

SUPREME COURT.

9° and 10° GEO. VI., No. XXXV.

No. 35 of 1945.

AN ACT to amend the **Supreme Court Act, 1935.**

[Reserved 30th January, 1946.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Supreme Court Act Amendment Act, 1945*, and shall be read as one with the Supreme Court Act, 1935, hereinafter referred to as the principal Act. Short title.

2. Section sixty-nine of the principal Act is amended by adding thereto a subsection as follows:— Amendment of s. 69 of principal Act.

(6) Any married person domiciled in Western Australia may present a petition to the Court praying that his or her marriage may be dissolved, and it shall be competent subject to the next succeeding section for the Court to decree a dissolution thereof, in the case where the husband and wife have lived separately and apart for a period of not less than five years immediately prior to the presentation of the petition and it is unlikely that cohabitation will be resumed.

In computing the period of separation for the purpose of this subsection separation before the enactment hereof may be taken into account.

Provided that the Court in its absolute discretion may refuse to decree a dissolution of

the marriage and shall refuse a decree unless and until provision is made for such maintenance, as in the circumstances the Court thinks proper, of the respondent and any children and the custody and care of any such children.

Provided further that if the petitioner at the time of the presentation of the petition is in default in respect of maintenance payable under any antecedent Court order or under any agreement for the payment of maintenance to the respondent for herself or any child of the marriage, a decree for dissolution of the marriage shall not be granted.

3. A new section is inserted in the principal Act after section sixty-nine, as follows:—

69A. If upon any petition for dissolution of marriage on the ground set out in subsection (6) of the last preceding section it shall appear to the Court that the petitioner has at any time during the period of five years immediately preceding the presentation of the petition been guilty of such conduct as would have enabled the respondent, had he or she so desired, to present a petition for dissolution of marriage on any ground other than the ground set out in subsection (6) of the last preceding section the Court shall dismiss the petition, excepting that in every case where the ground on which the respondent might have presented a petition is one of those specified in paragraph (a) of subsection (3) or subsection (4) of section sixty-nine of this Act, and the petitioner has proved his or her case, it shall be competent for the Court to decree dissolution of the marriage as provided by subsection (6) of the last preceding section.