

DIVORCE AMENDMENT.

10° GEO. V., No. XXI.

No. 33 of 1919.

AN ACT to further amend the Law relating to Divorce and Matrimonial Causes.

[Reserved 17th December, 1919.]

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 *Divorce Amendment Act*, 1919, and shall be read as one with the Ordinance No. 27 Victoriae, No. 19, hereinafter called the principal Act.

Short title.

2. (1.) A decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is by the wife the court may, at the time of making such decree, or at any time afterwards, order that in the event of such decree not being complied with within any time in that behalf limited by the court, the respondent shall make to the petitioner such periodical payments as may be just, and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation.

Periodical payments in lieu of attachment.
47 and 48 Vict., c. 68, s. 2.

(2.) The court may, if it shall think fit, order that the husband shall, to the satisfaction of the court, secure to the wife such periodical payments, and for that purpose may refer it to the master to settle and approve of a proper deed or instrument to be executed by all necessary parties.

3. Where the application for restitution of conjugal rights is by the husband, if it shall be made to appear to the court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the court may, if it shall think fit, order a settlement to

Settlements of wife's property.
Ibid., s. 3.

be made to the satisfaction of the court of such property, or any part thereof, for the benefit of the petitioner and of the children of the marriage, or either or any of them, or may order such part as the court may think reasonable of such profits of trade or earnings to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either or any of them.

Power to vary
orders.
Ibid., s. 4.

4. The court may from time to time vary or modify any order for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same order wholly or in part, as the court may think just.

Non-compliance with
decree deemed
to be desertion
Ibid., s. 5.

5. (1.) If the respondent shall fail to comply with a decree of the court for restitution of conjugal rights, such respondent shall thereupon be deemed to have been guilty of wilful desertion without just or reasonable cause or excuse, and a suit for dissolution of marriage or judicial separation may be forthwith instituted, and the petitioner shall (subject to the principal Act and the Acts read as one therewith) be entitled to a *decree nisi* for the dissolution of the marriage or a sentence of judicial separation although the period of five years or two years (as the case may be) may not have elapsed since the failure to comply with the decree for restitution of conjugal rights.

(2.) Such *decree nisi* for dissolution of marriage shall not be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the court shall for good cause fix a shorter time.

Custody, etc.,
of children.
Ibid., s. 6.

6. The court may, at any time before final decree, on any application for restitution of conjugal rights, or after final decree if the respondent shall fail to comply therewith, upon application for that purpose, make from time to time all such orders and provisions with respect to the custody, maintenance; and education of the children of the petitioner and respondent as might have been made by interim orders during the pendency of a trial for judicial separation between the same parties.

7. (1.) Any wife or husband married on or after the first day of January, one thousand nine hundred and nineteen, may present a petition to the court praying that her or his marriage may be dissolved, and it shall be competent for the court to decree a dissolution thereof in the case of a wife on the ground that prior to the celebration of the marriage the husband has been guilty of incontinence whereby at time of such marriage a woman other than the wife of such marriage is pregnant to such husband, and in the case of a husband on the ground that prior to the celebration of the marriage his wife has been guilty of incontinence, and was, at the time of celebration of the marriage, pregnant to a person other than the husband of the marriage:

Ante-nuptial incontinence a ground for dissolution of marriage.

Provided that—

- (a) In the case of a marriage celebrated prior to the commencement of this Act, such petition must be presented within six months after the commencement of this Act; and
- (b) In the case of a marriage celebrated after the commencement of this Act, such petition must be presented within nine months after the date of the marriage.

(2.) The respondent to any such petition may avail herself or himself of any defence or answer thereto which would be competent to a respondent to a petition for dissolution of marriage on the ground of adultery.

8. The powers conferred by the principal Act and the Acts amending the same shall apply to any decree pronounced under the said Acts as amended by the Divorce Amendment Act, 1911, and this Act.

Powers conferred by principal Act, etc., to extend to decrees under this Act and Divorce Amendment Act, 1911.

9. Section one of the Act intituled An Act to amend the procedure and powers of the Court for Divorce and Matrimonial Causes, 34 Vic. No. 7, is hereby amended by inserting after the word "payments," in sixth line of said section, the following words:—"or if such wife shall re-marry or if her circumstances shall, in the opinion of the court, render the continuance of such payments or any part thereof no longer necessary for her maintenance or support."