

See No. 400 of 187, S. 12.



ANNO TRICESIMO PRIMO

VICTORIÆ REGINÆ.

A.D. 1867.

No. 3.

An Act to consolidate and amend the Law relating to Divorce and Matrimonial Causes in South Australia.

[Assented to, 19th December, 1867.]

WHEREAS it is expedient to consolidate and amend the Law relating to Divorce and Matrimonial Causes in South Australia—Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

Preamble.

PRELIMINARY.

1. This Act may be cited, for all purposes, as the "Matrimonial Causes Act, 1867."

Short title.

2. This Act shall come into operation on the first day of February, 1868.

Commencement of Act.

3. An Act No. 22, of 1858, intituled "An Act to amend the law relating to Divorce and Matrimonial Causes in South Australia," is hereby repealed; except so far as may be necessary for supporting the validity of any proceedings taken or had thereunder before the commencement of this Act.

Repeal of No. 22 of 1858.

4. The Supreme Court of South Australia shall within the said Province and its dependencies possess and exercise similar jurisdiction and authority in respect of divorces *a mensa et thoro*, suits of nullity of marriage, suits for restitution of conjugal rights or jactitation of marriage, and in all causes, suits, and matters matrimonial, except in respect of marriage licences, as immediately

Supreme Court to continue to exercise jurisdiction in causes matrimonial.

*Matrimonial Causes Act.—1867.*PRELIMINARY.

diately before the time of the coming into operation of an Act of the Imperial Parliament, made and passed in the twentieth and twenty-first years of the reign of Her present Majesty, chapter eighty-five, intituled "An Act to amend the law relating to Divorce and Matrimonial Causes in England," was vested in or exercisable by any Ecclesiastical Court or person in England in respect of the like matters, together with the jurisdiction conferred by this Act; and the said jurisdiction, and all powers and authorities by this Act conferred, shall and may be exercised in like manner as the other powers, jurisdictions, and authorities, given to or vested in the Supreme Court; and all proceedings commenced under the said Act hereby repealed, shall be proceeded in, heard, and determined, as nearly as circumstances will allow under the provisions of this Act.

Division of Act.

5. This Act shall be divided into six parts, viz. —

PART I.—Orders for Protection of Property of Deserted Wives :

PART II.—Decrees for Judicial Separation :

PART III.—Decrees for Dissolution of Marriage :

PART IV.—Remedies against Adulterers :

PART V.—Provisions for Benefit of Children :

PART VI.—Procedure in Matrimonial Causes :

PART I.

PART I.—Orders for Protection of Property of Deserted Wives :

Wife deserted by her husband may apply to Court, or Judge, or to Local Court.

6. A wife, deserted by her husband, may at any time after such desertion apply to the Supreme Court or to a Judge thereof, or to the Local Court of full jurisdiction nearest to which she is resident, for an order to protect any money or property she may have acquired or may acquire by her lawful industry, and any property which she may have become possessed of prior to or may become possessed of after such desertion, against her husband, or his creditors, or any person claiming under him, and such Court, Judge, or Local Court respectively, 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 the earnings and property acquired by her, or which she may have become possessed of since the commencement of such desertion, or which she may thereafter acquire or become possessed of, 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 *femme sole*: Provided that where any such order is made by a Local Court, the Clerk of such Court shall, within ten days from the making thereof, transmit to the Master of the Supreme Court a copy of such order, certified to be correct under his hand and the seal of the Court, and the said Master shall file all such copies of orders as aforesaid amongst the records

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records of the said Court, and shall cause an alphabetical list thereof to be kept for reference.

PART I.

7. The husband and any creditor, or other person claiming under him, may apply to the Local Court, by whom any such order was made for the discharge thereof: And such Court shall have authority to make an order discharging the same: And the Supreme Court shall have power to make an order for the discharge of any order for protection, whether the same was made by the Court or not.

Husband or creditor may apply for discharge of order.

8. 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.

Remedy for disobedience of order.

9. Where any such order for protection is 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 Act, if she obtained a decree of judicial separation.

Status of protected wife.

10. Every such order of protection shall state the time at which the desertion in consequence by which 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.

Order to state and be conclusive evidence of the time of desertion.

PART II.—Decrees for Judicial Separation: *in No. 664 J 186, S. 10*

PART II.

11. No decree shall be made by the said Court for a divorce *a mensa et thoro*, but in all cases in which such a decree might have been pronounced according to the Ecclesiastical law as administered in England immediately before the time of the coming into operation of the said Imperial Act, the Court may pronounce a decree for judicial separation.

No decree for divorce *a mensa et thoro* to be made hereafter, but a judicial separation.

12. A decree of judicial separation shall have the effect of a divorce *a mensa et thoro* under the Ecclesiastical law as administered in England immediately before the time of the coming into operation of the said Imperial Act, and such other legal effect as herein mentioned; and 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.

Decree of judicial separation may be obtained by husband or wife for adultery, &c.

13. Application for judicial separation, on any one of the grounds aforesaid, or for restitution of conjugal rights, may be made by either husband or wife by petition to the said Court, and the Court is hereby

Application for restitution of conjugal rights, or judicial separation, may be

*Matrimonial Causes Act.—1867.***PART II.**

made by husband or wife by petition to Court, &c.

hereby authorized and required to hear and determine such petitions according to the rules and regulations contained in the First Schedule hereto, or the rules and regulations to be made from time to time under the powers in that behalf hereinafter contained, and the said 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 judicial separation or restitution of conjugal rights accordingly, and where application is made by the wife for judicial separation, the Court may make any order for alimony which shall be deemed just.

Court to act on principles of the Ecclesiastical Courts.

14. In all suits and proceedings other than proceedings to dissolve any marriage, the said Supreme 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 of England acted and gave relief immediately before the time of the coming into operation of the said Imperial Act, but subject to the provisions herein contained, and to the said rules and regulations.

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

15. 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 said 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 desertion was the ground of such decree: And the said Court may, on being satisfied of the truth of such allegations of such petition, reverse the decree accordingly.

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

16. In all cases in which the said 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 said Court, and may direct any securities to be given and impose any terms or restrictions which to the said Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the said Court expedient so to do.

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

17. 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 *femme 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 *femme 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 been then dead.

In case of renewed cohabitation, property to be held to wife's separate use.

18. If any 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 her husband and herself whilst separate.

*Matrimonial Causes Act.—1867.***PART II.**

Also for purposes of contract and suing.

19. In every case of a judicial separation the wife shall, whilst so separated, be considered as a *femme 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.

20. Nothing herein contained 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.

During separation, husband and wife may exercise joint power.

21. The provisions contained in this, and the said repealed Act 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 entitled as executrix, or administratrix, or trustee, since the decree for 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.

Wife's property in trust or in expectancy included in decree or protecting order.

22. In every case in which a wife shall, under this or the said repealed Act, have obtained an order for protection, or a decree for judicial separation, such order or decree, until reversed or discharged, shall, so far as shall be necessary for the protection of any person dealing 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 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.

Discharge of decree or protecting order not to affect creditor

23. If any person, in reliance on any such order or decree as aforesaid, shall make any payment to or permit any transfer or act to be made or done by the wife, who has obtained the same, 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 been discontinued, every such person shall 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 subsisting without variation in full force and effect and the separation of the wife from the husband had not ceased or been discontinued;

Indemnity to persons making payments under decrees or orders afterwards reversed.

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tinued; unless at the time of such payment, transfer, or other act such person had notice of the discharge, reversal, or variation of such order or decree, or of the cessation or discontinuance of such separation.

PART III.

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

PART III.—Decrees for Dissolution of Marriage: *See No. 664*

186, s. 9
24. It shall be lawful for any husband to present a petition to the said Court praying that his marriage may be dissolved, on the ground 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 said 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 bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her, under the Ecclesiastical Law as administered in England immediately before the time of the coming into operation of the said Imperial Act, to a divorce *a mensa et thoro*, or of adultery coupled with desertion, without reasonable excuse, for one year 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.

Meaning of incestuous adultery and bigamy.

25. For the purposes of this Act, incestuous adultery shall be taken to mean adultery committed by a husband with a woman with whom, if his 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.

26. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless, on special grounds, to be allowed by the said Court, he shall be excused from so doing; and on every petition presented by a wife for dissolution of marriage, the said 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.

Cause may be tried by a jury.

Where alleged adulterer a co-respondent, Court may order him to be dismissed from suit.

27. In all cases hereafter to be commenced, in which, on the petition of a husband for divorce, the alleged adulterer is made a respondent, or in which, on the petition of a wife, the person with whom the husband is alleged to have committed adultery is made a respondent, it shall be lawful for the Court or presiding Judge, 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.

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PART III.

28. In every suit instituted for dissolution of marriage the Court, at the time when application is made to it to direct the mode in which the questions of fact raised and the pleadings shall be tried, or any other period of the suit, may, if it think fit, appoint some practitioner of the said Court to act as Crown Proctor in such suit; and the said Court may, if it shall think fit, from time to time remove any practitioner appointed to be Crown Proctor for any suit, and appoint some other practitioner in his stead; and the practitioner so appointed to be Crown Proctor in any suit as aforesaid shall, until removed by the Court, perform the duties, and have and exercise the powers and authorities, in respect to the suit for which he has been appointed, which by this Act, or by the said Rules and Regulations, are or may be imposed or conferred upon the Crown Proctor; and the Court may, if it think fit, require the parties to the suit, or either of them, to find security for the payment of the costs to be incurred by such Crown Proctor.

In every suit for dissolution of marriage, Court to appoint practitioner to act as Crown Proctor.

29. Upon any such petition for the dissolution of a marriage, it shall be the duty of the said 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 the said Court shall also inquire into any counter charge which may be made against the petitioner.

Court to be satisfied of absence of collusion.

30. In every case of a petition for 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 Proctor, who shall argue, or instruct counsel to argue before the Court, any question in relation to such matter which the Court may deem it necessary or expedient to have fully argued.

Court may direct papers to be sent to Proctor.

31. In case the said 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 that the petition is presented or prosecuted in collusion with either of the respondents, then and in any of the said cases, the said Court shall dismiss the said petition.

Dismissal of petition.

32. In case the said 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 that the petition is presented or prosecuted in collusion with either of the respondents, then the said Court shall pronounce a decree declaring such marriage to be dissolved.

Cases in which dissolution of marriage may be decreed.

33. 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 which has not been condoned, or if the petitioner shall have

Cases in which Court may refuse to decree dissolution.

*Matrimonial Causes Act.—1867.*PART III.

have condoned the adultery complained of, or shall, in the opinion of the said Court, have been guilty of unreasonable delay in presenting or prosecuting such petition, or of cruelty which has not been condoned 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.

Respondent may have relief in certain cases.

34. In any suit instituted for dissolution of marriage, if the respondent shall oppose the relief sought on the ground in case of such a suit instituted by a husband of his adultery, cruelty, or desertion, or in case of such a suit instituted by a wife on the ground of her adultery or cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had filed a petition seeking such relief.

Decree for dissolution of marriage to be a decree *nisi* in first instance, against which any person may show cause.

35. Every decree for a dissolution of marriage shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as may be provided by the rules and regulations before mentioned, and during that period any person shall be at liberty in such manner as may be directed by such rules and regulations in that behalf, 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.

Any person may give instruction to the Crown Proctor, of matters material to the due decision of case.

36. At any time during the progress of the cause, or before the decree is made absolute, any person may give notice to the Crown Proctor, to be appointed in any such suit, of any matter material to the due decision of the case, who may thereupon take such steps as the Attorney-General may deem necessary or expedient.

In cases of collusion the Crown Proctor may intervene.

37. If, from any information to be given as aforesaid or otherwise, the said Crown Proctor appointed to act in any suit as aforesaid shall suspect that any parties to the suit are or have been acting in collusion, for the purpose of obtaining a divorce contrary to the justice of the case, he may, under the direction of the Attorney-General, and by leave of the Court, at any time before the decree *nisi* is made absolute, intervene, in the suit alleging such collusion, and may retain counsel, and subpoena witnesses to prove it, and the Court may order the costs of such 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.

Alimony.

38. The said Court may, if it shall think fit, on any such decree orde.

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order that the husband shall, to the satisfaction of the said 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 settle and approve, or may refer it to the Master of the said Court 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 shall 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 said 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.

PART III.

39. Where a decree for a dissolution of marriage is obtained against a husband who has no property on which the payment of any such gross or annual sum can be secured, but, nevertheless, he would be able to make a monthly or weekly payment to the wife during their joint lives, the Court may, if it shall think fit, make an order on the husband for payment to the wife during their joint lives of such monthly or weekly sums for her maintenance and support as the Court may think reasonable: Provided that if the husband shall afterwards from any cause become unable to make such payments, the Court may discharge or modify the order, or temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and may again revive the same order wholly or in part as to the Court may seem fit.

Monthly or weekly payments of alimony may be ordered.

40. When the time limited for appealing against any decree dissolving a 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, 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 officiating minister shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved on the ground of his or her adultery.

Liberty to parties to marry again.

3rd ed. sec. 66.

No officiating minister compelled to solemnize certain marriages.

PART IV.—Remedies against Adulterer.**PART IV.**

41. No action shall be maintainable in South Australia for criminal conversation.

No action in South Australia for criminal conversation.

42. 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 said Court shall dispense with such service, or direct some other mode

Husband may claim damages from adulterers.

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mode of 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 were, before the passing of the said repealed Act, tried and decided in the said Court; and all the enactments herein contained with reference to the hearing and decision of petitions to the said Court shall, so far as may be necessary, be deemed applicable to the hearing and decision of petitions under this clause.

Damages to be ascertained by a jury and paid according to directions of the Court.

43. The damages to be recovered on 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 said 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.

Power to Court to order adulterer to pay costs.

44. 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, the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

PART V.PART V.—Provisions for the benefit of Children :

Power to Court to make orders as to custody of children.

45. In any suit or other proceeding for obtaining a judicial separation, or a decree of nullity of marriage, and on any petition for dissolution of marriage, the said Court may, from time to time, before making its final decree, make such interim orders, and may make such provision in its 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 said Court in its equitable jurisdiction.

Court may make such order after final decree.

46. The Court, after a final decree of judicial separation, nullity of marriage, or dissolution of marriage, and whether the suit or proceeding in which such decree was made was instituted under the said Repealed Act, or this Act, may upon application (by petition) for that purpose, from time to time, make 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 in its equitable jurisdiction, as might have been made by such final decree, or by interim orders, in case the proceedings for obtaining such decree were still pending.

As to marriage settlements of parties after final decree of nullity of marriage.

47. 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

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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.

PART V.

48. In any case in which the said Court shall pronounce a sentence of dissolution of marriage, or judicial separation for adultery of the wife, if it shall be made to appear to the said Court that the wife is entitled to any property, either in possession or reversion, it shall be lawful for the said 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 party, and of the children of the marriage, or either or any of them.

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

49. Any instrument heretofore executed in pursuance of any such order made under the provisions of the said Repealed Act, or hereafter to be executed pursuant to any such order made at the time of, or after the procuring of a decree of dissolution of marriage or judicial separation, shall be deemed valid and effectual in law, notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Coverture not to invalidate instrument executed under order.

PART VI. Procedure in Matrimonial Causes :**PART VI.**

50. In questions of fact, arising in proceedings under this Act, it shall be lawful for, but except as hereinbefore provided, not obligatory upon the said Court, to direct the truth thereof to be determined by the verdict of a Special or Common Jury; and all questions under this Act, by the said Court directed to be tried by a Jury, shall be tried before one of the Judges of the said Court, and a Jury of twelve men, at such time and place as the Court shall order.

Questions of fact may be tried before the Court.

51. Where any such question shall be so ordered to be tried, such question shall be reduced into writing, in such form as the said 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 presiding Judge shall have the same powers, jurisdiction, and authority as if such Judge were sitting *at nisi prius*.

Such questions to be reduced into writing, and a Jury to be sworn to try.

52. The Rules of Evidence observed in the Supreme Court in its Common Law jurisdiction shall be applicable to and observed (save so far as altered by this Act) in the trial of all questions of fact in the Court.

Rules of evidence same as in Common Law jurisdiction.

53. Upon the trial of any such question, or of any issue under this Act, a bill of exceptions may be tendered, and a general or special verdict or verdicts, subject to a special case, may be returned in like manner as in any cause tried in the said Court; and every such bill of exceptions, special verdict, and special case respectively, shall be stated, settled, and sealed, in like manner as in any cause tried

Bill of exceptions, special verdict, and special case.

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tried in the said Court; and the matter of law in every such bill of exceptions, special verdict, and special case, shall be heard and determined by the Full Court, subject to such right of appeal as is hereinafter given in other cases.

Court may direct issues to try any fact.

54. It shall be lawful for the said Court to direct one or more issue or issues to be tried in any cause or matter matrimonial which may be brought before it under the provisions hereof, in like manner as may be done by the said Court in the exercise of its equitable jurisdiction.

Affidavit in support of a petition.

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

Service of petition.

56. Every such petition shall be served on the party to be affected thereby, either within the limits of the said Province of South Australia, or without, in such manner as may be directed by the rules and regulations before mentioned: Provided always, that the said Court may dispense with such service altogether, in case it shall seem necessary or expedient so to do.

Husband and wife competent witnesses as to cruelty and desertion.

57. The husband and wife respectively shall be competent and compellable on the hearing of any petition, to give evidence of or relating to any cruelty or desertion, but shall not be allowed to give any evidence or to answer any question, nor shall any question be put tending to show that either of the parties to the marriage has been guilty of adultery.

Adjournment.

58. The said 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.

Mode of taking evidence.

59. Subject to the rules and regulations before mentioned, the witnesses in all proceedings before the said Court, where 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 said 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 behalf of the party by whom such affidavit was filed.

Costs.

60. The said Court, on the hearing of any suit, proceeding, or petition

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petition under this Act, and the Court of Appeals of the Province of South Australia, on the hearing of any appeal under this Act, may make such order as to costs as to such Courts respectively may seem just: Provided always, that there shall be no appeal on the subject of costs only.

PART VI.

61. All decrees and orders to be made by the said Court or any Judge thereof in any suit, proceeding, or petition, to be instituted under authority of this Act, or heretofore made under the said repealed Act, shall be enforced and put in execution in the same or the like manner as the judgments, orders, and decrees of the said Court, in the exercise of its equitable jurisdiction, may be enforced and put in execution.

Enforcement of orders and decrees.

62. The said Court, or any two of the Judges thereof, shall have full power to fix and regulate, from time to time, the fees payable upon all proceedings before it, and until the said Court or Judges shall otherwise order, the fees payable shall be according to the scale in the Second Schedule hereto: Provided that the said Court or Judges may make such rules and regulations as it may deem necessary and expedient for enabling persons to sue in *forma pauperis*.

Fees to be regulated.

63. Until the same shall be revoked or varied under the power in that behalf hereinafter contained, the rules and regulations in the First Schedule hereto shall regulate the practice and procedure of the said Court under the provisions of this Act; and all rules heretofore made by the said Court under the provisions of the said repealed Act for regulating the practice and procedure of the Court in its matrimonial jurisdiction shall be and the same are hereby revoked.

Rules in Schedule to be in force till revoked or varied.

64. The said Court, or any two of the Judges thereof, shall have power from time to time to revoke or vary all or any of the rules and regulations in the said First Schedule contained, and to make other rules and regulations instead thereof, or in addition thereto, as to the said Court or Judges shall appear expedient; and such new rules and regulations so to be made, or any subsequent rules and regulations from time to time to revoke or vary.

Court may revoke or vary rules, and may make new rules.

65. All such rules and regulations so to be made as aforesaid, and all orders fixing or regulating fees which may be made by the said Court or Judges under the preceding provisions, shall be published in the *Government Gazette*, and shall take effect from a date to be therein specified; and all such rules and regulations shall be laid before both Houses of Parliament within one calendar month after the making thereof, if Parliament be then sitting, or if Parliament be not then sitting, within one calendar month after the commencement of the then next Session of Parliament. And if either House of Parliament shall, by resolution passed within thirty-six days next after any such rules and regulations as aforesaid shall be laid before it, resolve that the whole or any part thereof ought not

Rules to be published in *Government Gazette* and laid before Parliament.

to

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to continue in force, in that case the whole of such rules and regulations, or such part or parts thereof as may be specified in the resolution (as the case may be) shall from and after the passing of such resolution cease to be binding.

Appeal.

66. Either party dissatisfied with the decision of the said Court, on any petition for the dissolution of a marriage, or on any petition for nullity of marriage, may, within three calendar months after the pronouncing thereof, appeal therefrom to the Court of Appeals, which Court may affirm, alter, or reverse such decision in whole or in part, or dismiss the appeal as may be just.

In the name and on behalf of the Queen I hereby assent to
this Act.

D. DALY, Governor.

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THE FIRST SCHEDULE.

RULES AND REGULATIONS FOR REGULATING THE PRACTICE AND PROCEDURE OF THE SUPREME COURT IN ITS MATRIMONIAL CAUSES JURISDICTION.

Petition.

1. Proceedings before the Supreme Court in its Matrimonial Causes Jurisdiction shall be commenced by filing a petition. A form of petition is given in the Appendix, No. 1.

2. Every petition shall be accompanied by an affidavit made by the petitioner, verifying the facts of which he or she has personal cognizance, and deposing as to belief in the truth of the other facts alleged in the petition, and such affidavit shall be filed with the petition.

3. In cases where the petitioner is seeking a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the petitioner's affidavit, filed with his or her petition, shall further state, that no collusion or connivance exists between the petitioner and the other party to the marriage or alleged marriage.

Co-respondents.

4. Upon a husband filing a petition for dissolution of marriage, on the ground of adultery, the alleged adulterers shall be made co-respondents in the cause, unless the Court shall otherwise direct.

5. Application for such direction is to be made on motion founded on affidavit.

6. If the names of the alleged adulterers, or either of them, should be unknown to the petitioner at the time of filing his petition, the same must be supplied as soon as known; and application must be made forthwith to a Judge by summons to amend the petition by inserting such name therein, and the Judge shall give his directions as to such amendment, and such further directions as he may think fit as to service of the amended petition.

7. The term "respondent," where the same is hereinafter used, shall include all co-respondents, so far as the same is applicable to them.

Citation.

8. Every petitioner who files a petition and affidavit shall forthwith extract a citation, under the seal of the Court, for service on each respondent in the cause. A form of citation is given in the Appendix, No. 2.

9. Every citation shall be written or printed on parchment, and the party extracting the same, or his or her proctor, solicitor, or attorney, shall take it, together with a præcipe, to the office of the Court, and there deposit the præcipe, and get the citation signed and sealed. A form of præcipe is given in the Appendix, No. 3. The address given in the præcipe must be within three miles of the General Post Office.

Service.

10. Citations are to be served personally, when that can be done.

11. Service of a citation shall be effected by personally delivering a true copy of the citation to the party cited, and producing the original, if required.

12. To every person served with a citation shall be delivered, together with the copy of the citation, a certified copy of the petition, under seal of the Court.

13. In cases where personal service cannot be effected, application may be made to the Court by motion, or to a Judge in chambers, to substitute some other mode of service.

14. After service has been effected, the citation, with a certificate of service endorsed thereon, shall be forthwith returned into and filed in the office of the Court. The form of certificate of service is given in the Appendix, No. 4.

15. When it is ordered that a citation shall be advertised, the newspapers containing the advertisements are to be filed in the office of the Court with the citation.

16. The above rules, so far as they relate to the service of citations, are to apply to the service of all other instruments requiring personal service.

17. Before a petitioner can proceed, after having extracted a citation, an appearance must have been entered by or on behalf of the respondents, or it must be shown by affidavit, filed in the office of the Court, that they have been duly cited, and have not appeared.

18. An

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18. An affidavit of service of a citation must be substantially in the form given in the Appendix, No. 5, and a copy of the citation referred to in the affidavit must be annexed to such affidavit, and marked by the person before whom the same is sworn.

Appearance.

19. All appearances to citations are to be entered at the office of the Court. The form of entry of appearance is given in the Appendix, No. 6.

20. An appearance may be entered at any time before a proceeding has been taken in default, or afterwards, as hereinafter directed, or by leave of a Judge to be applied for on summons founded on affidavit.

21. Every entry of an appearance shall be accompanied by an address, within three miles of the General Post Office.

22. If a party cited wishes to raise any question as to the jurisdiction of the Court, he or she must enter an appearance under protest, and within eight days file in the office of the Court his or her act on petition in extension of such protest, and on the same day deliver a copy thereof to the petitioner. After the entry of an absolute appearance to the citation, a party cited cannot raise any objection as to jurisdiction.

Intervenors.

23. Application for leave to intervene in any cause must be made to the Court by motion, supported by affidavit.

24. Every party intervening must join in the proceedings at the stage in which he finds them, unless it is otherwise ordered by the Court.

Suits in formâ pauperis.

25. Any person desirous of prosecuting a suit in *formâ pauperis* is to lay a case before counsel, and obtain an opinion that he or she has reasonable grounds for proceeding.

26. No person shall be admitted to prosecute a suit in *formâ pauperis* without the order of a Judge, and to obtain such order, the case laid before counsel, and his opinion thereon, with an affidavit of the party, or of his or her proctor, solicitor, or attorney, that the said case contains a full and true statement of all the material facts, to the best of his or her knowledge and belief, and an affidavit of the party applying as to his or her income or means of living, and that he or she is not worth twenty-five pounds, after payment of his or her just debts, save and except his or her wearing apparel, shall be produced at the time such application is made.

27. Where a husband, admitted to sue as a pauper, neglects to proceed in a cause, he may be called upon by summons to show cause why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs be paid.

Answer.

28. Each respondent who has entered an appearance may, within twenty-one days after service of citation on him or her, file in the office of the Court, an answer to the petition. A form of answer is given in the Appendix, No. 7.

29. Each respondent shall, on the day he or she files an answer, deliver a copy thereof to the petitioner, or to his or her proctor, solicitor, or attorney.

30. Every answer, which contains matter other than a simple denial of the facts stated in the petition, shall be accompanied by an affidavit made by the respondent, verifying such other or additional matter, so far as he or she has personal cognizance thereof, and deposing as to his or her belief in the truth of the rest of such other or additional matter, and such affidavit shall be filed with the answer.

31. In cases involving a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the respondent, who is husband or wife of the petitioner, shall, in the affidavit filed with the answer further state that there is not any collusion or connivance between the deponent and the petitioner.

Further pleadings.

32. Within fourteen days from the filing and delivery of the answer, the petitioner may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder, or any subsequent pleading.

33. A copy of every reply and subsequent pleading shall, on the day the same is filed, be delivered to the opposite parties, or to their proctor, solicitor, or attorney.

General Rules as to pleadings.

34. Either party desiring to alter or amend any pleading, must apply by summons to a Judge at Chambers for permission to do so.

35. When

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35. When a petition, answer, or other pleading has been ordered to be altered or amended, the time for filing and delivering a copy of the next pleading shall be reckoned from the time of the order having been complied with.

36. A copy of every pleading, showing the alterations and amendments made therein, shall be delivered to the opposite parties, on the day such alterations and amendments are made in the pleadings filed in the office of the Court; and the opposite parties, if they have already pleaded in answer thereto, shall be at liberty to amend such answer within four days, or such further time as may be allowed for the purpose.

37. If either party in the cause fail to file or deliver a copy of the answer, reply, or other pleading, or to alter or amend the same, or to deliver a copy of any altered or amended pleading, within the time allowed for the purpose, the party to whom the copy of such answer, reply, or other pleading, or altered or amended pleading, ought to have been delivered, shall not be bound to receive it, and such answer, reply, or other pleading shall not be filed, or be treated or considered as having been filed, or be altered or amended, unless by order of a Judge, to be obtained on summons. The expense of obtaining such order shall fall on the party applying for it, unless the Judge shall otherwise direct.

38. Applications for further particulars of matters pleaded are to be made to a Judge by summons.

Service of pleadings, &c.

39. It shall be sufficient to leave all pleadings and other instruments, personal service of which is not expressly required by these rules and regulations, at the respective addresses furnished by, or on behalf of, the several parties to the cause.

Mode of Trial.

40. When the pleadings on being concluded, have raised any questions of fact, the petitioner may at any time after eight and within fourteen days from the filing of the last pleading, if the Court shall sit during that period, if not, on the first day that the Court shall sit thereafter, apply to the Court by motion to direct the mode by which the truth of such questions of fact shall be tried, whether before a jury or otherwise; but in case the petitioner shall fail so to apply, either of the respondents on whose behalf such questions have been raised may do so.

Questions of Fact for the Jury.

41. Whenever the Court directs the issues of fact in a cause to be tried by a jury, the questions of fact raised by the pleadings are to be briefly stated in writing by the petitioner, and settled by one of the Judges. A form is given in the Appendix No. 8.

42. Should the petitioner fail to prepare the questions for, and obtain a summons to settle the same, within fourteen days after the Court has directed the mode of trial, either of the respondents on whose behalf such questions have been raised shall be at liberty to do so.

43. After the questions have been settled by the Judge, the party who took out the summons to settle the same shall deliver a copy thereof, as settled to each of the other parties to be heard on the trial of the cause, and either of such parties shall be at liberty to apply to the Court by motion, at any time after four and within eight days, if the Court shall sit during that period, if not, on the first day that the Court shall sit thereafter, to alter or amend the same.

Setting down the Cause for Trial or Hearing.

44. In cases to be tried by a jury, the petitioner, after the expiration of eight days from the delivery of copies of the questions for the jury to the opposite parties, or from alteration or amendment of the same, in pursuance of the order of the Court, shall file such questions as finally settled in the office of the Court, and at the same time set down the cause as ready for trial, and on the same day give notice of his having done so to each party for whom an appearance has been entered.

45. In cases to be heard without a jury, the petitioner shall, after obtaining directions as to the mode of hearing, set the cause down for hearing, and on the same day give notice of his having done so to each party in the cause for whom an appearance has been entered.

46. If the petitioner fail to file the questions for the jury, or to set down the cause for trial or hearing, or to give due notice thereof, for the space of one month, after directions have been given as to the mode in which the cause shall be tried or heard, either of the respondents entitled to be heard at such trial or hearing may file the questions

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questions for the jury, and set the cause down for trial or hearing, and shall on the same day give notice of his having done so to the petitioner, and to each of the other parties to the cause for whom an appearance has been entered.

47. A copy of every notice of the cause being set down for trial or hearing shall be filed in the office of the Court, and the cause shall come on in its turn, unless the Court or a Judge shall otherwise direct.

Trial or Hearing.

48. No cause shall be called on for trial or hearing until after the expiration of ten days from the day when the same has been set down for trial or hearing, and notice thereof has been given, save with the consent of all parties to the suit.

49. Either of the respondents in the cause, after entering an appearance, without filing an answer to the petition in the principal cause, may be heard in respect of any question as to costs, and a respondent, who is husband or wife of the petitioner, may be heard also in respect to any question as to custody of children, but a respondent who may be so heard is not at liberty to bring in affidavits touching matters in issue in the principal cause, and no such affidavits can be read or made use of as evidence in the cause.

Evidence taken by Affidavit.

50. When the Court has directed that all or any of the facts set forth in the pleadings be proved by affidavits, such affidavits shall be filed in the office of the Court within eight days from the time when such direction was given, unless the Court or a Judge shall otherwise direct.

51. Counter affidavits as to any facts to be proved by affidavit may be filed within eight days from the filing of the affidavits which they are intended to answer.

52. Copies of all such affidavits and counter affidavits shall, on the day the same are filed, be delivered to the other parties to be heard on the trial or hearing of the cause, or to their proctors, solicitors, or attorneys.

53. Affidavits in reply to such counter affidavits cannot be filed without permission of the Court or a Judge.

54. Application for an order for the attendance of a deponent for the purpose of being cross-examined in open Court shall be made to a Judge on summons.

Proceedings by Petition.

55. Any party to a cause who has entered an appearance may apply on summons to a Judge, to be heard on his petition touching any collateral question which may arise in a suit.

56. The party to whom leave has been given to be heard on his petition shall, within eight days, file his act on petition in the office of the Court, and on the same day deliver a copy thereof to such parties in the cause as are required to answer thereto.

57. Each party to whom a copy of an act on petition is delivered shall, within eight days after receiving the same, file his or her answer thereto in the office of the Court, and on the same day deliver a copy thereof to the opposite party, and the same course shall be pursued with respect to the reply, rejoinder, &c., until the act on petition is concluded.

58. A form of act on petition, answer, and conclusion is given in the Appendix, No. 9.

59. Each party to the act on petition shall, within eight days from that on which the last statement in answer is filed, file in the office of the Court such affidavits and other proofs as may be necessary in support of their several averments.

60. After the time for filing affidavits and proofs has expired, the party filing the act on petition is to set down the petition for hearing before the Court, and four clear days' notice of the time appointed for the hearing of such petition is to be given to all the parties entitled to be heard thereon; and in the event of the party filing the petition failing so to set down such petition for the space of one calendar month, any party who has filed an answer thereto may set the same down for hearing.

New Trial and Hearing.

61. An application to the Court for a new trial of issues of fact tried by a jury, or for a rehearing of a cause, may be made by motion at any time after four and within fourteen days from the day on which the issues were tried or the cause was heard, if the Court shall sit during that time; if not, on the first day that the Court shall sit after the expiration of the fourteen days.

*Matrimonial Causes Act.—1867.**Petition for Reversal of Decree of Judicial Separation.*

62. A petition to the Court for the reversal of a decree of judicial separation must set out the grounds on which the petitioner relies. A form of such petition is given in the Appendix No. 10.

63. Before such a petition can be filed, an appearance on behalf of the party praying for a reversal of the decree of judicial separation must be entered in the cause in which the decree has been pronounced.

64. A certified copy of such a petition, under seal of the Court, shall be delivered personally to the party in the cause in whose favor the decree has been made, who may within fourteen days file an answer thereto in the office of the Court, and shall on the day on which the answer is filed deliver a copy thereof to the other party in the cause, or to his or her proctor, solicitor, or attorney.

65. All subsequent pleadings and proceedings arising from such petition and answer shall be filed and carried on in the same manner as before directed in respect of an original petition for judicial separation and answer thereto, so far as such directions are applicable.

Demurrer.

66. All demurrers are to be set down for hearing in the same manner as causes, unless the Court shall direct otherwise.

Intervention of the Crown Proctor.

67. The Crown proctor shall, within fourteen days after he has obtained leave to intervene in any cause, enter an appearance and plead to the petition; and on the day he files his plea in the office of the Court shall deliver a copy thereof to the petitioner, or to his proctor, solicitor, or attorney.

68. All subsequent pleadings and proceedings in respect to the Crown proctor's intervention in a cause shall be filed and carried on in the same manner as before directed in respect of the pleadings and proceedings of the original parties to the cause.

Shewing Cause against a Decree.

69. Any person wishing to shew cause against making absolute a decree *nisi* for dissolution of a marriage shall enter an appearance in the cause in which such decree *nisi* has been pronounced.

70. Every such person shall at the time of entering an appearance, or within four days thereafter, file affidavits setting forth the facts upon which he relies.

71. Upon the same day on which such person files his affidavits he shall deliver a copy of the same to the party in the cause in whose favor the decree *nisi* has been pronounced.

72. The party in the cause in whose favor the decree *nisi* has been pronounced, may, within eight days after delivery of the affidavits, file affidavits in answer, and shall, upon the day such affidavits are filed, deliver a copy thereof to the person showing cause against the decree being made absolute.

73. The person shewing cause against the decree *nisi* being made absolute, may within eight days file affidavits in reply, and shall upon the same day deliver copies thereof to the party supporting the decree *nisi*.

74. No affidavits are to be filed in rejoinder to the affidavits in reply without permission of a Judge.

75. The questions raised on such affidavits shall be argued in such manner and at such time as the Court may, on application by motion, direct; and if the Court thinks fit to direct any controverted questions of fact to be tried by a jury, the same shall be settled and tried in the same manner, and subject to the same rules as any other issue tried in the said Court.

Decree absolute.

76. All applications to make absolute a decree *nisi* for dissolution of a marriage must be made to the Court by motion, and notice of such motion may be filed in the office of the Court at any time after the expiration of six calendar months from the date of the decree *nisi*. In support of such applications it must be shown by affidavit, filed with the notice of motion, that search has been made in the office of the Court up to within two days of the affidavit being filed, and that at such time no person had obtained leave to intervene in the cause, and that no appearance had been entered, nor any affidavits filed on behalf of any person wishing to show cause against the decree *nisi* being made absolute; and in case leave to intervene had been obtained, or appearance entered, or affidavits filed on behalf of any such person, it
must

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must be shewn by affidavit what proceedings, if any, had been taken thereon; but it shall not be necessary to file a copy of the decree *nisi*. A form of affidavit is given in the Appendix, No. 11.

Alimony.

77. The wife, being the petitioner in the cause, may file her petition for alimony pending suit at any time after the citation has been duly served on the husband, or after order made by the Judge to dispense with such service, provided the factum of marriage between the parties is established by affidavit previously filed.

78. The wife, being the respondent in a cause, after having entered an appearance, may also file her petition for alimony pending suit.

79. A form of petition for alimony is given in Appendix, No. 12.

80. The husband shall, within eight days after the filing and delivery of a petition for alimony, file his answer thereto upon oath.

81. The husband, being respondent in the cause, must enter an appearance before he can file an answer to a petition for alimony.

82. The wife, if not satisfied with the husband's answer, may object to the same as insufficient, and apply to the Court on motion to order him to give a further and fuller answer, or to order his attendance on the hearing of the petition for the purpose of being examined thereon.

83. In case the answer of the husband alleges that the wife has property of her own, she may, within eight days, file a reply on oath to that allegation; but the husband is not at liberty to file a rejoinder to such reply without permission of a Judge.

84. A copy of every petition for alimony, answer, and reply, must be delivered to the opposite party, or to his or her proctor, solicitor, or attorney, on the day the same is filed.

85. After the husband has filed his answer to the petition for alimony (subject to any order as to costs); or, if no answer is filed, at the expiration of the time allowed for filing an answer, the wife may proceed to examine witnesses before the Master in support of her petition, and apply by motion for an allotment of alimony pending suit, notice of the motion, and of the intention to examine witnesses, being given to the husband, or to his proctor, solicitor, or attorney, four days previously to the motion being heard or the witnesses examined, unless a Judge shall dispense with such notice.

86. No affidavits can be read or made use of as evidence in support of, or in opposition to, the averments contained in a petition for alimony, or in an answer to such a petition, or in a reply, except such as may be required by the Court.

87. A wife who has obtained a decree of judicial separation in her favour, and has previously thereto filed her petition for alimony pending suit, may apply to the Court by motion for an allotment of permanent alimony; provided that she shall, eight days at least before making such application, give notice thereof to the husband, or to his proctor, solicitor, or attorney.

88. A wife may at any time after alimony has been allotted to her, whether alimony pending suit or permanent alimony, file her petition for an increase of the alimony allotted by reason of the increased faculties of the husband, or the husband may file a petition for a diminution of the alimony allotted by reason of reduced faculties; and the course of proceeding in such cases shall be the same as required by these rules and regulations in respect of the original petition for alimony, and the allotment thereof, so far as the same are applicable.

89. Permanent alimony shall, unless otherwise ordered, commence and be computed from the date of the decree.

90. Alimony, pending suit, and also permanent alimony, shall be paid to the wife, or to some person or persons to be nominated in writing by her, and approved of by the Court, as trustee or trustees on her behalf.

Maintenance and Settlements.

91. Applications to the Court to exercise the authority given by sections 37, 38, 46, and 47 of the foregoing Act, are to be made in a separate petition, which must, unless by leave of a Judge, be filed as soon as by the said sections such applications can be made, or within one month thereafter.

92. In cases of application for maintenance, under section 37, such petition may be filed as soon a decree *nisi* has been pronounced, but not before.

93. A certified copy of such petition, under seal of the Court, shall be personally served on the husband or wife (as the case may be), and on the person or persons who may have any legal or beneficial interest in the property in respect of which the applicator

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application is made, unless a Judge, on summons, shall direct any other mode of service, or dispense with service of the same on them, or either of them.

94. The husband or wife (as the case may be), and the other person or persons (if any) who are served with such petition, within fourteen days after service, may file his, her, or their answer on oath to the said petition, and shall on the same day deliver a copy thereof to the opposite party, or to his proctor, solicitor, or attorney,

95. Any person served with the petition, not being a party to the principal cause, must enter an appearance before he or she can file an answer thereto.

96. Within fourteen days from the filing the answer, the opposite party may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder.

97. Such pleadings, when completed, shall in the first instance be referred to the master, who shall investigate the averments therein contained, in the presence of the parties, their proctors, solicitors, or attorneys, and who, for that purpose, shall be at liberty to require the production of any documents referred to in such pleadings, or to call for any affidavits, and shall report in writing to the Court the result of his investigation, and any special circumstances to be taken into consideration with reference to the prayer of the petition.

98. The report of the master shall be filed in the office of the Court by the husband or wife on whose behalf the petition has been filed, who shall give notice thereof to the other parties heard by the master, and either of the parties, may be heard by the Court on motion, in objection to the master's report, or may apply on motion for a decree or order to confirm the same, and to carry out the prayer of the petition.

99. The costs of a wife of and arising from the said petition to answer, shall not be allowed on taxation of costs against the husband, before the final decree in the principal cause, without direction of a Judge.

Custody of and Access to Children.

100. Before the trial or hearing of a cause, a husband or wife who are parties to it may apply to the Court, by motion founded on affidavit, for an order with respect to the custody, maintenance, or education of or for access to children, issue of their marriage.

Guardians to Minors.

101. A minor above the age of seven years may elect any one or more of his or her next of kin, or next friends, as guardian, for the purpose of proceeding on his or her behalf as petitioner, respondent, or intervener in a cause. The form of an instrument of election is given in the Appendix, No. 13.

102. The necessary instrument of election must be filed in the office of the Court, before the guardian elected can be permitted to extract a citation, or to enter an appearance on behalf of the minor.

103. When a minor shall elect some person or persons other than his or her next of kin, as guardian for the purpose of a suit, or when an infant (under the age of seven years) becomes a party to a suit, application, founded on affidavit, is to be made to the master, who will assign a guardian to the minor or infant for such suit.

104. It shall not be necessary for a minor, who, as an alleged adulterer, is made a co-respondent in a suit, to elect a guardian, or to have a guardian assigned to him for the purpose of conducting his defence.

Subpœnas.

105. Every subpœna shall be written or printed, and may include the names of any number of witnesses. The party issuing the same, or his or her proctor, solicitor, or attorney, shall take it, together with a præcipe, to the office of the Court, and get it signed and sealed, and there deposit the præcipe. Forms of subpœna, Nos. 14 and 16, and forms præcipe, Nos. 15 and 17, are given in the Appendix.

Notices.

106. All notices required by these rules and regulations, or by the practice of the Court, shall be in writing, and signed by the party, or by his or her proctor, solicitor, or attorney.

Service of Notices, &c.

107. It shall be sufficient to leave all notices and copies of pleadings and other instruments which by these rules and regulations are required to be given or delivered to

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to the opposite parties in the cause, or to their proctors, solicitors, or attorneys, and personal service of which is not expressly required at the address furnished as aforesaid by the petitioner and respondent respectively.

108. When it is necessary to give notice of any motion to be made to the Court, such notice shall be served on the opposite parties who have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the office of the Court, but no proof of the service of the notice will be required, unless by direction of the Court.

109. If an order be obtained on motion without due notice to the opposite parties, such order will be rescinded, on the application of the parties upon whom the notice should have been served; and the expense of and arising from the rescinding of such order shall fall on the party who obtained it, unless the Court shall otherwise direct.

110. When it is necessary to serve personally any order or decree of the Court, the original order or decree, or an office copy thereof, under seal of the Court, must be produced to the party served.

Time fixed by these Rules.

111. Any Judge shall in every case in which a time is fixed by these rules and regulations for the performance of any act, or for any proceeding in default, have power to extend the same to such time, and with such qualifications and restrictions, and on such terms, as to him may seem fit.

112. To prevent the time limited for the performance of any act, or for any proceeding in default, from expiring before application can be made to a Judge for an extension thereof, the master may, upon reasonable cause being shewn, extend the time, provided that such time shall in no case be extended beyond the day upon which there shall be a Judge in chambers.

113. The time fixed by these rules and regulations for the performance of any act, or for any proceeding in a cause, shall in all cases be exclusive of Sundays, Christmas-day, and Good Friday.

Protection Orders.

114. Application on the part of a wife deserted by her husband for an order to protect her earnings and property, acquired since the commencement of such desertion, may be made in writing to a Judge in chambers, and must be supported by affidavit. A form of application is given in the Appendix, No. 18.

115. Applications for the discharge of any order made to protect the earnings and property of a wife are to be made to the Court, by motion, and must be supported by affidavit. Notice of such motion, and copies of any affidavit or other document to be read or used in support thereof, must be personally served on the wife eight clear days before the motion is heard.

Bond not required,

116. On a decree of judicial separation being pronounced, it shall not be necessary for either party to enter into a bond conditioned against marrying again.

Change of Proctor, Solicitor, or Attorney.

117. A party may obtain an order to change his or her proctor, solicitor, or attorney, upon application by summons to a Judge at chambers.

118. In case the former proctor, solicitor, or attorney, neglects to file his bill of costs for taxation at the time required by the order served upon him, the party may, with the sanction and by order of a Judge, proceed in the cause by the new proctor, solicitor, or attorney, without previous payment of such costs.

Affidavits.

119. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent is to be inserted therein.

120. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

121. No affidavit will be admitted in any matter depending in the Court in its matrimonial causes jurisdiction in which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure, or in which there is any interlineation the extent of which at the time when the affidavit was sworn is not clearly shown by the initials of the Commissioner, or other authority before whom it was sworn.

122. Where an affidavit is made by any person who is blind, or who, from his or her

Matrimonial Causes Act.—1867.

her signature, or otherwise, appears to be illiterate, the Commissioner, or other authority before whom such affidavit is made, is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature thereto in the presence of the Commissioner, or other authority, before whom the affidavit was made.

123. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his or her proctor, solicitor, or attorney, or before a partner or clerk of his or her proctor, solicitor, or attorney.

124. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules and regulations in respect of taking affidavits which are applicable to those in whose stead they are acting.

125. Where a special time is fixed for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court or a Judge.

126. The above rules and regulations in respect to affidavits shall, so far as the same are applicable, be observed in respect to affirmations and declarations.

127. Copies of any affidavits or documents to be read or used in support of a motion, are to be delivered to the opposite parties to the suit, who are entitled to be heard in opposition thereto.

Taxing Bills of Costs.

128. All bills of costs are referred to the master for taxation, and may be taxed by him without any special order for that purpose.

129. The party who has obtained an appointment to tax a bill of costs, shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall at or before the same time deliver to him or them a copy of the bill to be taxed.

130. When an appointment has been made by the master for taxing any bill of costs, and any parties to be heard on the taxation do not attend at the time appointed, the Master may nevertheless proceed to tax the bill after the expiration of a quarter of an hour; but in such case an affidavit must be filed before the closing of the office on that day, showing that the parties not in attendance had due notice of the time appointed.

131. The bill of costs of any proctor, solicitor, or attorney, will be taxed on his application as against his client, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons, after sufficient notice given to the practitioner.

132. The fees payable on the taxation of any bill of costs shall be paid by the party on whose application the bill is taxed, and shall be allowed as part of such bill; but if more than one-sixth of the amount of any bill of costs taxed as between practitioner and client is disallowed on the taxation thereof, no costs incurred in such taxation shall be allowed as part of such bill.

133. If an order for payment of costs is required, the same may be obtained by summons, on the amount of such costs being certified by the master.

Wife's Costs.

134. After directions given as to the mode of hearing or trial of a cause, or in an earlier stage of a cause by order of a Judge, to be obtained by summons, a wife who has entered an appearance may file a bill of costs for taxation as against her husband, and the master shall, at the time of taxation, if directions as to the mode of hearing or trial have been given, otherwise when the same are given, ascertain and report to the Court, what is a sufficient sum of money to be paid into Court, or what is a sufficient security to be given by the husband to cover the costs of the wife, of and incidental to the hearing or trial of the cause. A form of bond for securing a wife's costs of hearing and trial of a cause, is given in the Appendix, No. 19.

135. When on the hearing or trial of a cause, the decision of the Court, or the verdict of the jury, is against the wife, no costs of the wife of and incidental to such hearing or trial shall be allowed as against the husband, except such as shall be applied for and ordered to be allowed by the Court or presiding Judge at the time of such hearing or trial.

136. In case a husband or wife shall apply for, and obtain an order, or a commission, for the examination of witnesses, the wife shall be at liberty, without any special order for that purpose, to apply by summons to a Judge to fix a sufficient sum of money to be paid or secured to the wife to cover her expenses in attending at the examination of such witnesses in pursuance of such commission or order,
and

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and such sum of money shall be paid or secured before such order or such commission shall issue, unless the Judge shall otherwise direct.

Summonses.

137. A summons may be taken out by any person in any matter or suit depending in the Supreme Court in its matrimonial causes jurisdiction, provided there is no rule or practice requiring a different mode of proceeding.

138. The name of the cause or matter, and of the agent taking out the summons, is to be entered in the *præcipe*, and a true copy of the summons is to be served on the party summoned, one clear day at least before the summons is returnable, and before five o'clock p.m. On Saturdays a copy of the summons is to be served before one o'clock p.m.

139. On the day, and at the hour named in the summons, the party taking out the same is to present himself with the original summons at the Judge's chambers, or elsewhere appointed for hearing the same.

140. Both parties will be heard by the Judge, who will make such order as he thinks fit.

141. If the party summoned do not appear after the lapse of half an hour from the time named in the summons, the party taking out the summons shall be at liberty to go before the Judge, who will thereupon make such order as he may think fit.

142. An attendance on behalf of the party summoned for the space of half an hour, if the party taking out the summons do not during such time appear, will be deemed sufficient, and bar the party taking out the summons from the right to go before the Judge on that occasion.

143. If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons, or the copy served on the party summoned, must be filed in the office of the Court. An order will thereupon be drawn up, and delivered to the person filing such summons or copy.

144. If a summons is brought to the office of the Court, with consent to an order endorsed thereon, signed by the party summoned, or by his proctor, solicitor, or attorney, an order will be drawn up without the necessity of going before a Judge; provided that the order sought is, in the opinion of the master, one which under the circumstance would be made by a Judge.

APPENDIX.

[Forms which are to be followed as nearly as the circumstances of each case will allow.]

No. 1.—*Petition.*

To their Honors the Judges of the Supreme Court of the Province of South Australia.

The . day of , 18 .

The petition of A. B., of , sheweth—

1. That your petitioner was on the . day of , 18 , lawfully married to C. B., then C. D. [spinster or widow], at the

[Here state where the marriage took place.]

2. That after his said marriage your petitioner lived and cohabited with his said wife at , and at , and that your petitioner and his said wife have had issue of their said marriage three children; to wit,

[Here state the names and ages of the children, issue of the marriage.]

3. That on the . day of , 18 , and on other days between that day and , the said C. B., at , in the , committed adultery with R. S.

4. That in and during the months of January, February, and March, 18 , the said C. B. frequently visited the said R. S. at , and on divers of such occasions committed adultery with the said R. S.

Your petitioner, therefore, humbly prays—

That your Honors will be pleased to decree—

[Here set out the relief sought.]

And that your petitioner may have such further and other relief in the premises as to your Honors may seem meet.

[Petitioner's signature.]

No.

*Matrimonial Causes Act. —1867.*No. 2.—*Citation.*

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland,
Queen, Defender of the Faith.

To C. B., of , in the Province of South Australia

Whereas A. B., of &c., claiming to have been lawfully married to , has filed petition against in our said Court, praying for , wherein alleges that you have been guilty of adultery [or have been guilty of cruelty towards the said , or as the case may be]: Now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do appear in our said Court, then and there to make answer to the said petition, a copy whereof, sealed with the seal of our said Court, is herewith served upon you. And take notice, that in default of your so doing, our said Court will proceed to hear the said charge [or charges] proved in due course of law, and to pronounce sentence therein, your absence notwithstanding. And take further notice, that for the purpose aforesaid you are to attend in person, or by your proctor, solicitor, or attorney, at the office of our said Court, Victoria-square, Adelaide, and there to enter an appearance, without which you will not be allowed to address the Court, either in person or by counsel, at any stage of the proceedings in the cause.

Witness His Honor , Chief Justice of our said Court at Adelaide, the day of , one thousand eight hundred and .

(L.S.)

(Signed)

X. Y., Master (or Chief Clerk).

No. 3.—*Præcipe for Citation.*

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

Citation for A. B., of , against C. B., of , to appear in a suit for , by reason of

(Signed)

A. B., in person,

or

C. D., proctor, solicitor, or attorney for the said A.B.

[Here insert the address required within three miles of the General Post Office.]

No. 4.—*Certificate of Service.*

This citation was duly served by the undersigned G. H. on the within-named C.B. of , at , on the day of , 18 .

(Signed) G. H.

No. 5.—*Affidavit of Service of Citation.*

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

A. B. v. C. B. and E. F.

I, C. D., of &c., make oath and say—

That the citation, bearing date the day of , 18 , issued under seal of this Court, against C. B., the respondent [or co-respondent] in this cause, and a true copy whereof is hereunto annexed, marked with the letter A, was duly served by me on the said C. B., at , in the , by showing to h the original under seal, and by leaving with h a true copy thereof, on the day of , 18 . And I further make oath and say, that I did at the same time and place deliver to the said C. B., personally a certified copy, under seal of this Court, of the petition filed in this cause.

Sworn at &c., on the day of , 18. Before me.

No. 6.—*Entry of an Appearance.*

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

A. B. petitioner,

v.

C. B., respondent,

and

E. F., co-respondent.

The respondent, C. B., appears in person [or C. D., the proctor, solicitor, or attorney for C. B., the respondent (or E. F., the co-respondent), appears for the said respondent or co-respondent.]

[Here insert the address required within three miles of the General Post Office.]

Entered this day of , 18 .

No.

*Matrimonial Causes Act.—1867.*No. 7.—*Answer.*

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

The day of , 18 .

A. B. v. C. D.

The respondent, C. B., by C. D., her proctor, solicitor, or attorney [or in person], in answer to the petition filed in this cause, saith—

1. That she denies that she committed adultery with R. S., as set forth in the said petition:

2. Respondent further saith, that on the day of , 18 , and on other days between that day and , the said A. B., at , in the county of , committed adultery with K. L.

[*In like manner respondent is to state connivance, condonation, or other matters relied on as a ground for dismissing the petition.*]

Wherefore this respondent humbly prays—

That your Honors will be pleased to reject the prayer of the said petition and decree, &c.

No. 8.—*Questions of Fact for the Jury.*

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

A. B. v. C. B. and E. F.

Questions for the Jury.

1. Whether C. B., the respondent, committed adultery with E. F., the co-respondent.

2. Whether A. B., the petitioner, has condoned the adultery committed by C. B., the respondent (if any).

3. Whether A. B., the petitioner, has been guilty of cruelty towards C. B., the respondent.

[*Here set forth in the same form all the questions at issue between the parties.*]

4. What amount of damages should be paid by E. F., the co-respondent, in respect of the adultery (if any) by him committed.

No. 9.—*Act on Petition.*

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

A. B. v. C. B. and E. F.

On the day of , 18 .

A. B., the petitioner [or C. D., the proctor, solicitor, or attorney of A. B., the petitioner] alleged that

[*Here state briefly the facts and circumstances upon which the petition is founded.*]

Wherefore the said A. B. or C. D., referring to the affidavits and proofs to be by him exhibited in verification of what he so alleged, prayed that

[*Here set forth the prayer of the petitioner.*]

(Signed)

A. B.

or

C. D.

Answer.

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

A. B. v. C. B. and E. F.

On the day of , 18 .

C. B., the respondent [or G. H., the proctor, solicitor, or attorney of C. B., the respondent], in answer to the allegations in the act on petition, bearing date the day of , 18 , of A. B., admitted [or denied] that

[*Here set forth any allegations admitted or denied.*]

And he alleged that

[*Here state any facts or circumstances in explanation or in answer.*]

Wherefore the said C. B., or G. H., referring to the affidavits and proofs to be by her exhibited in verification of what she so alleged, prayed

[*Here state the prayer of respondent.*]

(Signed)

C. B.

or

G. H.

Conclusion.

Matrimonial Causes Act.—1867.

on, the business of a at , and from such business he derives the net annual income of £ :

2. That the said A. B. is now or lately was possessed of or entitled to proprietary shares of the Railway Company, amounting in value to £ , and yielding a clear annual dividend of £ :

3. That the said A. B. is possessed of certain stock-in-trade in his said business of a , of the value of £ .

[*In the same manner state particulars of any other property which the husband may possess.*]

Your petitioner, therefore, humbly prays—

That your Honors will be pleased to decree her such sum or sums of money, by way of alimony *pendente lite* [*or permanent alimony*], as to your Honors shall seem meet.

No. 13.—*Election of a Guardian.*

By a Petitioner.

Whereas a suit is about to be instituted in the Supreme Court of the Province of South Australia, in its Matrimonial Causes Jurisdiction, on behalf of A. B. v. C. B., the wife of the said A. B., and E. F. And whereas the said A. B. is now a minor of the age of years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in his own name: Now, I, the said A. B., do hereby make choice and elect G. H., my natural and lawful father and next of kin, to be my curator or guardian for the purpose of instituting the said suit, and for the purpose of carrying on and prosecuting the same until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years, and I hereby appoint C. D., of &c., my proctor [*solicitor or attorney*] to file, or cause to be filed this, my election, for me in the office of the said Court. In witness whereof, I have hereunto set my hand and seal this day of , 18 .

(Signed) A. B., (l. s.)

Signed, sealed, and delivered by the within-named A. B., in the presence of

[*One attesting witness.*]

By a Respondent.

Whereas a citation bearing date the day of , 18 , has issued under seal of the Supreme Court of the Province of South Australia, in its Matrimonial Causes Jurisdiction, at the instance of A. B., claiming to have been lawfully married to C. B., citing the said C. B. to appear in the said Court, and then and there to make answer to a certain petition of the said A. B., filed in the said Court. And whereas the said C. B. is now a minor of the age of years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in her own name: Now, I, the said C. B., do hereby make choice of and elect G. H., my natural and lawful father and next of kin, to be my curator or guardian for the purpose of entering an appearance for me and on my behalf in the said Court, and for the purpose of making answer for me to the said petition, and of defending me in the said cause, and to abide for me in judgment until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years, and I hereby appoint, &c.

No. 14.—*Subpœna ad Testificandum.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [*names of all witnesses included in the subpœna to be inserted*], greeting. We command you, and every of you, to be and appear in your proper persons before [*insert the name of the Judge*], Judge (or Chief Justice) of our Supreme Court of the Province of South Australia, at the Supreme Court House, Victoria-square, Adelaide, on the day of , 18 , by ten of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard, to testify the truth, according to your knowledge, in a certain cause now in our said Court, depending between A. B., petitioner, and C. B., respondent, and E. F., co-respondent, on the part of the petitioner *or* respondent, *or* co-respondent [*or, as the case may be*], and on the aforesaid day between the parties aforesaid to be heard. And this you or any of you shall by no means omit, under the penalty of each of you of One Hundred Pounds. Witness His Honor , Chief Justice of our said Court, at Adelaide, the day of , one thousand eight hundred and

(Signed)

X. Y., Master (or Chief Clerk.)

No.

*Matrimonial Causes Act.—1867.*No. 15.—*Præcipe for Subpœna ad Testificandum.*

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

Subpœna for [*insert witnesses' names*], to testify between A. B., petitioner, C. B., respondent, and E. F., co-respondent, on the part of the petitioner [*or respondent, or co-respondent*].

(Signed) $\left\{ \begin{array}{l} \text{A. B.} \\ \text{C. B.} \\ \text{E. F.} \end{array} \right\}$ or, $\left\{ \begin{array}{l} \text{P. A., petitioner's [or respondent's} \\ \text{or co-respondent's]} \text{ proctor, so-} \\ \text{licitor, or attorney.} \end{array} \right.$

No. 16.—*Subpœna Duces Tecum.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [*names of all parties included in the subpœna to be inserted*], greeting. We command you, and every of you, to be and appear in your proper persons before [*insert the name of the Judge*], Judge (or Chief Justice) of our Supreme Court of the Province of South Australia, at the Supreme Court House, Victoria-square, Adelaide, on the day of , 18 , by ten o'clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard, and also that you bring with you, and produce, at the time and place aforesaid [*here describe shortly the deeds, letters, papers, &c., required to be produced*], then and there to testify and show all and singular those things which you, or either of you know, or the said deed or instrument doth import, of and concerning a certain cause or proceeding now in our said Court, depending between A. B., petitioner, and C. B., respondent, and E. F., co-respondent, on the part of the petitioner [*or the respondent or co-respondent, as the case may be*], and on the aforesaid day between the parties aforesaid to be heard. And this you, or any of you, shall by no means omit, under the penalty of each of you of One Hundred Pounds. Witness His Honor , Chief Justice of our said Court, at Adelaide, the day of , one thousand eight hundred and .

(Signed) X. Y., Master (or Chief Clerk).

No. 17.—*Præcipe for Subpœna Duces Tecum.*

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

Subpœna for to testify and produce, &c., between A. B., petitioner, C. B., respondent, and E. F., co-respondent, on the part of the petitioner, [*or respondent, or co-respondent.*]

(Signed) $\left\{ \begin{array}{l} \text{A. B.} \\ \text{C. B.} \\ \text{E. E.} \end{array} \right\}$ or, $\left\{ \begin{array}{l} \text{P. A., petitioner's [or respondent's or co-} \\ \text{respondent's]} \text{ proctor, solicitor, or at-} \\ \text{torney.} \end{array} \right.$

No. 18.—*Application for a Protection Order.*

South Australia.—In the Supreme Court, Matrimonial Causes Jurisdiction.

To their Honors the Judges of the said Court—

The application of C. B., of , the lawful wife of A. B., sheweth—

That on the day of she was lawfully married to A. B., at :

That she lived and cohabited with the said A. B. for years at , and also at , and hath had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings:

That on or about the said A. B., without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her:

That since the desertion of her said husband the applicant hath maintained herself by her own industry, and hath thereby and otherwise acquired certain property [*or, hath become possessed of certain property*], consisting of [*here state generally the nature of the property.*]

Wherefore the said C. B. prays an order for the protection of her earnings and property acquired since the said day of , from the said A. B., and from all creditors and persons claiming under him.

(Signed) C. B.

No. 19.—*Bond for securing Wife's Costs.*

Know all men by these presents that we A. B., of &c., G. H., of &c., and K. L., of &c., are held firmly bound unto W. H., Esquire, Master of the Supreme Court of the Province

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Province of South Australia, in the penal sum of £ of good and lawful money of Great Britain, to be paid to the said W. H., and for which payment to be well and truly made we bind ourselves and each of us for the whole, our heirs, executors, or administrators, firmly by these presents. Sealed with our seals.

Dated the day of , in the year of our Lord, 18 .

Whereas a certain cause is now depending in the Supreme Court of the Province of South Australia, in its Matrimonial Causes Jurisdiction, between A. B., petitioner, and C. B., respondent, and E. F., co-respondent: and whereas W. H., Esquire, Master of the said Court, has, by a report under his hand, made in the said cause on the day of , 18 , reported to the Court that £ was a sufficient sum to be paid into the office of the said Court to cover the costs of the said respondent [or petitioner] of and incidental to the hearing of the said cause [or otherwise, as in the Master's report], or that a bond under the hand and seal of the said A. B., and of two sufficient sureties in the penal sum of £ , conditioned for the payment of such costs of the said C. B. as shall be certified to be due and payable by the said A. B., not exceeding the said sum of £ , [or otherwise, as in report], with hours' notice of such sureties to the proctor [solicitor or attorney] of the said C. B., was a sufficient security to be given for the costs aforesaid: Now, the condition of this obligation is such, that if the above-bounden A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, to the above-named W. H., his heirs, executors, administrators, or assigns, the full sum of £ of good and lawful money of Great Britain, or the lawful costs of the said C. B., the respondent [or petitioner], of and incidental to the hearing and trial of this cause [or otherwise, as in report], to the extent of £ , then this obligation is to be void and of none effect, otherwise to remain in full force and virtue.

Sealed and delivered by the said A. B., } A. B. (I.S.)
G. H., and K. L., in the presence of } G. H. (I.S.)
K. L. (I.S.)

One attesting witness.

THE SECOND SCHEDULE.

Fees to be taken for Proceedings in the Supreme Court in its Matrimonial Causes Jurisdiction.

	£	s.	d.
On every citation	0	5	0
On entering appearance	0	2	6
Filing a petition	0	5	0
Filing an answer	0	5	0
Filing a reply	0	5	0
Filing any further replication to a petition	0	5	0
Filing application for an order for the protection of a wife's earnings and property	0	5	0
Filing application for discharge of such order	0	5	0
Filing interrogatories	0	5	0
Filing answer of each deponent to interrogatories	0	5	0
On every motion by counsel	0	5	0
Entering order of Court on motion	0	5	0
Summons to attend in Chambers	0	2	6
For entering order on summons	0	2	6
Filing notice	0	1	0
On depositing questions of fact for Jury (exclusive of Jury fee)	1	0	0
For the settling of questions of fact for trial	1	0	0
Setting a cause down for hearing or trial	0	5	0
Entering sentence or final decree in a cause	0	10	0
Entering special verdict, if five folios of seventy-two words or under	0	2	6
If exceeding five folios, per folio of seventy-two words	0	0	6
Entering any decree or order for alimony	0	5	0
Entering order directing how damages shall be applied	0	5	0
Entering order providing for custody, maintenance, or education of children, if two folios of seventy-two words or under	0	5	0
Entering order for settlement of the wife's property, if two folios of seventy-two words or under	0	5	0
If either of the above orders exceed five folios, for each additional folio	0	2	0
Entering any minute, order, or decree in the Court book, other than the decrees or orders before specified	0	2	6

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	<i>£</i>	<i>s.</i>	<i>d.</i>
On withdrawal of a cause after same is set down for hearing, to be paid by the party at whose instance it is withdrawn.....	0	5	0
On the hearing or trial of a cause—			
From the plaintiff	1	0	0
From the defendant or defendants	0	15	0
If the hearing or trial continues more than one day, for each day—			
From the plaintiff	0	10	0
From the defendant or defendants	0	10	0
Producing the Judge's notes	0	5	0
Bill of exceptions signed by the Judge	0	5	0
Entering on the record the finding of the Jury or the decision of the Judge	0	5	0
On every subpoena	0	2	6
On a certificate under the hand of the Judge.....	0	2	6
Search in Court books, if within the last two years	0	1	0
If at an earlier period than within two years.....	0	2	6
In case the Court books to be searched or the documents required are not in the office, in addition to the above	0	2	6
Filing exhibits, not exceeding ten for each exhibit	0	1	0
Exceeding ten, but not exceeding twenty	0	10	0
Exceeding twenty, but not exceeding fifty.....	0	15	0
Exceeding fifty	1	0	0
Office copies of minutes, orders, or decrees, Judge's notes, or other documents filed in a cause—			
If five folios of seventy-two words or under	0	2	6
If exceeding five folios of seventy-two words, per folio	0	0	6
In case the same are under seal of the Court, in addition for the seal	0	5	0
Filing every affidavit or other document brought into Court or deposited in the Office, for filing which no fee is before specified	0	1	6
Taxing every bill of costs—			
If three folios of seventy-two words or under	0	2	6
If exceeding three folios of seventy-two words—			
When taxed as between party and party, per folio	0	0	6
When taxed as between practitioner and client, per folio ..	0	1	0
For administering oaths, to each deponent.....	0	1	0