

WESTERN AUSTRALIA

ANNO QUADRAGESIMO TERTIO

VICTORIÆ REGINÆ

No. 9

An Act to amend the Ordinance to regulate Divorce and Matrimonial Causes.

[Assented to 26th August, 1879.]

**B**E it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. Where the Attorney General or any other person shall intervene or show cause against a decree nisi in any suit or proceeding for divorce or nullity of marriage, the Court may make such order as to the costs of any proctor retained by the Attorney General or of any other person who shall intervene or show cause 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's proctor or 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 of intervention  
41 Vic., c. 19, s. 2

2. The Court may exercise the powers vested in it by the provisions of section 43 of the local Ordinance of the 27th year of Victoria, No. 19, notwithstanding there are no children of the marriage.

Extension of power given by  
27 Vic., No. 19,  
s. 43  
Ibid., s. 3

3. If a husband shall be convicted summarily or otherwise of an aggravated assault within the meaning of the imperial statute 24th and 25th Victoria, chapter 100, section 43 (adopted in Western Australia by the Ordinance 29th Victoria, No. 5), upon his wife, the Court or magistrate before whom he shall be so convicted may, if satisfied that the future safety of the wife is in peril, order that the wife shall be no longer bound to cohabit with her husband; and such order shall have the force and effect in all respects of a decree of judicial

If husband convicted of aggravated assault, Court may order that wife be not bound to cohabit, &c.  
Ibid., s. 4

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separation on the ground of cruelty; and such order may further provide,

- (1) That the husband shall pay to his wife such weekly sum as the Court or magistrate 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 magistrate 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 ten years shall, in the discretion of the Court or magistrate, be given to the wife.

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 shall be 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 magistrate 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.

H. ST. GEORGE ORD,  
GOVERNOR.

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