

WESTERN AUSTRALIA

ANNO VICESIMO SEPTIMO

VICTORIÆ REGINÆ

No. 19

An Ordinance to regulate Divorce and Matrimonial Causes.

[Assented to 22nd July, 1863.]

WHEREAS to obviate the danger which may arise as well to public morality as to family interests, if the law of this Colony on the subject of marriage and divorce differed materially from that of the mother country, it is expedient to adopt the provisions of the recent Statutes amending the law relating to divorce and matrimonial causes in England, as far as the same are compatible with the requirements of the Colony: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council, and the authority of the same, as follows:—

Preamble

1. All jurisdiction now vested in or exercisable by the Court of Divorce and Matrimonial Causes in England constituted under the provisions of the Statute 20 and 21 of Victoria, chapter 85, shall, in this Colony, from and after the passing of this Ordinance, belong to and

Jurisdiction over Causes Matrimonial to be exercised by the Court for

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- Divorce and Matrimonial Causes<sup>1</sup> be vested in Her Majesty, and such jurisdiction shall be exercised in the name of Her Majesty in a Court of Record to be called the Court for Divorce and Matrimonial Causes.
- No decree for Divorce *a mensâ et thoro* to be made, but a judicial separation
2. No decree shall be made for a divorce *a mensâ et thoro*, but in all cases in which a decree for a divorce *a mensâ et thoro* might, before the operation of the said Statute 20 and 21 of Victoria, chapter 85, have been pronounced by any Ecclesiastical Court in England, the Court now by this Ordinance established may pronounce a decree for a judicial separation, which shall have the same force and the same consequences as a divorce *a mensâ et thoro* formerly had.
- 'The Chief Justice of Western Australia' to be Judge of the Court
3. The Chief Justice of Western Australia for the time being shall be the Judge of the said Court, and shall have full authority to hear and determine all matters arising therein, and may exercise all the powers and authority of the said Court.
- Sittings of the Court
4. The Court for Divorce and Matrimonial Causes shall hold its sittings in such place or places in the Colony as the Judge of such Court shall from time to time appoint.
- Judge may sit in Chambers
5. It shall be lawful for the said Judge to sit in Chambers for the despatch of such part of the business of the said Court as can in the opinion of the said Judge, with advantage to the suitors, be heard in Chambers; and such sittings shall from time to time be appointed by the said Judge.
- Powers of Judge when sitting in Chambers
6. The 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.
- Seal of the Court
7. The Judge of the said Court shall procure a seal to be made for the said Court; and all decrees and orders, or copies of decrees or orders of the said Court, sealed with the said seal, shall be received in evidence.
- Officers of the Court
8. The Registrar and other officers of the Supreme Court shall attend the sittings of the Court for Divorce and Matrimonial Causes, and assist in the proceedings thereof, as shall be directed by the rules and orders under this Ordinance.
- The Registrar to do all acts formerly done, in England, by surrogates in Chambers
9. The Registrar of the Supreme Court shall be invested with and shall and may exercise with reference to proceedings in the Court for Divorce and Matrimonial Causes the same power and authority which surrogates of the official principal of the Court of Arches in England could or might before the passing of the Statute 20 and 21 of Victoria, chapter 77, have exercised in Chambers with reference to proceedings in that Court.
- Practitioners in the Court
10. All barristers, attorneys, and solicitors entitled to practise in the Supreme Court of this Colony, shall be entitled to practise in the Court for Divorce and Matrimonial Causes.
- Sentence of judicial separation may be obtained by husband or wife for adultery, &c.
11. A sentence of judicial separation (which shall have the effect of a divorce *a mensâ et thoro* under the law as it existed in England previously to the operation of the Statute 20 and 21 of Victoria, chapter 85, and such other effect as herein mentioned) may be obtained either by the husband or the wife, on the ground of adultery, or cruelty, or desertion without cause for two years and upwards.

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12. Application for restitution of conjugal rights, or 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 restitution of conjugal rights or judicial separation accordingly, and, where the application is by the wife, may make any order for alimony which shall be deemed just.

Application for restitution of conjugal rights or judicial separation may be made by husband or wife by petition to Court

13. A wife deserted by her husband may at any time after such desertion, apply to the Police Magistrate or to the Resident Magistrate of the district wherein she resides, or if resident in any part of the country for which no such Magistrate has been appointed, to Justices in Petty Sessions, or in either case to the Court, for an order to protect any money or property in the Colony she may have acquired or may acquire by her own lawful industry, and any property she may have become possessed of or may become possessed of after such desertion, against her husband and his creditors and any person claiming under him; and such Magistrate or Justices or Court, 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 protecting all money and property in the Colony acquired or which may be acquired by her own lawful industry, and all property of which she has become possessed or may become possessed after 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*: Provided always, that every such order, if made by a Police Magistrate, Resident Magistrate, or Justices at Petty Sessions, shall, within ten days after the making thereof, be entered with the clerk of the Local Court for the recovery of small debts within whose jurisdiction the wife is resident; and that it shall be lawful for the husband and any creditor or other person claiming under him, to apply to the Court or to the Magistrate or Justices by whom such order was made, for the discharge thereof: Provided also that if the husband or any creditor of or person claiming under the husband shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife, (which she is hereby empowered to bring), to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid: If any such order of protection be 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 property and contracts, and suing and being sued, as she would be under this Ordinance if she obtained a decree of judicial separation.

Wife deserted by husband may apply to Police Magistrate, Resident Magistrate, Justices in Petty Sessions, or to Court for protection

14. The provisions contained in this Ordinance 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 sentence of separation or the commencement of the desertion (as the case may be); and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

Provisions respecting property of wife to extend to property vested in her as executrix, &c.

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Order for protection of earnings, &c., of wife to be deemed valid

15. In every case in which a wife shall under this Ordinance have obtained an order to protect her earnings or property, or a decree for judicial separation, such order or decree shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal 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.

Order to state the time when desertion commenced

16. Every order which shall be obtained by a wife, under this Ordinance, for the protection of her earnings or property, shall state the time at which the desertion in consequence whereof 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.

Indemnity to corporations, &c., making payments under orders afterwards reversed

17. All persons and corporations who shall, 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, shall, 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 has been discontinued, 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 her husband had not ceased or been discontinued, unless at the time of such payment, transfer, or other act such persons or corporations had notice of the discharge, reversal, or variation of such order or decree, or of the cessation or discontinuance of such separation.

Court to act on principles of the Ecclesiastical Courts

18. In all suits and proceedings, other than proceedings to dissolve any marriage, the said Court shall proceed and act and give relief on principles and rules which in the opinion of the said Court shall be as nearly as may be conformable to the principles and rules on which the Ecclesiastical Courts in England acted and gave relief previously to the operation of the provisions of the Statutes 20 and 21 of Victoria, chapter 85, but subject to the provisions herein contained, and to the rules and orders made under this Ordinance.

Decree of separation obtained during the absence of husband or wife may be reversed

19. 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 the 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

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reversal thereof shall 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.

20. In all cases in which the Court shall make 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.

Court may direct payment of alimony to wife, or to her trustee

21. In every case of a judicial separation the wife shall, from the date of the sentence and whilst the separation shall continue, 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; 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 shall die intestate, go as the same would have gone if her husband had then been dead; provided that if such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

In case of judicial separation the wife to be considered a Feme Sole with respect to property she may acquire, &c.

22. In every case of a judicial separation the wife shall, whilst so separated, be considered as a feme sole for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; 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 shall not be duly paid by the husband, he shall be liable for necessaries supplied for her use; provided also that nothing shall prevent the wife from joining at any time during such separation in the exercise of any joint power given to herself and her husband.

Also for purposes of contract and suing

23. It shall be lawful for any husband to present a petition to the said Court, praying that his marriage may be dissolved, on the grounds that his wife has since the celebration thereof been guilty of adultery; and it shall be lawful for any wife 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, or of bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et thoro* in the Ecclesiastical Courts in England previously to the operation of the Statute 20 and 21 of Victoria, chapter 85, or of adultery coupled with desertion without reasonable excuse for two years or upwards; and every such petition shall state as distinctly as the nature of the case permits the facts on which the claim to have such marriage dissolved is founded: Provided that for the purposes of this Ordinance incestuous adultery shall be taken to mean adultery committed by a husband with a woman

On adultery of wife, or incest, &c., of husband, petition for dissolution of marriage may be presented

As to incestuous adultery

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with whom if the wife were dead he could not lawfully contract marriage 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 the former husband or wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere.

Adulterer to be  
a co-respondent

24. Upon any such petition presented by the 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; 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.

Cases may be  
tried by a jury

Where alleged  
adulterer a co-  
respondent,  
Court may order  
him to be dis-  
missed from the  
suit

25. In all cases in which, on the petition of the husband for a divorce, the alleged adulterer is made a co-respondent, or in which on the petition of the wife, the person with whom the 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.

Court to be satis-  
fied of collusion

26. 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 no the petitioner has been in any manner accessory to or conniving at the adultery, or has condoned the same, and shall also inquire into any counter charge which may be made against the petitioner.

Dismissal of  
petition

27. In case the Court, on the evidence in relation to any such petition, shall not be satisfied that the alleged adultery has been committed, or shall find 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 either of the respondents, then and in any of the said cases the Court shall dismiss the petition.

Power to Court  
to pronounce  
decree for dis-  
solving marriage

28. In case the Court shall be satisfied on the evidence that the case of the petitioner has been proved, and shall not find that the petitioner has been in any manner 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 either of the respondents, then the Court shall pronounce a decree declaring such marriage to be dissolved. Provided always, that the Court shall not be bound to pronounce such decree if it shall find that the petitioner has during the marriage been guilty of adultery, or if the petitioner shall, 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.

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29. 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 shall deem reasonable, and for that purpose may refer it to any conveyancing counsel 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.

Alimony

30. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition limited to such object only, 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 shall 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 are tried and decided in Courts of Common Law; and all the enactments herein contained with reference to the hearing and decisions 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; and the damages to be recovered under 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 the Court shall have power to direct in what manner such damages shall be paid or applied, and 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.

Husband may claim damages from adulterer

31. Whenever in any petition presented by a husband the alleged adulterer shall have been made a co-respondent, and the adultery shall have been established, it shall be lawful for the Court to order the adulterer to pay the whole or any part of the costs of the proceedings.

Power of Court to order adulterer to pay costs

32. 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 provisions 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 shall think fit, direct proper proceedings to be taken for placing such children under the protection of the Supreme Court exercising the jurisdiction of the Court of Chancery.

Power of Court to make orders as to custody of children

33. In questions of fact arising in proceedings under this Ordinance it shall be lawful for, but, except as hereinbefore provided, not obligatory upon, the Court to direct the truth thereof to be determined before itself, by the verdict of a special or common jury.

Questions of fact may be tried before the Court

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Where a question is ordered to be tried, a jury may be summoned as in the Supreme Court

34. The Court may make such rules and orders upon the Sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by the Supreme Court, and may also make any other orders which may seem requisite; and every such jury shall consist of persons possessing the like qualifications, and shall be struck, summoned, balloted for, and called in like manner as if such jury were a jury for the trial of any cause in the Supreme Court; and every jurymen so summoned shall be entitled to the same rights, and subject to the same duties and liabilities, as if he had been duly summoned for the trial of any such cause in the Supreme Court; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause.

Right to challenge

Such question to be reduced into writing and a jury to be sworn to try it

35. When any such question shall be so ordered to be tried such question shall be reduced into writing in such form as the Court shall direct, and at the trial the jury shall be sworn to try the said question and a true verdict to give thereon according to the evidence; and upon every such trial the Judge shall have the same powers, jurisdiction, and authority as is vested in and exercisable by him when sitting as Judge in the Supreme Court.

Judge to have same powers as when sitting as Judge in the Supreme Court

Court may direct issues to try any fact

36. It shall be lawful for the Court to direct one or more issues to be tried in any Court of Common Law, and either by a special or common jury, in like manner as is now done by the Court of Chancery in England.

Affidavit in support of petition

37. Every person asking 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 so to do, and stating that there is not any collusion or connivance between the deponent and the other party to the marriage.

Service of petition

38. Every such petition shall be served on the party to be affected thereby, either within or without Her Majesty's dominions, 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 all the powers vested in, or which may hereafter by any Ordinance be conferred on the Supreme Court in the exercise of its Equity jurisdiction.

Examination of petitioner

39. The Court may, if it shall think fit, order the attendance of the petitioner, 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.

Adjournment

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

Court may order settlement of property for benefit of innocent party and children of marriage

41. In any case in which the Court shall pronounce a sentence of divorce or judicial separation for adultery of the wife, if it shall be made appear to the Court that the wife is entitled to any property either in possession or reversion, it shall be lawful for the Court, if it shall think proper, to order such settlement as it shall think reasonable to be made of such property, or any part thereof, for the benefit of the innocent

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party, and of the children of the marriage, or either or any of them. And any instrument executed pursuant to any order of the Court made under this enactment, at the time of or after the pronouncing of a final decree of divorce or judicial separation, shall be deemed valid and effectual at law, notwithstanding the existence of the disability of coverture at the time of the execution thereof.

42. 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 exercising the jurisdiction of the Court of Chancery, as might have been made by any such final decree or by interim orders in case the proceedings for obtaining such decree were still pending.

The Court may make order as to custody of children after a final decree of separation

43. 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.

As to marriage settlement of parties after final decree of nullity of marriage

44. 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.

On a petition by wife on account of adultery, &c., both husband and wife competent, &c., to give evidence relating to cruelty or desertion

45. In every case of a petition for a dissolution of marriage it shall be lawful for the Court, if it shall see fit, to direct all necessary papers in the matter to be sent to the Attorney-General, who shall argue before the Court any question in relation to such matter, and which the Court may deem it necessary or expedient to have fully argued.

Court may, where one party only appears, require the Attorney-General to argue on the other side

46. 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 special order from time to time direct; and during that space of time any person shall be at liberty, in such manner as the Court shall by general or 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 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, who may thereupon take such steps as he may deem necessary or expedient; and if from such information or otherwise the Attorney-General shall suspect that any parties to the suit are acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case, he may, by leave of the Court,

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intervene in the suit, alleging such case of collusion, and subpoena witnesses to prove it; and it shall be lawful for the Court to order the costs of counsel and witnesses and otherwise arising from such intervention, to be paid by the parties or such of them as it shall see fit, including a wife if she have separate property.

Made of taking  
evidence

47. Subject to such rules and regulations as may be established as herein provided, the witnesses in all proceedings before the Court when their attendance can be had shall be sworn and examined orally in open Court: Provided that parties, except as hereinbefore provided, shall be at liberty to verify their respective cases in whole or in part by 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 by or on the behalf of the party by whom such affidavit was filed.

Court may issue  
commission or  
give orders for  
examination of  
witnesses abroad  
or unable to  
attend

48. Provided that where a witness is out of the jurisdiction of the Court, or where, by reason of his illness or from other circumstances, the Court shall not think fit to enforce the attendance of the witness in open Court, it shall be lawful for the Court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the Court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said Court or other person to be named in such order for the purpose; and all the powers given to the Courts of Law at Westminster by the Acts 13 George III., chap. 63, and 1 William IV., chap. 22, for enabling the Courts of Law at Westminster to issue commissions and give orders for the examination of witnesses in actions depending in such Courts, and to enforce such examination and all the provisions of the said Acts, and of any other Acts for enforcing, or otherwise applicable to, such examination and the witnesses examined, which, with the Acts aforesaid, are adopted and made applicable to actions pending in the Supreme Court (by local Ordinance adopting the practice of the Courts of Law at Westminster), shall extend and be applicable to the Court for Divorce and Matrimonial Causes and to the examination of witnesses under the commission and orders of the said Court and to the witnesses examined.

Affidavits, before  
whom to be  
sworn when  
parties making  
them reside in  
foreign parts

49. In cases where it is necessary to obtain affidavits, declarations, or affirmations to be used in the Court for Divorce and Matrimonial Causes from persons residing in foreign parts out of Her Majesty's dominions, the same may be sworn, declared or affirmed before the persons empowered to administer oaths under the Act 6 of George IV., chapter 87, or under the Act 18 and 19 of Victoria, chapter 42; provided that in places where there are no such persons as are mentioned in the said Acts, 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 to be  
sworn

50. Affidavits, declarations, and affirmations to be used in the Court for Divorce and Matrimonial Causes may be sworn and taken within the Colony before any Justice of the Peace; and in England or any colony, island, plantation, or place under the dominion of Her

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Majesty, before any Court, Judge, Notary Public, or person or persons lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively; and the Registrar and other officers of the Court for Divorce and Matrimonial Causes 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.

51. If any person shall forge any such seal or signature as last aforesaid, or any seal or signature impressed, affixed, or subscribed under the provisions of the said Act 6 George IV., chapter 87, or of the said Act 18 and 19 Victoria, chapter 42, to any affidavit, declaration, or affirmation, to be used in the Court for Divorce and Matrimonial Causes, 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 penal servitude for the term of his life, or for any term not less than seven years, or to be imprisoned with or without hard labour, for any term not exceeding three years nor less than one year; and whenever any such document has been admitted in evidence by virtue of this Ordinance, the Court or the person who has admitted the same may, at the request of the 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 forging  
seal or signature  
guilty of felony

52. 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 this Ordinance, before any person authorised to administer oaths under this Ordinance, shall be liable to the penalties and consequences of wilful and corrupt perjury: And all persons wilfully deposing or affirming falsely in any proceeding before the Court shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attached thereto.

Persons taking  
false oaths guilty  
of perjury

53. The rules of evidence observed in the Supreme Court shall be applicable to and be observed on the trial of all questions of fact in the Court.

Rules of evidence  
in Supreme Court  
to be observed

54. The Court may, under its seal, issue writs of subpoena or subpoena *duces tecum*, commanding the attendance of witnesses at such time and place as shall be therein expressed; and every person served with such writ shall be bound to attend, and to be sworn and give evidence in obedience thereto, in the same manner as if it had been a writ of subpoena or subpoena *duces tecum* issued from the Supreme Court in a cause pending therein: Provided that any petitioner required to be examined, or any person called as a witness or required or desiring to make an affidavit or deposition under or for the purposes of this Ordinance, shall be permitted to make his solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would be permitted so to do under the 'Common Law Procedure Act, 1854,' in cases within the provisions of that Act.

Attendance of  
witnesses on the  
Court

*Administration of Justice (Divorce, &c.)*

- Costs** 55. The Court on the hearing of any suit, proceeding, or petition under this Ordinance, and the 'Court of Appeal of Western Australia' hereinafter mentioned and Her Majesty, her heirs and successors in her or their Privy Council, or the Judicial Committee of her or their Privy Council, may make such order as to costs as to such Courts respectively may seem just: Provided always that there be no appeal on the subject of costs only.
- Enforcement of orders and decrees** 56. All decrees and orders to be made by the Court in any suit, proceeding, or petition to be instituted under authority of this Ordinance shall be enforced and put in execution in the same or the like manner as the judgments orders and decrees of the Supreme Court in the exercise of its Equity jurisdiction may be now enforced and put in execution.
- Power to make rules, &c., for procedure, and to alter them from time to time** 57. The Court shall make such rules and regulations concerning the practice and procedure under this Ordinance as it may from time to time consider expedient, and shall have full power from time to time to revoke or alter the same.
- Fees to be regulated** 58. The Court shall have full power to fix and regulate from time to time the fees payable upon all proceedings before it, all which fees shall be received, paid, and applied as herein directed: Provided always, that the said Court shall make such rules and regulations as it may deem necessary and expedient for enabling persons to sue in the said Court *in formâ pauperis*.
- Bills of proctors, attorneys, &c., to be subject to taxation** 59. The bill of any proctor, attorney, or solicitor, for any fees, charges, or disbursements in respect of any business transacted in the Court for Divorce and Matrimonial Causes, shall, as well between proctor and attorney or solicitor and client, as between party and party, be subject to taxation by the Registrar of the Supreme Court, and the mode in which any such bill shall be referred for taxation and by whom the costs of taxation shall be paid, shall be regulated by the rules and orders to be made under this Ordinance, and the certificate of the Registrar of the amount at which such bill is taxed shall be subject to appeal to the Judge of the Court.
- Judge to exercise power and authority over proctors** 60. The Judge of the Court for Divorce and Matrimonial Causes shall have and exercise, over proctors, solicitors, and attorneys practising in the said Court, the like authority and control as is now exercised by the Judges of any Court of Equity or of Common Law in England over persons practising therein as proctors, solicitors, or attorneys.
- Appeal in cases of dissolution of marriage or of nullity of marriage** 61. Either party dissatisfied with the decision of the Court on any petition for the dissolution of a marriage or on any petition for nullity of marriage may, within three months after the pronouncing thereof, appeal therefrom to 'The Court of Appeal of Western Australia,' established under the provisions of 'The Supreme Court Ordinance, 1861,' which Court shall have, in all such cases, power to receive and hear appeals as fully and effectually and in like manner and form and subject to the like restrictions as in the said last mentioned Ordinance are given and contained with respect to appeals from final judgments

*Administration of Justice (Divorce, &c.)*

decrees and orders of a civil nature of the Supreme Court: Provided always, that the power hereby given to appeal as aforesaid, shall not extend, or be construed to extend, in any manner to abridge the right of any party to appeal direct to Her Majesty her heirs and successors in her or their Privy Council, in such manner, within such time, and under and subject to such rules, regulations, and limitations as Her Majesty, her heirs, and successors in her or their Privy Council shall or may from time to time think fit to make in the premises.

62. When the time limited for appealing against any decree dissolving a marriage or against any decree for nullity of 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 or to be null and void, 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: Provided always that no clergyman in holy orders of the United Church of England and Ireland shall be compelled to solemnise the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty or censure, for solemnising or refusing to solemnise the marriage of any such person.

Liberty to parties to marry again

63. Provided always, that when any minister of any church or chapel of the United Church of England and Ireland shall refuse to perform such marriage service between any persons who but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in holy orders of the said United Church, entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage service in such church or chapel.

If minister of any Church, &c., refuses to perform marriage ceremony, any other minister may perform such service

64. After this Ordinance shall have passed no action shall be maintained in Western Australia for criminal conversation.

No action in Western Australia for criminal conversation

65. The fees taken in the Registry of the Court for Divorce and Matrimonial Causes shall be paid over to the Colonial Treasurer, to the use of Her Majesty, her heirs and successors, for the public uses of the Colony and in support of the Government thereof.

Fees taken in the Registry of the Court to be paid over to Colonial Treasurer

66. All rules and regulations concerning practice or procedure, or fixing and regulating fees, which may be made by the Court under this Ordinance, shall be laid before the Legislative Council within one month after the making thereof, if the Council be then sitting, otherwise the same shall be laid before the said Council at the next meeting thereof.

Rules to be laid before the Legislative Council

J. S. HAMPTON,  
GOVERNOR AND COMMANDER-IN-CHIEF.