

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

W. L. S. COOPER,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 27th August, 1924.*

New South Wales.



ANNO QUINTO DECIMO

GEORGI V REGIS.

Act No. , 1924.

An Act to amend the Matrimonial Causes Act, 1899; and for purposes connected therewith.

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 New South Wales in Parliament assembled, and by the authority of
5 the same, as follows:—

1. This Act shall be construed with the Matrimonial Causes Act, 1899, herein called the Principal Act, and may be cited as the "Matrimonial Causes (Amendment) Act, 1924." Short title.

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2.

Matrimonial Causes (Amendment).

2. The Principal Act is amended by inserting after section sixteen the following new heading and section :—

Amendment
of Principal
Act.
New section.

On petition by husband or wife.

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16A. (1) The court may, in its discretion, on the petition of a spouse in whose favour a decree of judicial separation has been made, when the decree is then in full force and effect and has continued in full force and effect continuously for three years and upwards prior to the presentation of the petition, pronounce a decree of dissolution of marriage between the parties, and on the hearing of the petition and in making the decree, and in dealing with all matters arising out of the petition, the court shall, subject to the provisions of this section, have the same powers as if the petition had been presented under section thirteen or section sixteen of this Act :

Decree for
dissolution
after judicial
separation.
cf. N.Z.,
1920 No. 70
s. 4.

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Provided always that if the spouse in whose favour the decree of judicial separation has been made shall fail or neglect, after the expiration of the said period of three years, to present a petition for dissolution of marriage, the court, on the petition of the spouse against whom the decree of judicial separation was made, may in its discretion pronounce a decree for dissolution of the marriage if the court is satisfied that such last-mentioned spouse has bona fide offered to return to cohabitation, and that such offer has been refused by the other spouse without just cause or excuse.

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(2) If on the hearing of the petition it shall appear that after the decree of judicial separation was made the respondent has bona fide offered to return to cohabitation and that the offer has been declined by the petitioner without just cause or excuse the court may refuse to dissolve the marriage.

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(3) Whether the wife is the petitioner or the respondent, the court may make all such orders in respect of alimony to the wife and the custody, maintenance, and education of the children of

Matrimonial Causes (Amendment).

of the marriage as it could make either in a suit for judicial separation or in a suit for dissolution of marriage, provided that the court shall not deprive the wife of any right in respect of any such matter to which she is entitled under the decree of judicial separation or under any order made in the suit in which that decree was made, except in any case where the court could do so apart from this section.

10 **3.** The Principal Act is further amended—

Amendment
of Principal
Act, ss. 7, 11.
(Restitution.)

(a) by inserting after subsection one of section seven the following proviso:

15 “Provided that if the court is satisfied that the petitioner is not sincerely desirous that the respondent should return and render conjugal rights to the petitioner, or that the petitioner is not ready and willing to render conjugal rights to the respondent, the court may refuse to decree restitution of conjugal rights”;

20 (b) by omitting from subsection one of section eleven—

(i) the word “forthwith”;

(ii) the words “although the period of three years may not have elapsed since the failure to comply with the decree for the restitution of conjugal rights”;

25 (c) by inserting after subsection one of section eleven the following new subsections:—

30 (2) If the suit is for judicial separation, it may be instituted at any time after failure to comply with the decree for restitution of conjugal rights.

35 (3) If the suit is for dissolution of marriage, it may be instituted at any time after three years have elapsed since such failure;

(d) by omitting subsection two of the same section.

4. The Principal Act is further amended as follows:—

Amendment o
Principal Act
(General).
Secs. 18, 19.

40 (a) by omitting from sections eighteen and nineteen respectively the words “under sections twelve, fourteen or fifteen” and substituting therefor the words “for the dissolution of a marriage”;

(b)

Matrimonial Causes (Amendment).

- (b) by omitting from section eighteen the word Sec. 18.
 “adultery” wherever occurring, and substituting therefor the words “matrimonial offence”;
- 5 (c) by omitting subsection one of section twenty- Sec. 24.
 four and substituting therefor the following subsection:—
 (1) Where the husband presents a petition for dissolution of marriage he shall make the
 10 alleged adulterer a co-respondent to the petition, and where the husband sets up in his answer a cross-claim for relief on the ground of his wife’s adultery he shall make the alleged
 15 adulterer a respondent to the suit, unless on special grounds to be allowed by the court he is excused in either case from so doing;
- (d) by omitting section twenty-five and substituting Sec. 25.
 therefor the following section:—
 20 25. In a suit for dissolution of marriage if the respondent opposes the suit upon any ground upon which he or she might have instituted a suit for dissolution of marriage the court may on the application of the respondent give such relief as the respondent would have been entitled to if he or she had presented a petition seeking
 25 such relief;
- (e) by omitting in subsection one of section twenty- Sec. 26.
 six the words “in relation to a petition for dissolution of marriage” and substituting therefor the words “in relation to any petition
 30 or other proceeding”;
- (f) by inserting in section twenty-nine after the Sec. 29.
 words “twenty-one” the words “twenty-two and twenty-three”;
- 35 (g) by inserting the following sub-heading and Sec. 44A.
 section after section forty-four:—

In suits for nullity of marriage.

- 40 44A. In a suit for nullity of marriage the Alimony.
 court may make any order for alimony which it deems just;

(h)

Matrimonial Causes (Amendment).

- (h) by omitting section forty-seven, and substituting therefor the following section:—

5 47. (1) The court may make any order as to the costs of any proceedings under this Act which it deems just, and except in the case of proceedings on appeal may order payment of costs as between solicitor and client. Court may order payment of costs.

10 (2) The court may by consent of all parties interested assess the costs of any proceedings, and in the case of interlocutory proceedings may do so without the consent of the parties, and the costs so assessed shall be recoverable from the person ordered to pay the same in the same manner as if they had been duly taxed and certified by the taxing officer ;

15 (i) by inserting in section forty-eight after the word "co-respondent" the words "or in a petition by the wife there is a cross-claim by the husband for relief on the ground of his wife's adultery"; and by inserting at the end of the same section the words "notwithstanding that the adulterer may not have known that the person with whom he committed adultery was the wife of the petitioner or of the husband by whom the cross-claim is made, as the case may be"; Sec. 48.

20 (k) by omitting in paragraph (c) of subsection two of section sixty the words "by petition for the purpose" and substituting therefor the words "in the manner prescribed"; Sec. 60.

25 (l) by inserting in subsection one of section sixty-five after the words "nullity of marriage" the words "restitution of conjugal rights"; Sec. 65.

30 (m) by omitting section sixty-seven, and substituting therefor the following section:— Sec. 67.

35 67. No decree for the dissolution of her marriage shall be granted to any wife, except as provided in section sixteen, unless it is proved to the satisfaction of the court that at the time of the institution of the suit her husband Proof of domicile of husband.

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Matrimonial Causes (Amendment).

husband was domiciled in New South Wales, and every decree for dissolving the marriage shall state that such proof has been given;

- 5 (n) by omitting in subsection one of section Sec. 73. seventy-three the word "forty-eight" and substituting therefor the word "twelve"; and by omitting in subsection two of the same section the word "six" and substituting therefor the word "two";
- 10 (o) by omitting in subsection three of section Sec. 74. seventy-four the words "twelve" and "six" and substituting therefor respectively the words "four" and "two";
- 15 (p) by omitting in subsection one of section Sec. 75. seventy-five the word "six" and substituting therefor the word "two"; and by omitting in subsection five of the same section the word "twelve" and substituting therefor the word "four";
- 20 (q) by omitting in subsection one of section Sec. 81. eighty-one the words "on circuit";
- (r) by inserting after section eighty-one the following New sections. new sections:—
- 25 81A. (1) It shall not be lawful to print, circulate, or publish, or cause or procure to be printed, circulated, or published, in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage, for judicial separation, or for restitution of conjugal rights, any particulars other than the following, that
- 30 is to say:—
- (a) The names, addresses, and occupation of the parties and witnesses, and counsel and solicitors engaged.
- 35 (b) The grounds on which the proceedings are brought and resisted, as set forth in the petition and answer and particulars thereof.
- (c) Submissions on any point of law arising in the course of the proceedings and the
- 40 decision of the court thereon.

(d)

Matrimonial Causes (Amendment).

(d) The summing up of the judge and the finding of the jury (if any) and the judgment of the court and observations made by the judge in giving judgment.

5 (2) It shall not be lawful to print, or circulate, or publish in any newspaper, in relation to any such judicial proceedings, any picture or representation of any party or witness or exhibit.

10 (3) If any person acts in contravention of the provisions of this section he shall in respect of each offence be liable, on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

15 (4) Nothing in this section shall apply to the publishing of any notice or report in pursuance of the directions of the court; or to the publishing of any matter in any separate volume or part of any bona fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or in any
20 publication of a technical character bona fide intended for circulation amongst members of the legal or medical professions.

30 81B. Any evidence which has been taken upon the trial of any issues in any suit may be used as evidence in any subsequent proceedings in such suit; Evidence upon trial of issues may be used subsequently.

(s) by inserting in subsection one of section Sec. 82. eighty-two after the word "varied" the words "or a new trial of any issue granted";

35 (t) by omitting in subsection one of section eighty- Sec. 88. eight the words "respondent or";

(u) by omitting section ninety and substituting Sec. 90. therefor the following section :—

40 90. (1) The court may enforce by attachment Attachment. any order made by it for payment of any sum due

Matrimonial Causes (Amendment).

due in respect of alimony or the maintenance of children, or may in the exercise of its discretion refuse to do so.

5 (2) No person adjudicated bankrupt in ^{Bankruptcy} whose statement of affairs all sums due in ^{of person} respect of such alimony or maintenance are ^{ordered to} included shall remain imprisoned under such writ during a longer period than twelve months ;

10 (v) by omitting section ninety-one and substitut- ^{Sec. 91,} ing therefor the following section :—

91. (1) The judges of the Supreme Court, ^{Power to} or any three of them, may make general rules— ^{make rules.}

15 (a) for regulating the pleading, practice, and procedure of the court, and may by such rules amend, vary, or dispense with any provisions of this Act regulating such pleading, practice, or procedure ;

20 (b) for fixing the amount of all fees and allowances to officers of the court and solicitors in respect of proceedings under this Act ;

25 (c) for enabling persons to sue in the court in forma pauperis, and for regulating the exercise by the registrar of the jurisdiction and powers conferred upon or delegated to the registrar under this Act, and the right of appeal from the registrar ;

30 (d) generally as to all matters necessary or expedient for giving effect to the provisions of this Act.

35 (2) The judges of the Supreme Court or any three of them may by rules of court made in that behalf delegate to the registrar power to do such things and transact such business and to exercise any such authority and jurisdiction as is now done, transacted or exercised by the court except in respect of the hearing of suits in which an appearance is entered or in respect of matters relating to the liberty of the subject ;

40 Provided

Matrimonial Causes (Amendment).

Provided that the registrar may in case of doubt or difficulty refer any matter to the court :

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Provided also that the court may direct any matter in which an order has been made by the registrar to be re-argued before the court upon giving a direction to that effect within the prescribed time after such order has been made by the registrar.

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(3) A copy of every such rule shall be laid before both Houses of Parliament within one month from the making thereof if Parliament be then sitting, or if Parliament be not then sitting within one month after the commencement of the next ensuing session ;

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(w) by inserting at the end of section ninety-four Sec. 94. the following paragraph :—

(h) to exercise the powers and jurisdiction delegated to him under this Act.

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5. This Act shall not extend or apply to any petition presented before the passing of this Act praying for a decree for dissolution of marriage by reason of non-compliance with a decree for restitution of conjugal rights, but shall extend to and be applicable to all other cases, whether the decree for restitution of conjugal rights has been made before or after the passing of this Act. Retrospective operation of Act.

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This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Clerk of the Parliaments.
Legislative Council Chamber,
Sydney, August, 1924.

New South Wales.



ANNO QUINTO DECIMO

GEORGII V REGIS.

Act No. , 1924.

An Act to provide that insanity shall in certain cases be a ground for divorce; to repeal the provisions under which failure to comply with a decree for the restitution of conjugal rights is a ground for a divorce; to amend the Matrimonial Causes Act, 1899, in these and certain other respects; and for purposes connected therewith.

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c 16—A

BE

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

Matrimonial Causes (Amendment).

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 New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act shall be construed with the Matrimonial Causes Act, 1899, herein called the Principal Act, and may be cited as the "Matrimonial Causes (Amendment) Act, 1924." Short title.

2. The Principal Act is amended as follows:— Amendment of Principal Act (Insanity). Sec. 3.

(a) By inserting in section three, before the definition of the word "Prescribed," the following definitions:—

15 " 'Hospital for the insane' means any hospital for the insane, hospital for the criminal insane, or licensed house within the meaning of the Lunacy Act, 1898, and includes any like institution in any part of His Majesty's Dominions.

20 " 'Insane person' means a lunatic or person of unsound mind and includes any insane person or insane patient within the meaning of the Lunacy Act, 1898.

25 " 'Matrimonial offence' means any ground upon which relief can be granted by the court other than the ground of insanity";

(b) by adding at the end of section thirteen the following paragraph:— Sec. 13.

30 (f) that his wife is an insane person at the date of the presentation of the petition, and is at such date detained in a hospital for the insane, and has been detained in such a hospital for a continuous period of five years, or for periods aggregating not less than five years within seven years immediately preceding the presentation of the petition, and is not likely to recover her sanity; Insanity as a ground of relief. cf. N.Z., 1920 No. 70, s. 5. W.A., 1912 No. 7, s. 2 (d). Vic. No. 3,049 (1920), s. 3.

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(c)

Matrimonial Causes (Amendment).

(c) by adding at the end of section sixteen the following paragraph:—

5 (g) that her husband is an insane person at the date of the presentation of the petition, and is at such date detained in a hospital for the insane, and has been detained in such a hospital for a continuous period of five years, or for periods aggregating not less than five years within seven years immediately preceding the presentation of the petition, and is not likely to recover his sanity ;

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(d) by inserting after section sixteen the following new headings and sections:—

On petition by husband or wife.

16A. (1) The court may, in its discretion, on the petition of a spouse in whose favour a decree of judicial separation has been made, when the decree is then in full force and effect and has continued in full force and effect continuously for three years and upwards prior to the presentation of the petition, pronounce a decree of dissolution of marriage between the parties, and on the hearing of the petition and in making the decree, and in dealing with all matters arising out of the petition, the court shall, subject to the provisions of this section, have the same powers as if the petition had been presented under section thirteen or section sixteen of this Act :

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35 Provided always that if the spouse in whose favour the decree of judicial separation has been made shall fail or neglect, after the expiration of the said period of three years, to present a petition for dissolution of marriage, the court, on the petition of the spouse against whom the decree of judicial separation was made, may in its discretion pronounce a decree for dissolution of the marriage if the court is

40 satisfied

Decree for dissolution after judicial separation.
cf. N.Z., 1920 No. 70, s. 4.

Matrimonial Causes (Amendment).

satisfied that such last-mentioned spouse has bona fide offered to return to cohabitation, and that such offer has been refused by the other spouse without just cause or excuse.

5 (2) If on the hearing of the petition it shall appear that after the decree of judicial separation was made the respondent has bona fide offered to return to cohabitation and that
10 the offer has been declined by the petitioner without just cause or excuse the court may refuse to dissolve the marriage.

15 (3) Whether the wife is the petitioner or the respondent, the court may make all such orders in respect of alimony to the wife and the custody, maintenance, and education of the children of the marriage as it could
20 make either in a suit for judicial separation or in a suit for dissolution of marriage, provided that the court shall not deprive the wife of any right in respect of any such matter to which she is entitled under the
25 decree of judicial separation or under any order made in the suit in which that decree was made, except in any case where the court could do so apart from this section.

Special provisions when insanity a ground.

30 16B. (1) Where a ground of a petition for dissolution of marriage or judicial separation is the insanity of the respondent, the petition shall be served upon the Crown Solicitor and upon the Master in Lunacy. Procedure where insanity is alleged, and effect of decree.

35 (2) The Crown Solicitor may thereupon enter an appearance on behalf of the respondent to the petition, and shall in any case be served with notice of all subsequent proceedings in the suit, and may take such steps as he may think proper on behalf of the respondent in regard to the suit and to all matters and questions arising in the suit.

(3)

Matrimonial Causes (Amendment).

5 (3) The court may upon such terms as it may deem just allow any relative of the respondent to intervene and to be made a party respondent to the suit, and such person so allowed to intervene shall be served with notice of all subsequent proceedings in the suit, and shall have the same rights and powers in reference thereto as if he had been the original respondent to the suit.

10 (4) Before pronouncing the decree the court shall hear the oral testimony of at least two legally qualified medical practitioners appointed by the court, one of whom shall be a medical officer of the hospital for the insane in which the respondent is detained, as to the mental condition of the respondent and as to the likelihood of the recovery of sanity by the respondent :

20 Provided that where the hospital for the insane in which the respondent is detained is an institution outside New South Wales the court may receive evidence of the medical practitioners appointed by the court which has been taken on commission.

25 (5) A decree made upon the ground of the insanity of the respondent shall not relieve the petitioner from any obligation to support the respondent or to pay such sums to the Master in Lunacy for the support of the respondent as may be or may have been ordered under the provisions of the Lunacy Act, 1898.

30 (6) The making of a decree upon the ground of the insanity of a wife who is respondent to the decree shall not relieve the petitioner from the obligation to support such respondent if she subsequently recovers her sanity. Such obligation shall continue notwithstanding the decree and may be enforced by the court at any time on motion by the respondent.

40 (7) If a decree nisi is granted, and, before the decree is made absolute, the court is satisfied that the respondent has recovered his or her sanity, the court may reverse the decree nisi upon the application of the respondent or the Crown Solicitor ;
45 (e)

Matrimonial Causes (Amendment).

(e) by the addition at the end of subsection one of section twenty of the following words: "or the insanity of the respondent."

3. The Principal Act is further amended—

Amendment
of Principal
Act, ss. 7, 11.
(Restitution.)

5 (a) by inserting after subsection one of section seven the following proviso:

10 "Provided that if the court is satisfied that the petitioner is not sincerely desirous that the respondent should return and render conjugal rights to the petitioner, or that the petitioner is not ready and willing to render conjugal rights to the respondent, the court may refuse to decree restitution of conjugal rights";

15 (b) by omitting from subsection one of section eleven—

(i) the words "~~for dissolution of marriage or where first occurring~~"; "forthwith";

20 (ii) the words "~~a decree nisi for the dissolution of the marriage or~~"; and "although the period of three years may not have elapsed since the failure to comply with the decree for the restitution of conjugal rights";

25 (iii) the word "three" and by inserting in lieu thereof the word "two";

(c) by inserting after subsection one of section eleven the following new subsections:—

Sec. 11.

30 (2) If the suit is for judicial separation, it may be instituted at any time after failure to comply with the decree for restitution of conjugal rights.

(3) If the suit is for dissolution of marriage, it may be instituted at any time after three years have elapsed since such failure;

35 (e d) by omitting subsection two of the same section.

4. The Principal Act is further amended as follows:—

Amendment of
Principal Act
(General).

40 (a) by omitting from sections eighteen and nineteen respectively the words "under sections twelve, fourteen or fifteen" and substituting therefor the words "for the dissolution of a marriage";

Secs. 18, 19.

(b)

Matrimonial Causes (Amendment).

- (b) by omitting from section eighteen the word ^{Sec. 18.} "adultery" wherever occurring, and substituting therefor the words "matrimonial offence"; and by inserting at the end of paragraph (a) of section eighteen the words "of the insanity of the respondent or";
- (c) by omitting subsection one of section twenty-^{Sec. 24.} four and substituting therefor the following subsection:—
- (1) Where the husband presents a petition for dissolution of marriage he shall make the alleged adulterer a co-respondent to the petition, and where the husband sets up in his answer a cross-claim for relief on the ground of his wife's adultery he shall make the alleged adulterer a respondent to the suit, unless on special grounds to be allowed by the court he is excused in either case from so doing;
- (d) by omitting section twenty-five and substituting ^{Sec. 25.} therefor the following section:—
25. In a suit for dissolution of marriage if the respondent opposes the suit upon any ground upon which he or she might have instituted a suit for dissolution of marriage the court may on the application of the respondent give such relief as the respondent would have been entitled to if he or she had presented a petition seeking such relief;
- (e) by omitting in subsection one of section twenty-^{Sec. 26.} six the words "in relation to a petition for dissolution of marriage" and substituting therefor the words "in relation to any petition or other proceeding";
- (f) by inserting in section twenty-nine after the ^{Sec. 29.} words "twenty-one" the words "twenty-two and twenty-three";
- (g) by inserting the following sub-heading and ^{Sec. 44A.} section after section forty-four:—

In suits for nullity of marriage.

- 40 44A. In a suit for nullity of marriage the ^{Alimony.} court may make any order for alimony which it deems just; (h)

Matrimonial Causes (Amendment).

(h) by omitting section forty-seven, and substituting therefor the following section:— Sec. 47.

47. (1) The court may make any order as to the costs of any proceedings under this Act which it deems just, and except in the case of proceedings on appeal may order payment of costs as between solicitor and client. Court may order payment of costs.

(2) The court may by consent of all parties interested assess the costs of any proceedings, and in the case of interlocutory proceedings may do so without the consent of the parties, and the costs so assessed shall be recoverable from the person ordered to pay the same in the same manner as if they had been duly taxed and certified by the taxing officer;

(i) by inserting in section forty-eight after the word "co-respondent" the words "or in a petition by the wife there is a cross-claim by the husband for relief on the ground of his wife's adultery"; and by inserting at the end of the same section the words "notwithstanding that the adulterer may not have known that the person with whom he committed adultery was the wife of the petitioner or of the husband by whom the cross-claim is made, as the case may be"; Sec. 48.

(k) by omitting in paragraph (c) of subsection two of section sixty the words "by petition for the purpose" and substituting therefor the words "in the manner prescribed"; Sec. 60.

(l) by inserting in subsection one of section sixty-five after the words "nullity of marriage" the words "restitution of conjugal rights"; Sec. 65.

(m) by omitting section sixty-seven, and substituting therefor the following section:— Sec. 67.

67. No decree for the dissolution of her marriage shall be granted to any wife, except as provided in section sixteen, unless it is proved to the satisfaction of the court that at the time of the institution of the suit her husband Proof of domicile of husband.

Matrimonial Causes (Amendment).

husband was domiciled in New South Wales, and every decree for dissolving the marriage shall state that such proof has been given;

- 5 (n) by omitting in subsection one of section seventy-three the word "forty-eight" and substituting therefor the word "twelve"; and by omitting in subsection two of the same section the word "six" and substituting therefor the word "two"; Sec. 73.
- 10 (o) by omitting in subsection three of section seventy-four the words "twelve" and "six" and substituting therefor respectively the words "four" and "two"; Sec. 74.
- 15 (p) by omitting in subsection one of section seventy-five the word "six" and substituting therefor the word "two"; and by omitting in subsection five of the same section the word "twelve" and substituting therefor the word "four"; Sec. 75.
- 20 (q) by omitting in subsection one of section eighty-one the words "on circuit"; Sec. 81.
- (r) by inserting after section eighty-one the following section "new sections":— New sections.
- 25 **81A. (1)** It shall not be lawful to print, circulate, or publish, or cause or procure to be printed, circulated, or published, in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage, for judicial separation, or for restitution of conjugal rights, any particulars other than the following, that
- 30 is to say:—
- (a) The names, addresses, and occupation of the parties and witnesses, and counsel and solicitors engaged.
- 35 (b) The grounds on which the proceedings are brought and resisted, as set forth in the petition and answer and particulars thereof.
- (c) Submissions on any point of law arising in the course of the proceedings and the decision of the court thereon.
- 40 (d)

Matrimonial Causes (Amendment).

(d) The summing up of the judge and the finding of the jury (if any) and the judgment of the court and observations made by the judge in giving judgment.

5 (2) It shall not be lawful to print, or circulate, or publish in any newspaper, in relation to any judicial proceedings, any picture or representation of any party or witness or exhibit.

10 (3) If any person acts in contravention of the provisions of this section he shall in respect of each offence be liable, on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

15 (4) Nothing in this section shall apply to the publishing of any notice or report in pursuance of the directions of the court; or to the publishing of any matter in any separate volume or part of any bona fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or in any
20 publication of a technical character bona fide intended for circulation amongst members of the legal or medical professions.

25 ~~81~~ 81B. Any evidence which has been taken upon the trial of any issues in any suit may be used as evidence in any subsequent proceedings in such suit; Evidence upon trial of issues may be used subsequently.

(s) by inserting in subsection one of section eighty-two after the word "varied" the words "or a new trial of any issue granted"; Sec. 82.

35 (s t) by omitting in subsection one of section eighty-eight the words "~~or costs~~" "respondent or"; Sec. 88.

(t u) by omitting section ninety and substituting therefor the following section:— Sec. 90.

40 90. (1) The court may enforce by attachment any order made by it for payment of any sum due Attachment.

Matrimonial Causes (Amendment).

due in respect of alimony or the maintenance of children, or may in the exercise of its discretion refuse to do so.

5 (2) No person adjudicated bankrupt in whose statement of affairs all sums due in respect of such alimony or maintenance are included shall remain imprisoned under such writ during a longer period than twelve months ;

(# v) by omitting section ninety-one and substituting therefor the following section :—

10 91. (1) The judges of the Supreme Court or any three of them, may make general rules—

15 (a) for regulating the pleading, practice, and procedure of the court, and may by such rules amend, vary, or dispense with any provisions of this Act regulating such pleading, practice, or procedure ;

20 (b) for fixing the amount of all fees and allowances to officers of the court and solicitors in respect of proceedings under this Act ;

25 (c) for enabling persons to sue in the court in forma pauperis, and for regulating the exercise by the registrar of the jurisdiction and powers conferred upon or delegated to the registrar under this Act, and the right of appeal from the registrar ;

30 (d) generally as to all matters necessary or expedient for giving effect to the provisions of this Act.

35 (2) The judges of the Supreme Court or any three of them may by rules of court made in that behalf delegate to the registrar power to do such things and transact such business and to exercise any such authority and jurisdiction as is now done, transacted or exercised by the court except in respect of the hearing of suits in which an appearance is entered or in respect of matters relating to the liberty of the subject :

Provided

Matrimonial Causes (Amendment).

Provided that the registrar may in case of doubt or difficulty refer any matter to the court :

5 Provided also that the court may direct any matter in which an order has been made by the registrar to be re-argued before the court upon giving a direction to that effect within the prescribed time after such order has been made by the registrar.

10 (3) A copy of every such rule shall be laid before both Houses of Parliament within one month from the making thereof if Parliament be then sitting, or if Parliament be not then sitting within one month after the commencement of the next ensuing session ;

15 (v w) by inserting at the end of section ninety-Sec. 94. four the following paragraph :—

(h) to exercise the powers and jurisdiction delegated to him under this Act.

20 5. This Act shall not extend or apply to any petition presented before the passing of this Act praying for a decree for dissolution of marriage by reason of non-compliance with a decree for restitution of conjugal rights, but shall extend to and be applicable to all other
 25 cases, whether the decree for restitution of conjugal rights has been made before or after the passing of this Act.

Retrospective operation of Act.

1924.

Legislative Council.

Matrimonial Causes (Amendment) Bill, 1924.

EXPLANATORY NOTE.

THE object of this Bill is to make insanity a ground of divorce; to provide that the failure to comply with a decree for restitution of conjugal rights shall not be a ground for divorce; to give the Court a discretionary power to grant a divorce to persons who have been judicially separated for three years; and to make certain general amendments in the Principal Act.

Clause 2 of the Bill adds certain additional definitions which are necessary to give effect to the amendments proposed by the Bill, and makes insanity a ground of divorce, subject to the provision of certain safeguards to ensure the adequate protection of the interests of the insane respondent.

Paragraph (d) of this clause provides for the insertion in the Principal Act of a new section, 16A, by which a decree for dissolution may be granted after a judicial separation.

Clause 3 amends section 11 of the Principal Act so as to provide that the refusal to comply with a decree for restitution of conjugal rights shall not be a ground for divorce.

Clause 4 contains general amendments in the Principal Act. The more important of the proposed amendments are:—

Paragraph (g): Power to grant alimony in a suit for nullity of marriage.

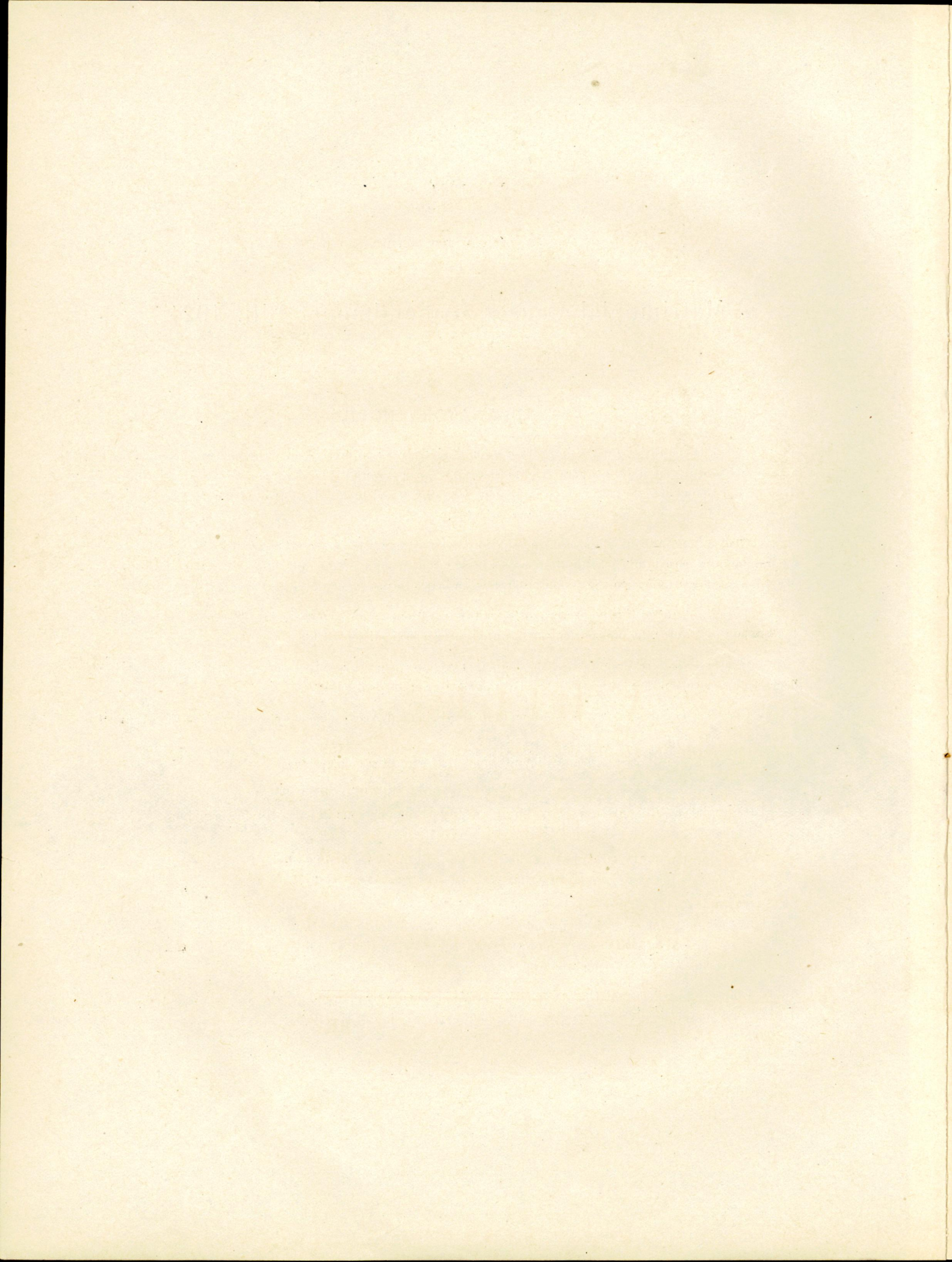
Paragraph (h): Power to assess costs so as to save the expense of taxation.

Paragraphs (n), (o), (p), (q): Providing for a jury of four persons in substitution for a jury of twelve persons.

Paragraphs (s) and (t): Abolishing the right now given by section 90 of the Principal Act to attach a person for non-payment of costs.

Paragraph (u): Providing that general rules shall be made by not less than three judges instead of by a single judge as at present; enlarging the rule-making power; and providing for the delegation to the registrar of certain powers which can now only be exercised by the Court, including the hearing of suits in which no appearance has been entered.

Clause 5 provides that the amendment in the law made by clause 3 of the Bill shall not apply to petitions for dissolution of marriage presented before the passing of the Bill.



Legislative Council.

No. , 1924.

A BILL

To provide that insanity shall in certain cases be a ground for divorce; to repeal the provisions under which failure to comply with a decree for the restitution of conjugal rights is a ground for a divorce; to amend the Matrimonial Causes Act, 1899, in these and certain other respects; and for purposes connected therewith.

[MR. BOYCE;—17th July, 1924.]

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 New South Wales in Parliament assembled, and by the authority of the same, as follows :—

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Short title.

1. This Act shall be construed with the Matrimonial Causes Act, 1899, herein called the Principal Act, and may be cited as the "Matrimonial Causes (Amendment) Act, 1924."

Amendment
of Principal
Act
(Insanity).
Sec. 3.

2. The Principal Act is amended as follows :— 10

(a) By inserting in section three, before the definition of the word "Prescribed," the following definitions :—

" 'Hospital for the insane' means any hospital for the insane, hospital for the 15 criminal insane, or licensed house within the meaning of the Lunacy Act, 1898, and includes any like institution in any part of His Majesty's Dominions.

" 'Insane person' means a lunatic or person 20 of unsound mind and includes any insane person or insane patient within the meaning of the Lunacy Act, 1898.

" 'Matrimonial offence' means any ground upon which relief can be granted by 25 the court other than the ground of insanity";

Sec. 13.

(b) by adding at the end of section thirteen the following paragraph :—

Insanity as a
ground of
relief.
cf. N.Z., 1920
No. 70, s. 5.
W.A., 1912
No. 7, s. 2 (d).
Vic. No. 3,049
(1920), s. 3.

(f) that his wife is an insane person at the 30 date of the presentation of the petition, and is at such date detained in a hospital for the insane, and has been detained in such a hospital for a continuous period of five years, or for periods aggregating 35 not less than five years within seven years immediately preceding the presentation of the petition, and is not likely to recover her sanity;

(c)

(c) by adding at the end of section sixteen the following paragraph:—

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(g) that her husband is an insane person at the date of the presentation of the petition, and is at such date detained in a hospital for the insane, and has been detained in such a hospital for a continuous period of five years, or for periods aggregating not less than five years within seven years immediately preceding the presentation of the petition, and is not likely to recover his sanity ;

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(d) by inserting after section sixteen the following new headings and sections:—

On petition by husband or wife.

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16A. (1) The court may, in its discretion, on the petition of a spouse in whose favour a decree of judicial separation has been made, when the decree is then in full force and effect and has continued in full force and effect continuously for three years and upwards prior to the presentation of the petition, pronounce a decree of dissolution of marriage between the parties, and on the hearing of the petition and in making the decree, and in dealing with all matters arising out of the petition, the court shall, subject to the provisions of this section, have the same powers as if the petition had been presented under section thirteen or section sixteen of this Act :

Decree for dissolution after judicial separation.
cf. N.Z., 1920 No. 70, s. 4.

Provided always that if the spouse in whose favour the decree of judicial separation has been made shall fail or neglect, after the expiration of the said period of three years, to present a petition for dissolution of marriage, the court, on the petition of the spouse against whom the decree of judicial separation was made, may in its discretion pronounce a decree for dissolution of the marriage if the court is satisfied

satisfied that such last-mentioned spouse has bona fide offered to return to cohabitation, and that such offer has been refused by the other spouse without just cause or excuse.

(2) If on the hearing of the petition it shall appear that after the decree of judicial separation was made the respondent has bona fide offered to return to cohabitation and that the offer has been declined by the petitioner without just cause or excuse the court may refuse to dissolve the marriage.

Special provisions when insanity a ground.

Procedure where insanity is alleged, and effect of decree.

16B. (1) Where a ground of a petition for dissolution of marriage or judicial separation is the insanity of the respondent, the petition shall be served upon the Crown Solicitor and upon the Master in Lunacy.

(2) The Crown Solicitor may thereupon enter an appearance on behalf of the respondent to the petition, and shall in any case be served with notice of all subsequent proceedings in the suit, and may take such steps as he may think proper on behalf of the respondent in regard to the suit and to all matters and questions arising in the suit.

(3) The court may upon such terms as it may deem just allow any relative of the respondent to intervene and to be made a party respondent to the suit, and such person so allowed to intervene shall be served with notice of all subsequent proceedings in the suit, and shall have the same rights and powers in reference thereto as if he had been the original respondent to the suit.

(4) Before pronouncing the decree the court shall hear the oral testimony of at least two legally qualified medical practitioners appointed by the court, one of whom shall be a medical officer of the hospital for the insane in

in which the respondent is detained, as to the mental condition of the respondent and as to the likelihood of the recovery of sanity by the respondent :

5 Provided that where the hospital for the insane in which the respondent is detained is an institution outside New South Wales the court may receive evidence of the medical practitioners appointed by the court which has been taken on commission.

10 (5) A decree made upon the ground of the insanity of the respondent shall not relieve the petitioner from any obligation to support the respondent or to pay such sums to the Master in Lunacy for the support of the respondent as may be or may have been ordered under the provisions of the Lunacy Act, 1898.

15 (6) The making of a decree upon the ground of the insanity of a wife who is respondent to the decree shall not relieve the petitioner from the obligation to support such respondent if she subsequently recovers her sanity. Such obligation shall continue notwithstanding the decree and may be enforced by the court at any time on motion by the respondent.

20 (7) If a decree nisi is granted, and, before the decree is made absolute, the court is satisfied that the respondent has recovered his or her sanity, the court may reverse the decree nisi upon the application of the respondent or the Crown Solicitor;

25 (e) by the addition at the end of subsection one of section twenty of the following words: "or the insanity of the respondent." Sec. 20.

3. The Principal Act is further amended—

(a) by inserting after subsection one of section seven the following proviso:

Amendment
of Principal
Act, ss. 7, 11.
(Restitution.)

40 " Provided that if the court is satisfied that the petitioner is not sincerely desirous that the respondent

respondent should return and render conjugal rights to the petitioner, or that the petitioner is not ready and willing to render conjugal rights to the respondent, the court may refuse to decree restitution of conjugal rights"; 5

- (b) by omitting from subsection one of section eleven—
- (i) the words "for dissolution of marriage or" where first occurring;
 - (ii) the words "a decree nisi for the dissolution of the marriage or"; and 10
 - (iii) the word "three" and by inserting in lieu thereof the word "two";
- (c) by omitting subsection two of the same section. 15

Amendment of
Principal Act
(General).
Secs. 18, 19.

4. The Principal Act is further amended as follows:—

- (a) by omitting from sections eighteen and nineteen respectively the words "under sections twelve, fourteen or fifteen" and substituting therefor the words "for the dissolution of a marriage"; 20
- Sec. 18. (b) by omitting from section eighteen the word "adultery" wherever occurring, and substituting therefor the words "matrimonial offence"; and by inserting at the end of paragraph (a) of section eighteen the words 25
"of the insanity of the respondent or";
- Sec. 24. (c) by omitting subsection one of section twenty-four and substituting therefor the following subsection:—

(1) Where the husband presents a petition 30
for dissolution of marriage he shall make the alleged adulterer a co-respondent to the petition, and where the husband sets up in his answer a cross-claim for relief on the ground of his wife's adultery he shall make the alleged 35
adulterer a respondent to the suit, unless on special grounds to be allowed by the court he is excused from so doing;

(d)

- (d) by omitting section twenty-five and substituting therefor the following section :—
 25. In a suit for dissolution of marriage if the respondent opposes the suit upon any ground upon which he or she might have instituted a suit for dissolution of marriage the court may on the application of the respondent give such relief as the respondent would have been entitled to if he or she had presented a petition seeking such relief ;
- (e) by omitting in subsection one of section twenty-six the words “in relation to a petition for dissolution of marriage” and substituting therefor the words “in relation to any petition or other proceeding” ;
- (f) by inserting in section twenty-nine after the words “twenty-one” the words “twenty-two and twenty-three” ;
- (g) by inserting the following sub-heading and section after section forty-four :—

In suits for nullity of marriage.

44A. In a suit for nullity of marriage the court may make any order for alimony which it deems just.

- (h) by omitting section forty-seven, and substituting therefor the following section :—
47. (1) The court may make any order as to the costs of any proceedings under this Act which it deems just, and except in the case of proceedings on appeal may order payment of costs as between solicitor and client.
- (2) The court may by consent of all parties interested assess the costs of any proceedings, and in the case of interlocutory proceedings may do so without the consent of the parties, and the costs so assessed shall be recoverable from the person ordered to pay the same in the same manner as if they had been duly taxed and certified by the taxing officer ;

(i)

- Sec. 48. (i) by inserting in section forty-eight after the word "co-respondent" the words "or in a petition by the wife there is a cross-claim by the husband for relief on the ground of his wife's adultery"; and by inserting at the end of the same section the words "notwithstanding that the adulterer may not have known that the person with whom he committed adultery was the wife of the petitioner or of the husband by whom the cross-claim is made, as the case may be"; 5 10
- Sec. 60. (k) by omitting in paragraph (c) of subsection two of section sixty the words "by petition for the purpose" and substituting therefor the words "in the manner prescribed"; 15
- Sec. 65. (l) by inserting in subsection one of section sixty-five after the words "nullity of marriage" the words "restitution of conjugal rights";
- Sec. 67. (m) by omitting section sixty-seven, and substituting therefor the following section:— 20
 67. No decree for the dissolution of her marriage shall be granted to any wife, except as provided in section sixteen, unless it is proved to the satisfaction of the court that at the time of the institution of the suit her husband was domiciled in New South Wales, and every decree for dissolving the marriage shall state that such proof has been given; 25
- Sec. 73. (n) by omitting in subsection one of section seventy-three the word "forty-eight" and substituting therefor the word "twelve"; and by omitting in subsection two of the same section the word "six" and substituting therefor the word "two"; 30
- Sec. 74. (o) by omitting in subsection three of section seventy-four the words "twelve" and "six" and substituting therefor respectively the words "four" and "two"; 35
- Sec 75. (p) by omitting in subsection one of section seventy-five the word "six" and substituting therefor the word 40

word "two"; and by omitting in subsection five of the same section the word "twelve" and substituting therefor the word "four";

5 (q) by omitting in subsection one of section eighty-Sec. 81.
one the words "on circuit";

(r) by inserting after section eighty-one the follow-Sec. 81A.
ing section :—

10 81A. Any evidence which has been taken Evidence upon trial of issues may be used subsequently.
upon the trial of any issues in any suit may be used as evidence in any subsequent proceedings in such suit.

(s) by omitting in subsection one of section eighty-Sec. 88.
eight the words "or costs";

15 (t) by omitting section ninety and substituting Sec. 90.
therefor the following section :—

20 90. (1) The court may enforce by attachment Attachment.
any order made by it for payment of any sum due in respect of alimony or the maintenance of children, or may in the exercise of its discretion refuse to do so.

25 (2) No person adjudicated bankrupt in Bankruptcy of person ordered to pay.
whose statement of affairs all sums due in respect of such alimony or maintenance are included shall remain imprisoned under such writ during a longer period than twelve months;

(u) by omitting section ninety-one and substitut-Sec. 91.
ing therefor the following section :—

30 91. (1) The judges of the Supreme Court, Power to make rules.
or any three of them, may make general rules—

(a) for regulating the pleading, practice, and procedure of the court, and may by such rules amend, vary, or dispense with any provisions of this Act regulating such pleading, practice, or procedure;

35 (b) for fixing the amount of all fees and allowances to officers of the court and solicitors in respect of proceedings under this Act;

(c) for enabling persons to sue in the court in forma pauperis, and for regulating the exercise by the registrar of the jurisdiction and powers conferred upon or delegated to the registrar under this Act, and the right of appeal from the registrar ; 5

(d) generally as to all matters necessary or expedient for giving effect to the provisions of this Act. 10

(2) The judges of the Supreme Court or any three of them may by rules of court made in that behalf delegate to the registrar power to do such things and transact such business and to exercise any such authority and jurisdiction as is now done, transacted or exercised by the court except in respect of the hearing of suits in which an appearance is entered or in respect of matters relating to the liberty of the subject : 20

Provided that the registrar may in case of doubt or difficulty refer any matter to the court :

Provided also that the court may direct any matter in which an order has been made by the registrar to be re-argued before the court upon giving a direction to that effect within the prescribed time after such order has been made by the registrar. 25

(3) A copy of every such rule shall be laid before both Houses of Parliament within one month from the making thereof if Parliament be then sitting, or if Parliament be not then sitting within one month after the commencement of the next ensuing session ; 35

Sec. 94.

(v) by inserting at the end of section ninety-four the following paragraph :—

(h) to exercise the powers and jurisdiction delegated to him under this Act.

5.

5. This Act shall not extend or apply to any petition presented before the passing of this Act praying for a decree for dissolution of marriage by reason of non-compliance with a decree for restitution of conjugal rights, but shall extend to and be applicable to all other cases, whether the decree for restitution of conjugal rights has been made before or after the passing of this Act.

Retrospec-
tive operation
of Act.

5. This Act shall not extend or apply to any petition presented before the passing of this Act providing for the dissolution of marriage by reason of non-compliance with a decree for restitution of conjugal rights, but shall extend to and be applicable to all cases where the decree for restitution of conjugal rights has been made before the passing of this Act.

Continuation of Case (Amended)

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