

Legislative Council.

49^o VICTORIÆ, 1886.

A BILL

To amend the Matrimonial Causes Acts in respect of
Procedure.

[SIR ALFRED STEPHEN;—2 June, 1886.]

WHEREAS doubts have arisen as to the absolute right of all parties in certain suits under the "Matrimonial Causes Act" and the Acts amending the same to require contested matters of fact to be tried by a jury and it is expedient to amend the said Acts in that respect and also respecting certain other matters of procedure in suits under those Acts or one of them Be it therefore enacted by the Queen'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. In all suits under the Matrimonial Causes Act thirty-six Victoria number nine or the Act of one thousand eight hundred and eighty-one amending the same wherein a decree is sought by either a husband or a wife for dissolution of their marriage any party to the suit may require the contested matters of fact therein to be tried by a jury and such matters shall be so tried accordingly And the provisions of the Act of one thousand eight hundred and eighty-four further amending the Principal Act shall apply to every such trial.

Preamble.
Amendments in
procedure required.

Trial by jury.
36 Vic. No. 9 sec. 6
sec. 23 and sec. 30.
44 Vic. No. 31.
48 Vic. No. 3.

Decree absolute—
how obtained.
36 Vic. No. 9 sec. 28.

2. In every case where a decree *nisi* in any such suit has been or shall hereafter be pronounced for dissolution of a marriage and the time thereby limited respecting its being made absolute shall have expired it shall not be necessary for the petitioner to apply to make such decree absolute but the same shall by the Court be declared to be and shall on such declaration become absolute upon production of a certificate under the hand of the Registrar that no matter in opposition to the final decree by the intervention of any person or the showing of cause against the same or by appeal or otherwise is then pending And it shall be the duty of the Registrar to prepare and submit such certificates. 5 10

Certain marriages
validated.

3. No marriage heretofore contracted by the petitioner or the respondent in any such suit after the making of a decree *nisi* therein for dissolution of the marriage and after expiration of the time limited thereby and where there was then no opposition pending to the making of such decree absolute shall be affected by reason only of its not having been made absolute by the Court on motion in that behalf as at present prescribed But where a decree *nisi* in any such suit shall be pronounced after the passing of this Act and in respect thereof no declaration as provided by the last section shall have been made by the Court nothing herein shall be taken to legalise the contracting of marriage by either of the parties And to every such decree *nisi* there shall be a notice subjoined by the Registrar that any person so contracting marriage will be guilty of bigamy. 15 20

Bigamy.

Decrees *nisi* not
prosecuted.

4. Within thirty days after the passing of this Act a list in such form as the Court shall prescribe shall be made out by the Registrar and filed in his office of all suits in which a decree *nisi* for dissolution of marriage has been pronounced but in which no application has been made to make the same absolute And there shall be published by the Registrar in such form and in such newspapers as the Court shall direct notice of the filing of such list and that any party named therein may inspect the same and may at any time within six months after such filing apply to the Judge in Chambers to order the removal of his or her name from the list And it shall be lawful for the Judge unless cause be shown to the contrary to make such order in any case and after the making of any such order the decree *nisi* in the suit in which the name appears whether as petitioner or respondent shall be vacated. 25 30 35

When vacated.

Certain decrees
made absolute.

5. On the expiration of the said six months or within one month thereafter all suits included in the aforesaid list in which the time limited by the decree *nisi* shall have expired before the passing of this Act shall be submitted to the Court by the Registrar And the petitioner in any such suit wherein there is then no matter in opposition to a final decree pending may in writing require the Registrar to submit the decree *nisi* to the Court for confirmation and the Court may thereupon declare such decree to be absolute. 40 45

Service of notices
may be effected by
registered letter.

6. All notices required to be served in a divorce suit may be served in the manner now or hereafter prescribed by the Court or may be sent to the party intended to be served in a registered letter directed and posted by an officer of the Court appointed for that purpose. 50

Arrest of
co-respondents.

7. In all cases in which a writ of *capias ad respondendum* could now be issued in an action at law against a defendant the like writ may be issued in a divorce suit against a respondent or co-respondent in respect of alimony costs or damages claimed in such suit subject nevertheless to such special directions in any case as the Court shall think fit to give in order to prevent injustice or oppression. 55

The Court may
make rules.

8. The Court may subject to the provisions of the "Matrimonial Causes Act" make such General Rules as shall be deemed necessary for carrying out the provisions of this or any other Act for amendment

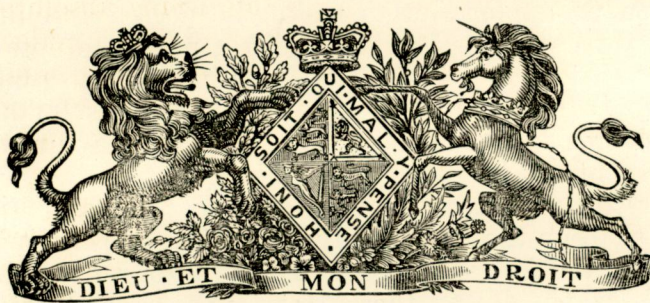
- amendment of the law of Divorce and may enforce by attachment any order made by the Court for payment of costs or of any sum or sums due in respect of alimony or the maintenance of children. Enforcing payment of costs &c. Provided that no person declared or made bankrupt or insolvent in whose
- 5 schedule all sums due in respect of such costs alimony or maintenance are included shall remain imprisoned under any such writ for nonpayment of costs during a longer period than six months or for nonpayment of alimony or any sum respecting the maintenance of children during a longer period than twelve months.
- 10 9. The word Court in this Act which may be cited as the Meaning of "Court." "Divorce Procedure Amendment Act" shall be taken ordinarily to Short title. mean the Judge exercising jurisdiction in matrimonial causes but for the purposes of an appeal shall mean the Supreme Court sitting as in Banco.

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.

Legislative Council Chamber,
Sydney, 7th July, 1886. }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ.

No. .

An Act to amend the Matrimonial Causes Acts in respect of Procedure and certain other matters.

WHEREAS doubts have arisen as to the right of parties in certain suits under the "Matrimonial Causes Act" and the Acts amending the same to require contested matters of fact to be tried by a jury and it is expedient to amend the said Acts in that respect and also respecting procedure and certain other matters under those Acts Be it therefore enacted by the Queen'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:—

10 1. In all suits under the Matrimonial Causes Act or any Act amending the same wherein a decree is sought for dissolution of marriage any party to the suit may require the contested matters of fact therein to be tried by a jury And the provisions of the Act forty-eighth Victoria number three shall apply to every such trial.

Preamble.
Amendments in
procedure required.

Trial by jury.
36 Vic. No. 3
s. 6 23 and 30.

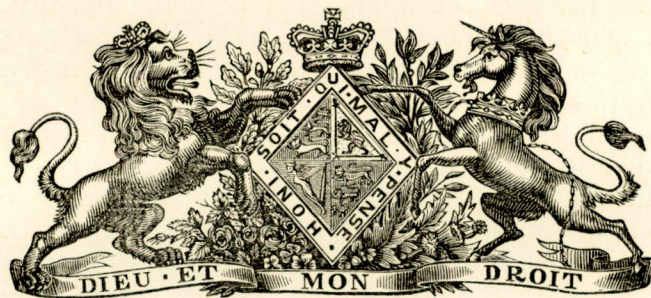
15 2. No marriage heretofore contracted by the petitioner or the respondent in any such suit after expiration of the time limited by the decree nisi and where no opposition was then pending to the making of such decree absolute shall be affected by reason only of its not having been made absolute as now prescribed.

Certain past marriages validated.

Divorce Procedure Amendment.

3. On every decree *nisi* in any such suit pronounced after the passing of this Act the Registrar shall indorse a notice that if the petitioner or respondent shall contract marriage before such decree has been made absolute he or she will be guilty of bigamy. But it shall
 5 not be necessary for the petitioner to move to make any decree *nisi* absolute whether heretofore or hereafter pronounced. After expiration of the time limited in that behalf the Court on the request in writing of the petitioner and upon a certificate from the Registrar that no matter in opposition to the final decree is then pending shall make the
 10 decree absolute as of course. Making decree absolute.
4. Within thirty days after the passing of this Act the Registrar shall make out a list of all suits in which a decree *nisi* has been pronounced and the time allowed for showing cause has expired but in which there has been no application to make the decree absolute
 15 and shall in such newspapers as the Court shall direct publish a notice that any party to any suit included in the list may inspect the same and may within six months apply to the Judge in Chambers for an order to vacate the decree in such suit and such decree may unless cause be shown to the contrary be vacated accordingly. List of past suits.
What decrees in list vacated.
- 20 5. Within thirty days after the expiration of the said six months the Registrar shall on the request in writing of the petitioner in any suit included in the list submit the name of such suit to the Court for confirmation of the decree therein and upon a certificate from the Registrar that no matter in opposition to the final decree is
 25 then pending the Court unless cause be shown to the contrary shall make the decree *nisi* absolute. What decrees in list made absolute.
6. All notices required to be served in a divorce suit may be served in the manner now or hereafter prescribed by the Court or may be sent to the party intended to be served in a registered letter directed
 30 and posted by an officer of the Court appointed for that purpose. Service of notices may be effected by registered letter.
7. In all cases in which a writ of *capias ad respondendum* could now be issued in an action at law against a defendant the like writ may be issued in a divorce suit against a respondent or co-respondent in respect of alimony costs or damages subject nevertheless to
 35 such special directions in any case as the Court shall think fit to give in order to prevent injustice or oppression. Arrest of co-respondents.
8. The Court may subject to the provisions of the "Matrimonial Causes Act" make such General Rules as shall be deemed necessary for carrying out the provisions of this or any other Act for
 40 amendment of the law of Divorce and may enforce by attachment any order made by the Court for payment of costs or of any sum or sums due in respect of alimony or the maintenance of children. Provided that no person declared or made bankrupt or insolvent in whose
 45 schedule all sums due in respect of such costs alimony or maintenance are included shall remain imprisoned under any such writ for nonpayment of costs during a longer period than six months or for nonpayment of alimony or any sum respecting the maintenance of children during a longer period than twelve months. The Court may make rules.
Enforcing payment of costs &c.
9. The word Court in this Act which may be cited as the "Divorce Procedure Amendment Act" shall be taken ordinarily to mean the Judge exercising jurisdiction in matrimonial causes but for the purposes of an appeal shall mean the Supreme Court sitting as in Banco. Meaning of "Court."
Short title.

New South Wales.



ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ.

No. XII.

An Act to amend the Matrimonial Causes Acts in respect of Procedure and certain other matters. [Assented to, 8th September, 1886.]

WHEREAS doubts have arisen as to the right of parties in certain suits under the "Matrimonial Causes Act" and the Acts amending the same to require contested matters of fact to be tried by a jury and it is expedient to amend the said Acts in that respect and also respecting procedure and certain other matters under those Acts Be it therefore enacted by the Queen'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. In all suits under the Matrimonial Causes Act or any Act amending the same wherein a decree is sought for dissolution of marriage any party to the suit may require the contested matters of fact therein to be tried by a jury And the provisions of the Act forty-eighth Victoria number three shall apply to every such trial.

2. No marriage heretofore contracted by the petitioner or the respondent in any such suit after expiration of the time limited by the decree *nisi* and where no opposition was then pending to the making of such decree absolute shall be affected by reason only of its not having been made absolute as now prescribed.

Divorce Procedure Amendment.

Making decree absolute.

3. On every decree *nisi* in any such suit pronounced after the passing of this Act the Registrar shall indorse a notice that if the petitioner or respondent shall contract marriage before such decree has been made absolute he or she will be guilty of bigamy. But it shall not be necessary for the petitioner to move to make any decree *nisi* absolute whether heretofore or hereafter pronounced. After expiration of the time limited in that behalf the Court on the request in writing of the petitioner and upon a certificate from the Registrar that no matter in opposition to the final decree is then pending shall make the decree absolute as of course.

List of past suits.

4. Within thirty days after the passing of this Act the Registrar shall make out a list of all suits in which a decree *nisi* has been pronounced and the time allowed for showing cause has expired but in which there has been no application to make the decree absolute and shall in such newspapers as the Court shall direct publish a notice that any party to any suit included in the list may inspect the same and may within six months apply to the Judge in Chambers for an order to vacate the decree in such suit and such decree may unless cause be shown to the contrary be vacated accordingly.

What decrees in list vacated.

What decrees in list made absolute.

5. Within thirty days after the expiration of the said six months the Registrar shall on the request in writing of the petitioner in any suit included in the list submit the name of such suit to the Court for confirmation of the decree therein and upon a certificate from the Registrar that no matter in opposition to the final decree is then pending the Court unless cause be shown to the contrary shall make the decree *nisi* absolute.

Service of notices may be effected by registered letter.

6. All notices required to be served in a divorce suit may be served in the manner now or hereafter prescribed by the Court or may be sent to the party intended to be served in a registered letter directed and posted by an officer of the Court appointed for that purpose.

Arrest of co-respondents.

7. In all cases in which a writ of *capias ad respondendum* could now be issued in an action at law against a defendant the like writ may be issued in a divorce suit against a respondent or co-respondent in respect of alimony costs or damages subject nevertheless to such special directions in any case as the Court shall think fit to give in order to prevent injustice or oppression.

The Court may make rules.

8. The Court may subject to the provisions of the "Matrimonial Causes Act" make such General Rules as shall be deemed necessary for carrying out the provisions of this or any other Act for amendment of the law of Divorce and may enforce by attachment any order made by the Court for payment of costs or of any sum or sums due in respect of alimony or the maintenance of children. Provided that no person declared or made bankrupt or insolvent in whose schedule all sums due in respect of such costs alimony or maintenance are included shall remain imprisoned under any such writ for nonpayment of costs during a longer period than six months or for nonpayment of alimony or any sum respecting the maintenance of children during a longer period than twelve months.

Enforcing payment of costs &c.

Meaning of "Court." Short title.

9. The word Court in this Act which may be cited as the "Divorce Procedure Amendment Act" shall be taken ordinarily to mean the Judge exercising jurisdiction in matrimonial causes but for the purposes of an appeal shall mean the Supreme Court sitting as in Banco.