be enforced and put in execution in the same or in the like manner as other judgments orders and decrees of the said Court may be now enforced and put in execution.

(a) In a suit for dissolution of marriage the co-respondent appeared and answered raising by his answer *inter alia* an objection to the jurisdiction, he not being domiciled in Victoria. On a summons in chambers to obtain a commission to examine a witness abroad, it was contended that the decision on the objection to the jurisdiction might render his evidence unnecessary, but the commission was nevertheless granted.—*Smith v. Smith*, 3 V.L.R. (I.P. & M.), 65.

Where a witness was in an advanced state of pregnancy, and medical evidence was adduced showing that she was exceedingly nervous and had miscarried in her previous pregnancy, and that her attendance in the witness box would be very likely to occasion another miscarriage, but that she was not otherwise ill, the court refused to admit her evidence taken under a commission.—*Fisher v. Fisher*, 3 V.L.R. (I.P. & M.), 64.

(b) In an application by the petitioner in a suit for judicial separation for costs *de die in diem* to be taxed and paid, a judge is not at liberty, where the petition has been accepted and the facts are still in dispute, to vary the usual order as to such costs.—*Franklin v. Franklin*, 14 V.L.R., 326.

The petitioner commenced proceedings against the respondent in this court for a dissolution of marriage. The respondent in his answer pleaded want of jurisdiction, he being domiciled in New South Wales. During the progress of the suit the petitioner obtained an order for alimony *pendente lite*, and an order for costs *de die in diem*. These orders were sought to be enforced in the courts of New South Wales, but it was there decided that, inasmuch as such orders were interlocutory and not final, they could not be enforced there. The petitioner subsequently instituted proceedings in New South Wales and obtained a decree against the respondent for dissolution of marriage. The petitioner's proctors afterwards applied, by way of motion, to this court for an order dismissing the suit, and for an order for the payment of the alimony and costs already ordered to be paid by the respondent, but which had never been obeyed. It appeared that the petitioner had not instructed her proctors to make this application, but there had been no direction on her part forbidding the application. *Held*, that the court had jurisdiction to dismiss the suit and to make the order for payment of the alimony and costs.—*Splatt v. Splatt*, 14 V.L.R., 650.

118. The Governor in Council may fix from time to time the fees payable upon all proceedings under this Part of this Act; but 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 actions.

*"The Marriage and Mat. Causes Stat. 1864" s. 94.*  
 Person may sue *in formâ pauperis*.

119. All orders fixing the fees payable under this Act shall be laid before both Houses of Parliament within one month after the making thereof if Parliament be then sitting or if Parliament be not then sitting within one month after the commencement of the then next session of Parliament.

*"The Divorce Act 1889" s. 16.*  
 20 & 21 Vict. c. 85 s. 54.  
 Orders fixing fees to be laid before Parliament.

120. On any petition presented by a wife praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty or of adultery coupled with desertion the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

*"The Marriage and Mat. Causes Stat. 1864" s. 95.*  
 Ib. s. 67.  
 Husband and wife competent and compellable to give evidence.

121. The Court may on the application of either husband or wife or at its own discretion if it thinks it useful in the interests of public morals hear and try any suit or other proceeding in chambers, and may at all times in any suit or proceeding whether heard and tried in chambers or in court make an order forbidding the publication of any report or account of the evidence or other proceedings therein either as to the whole or portion thereof, and the breach of any such order or any colourable or attempted evasion thereof may be dealt with as for contempt of court.

*Ib. s. 96.*  
 22 & 23 Vict. c. 61 s. 6.  
 Trial in chambers.  
*"The Divorce Act 1889" s. 8.*  
 Forbidding publication of the evidence.

122. It shall be lawful for the judge in any cause to sit in chambers for the despatch of such part of the business of the Supreme Court as in the opinion of the said judge can with advantage to the suitors be heard in chambers; and the times at which such sittings shall be held shall from time to time be fixed by such judge.

Judge may sit in chambers to hear cases.  
*"The Marriage and Mat. Causes Stat. 1864" s. 97*  
 21 & 22 Vict. c. 108 s. 1.

123. Such judge when so sitting in chambers shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open court.

Powers of judges in chambers.  
*Ib. s. 98.*  
*Ib. s. 3.*

124. Where any trial shall have been had by a jury before the Court or before the Full Court or upon any issue directed by the Court or the Full Court, it shall be lawful for the Court to grant a rule *nisi* for a new trial;<sup>(a)</sup> but no such rule shall be made absolute except by the Full Court.

Court may grant rule *nisi* for new trial &c.  
*Ib. s. 99.*  
*Ib. s. 18.*

125. In cases where it is necessary to obtain affidavits declarations or affirmations from persons residing in foreign parts out of Her Majesty's dominions, the same may be sworn declared or affirmed before any British ambassador envoy minister chargé d'affaires or secretary of embassy or legation exercising his functions in any foreign country, or before any British consul-general consul vice-consul acting-consul pro-consul or consular agent. Provided that in places where there are no such persons as are last mentioned such affidavits declarations or affirmations may be made declared and affirmed before any foreign local magistrate or other person having authority to administer an oath there.

Affidavits before whom sworn in certain cases.  
*Ib. s. 100.*  
*Ib. s. 20.*  
 See 6 Geo. IV. c. 87 s. 20.  
 See 18 & 19 Vict. c. 42.

(a) Under the combined effect of this section and section 101, a single judge sitting in the divorce jurisdiction has power to hear an application for a rule *nisi* for a new trial, and to make the rule absolute.—*Belcher v. Belcher*, 10 V.L.R. (I.P. & M.), 54.

67, 81, and 101 is to place the judge, to whom an application is made for a new trial on the ground of the verdict being against evidence, in a similar position with similar duties and powers as the court to which an application used to be made in its common law jurisdiction.—*Malpas v. Malpas*, 11 V.L.R., 671.

"The Marriage and Mat. Causes Stat. 1864" s. 101.  
Affidavits before whom to be sworn in certain other cases.  
21 & 22 Vict.  
c. 103 s. 21.

**126.** Affidavits declarations and affirmations for the purposes of Part VII. VIII. IX. X. or XI. of this Act may be taken and sworn in England Scotland Ireland the Isle of Man the Channel Islands or any colony island plantation or place out of England under the dominions of Her Majesty before any court judge notary public or person lawfully authorized to administer oaths in such country colony island plantation or place respectively; or so far as relates to the Isle of Man and the Channel Islands before any commissary ecclesiastical judge or surrogate who at the time of the passing of the Act of the Parliament of the United Kingdom of Great Britain and Ireland in the twentieth and twenty-first years of the present reign cap. seventy-seven was authorized to administer oaths in the Isle of Man or in the Channel Islands respectively; and all judges registrars and other officers of the Supreme Court of Victoria shall take judicial notice of the seal or signature as the case may be of any such judge notary public or person which shall be attached suspended or subscribed to any such affidavit declaration or affirmation or to any other document.

Persons forging seal or signature guilty of felony.  
*Ib.* s. 102.  
*Ib.* s. 22.

**127.** If any person shall forge any such seal or signature as last aforesaid or any seal or signature impressed affixed or subscribed to any affidavit declaration or affirmation sworn declared or affirmed as hereinbefore provided and to be used for the purposes of any of the Parts aforesaid of this Act or shall tender in evidence any such document as aforesaid with a false or counterfeit seal or signature thereto knowing the same to be false or counterfeit he shall be guilty of felony and shall upon conviction be liable to be imprisoned with or without hard labour for any period not less than seven years. And whenever any such document has been admitted in evidence by virtue of this Act the court or the person who has admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded and be kept in the custody of some officer of the court or other proper person for such period and subject to such conditions as to the said court or person shall seem meet.

Persons taking a false oath guilty of perjury.  
*Ib.* s. 103.  
*Ib.* s. 23.

**128.** Any person who shall wilfully give false evidence or who shall wilfully swear affirm or declare falsely in any affidavit or deposition made under the authority of Part VII. VIII. IX. X. or XI. of this Act before any person authorized to administer oaths under any of the said Parts shall be liable to the penalties and consequences of wilful and corrupt perjury.

Appeal from single judge to Full Court.  
"The Marriage and Mat. Causes Stat. Amend. Act 1883" s. 17.  
See 23 & 24 Vict.  
c. 144 s. 2.

**129.** Either party dissatisfied with any decision of a single judge in any matter may within three months after the pronouncing thereof appeal therefrom to the Full Court; and either party dissatisfied with the decision of such judge in granting or refusing any application for a rule *nisi* for a new trial which by virtue of this Act he is empowered to hear and determine may within fourteen days after the pronouncing thereof appeal to the Full Court.

Appeal to Privy Council within one month.  
*Ib.* s. 18.  
See 31 & 32 Vict.  
c. 77 s. 3.

**130.** Either party dissatisfied with the final decision of the Court on any petition for dissolution or nullity of marriage may within one month after the pronouncing thereof appeal to Her Majesty in Privy Council. Provided always that in suits for dissolution of marriage no respondent nor co-respondent not appearing and defending the suit on

the occasion of the decree nisi being made shall have any right of appeal to Her Majesty in Privy Council against the decree absolute unless the Court at the time of the pronouncing of the decree absolute, or where no decree absolute is pronounced at some time previously to the issue of the decree absolute by the Prothonotary, shall see fit to permit an appeal.

*"The Divorce Act 1889" s. 4.*  
No appeal in undefended suits for dissolution unless by leave of court.  
31 & 32 Vict. c. 77 s. 3.

SCHEDULES.

FIRST SCHEDULE.

Section 2.

Date of Act.	Title of Act.	Extent of Repeal.
28 Vict. No. 268 ...	<i>"The Marriage and Matrimonial Causes Statute 1864"</i>	So much as is not already repealed.
36 Vict. No. 453 ...	<i>"An Act to make valid the Marriage of a Man with the Sister of his Deceased Wife"</i>	The whole.
47 Vict. No. 787 ...	<i>"The Marriage and Matrimonial Causes Statute Amendment Act 1883"</i>	The whole.
54 Vict. No. 1056 ...	<i>"The Divorce Act 1889"</i> ... ..	The whole.

SECOND SCHEDULE.

Section 8.

FORM OF DECLARATION OF MARRIAGE BEFORE REGISTRAR-GENERAL OR OTHER OFFICER.

I *John Smith* of [usual place of residence and designation or employment] do hereby declare in the presence of *A. B.* [Registrar-General or other officer as the case may be for the district of ] that I take *Mary Edwards* of [usual place of residence and designation or employment] to be my lawful wife. And I the said *Mary Edwards* do hereby declare that I take the said *John Smith* to be my lawful husband.

J.S.

[Signatures]

M.E.

[Signatures of Witnesses]

THIRD SCHEDULE.

Section 10.

DECLARATION BEFORE MINISTER REGISTRAR-GENERAL OR OTHER OFFICER.

I *John Smith* or *Mary Edwards* of [usual place of residence and designation or employment] being duly sworn make oath and say [or if objecting to take an oath "do solemnly and sincerely declare and affirm"] that I am [widower or widow bachelor or spinster as the case may be] and am [under or above the age of twenty-one years as the case may be] and that I have no knowledge of any just impediment or lawful objection by reason of any kindred relationship or alliance of any former marriage or the want of consent of parents or guardians or any other lawful cause whatever to my being married to *John Smith* or *Mary Edwards* of [usual place of residence and designation or employment] daughter of [*James Edwards*] of [usual or last place of residence and designation] and I hereby further declare that I have full knowledge that in swearing or affirming falsely in this matter I am guilty of perjury and liable to the pains and penalties thereof.

[Signature of *John Smith*]

or

[*Mary Edwards*]

Declared and sworn [or "affirmed"] by both the parties named this day of 18 . }

[Signature and designation whether minister Registrar-General or other officer.] }

## FOURTH SCHEDULE.

IN VICTORIA.

## CERTIFICATE OF MARRIAGE.

District \_\_\_\_\_ No. in Register \_\_\_\_\_  
 On \_\_\_\_\_ at \_\_\_\_\_  
 Marriage was solemnized between us according to the  
 Signature \_\_\_\_\_

DESCRIPTION. { Residence { Present  
 { Usual  
 Age  
 Rank or Profession  
 Condition  
 If Widower { Former } Deceased in { Living  
 { Wife } Children { Dead  
 Birth-place  
 Parents' Names and { Father  
 Rank or Profession { Mother  
 (Maiden Surname.)

Signature \_\_\_\_\_

DESCRIPTION. { Residence { Present  
 { Usual  
 Age  
 Rank or Profession  
 Condition  
 If Widow { Former } Deceased in { Living  
 { Husband } Children { Dead  
 Birth-place  
 Parents' Names and { Father  
 Rank or Profession { Mother  
 (Maiden Surname.)

I [name of minister Registrar-General or other officer] being [designation] do hereby certify that I have this day at [place] duly celebrated marriage between [name designation and residence of husband] and [name designation and residence of wife] after notice and declaration duly made and published as by law required.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

[Signature of minister Registrar-General or other officer—  
 A.B.]Signature of parties to the marriage—  
 C.D.

Witnesses {

IN VICTORIA.

## CERTIFICATE OF MARRIAGE.

District \_\_\_\_\_ No. in Register \_\_\_\_\_  
 On \_\_\_\_\_ at \_\_\_\_\_  
 Marriage was solemnized between us according to the  
 Signature \_\_\_\_\_

DESCRIPTION. { Residence { Present  
 { Usual  
 Age  
 Rank or Profession  
 Condition  
 If Widower { Former } Deceased in { Living  
 { Wife } Children { Dead  
 Birth-place  
 Parents' Names and { Father  
 Rank or Profession { Mother  
 (Maiden Surname.)

Signature \_\_\_\_\_

DESCRIPTION. { Residence { Present  
 { Usual  
 Age  
 Rank or Profession  
 Condition  
 If Widow { Former } Deceased in { Living  
 { Husband } Children { Dead  
 Birth-place  
 Parents' Names and { Father  
 Rank or Profession { Mother  
 (Maiden Surname.)

I [name of minister Registrar-General or other officer] being [designation] do hereby certify that I have this day at [place] duly celebrated marriage between [name designation and residence of husband] and [name designation and residence of wife] after notice and declaration duly made and published as by law required.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

[Signature of minister Registrar-General or other officer—  
 A.B.][Signature of parties to the marriage—  
 C.D.]

Witnesses {

IN VICTORIA.

## CERTIFICATE OF MARRIAGE.

District \_\_\_\_\_ No. in Register \_\_\_\_\_  
 On \_\_\_\_\_ at \_\_\_\_\_  
 Marriage was solemnized between us according to the  
 Signature \_\_\_\_\_

DESCRIPTION. { Residence { Present  
 { Usual  
 Age  
 Rank or Profession  
 Condition  
 If Widower { Former } Deceased in { Living  
 { Wife } Children { Dead  
 Birth-place  
 Parents' Names and { Father  
 Rank or Profession { Mother  
 (Maiden Surname.)

Signature \_\_\_\_\_

DESCRIPTION. { Residence { Present  
 { Usual  
 Age  
 Rank or Profession  
 Condition  
 If Widow { Former } Deceased in { Living  
 { Husband } Children { Dead  
 Birth-place  
 Parents' Names and { Father  
 Rank or Profession { Mother  
 (Maiden Surname.)

I [name of minister Registrar-General or other officer] being [designation] do hereby certify that I have this day at [place] duly celebrated marriage between [name designation and residence of husband] and [name designation and residence of wife] after notice and declaration duly made and published as by law required.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

[Signature of minister Registrar-General or other officer—  
 A.B.][Signature of parties to the marriage—  
 C.D.]

Witnesses {

FIFTH SCHEDULE.

Section 55.

ORDER TO PROTECT WIFE'S EARNINGS ETC.

To writ. } To A.B. of to all creditors of the said A.B. and  
 to all other persons claiming under him.  
 Whereas application hath this day been made unto the undersigned  
 under Part V. of the *Marriage Act 1890* by one C.B.  
 (hereinafter called the "applicant") now residing at in the  
 said of the wife of the above-named A.B. and who hath  
 been and now is deserted by her said husband (hereinafter called the "husband")  
 for order as hereinafter mentioned and contained she the said applicant  
 alleging that on the day of she was lawfully married to her said  
 husband at in the of that she lived and cohabited  
 with her said husband for years at and also at [and  
 hath had children issue of her said marriage of whom are now  
 living with her and wholly dependent upon her earnings] that on or about  
 her said husband without any reasonable cause deserted the applicant and hath ever since  
 remained separate and apart from her, that since the desertion of her said husband the  
 applicant hath maintained herself by her own industry [or on her own property as the  
*case may be*] and hath thereby and otherwise acquired and become possessed of certain  
 money and property consisting of [*here state generally the nature of the property in the  
 ordinary mode of describing it in legal instruments*] Now therefore  
 the said as aforesaid upon due proof thereof upon oath and  
 upon due consideration of the premises am [or are] satisfied of the fact of the said  
 desertion of the said applicant by her said husband (which desertion I [or we] find  
 commenced on the day of 189 ) and that the same was without  
 reasonable cause and that the said applicant is maintaining herself by her own lawful  
 industry [or property] and do hereby upon the application of the said applicant so  
 made to as aforesaid and by virtue of the Act aforesaid make and give  
 to the said applicant this order that the earnings and property of the  
 said applicant acquired by her since the commencement of such desertion of her by her  
 said husband as aforesaid shall be protected from her said husband and from all creditors  
 and persons claiming under him and such earnings and property shall belong to the said  
 applicant as if she were a *feme sole*.  
 Given under hand and seal this day of  
 at in the aforesaid.

SIXTH SCHEDULE.

Section 106.

TO THE SUPREME COURT OF THE COLONY OF VICTORIA.

*Divorce and Matrimonial Causes Jurisdiction.*

The petition of A.B., of The day of 18 .  
 showeth—  
 1. That your petitioner was on day of 18 lawfully  
 married to C.B. [*if respondent be the wife, state here name prior to marriage*] at [*here state  
 where the marriage took place*].  
 2. That on day of 18 and on other days between that  
 day and or in the months of and and  
 18 the said C.B. committed [*adultery*] with of [or] was  
 guilty of [*here state acts or conduct for which relief is sought*].  
 Your petitioner therefore prays that your Honours will be pleased to decree [*here set-  
 out the relief sought*], and that your petitioner may have such further and other relief in  
 the premises as to your Honours may seem meet.

Petitioner's signature—

MARRIED WOMEN.

[*See Real Property Act 1890.*]