

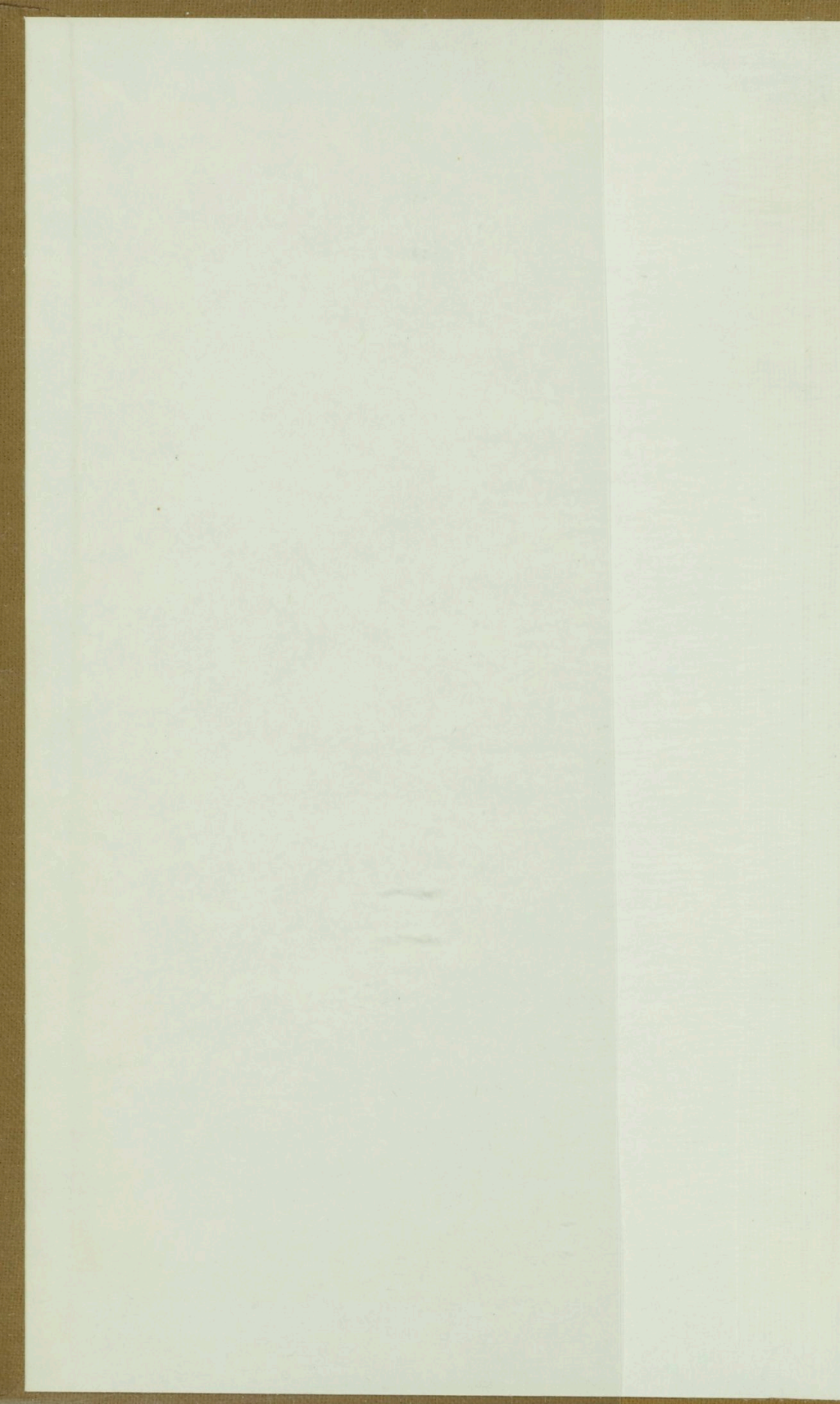
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J. Mitchell

THE MATRIMONIAL CAUSES ACT, 1873,

(36 VIC., No. 9),

WITH THE



RULES AND REGULATIONS

CONCERNING THE PRACTICE AND PROCEDURE THEREUNDER, OF THE 8TH JULY, 1873;

TO WHICH ARE ADDED

NOTES AND REPORTS OF ALL THE CASES

HEARD OR DETERMINED BY

HIS HONOR MR. JUSTICE HARGRAVE,

JUDGE OF THE DIVORCE AND MATRIMONIAL COURT,

BETWEEN THE OPENING OF THE SAID COURT ON 9TH JULY, 1873, AND
29TH SEPTEMBER, 1877:

EDITED BY

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PREFACE.

THESE Reports have been published for two purposes—Firstly, to supply a book of reference for professional use in the Divorce Court; and, secondly, for public information as to social results of the Divorce Act during the four years which have elapsed since its enactment.

As regards the first purpose, it may be said that the great, nay lamentable, scarcity of information among the legal profession has rendered some such publication as this almost imperative in order to provide them either in instituting Divorce Suits or in the progressive steps of such suits to final decrees with a work which may, in some sort, serve as a guide.

It is hoped that the numerous but short reports of decided cases when examined and compared with the affidavits filed in each case will enable the professional advisers of suitors to conduct all future Divorce Suits with reasonable expedition and certainly with greatly diminished costs and expenses.

It will be observed that by far the greater part of the cases reported in this volume were undefended cases, in which neither respondent nor co-respondent appeared; or in which, formal appearances having been entered, the petitioners were afterwards allowed, almost as it were *ex parte*, to obtain a Divorce without either opposition or assistance. It is possible, indeed, that the consciousness of guilt may in many cases have dictated this passive submission to the petitioner's claim for a Divorce, but in such cases the duty of the Judge has been extremely onerous and anxious.

As Lord Brougham said, in speaking of the Divorce Court, on the 4th June, 1859, "No sufficient security is provided—hardly any security at all—against the frauds which may be practised by parties acting in collusion to obtain a divorce. The Court is entirely at their mercy; and unless by some accidental slip of the parties, or of their professional representatives, the conspiracy is sure to succeed." So again, Mr. M'Queen in the preface to his excellent treatise on the law of marriage, divorce, and legitimacy, says, "We humbly submit that undefended cases in the Divorce Court, instead of being the most simple and straightforward are generally or occasionally the most dangerous of all to deal with.

When an action is brought in a Court of common law for the recovery of a pecuniary demand, the acquiescence of the defendant ensures a safe judgment for the plaintiff; but in a divorce suit this is not so. The respondent's silence may be in pursuance of a corrupt concert to deceive the Court. The better to insure the desired result a sham defence may be lodged. *In scena non in foro res agitur.* The decree is procured by collusion. The divorce, say the decisions,* is a nullity, and may be so found after the lapse of years. It requires but little reflection to perceive that a deep, lasting, and irremediable injury may be thus inflicted on innocent third parties in the event of re-marriages. Suppose there are children of the second nuptials—they are illegitimate."

As regards the second purpose for which this publication has been issued, viz., public information as to social results of the Divorce Act during the four years which have elapsed since its enactment, many most serious considerations must present themselves to every reflecting mind after a perusal of the following pages.

In the first place it is a doubtful question whether some of the petitioners who have appeared before the Court were entitled to legislation for their relief from marriage bonds into which they either most carelessly entered, or the duties of which they so carelessly neglected.

In the second place these reported cases would seem to prove almost conclusively that either the husband or wife in the present state of the law can deliberately ignore and get rid of all marriage duties and responsibilities by deliberately committing adultery, and in the husband's case, coupling such adultery with desertion or cruelty.

Such being the results of the four years administration of our Divorce Act they surely create most serious matter for both social and legislative consideration. Much may be said in favour of the enactment itself as a means of relief to parties whose injury occurred before it came into operation; but it becomes a very different question when applied to cases arising from deliberate commissions of adultery since the Act, and with deliberate intention by the respondent to obtain release from marriage bonds which have become unendurable, possibly, nay probably, in consequence of his or her own misconduct.

* See *M^cQueen* pp. 68, 69, 70, 72, 269, 272, and 323.

It becomes, therefore, it is submitted, a very serious question, when the Act is capable of being thus abused to suit the selfish purposes of either husband or wife, whether the Legislature should not intervene and criminally punish such adulterers or adulteresses, while not repealing the enactment as a relief to the injured petitioner wherever he or she is able to establish his or her clearness from collusion or connivance.

It may, possibly, be urged by some that extended education will meet the difficulty, but, unfortunately for this argument, no signs of any higher views of conjugal relationships appear to be forthcoming in our, or, indeed, in any modern community. On the contrary it seems rather as if the marriage tie were becoming more lightly esteemed than heretofore, and that offences against the purity of marriage life were, so to speak, glossed over and thought less of than every true Christian or thoughtful legislator would desire to see prevail among us.

This culpable neglect of moral culture—these “advanced views”—seem to be silently, yet surely extending their pernicious influence throughout modern communities not only as to marriage relations and duties but also as regards our whole social and domestic life.

As Sir James MacIntosh well remarks in his celebrated Lecture on the Law of nature:—“The law of marriage is a branch of General Jurisprudence, upon which, with the Law of Property, the whole frame of every social fabric must rest. Around these two institutions all our social duties will be found, at various distances, to arrange themselves; some more near, obviously essential to the good order of human life,—others more remote, and of which the necessity is not, at first sight, so apparent, and some so distant that their importance has been sometimes doubted, though upon mature consideration they will be found to be outposts or advanced guards of these two fundamental principles,—that man should securely enjoy the fruits of his labour,—and that *the society of the sexes* should be so wisely ordered as to make it a school of the kind affections, and a fit nursery for the commonwealth.”

Temple Court,

27th November, 1877.

F.H.L.

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4 Geo. IV. c. 76 (1823).

6 & 7 Wm. IV. c. 85 (1836).

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6 & 7 Wm. IV. c. 86 (1836).

17 & 18 Vic. c. 125 (1854).

19 & 20 Vic. c. 119 (1856).

20 & 21 Vic. c. 85 (1857).

Created the Court for Divorce and Matrimonial
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21 & 22 Vic. c. 108 (1858).

22 & 23 Vic. c. 61 (1859).

23 & 24 Vic. c. 144 (1860).

25 & 26 Vic. c. 81 (1862).

27 & 28 Vic. c. 44 (1864).

29 Vic. c. 32 (1866).

THE MATRIMONIAL CAUSES ACT.*

(36 VIC. NO. 9.)

An Act to confer jurisdiction on the Supreme Court in Divorce and Matrimonial Causes. [3rd March, 1873.]

WHEREAS it is expedient to confer upon the Supreme Court of New South Wales jurisdiction in matters matrimonial and also authority in certain cases to decree the dissolution of a Marriage Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Preamble.

1. This Act shall come into operation on the first day of July one thousand eight hundred and seventy-three and may be cited as the "Matrimonial Causes Act."

Commencement and short title of Act.

2. So soon as this Act shall come into operation there shall be vested in the Supreme Court jurisdiction in respect of divorces *a mensâ et thoro* suits of nullity of marriage suits for dissolution of marriage suits for restitution of conjugal rights suits for jactitation of marriage and in all causes suits and matters matrimonial (except in respect of marriage licenses) and the said jurisdiction and all powers and authorities by this Act conferred may be exercised in like manner as the other powers jurisdictions and authorities given to or vested in the said Court Provided always that in all cases in which a decree for a divorce *a mensâ et thoro* might have been at any time hitherto pronounced in England the Court may pronounce a decree for a judicial separation which decree shall have the same effect as a decree for a divorce *a mensâ et thoro* would have had in England according to the law in force before the passing of the Imperial Act twentieth and twenty-first Victoria chapter eighty-five and such other effect as herein mentioned.

Jurisdiction over causes matrimonial to be vested in the Supreme Court.

Decree to be made hereafter a judicial separation.

* In *ex parte Weir re Weir* 41 L. J. Bank 14 Mellish L. J., speaking of the English Bankruptcy Act 1869 (32 & 33 Vic. c. 71), said:—Where the construction of the Act is ambiguous and doubtful on any point recourse may be had to the Rules which have been made by the Lord Chancellor under the authority of the Act and if it is found that in the Rules any particular construction has been put on the Act it is the duty of the Court to adopt and follow that construction.

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Power to vest jurisdiction in one Judge.

3. It shall be lawful for the Governor with the advice of the Executive Council to nominate and appoint the Chief Justice or if he shall decline such appointment then one of the Puisne Judges to sit and hear and determine without the assistance of the other Judges or either of them all causes matters and suits at any time depending in the Court under this Act and every decree or order of the Chief Justice or of the Judge so appointed shall in any cause and matter under this Act be as valid to all intents and purposes as if such decree or order had been made by the full Court.

Provision for absence or illness of such Judge.

4. In case of the absence from Sydney or illness of such Chief Justice or other Judge it shall be lawful for such Chief Justice or other Judge to nominate such one of the other Judges as he shall see fit to act in his place and it shall be lawful for the Judge so nominated as aforesaid (during such absence or illness) to sit alone and hear and determine all causes and matters depending in the Court under this Act in like manner as the Judge so being ill or absent might have done if not so incapacitated.

Appeals.

5. It shall be lawful for any person feeling aggrieved by any decree or order made by a single Judge under this Act at any time within fourteen days next after the pronouncing or making of the same to enter an appeal against such decree or order to the full Court consisting of three or more of the Judges such person giving security within twenty-one days thence next following in such manner as shall for that purpose be provided by the general rules to be made as hereinafter mentioned to prosecute such appeal with effect and to obey such decree or order in all things in case of the eventual affirmance of the same and also to pay the costs of such appeal if costs shall be thereupon awarded against him.

See R. R. 18 19 sec. 9 post.

Question of fact may be tried before a Jury.

6. In questions of fact arising under this Act it shall be lawful for but except as hereinafter provided not obligatory upon the Court to direct the truth thereof to be determined before itself or before any one of the Judges of the Court by the verdict of a special or common Jury.

Such question to be reduced to writing and a Jury sworn to try it.

See R. R. 33 34.

7. When any such question shall be so ordered to be tried such question shall be reduced into writing in such form as the Court shall direct and at the trial the Jury shall be sworn to try the question and a true verdict to give thereon according to the evidence and upon every such trial the Court or Judge shall have the same power jurisdiction and authority as any Judge possesses when sitting at Nisi Prius.

Provision for special verdict or special case and new trial.

8. Upon the trial of any such question or of any issue under this Act a general or special verdict subject to a special case may be

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returned in like manner as in any cause tried in the Court and every such special verdict or special case respectively shall be stated and settled in like manner as in any cause tried in the Court and the matter of law in every such special verdict and special case as also all applications for a new trial of any such question or of any issue shall be heard and determined before the full Court consisting of three or more of the Judges thereof.

See R. R. 12 13
14 15 and two
previous secs.

9. It shall be lawful for the parties to apply for a new trial of any such question or of any issue which under this Act may be tried before a Jury.

New trial.
See R. R. 18 19
sec. 5 ante.

10. Subject to such rules and regulations as may be established as herein provided the witnesses in all proceedings before the 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 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.

Witnesses to be
examined orally.

Affidavits.

See R. 16
secs. 35 37 post.

11. On any application to the Court by a wife for a sentence of judicial separation by reason of her husband having been guilty of adultery or cruelty or desertion the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

On a petition by
wife &c. husband
and wife may
give evidence.

12. Provided that where a witness is out of the jurisdiction of the Court or where by reason of his illness or from other circumstances the Court shall not think fit to enforce the attendance of witnesses in open Court it shall be lawful for the Court to order a Commission to issue for the examination of any such witness on oath upon interrogatories or otherwise before any officer of the Court or other person to be named in such order for the purpose And all the powers enabling the Court to issue Commissions and give orders for the examination of witnesses in actions depending in such Court and to enforce such examination and all the provisions of any Acts for enforcing or otherwise applicable to such examination and the witnesses examined shall extend and be applicable to the examination of witnesses under Commissions and orders of the Court and to the witnesses examined for all purposes of this Act in like manner as if such Court were trying an action at law pending in such Court.

Court may issue
Commissions or
give orders for
examination of
witnesses abroad
or unable to
attend.

See R. 29.

Matrimonial Causes.

Repeal of part of 4th section 16th Vic. No. 14 and part of 3rd section of 22nd Vic. No. 10.

13. So much of the fourth section of the 16 Vic. No. 14 and so much of the third section of the 22nd Vic. No. 10 as is contained in the words "in any proceedings instituted in consequence of adultery" is hereby repealed.

Parties or husbands or wives to be witnesses.

14. The parties to any proceedings instituted under this Act shall be competent to give evidence in such proceeding Provided that no witness in any proceeding whether a party to the suit or not shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery unless such witness shall have already given evidence in the same proceeding in disproof of his or her alleged adultery.

32 and 33 Vic. c. 68, s. 3.

Babbage v. Babbage 2 L.R.P. and D. 222.

Judicial separation.

15. A sentence of judicial separation 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.

Application for restitution of conjugal rights or judicial separation may be made by husband or wife by petition to Court &c.

16. Application for restitution of conjugal rights or for judicial separation on any one of the grounds aforesaid may be made by either husband or wife by petition to the Court And the 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 restitution of conjugal rights or judicial separation accordingly and where the application is by the wife may make any order for alimony which the Court shall deem just.

See R.R. 24 25 26 sec. 29 *post*.

Court to act on principles of the Ecclesiastical Courts.

17. In all suits and proceedings other than proceedings to dissolve any marriage the Court shall proceed and act and give relief on principles and rules which in the opinion of the Court shall be as nearly as may be conformable to the principles and rules on which the Ecclesiastical Courts of England before the passing of the said Imperial Act acted and gave relief but subject to the provisions herein contained and to the rules and orders under this Act.

Decree of separation obtained during absence may be reversed.

18. 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 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 the allegations of such petition reverse the decree accordingly but the reversal thereof shall not prejudice nor affect the rights and remedies which any other person would have had in case such reversal had not been decreed in respect of any debts contracts or acts of the wife incurred entered into or done between the times of the sentence of separation and of the reversal thereof.

See R. 20.

Matrimonial Causes.

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

Alimony may be paid to the wife or her trustee.

20. 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 a *feme sole* with respect to property of every description which she may acquire or which may come to her or devolve upon her. And such property may be disposed of by her in all respects as a *feme 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. Provided that 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 herself and her husband when separate. And the provisions of this section shall be deemed to extend to property to which such wife has become or shall become entitled as executrix administratrix or trustee since the sentence of 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.

In every case of judicial separation wife to be considered as a *feme sole* with respect to after acquired property.

21. In every case of a judicial separation the wife shall whilst so separated be considered as a *feme 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. Provided also that nothing 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.

By judicial separation wife becomes a *feme sole* as regards contracts and suing. Husband shall not be liable.

22. It shall be lawful for any husband to present a petition to the 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 Court praying that her marriage may be dissolved on the ground that since

When husband may petition for dissolution of marriage.

When wife may petition for dissolution of marriage.

Matrimonial Causes.

the celebration thereof her husband has been guilty of incestuous adultery or of bigamy with adultery or of rape or of sodomy or of bestiality or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et thoro* under the law heretofore existing in England or of adultery coupled with desertion without reasonable excuse for two years or upwards Provided that 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 matrimony 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 his or her former wife or husband whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere Every petition praying for a dissolution of marriage under the provisions of this Act 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 of bigamy.

Petition to state facts.
Sec R. 1.

See 39 Vic. No. 20 s. 1 *post* p.

Adulterer to be a co-respondent.

23. 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 Court he shall be excused from so doing And on every petition presented by a wife for dissolution of a marriage the 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 hereinbefore mentioned Provided always that in all cases in which on the petition of a husband for a divorce the alleged adulterer is made a co-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 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.

Court to be satisfied of the absence of collusion.

See R. R. 1. 2 and two previous sections and sec. 35 *post*.

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

Court may where one party only appears require Counsel to be appointed to argue on the other side.

25. In every case of a petition for a 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 Crown Solicitor who shall under the

Matrimonial Causes.

directions of the Attorney General instruct Counsel to argue before the Court any question in relation to such matter and which the Court may deem it necessary or expedient to have fully argued and it shall be lawful for the Court to order the costs incurred by the Crown Solicitor 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 estate and in case the Crown Solicitor shall not be thereby fully satisfied his reasonable costs he shall be entitled to charge and be reimbursed the costs of such proceeding as part of the expense of his office.

See R. 6 sec. 28
post.

23 & 24 Vic
c. 144 s. 5.

26. In case the 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 has condoned the adultery complained of or that the petition is presented or prosecuted in collusion with either of the respondents then and in any of the said cases the Court shall dismiss the said petition.

When petition
shall be dis-
missed.

27. In case the 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 has condoned the adultery complained of or that the petition is presented or prosecuted in collusion with either of the respondents then the Court shall pronounce a decree declaring such marriage to be dissolved Provided that 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 or if the petitioner shall in the opinion of the Court have been guilty of unreasonable delay in presenting or prosecuting such petition or of cruelty 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 or of such wilful neglect or misconduct as has conduced to the adultery.

In what cases
the Court shall
pronounce a
decree for
dissolution of
marriage.

Its discretionary
power therein.

28. Every decree for a divorce 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 unless the Court shall by special order fix a shorter time and during that period any person shall be at liberty in such manner as the Court shall by general or special order in that behalf from time to time direct 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

Decree.

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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 and *at any time* during the progress of the cause or before the decree is made absolute any person may give information to the Crown Solicitor 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 and if from any such information or otherwise the said Crown Solicitor 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 intervene in the suit alleging such case of collusion and retain counsel and subpoena witnesses to prove it and it shall be lawful for the Court to 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 and in case the said Crown Solicitor shall not thereby be fully satisfied his reasonable costs he shall be entitled to charge and be reimbursed the difference as part of the expense of his office.

23 and 24 Vic.
c. 144 s. 7.

Collusion.

See R. 6. Sec. 25
ante.

Alimony permanent.

Pendente lite.

29. The Court may if it shall think fit on any such decree order that the husband shall to the satisfaction of the 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 her husband and the conduct of the parties it shall deem reasonable and for that purpose may settle and approve or may refer it to the proper officer of the Court to settle and approve of a proper deed or instrument to be executed by all necessary parties and the 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 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 Provided always that in every such case it shall be lawful for the Court to 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 also that if the husband shall afterwards from any cause become unable to make such payments it shall be lawful for the Court to discharge or modify the order or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid and again to revise the same order wholly or in part as to the Court may seem fit.

See R.R. 24 25
26. Sec. 16 *ante.*

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30. Any husband may either in a petition for dissolution of marriage or for judicial separation 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 Court shall dispense with such service or direct some other 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 like rules and regulations as actions for criminal conversation are now tried and decided in the Court And all the enactments herein contained with reference to the hearing and decision of petitions presented under this enactment shall so far as may be necessary be deemed applicable to the hearing and decision of petitions presented under this enactment and 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 Court shall have power to direct in what manner such damages shall be paid and 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.

Husband may claim damages from adulterer.

20 & 21 Vic. c. 85 s. 33.

31. 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 it shall be lawful for the Court to order the adulterer to pay the whole or any part of the costs of the proceedings.

Adulterer may be condemned in costs.

20 & 21 Vic. c. 85 s. 34.

32. 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.

In cases of opposition on certain grounds Court may grant relief to respondent.

20 Vic. c. 32 s. 2.

33. In any suit or other proceeding for obtaining a judicial separation or a decree of nullity of marriage and on any petition for dissolving a marriage the Court may from time to time before making its final decree make such interim orders and may make such provision in the 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 proceedings and may if it shall think fit direct proper proceedings to be taken for placing such children under the protection of the Court in its equitable jurisdiction.

Custody and maintenance of children. See R. R. 27 28 and next section and secs. 39 40 post.

Matrimonial Causes.

The Court may make orders as to custody of children after a final decree of separation.
22 and 23 Vic. c. 61 s. 4.

34. The Court after a final decree of judicial separation nullity of marriage or dissolution of marriage may upon application (by petition) for this purpose make from time to time 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 said 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.

Affidavit in support of petition.
See R. R. 1 2 16 secs. 10 22 24 *ante* and 37 *post*.

35. Every person seeking a decree of nullity of marriage or a decree of judicial separation or a dissolution 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.

See R. 11.

36. Every such petition shall be served on the party to be affected thereby either within or without the Colony of New South Wales in such manner as the Court shall by any general or special order from time to time direct Provided always that the Court may dispense with such service altogether in case it shall seem necessary or expedient to do so.

Examination of petitioner.

See R. 16 secs. 10 35 *ante*.

37. The Court may if it shall think fit order the attendance of the petitioner and may examine him or her or permit him or her to be examined or cross-examined on oath on the hearing of any petition but no such petitioner shall be bound to answer any question tending to shew that he or she has been guilty of adultery unless he or she shall have already given evidence in the same proceeding in disproof of his or her alleged adultery.

Adjournment.

38. The Court may from time to time adjourn the hearing of any such petition and may require further evidence thereon if it shall see fit to do so.

On divorce or separation for the wife's adultery her property may be settled for the benefit of children &c.

See R. 27 and next section and secs. 33 34 *ante*.

20 & 21 Vic. c. 85 s. 45.

39. In any case in which the Court shall pronounce a sentence of divorce or judicial separation for the adultery of the wife if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion it shall be lawful for the 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 And any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a final decree of

Matrimonial Causes.

divorce 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.

40. 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 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.

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

22 & 23 Vic. c. 61 s. 5.

41. The Court on the hearing of any suit proceeding or petition under this Act whether originally or upon appeal may make such order as to costs as to such Court may seem just Provided that there shall be no appeal on the subject of costs only.

Costs.

See R. R. 5. 31.

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

Same power as the Court of Equity to enforce decrees.

43. The Court may make such rules and regulations concerning the practice and procedure under this Act as it may from time to time consider expedient and shall have full powers from time to time to revoke or alter the same.

Power to make rules of practice

44. The Court shall have full power to fix and regulate from time to time the fees payable upon all proceedings before it under this Act all which fees shall be received paid and applied as herein directed Provided that the Court may make such rules and regulations as it may deem necessary and expedient for enabling persons to sue in the said Court *in formâ pauperis*.

Rules for fees.

See R. R. 7. 32.

Suitors in *formâ pauperis*.

45. No law now or hereafter to be in force for the relief of insolvent debtors or for the abolition of imprisonment for debt shall extend to affect or discharge from his liability any person who shall be charged with the payment of alimony or who shall be indebted for any damages or costs adjudged against him as respondent or co-respondent in any proceeding under this Act.

Respondent or co-respondent not relieved from liability by law for relief of insolvent debtors or for abolition of imprisonment for debt.

46. When the time limited for appealing against any decree dissolving a marriage shall have expired and no appeal shall have been presented against such a decree or when any such appeal shall have been dismissed or when in the result of any appeal any marriage shall be

When a marriage is dissolved the parties thereto may marry again as if the prior marriage had been dissolved by death.

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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 or shall be liable to any suit penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

20 and 21 Vic.
c. 85 s. 57.
Officiating
minister shall
not be compelled
to solemnize.

47. After this Act shall have come into operation no action shall be maintainable in the Colony of New South Wales for criminal conversation.

No action in
New South
Wales for crim-
inal conversa-
tion.

48. All rules and regulations concerning practice or procedure or fixing or regulating fees which may be made by the said Court under this Act shall be laid before both Houses of the Parliament of New South Wales 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.

Rules &c. to be
laid before
Parliament.

49. The word "Court" standing by itself in this Act shall mean the Court holden before the Chief Justice or such other Judge as may be appointed or nominated to sit alone and adjudicate under this Act Provided always that in the case of an appeal the word "Court" when standing by itself shall mean the full Court consisting of three or more of the Judges of the Supreme Court of New South Wales.

Interpretation

See R. 18.

(31 VIC. No. 20.)

An Act to declare valid the Marriage of a Man with the
Sister of his Deceased Wife. [**Reserved, 21st July,*
1875.]

WHEREAS doubts have arisen in New South Wales as to the validity Preamble.
of the marriage of a man with the sister of his deceased wife and it is
expedient to remove such doubts Be it therefore enacted by the
Queen's Most Excellent Majesty by and with the advice and consent
of the Legislative Council and Legislative Assembly of New South
Wales in Parliament assembled and by the authority of the same as
follows :—

1. Every marriage otherwise lawful which has been heretofore or Marriage with
deceased wife's
sister valid.
which shall be hereafter celebrated within the Colony of New South
Wales between any person and the sister of his deceased wife shall be See 36 Vic. No. 9
s. 22 ante p. 6.
deemed and is hereby declared to have been and to be valid and of full
force and effect any law or custom to the contrary notwithstanding.

* NOTE. - Act not disallowed. *Vide* Government Gazette, 26 May, 1876, No. 165, p. 2035.

MATRIMONIAL CAUSES ACT.

RULES AND REGULATIONS.*

In the Supreme Court of New South Wales.

Divorce and Matrimonial Jurisdiction.

WHEREAS, I, John Fletcher Hargrave, have been duly appointed Judge of the Court established under the Divorce and Matrimonial Causes Act, 1873: Now, I do hereby, in pursuance of the several powers vested in me by the 43rd, 44th, and 49th sections of the said Act, and of all other powers and authorities vested in me as a Judge of the Supreme Court, and enabling me in this behalf,—make the following Rules and Regulations concerning the practice and procedure in the said Court; and I do also hereby fix and regulate the fees payable upon all proceedings before the said Court.

July 8th, 1873.

JOHN F. HARGRAVE.

1. Proceedings before the Court shall be commenced by presenting a petition to the Judge, according to form No. (1), accompanied by affidavits of the petitioner and other persons verifying all the statements of the petition; and in all suits for a decree of nullity of marriage, dissolution of marriage, jactitation of marriage, or judicial separation, the petitioner shall also file a full and clear affidavit denying collusion and connivance between deponent and the other party to the marriage.

Original
Petitions.

See secs. 22, 23,
24, 35.

2. All such petitions and affidavits shall be laid before the Judge, who shall, if they are in compliance with these rules and regulations, or contain satisfactory excuses for non-compliance, endorse upon every such petition his acceptance thereof; or, if they are not in compliance and do not contain satisfactory excuses, shall require the attendance before him in Chambers of the petitioner, and shall examine him or her vivâ voce, on oath, as to the matter of such petition, and shall thereupon either endorse such acceptance, or shall refuse to accept such petition; and any person dissatisfied with such refusal may move in open Court, upon the same or further or other materials, that such petition may be accepted; and such petition shall thereupon accordingly be accepted or refused; and every petition, when so accepted by the Court or the Judge, shall be forthwith filed in the Office of the Registrar.

Acceptance of
Petition by
Judge.

See secs. 22, 23,
24, 35.

3. Every petitioner shall forthwith on filing his petition prepare a citation in form No. (2), and shall take such citation together with a præcipe according to form No. (3), to the Office of the Registrar, and shall file the præcipe, and the citation shall then be signed by the Registrar and sealed with the seal of the Court. Every respondent named in the said petition shall be served personally with the said

Citation and
Service on Res-
pondents.

* IN EX PARTE HUNT. L. R., 8 CH. 234, James, L. J., speaking of the rules made under the authority of the English Bankruptcy Act 1869 (32 & 33 Vic. c. 71) observed, that, although it was no doubt important that the rules should be observed, they were, after all, merely directory, and were intended for the convenience of the parties and the Court.

Rules and Regulations.

citation and a certified copy of the petition within two months after filing the said petition; and the said citation shall then be returned and filed with the Registrar, with affidavit of personal service thereof.

Appearances.

4. Appearances are to be entered voluntarily or under protest in a book to be kept for that purpose by the Registrar, and in the forms and with the address for services as therein specified. If no appearance be entered within twenty-one days, petitioner may apply for leave to advertise citation, or otherwise as the Judge may direct.

After twenty-one days, any respondent may enter an appearance by leave of the Judge.

Preliminary hearing as to Costs or Custody of Children before answer. See sec. 41.

5. After appearance, any respondent may be heard before answer with reference to the costs of the suit and the custody of children of the alleged marriage.

Interveners. See secs. 25, 28.

6. Application may be made for leave to intervene at any period of the cause, by motion supported by affidavit.

Formâ Pauperis. See sec. 44.

7. No person shall be admitted to sue or defend in formâ pauperis, except upon filing a case laid before counsel, with his opinion thereon that the party has reasonable grounds for proceeding; such case being sworn by the party or his solicitor to contain a full and true statement of all the material facts, and an affidavit that the party applying is not worth £25 beyond just debts and wearing apparel. Where a party admitted to sue in formâ pauperis neglects to proceed, he or she may be called upon by summons to show cause why he should not pay costs though not dispaupered, and why all further proceedings should not be stayed until such costs are paid.

Answers.

8. Each respondent may, within twenty-one days after service of the citation, file with the Registrar an answer to the petition in form No. (5), with an affidavit of every material fact relied upon, but shall not be required to deny any allegation of adultery alleged in the petition; and in all suits for a decree of nullity of marriage, dissolution of marriage, jactitation of marriage, and judicial separation, the husband or wife respondent shall also file an affidavit denying all collusion and connivance with the other party to the marriage—copies of such answer being on same day delivered to the petitioner or his solicitor.

If no answer be filed within twenty-one days, the petitioner shall be at liberty to proceed to proof of his petition.

Reply and further Pleadings.

9. Within fourteen days from the filing and delivery of the answer, the petitioner may file a reply thereto; and if any new facts be stated in such reply, beyond a mere denial of the statements contained in the respondent's answer, the respondent shall be allowed fourteen days to file his or her rejoinder thereto; and the same period shall be allowed to both parties for any subsequent pleadings, until both parties shall have completed their statements and denials.

Amendments.

10. Amendments can only be made in pleadings by order of the Judge, on such terms as he may direct.

Service of all Pleadings. See sec. 36.

11. Copies of all pleadings and other instruments shall be delivered at the address entered in the Registrar's book, which delivery shall be sufficient service, except where personal service is expressly directed by these rules, or order of the Judge; and all such deliveries shall be made on the same day as the original pleading shall be filed with the Registrar; and all such copies shall be endorsed with the name and address of the party's solicitor according to the Registrar's book.

After any of the periods herein mentioned no pleading or other instrument shall be filed or served except by leave of the Judge.

Rules and Regulations.

12. The petitioner shall and may, within fourteen days from the filing of the last pleading (and within ten days after that date any of the respondents may) prepare and file a copy of the petition and all subsequent pleadings, and then may forthwith apply to the Judge by motion to order and direct what are the issues of fact to be determined in the cause, and the Judge shall settle the same in writing for trial (form No. 7) ; and shall also decide whether the same are to be heard upon affidavits or to be tried by a Common or Special Jury; and the time and place of such trial; which issues shall then be filed with the Registrar; but such issues may be amended by the Judge in immaterial matters at the hearing of the cause, as at Common Law.

Issues and setting down for trial.

13. The petitioner or respondent, as the case may be, shall, within eight days after the said issues have been so settled, set down the said issues as ready for trial at the time and place fixed by the Judge, and shall give notice thereof to each other party for whom an appearance has been entered; and in default of such setting down and notice, the other party may do the like within four days from such default, and such notice of trial shall be filed forthwith with the Registrar.

14. No trial shall take place until ten days after setting down and notice as aforesaid, except by consent of all parties. The proceedings, as to summoning attendance and challenging of jurors, subpoenas for attendance of witnesses, notice to admit documents, hearing and address of counsel, examination of witnesses, entering the names of the jury and their finding, and all other matters at the trial, shall, as nearly as possible, be the same as at Common Law. After the verdict any party may be forthwith heard upon affidavit as to costs; and the husband or wife may be also heard upon affidavits as to the custody of the children, or as to the settlement of the property, unless the Judge shall direct such matters to be separately disposed of.

Trials.

15. The orders as to all which matters at the trial shall, with the verdict, be duly entered by the Judge's Associate upon the issue paper and returned to the Registrar to be filed as of record by the Registrar.

As to last four Rules see secs. 6, 7, and 8.

16. Where the Judge has directed the trial to be by affidavit, such affidavits shall be filed within eight days from the service of the order upon the opposite parties; and all counter affidavits shall be filed within eight days from the last of such eight days; and all affidavits, if any, in reply within eight days from the last of such last-mentioned eight days, subject to the usual rules in equity as to the contents of all affidavits, and as to the cross examination of any deponent in open Court, if required by the Judge. Copies of all such affidavits shall be delivered to the other party or his solicitor upon filing the same.

Affidavits. See secs. 10, 35, 37.

17. Any party who has entered an appearance may, by leave of the Court, file a petition, or may move upon any interlocutory matter, or for any collateral relief in relation to the suit, and may file affidavits in support thereof; and shall deliver certified copies of such petition to the respondents thereto, whereupon proceedings shall forthwith proceed upon interlocutory petition or motion before the Judge upon affidavits, as nearly as possible according to the Equity practice, unless the Judge shall direct any issue of fact to be tried by a jury, in which case the proceedings shall be as above directed with reference to original petitions before this Court, or any other issue tried in this Court.

Interlocutory Motions and Collateral Relief.

18. All motions for new trials and appeals against any decree or order of the Judge shall be made to the full Court of Appeal, upon notice given to all parties within fourteen days from the date of such

New trials and appeals. See sec. 49.

Rules and Regulations.

verdict, decree, or order, and upon the like petition and security as in Equity appeals; but no security shall be required in mere motions for new trial.

See secs. 5, 9.

19. All such motions for new trial and appeals shall be set down within the first eight days of the term next following such verdict, decree, or order, and shall be heard next after the Equity appeals.

Reversals of
judicial separa-
tion.
See sec. 18.

20. A petition for reversal of decree of judicial separation may be presented at any time in the form No. (10), by either husband or wife, after first entering an appearance and filing such petition, stating all the material grounds for such reversal, and supporting the same by affidavits as on an original petition; and a certified copy of such petition and affidavit shall be delivered personally to the wife or husband in whose favour the decree was made, who may within fourteen days file his or her answer thereto, and shall deliver a copy thereof to the other party or his or her solicitor—whereupon all subsequent pleadings and proceedings shall be filed and carried on as in the original petition, so far as applicable to such petition for reversal.

Showing cause
against dissolu-
tion of marriage.

21. Any person wishing to show cause against making absolute a rule nisi for dissolution of a marriage must first enter an appearance in such cause, giving notice of it to all parties; and affidavits shall be filed, and copies thereof delivered to the opposite party as directed by the general order as to "Affidavits."

22. If no such notice be given within six months after such decree nisi, the same may be made absolute upon motion to the Judge, supported by affidavits and certificates from Registrar.

23. All decrees for dissolution of marriage may be open to appeal before the full Court by motion for a rule nisi by the party wishing to reverse the same; and such rule if granted by the full Court shall be set down and argued in like manner as other rules nisi and other appeals.

Alimony—tem-
porary, perman-
ent, increase,
and diminution
thereof.

See secs. 16, 29.

24. The wife, whether petitioner or respondent, may file her petition in the form No. (8), with certificate of marriage and other affidavits for alimony, at any time pending any cause in this Court; but such petition for alimony, with copies of all affidavits, must be served personally upon the husband, unless otherwise ordered by the Judge. The husband shall have eight days to put in an appearance, and make answer upon oath to the wife's petition.

25. If the wife is alleged by the husband's answer to have separate property, she shall have eight days to file her reply thereto upon oath. Either party may then be required by the opposite party to make further answer upon oath, in relation to such petition, in open Court or otherwise, as the Judge may direct. Upon the hearing of the petition no fresh affidavits shall be made or heard to be read, except by special leave of the Judge.

26. When the wife has obtained a final decree of judicial separation, and the time for appeal has expired, she may apply by motion for permanent alimony, after eight days notice of such motion, personally to the husband. Such permanent alimony shall not be retrospective before the decree for judicial separation. Petitions may also be presented by the wife for increase of alimony, and by the husband for diminution thereof—whereupon the like course of proceedings shall take place as upon an original petition for alimony.

Maintenance of
children—settle-
ments.

See secs. 33, 34,
39, 40.

27. Applications to the Judge for maintenance of children or for settlements under the 33, 34, 39, and 40 sections of the Act may be made by petitions supported by affidavits—the proceedings upon which shall be the same as upon other petitions under this Act.

Rules and Regulations.

28. All orders as to custody of and access to children, and appointments of guardians, shall be made as in the Equity Jurisdiction of this Court. Custody of children—appointment of guardians. See secs. 33, 34.

29. The practice and procedure as to the subpoenas, writs of attachment, notices, services of notices, computation of time, enlargement of any time named in these rules, change of solicitors, examination of witnesses, de bene commissions for examination of witnesses, forms of affidavit, and filing the same amendments of error in proceedings, and all other matters of practice and procedure, except where otherwise ordered by these rules, shall be the same as at Common Law, or as near thereto as the circumstances will permit, and shall be commenced by summons in Chambers. General practice in miscellaneous matters. See sec. 12.

30. The several forms hereunto annexed, and numbered respectively from 1 to 9, may be varied as the circumstances of every case may require.

31. The taxation of bills of costs shall be by the Registrar, and as at Common Law. The wife may obtain an order for taxation of her bill of costs at any time after the cause is at issue, or earlier, by leave of the Court. The Judge shall decide what is proper to be paid into Court, or secured to be paid by the husband. Taxation of costs. See sec. 41.

32. *The Chief Clerk of the Supreme Court shall be the Registrar of this Court, and the Fourth Clerk shall be the Registrar's Clerk, both under the immediate direction of the Judge.* The Registrar shall have the custody of all pleadings and other documents of this Court; and all rules, orders, and regulations and fees payable in respect of searches for, and inspection of, and copies of extracts from or certified copies of, and attendance with books and documents in the Court of Equity, shall as far as practicable extend to such pleadings and documents brought in and filed, and to all entries of orders and decrees made in this Court of Divorce. [Amended as to the first paragraph on 14th July, 1873, as follows:—The Prothonotary of the Supreme Court for the time being shall be the Registrar of this Court, and the Chief Clerk the Deputy Registrar.] Officers of the Court. See sec. 44.

33. All applications by way of summons, motions, or petitions in this Divorce Jurisdiction may be heard on every Tuesday and Friday, immediately after the Common Law Chamber business, or if in Court next after the Equity motions and petitions. All sittings for the trial of any causes in this Court, except by jury, shall be set down and heard, except during Term time or Vacation, on every Tuesday, Wednesday, and Friday, immediately after the Equity causes, or such other day as the Judge may direct. Sittings of the Court and Chamber business. See sec. 7.

34. The sittings of this Court, for the hearing of causes set down for trial by any jury, shall be held four times in every year, that is to say, during the months of February, May, August, and November, commencing on Thursday, the twenty-first day of August next; and, until further order of the Judge the hearing of all Divorce and Matrimonial causes, whenever required to be tried by any jury shall take place in the large Court at Darlinghurst.*

* Divorce and Matrimonial Causes are now heard in the new Court Room in the Supreme Court building in Sydney.

Rules and Regulations.

No. 1.

Petition for Divorce.

To His Honor John Fletcher Hargrave, Esquire, Judge of the Court for Divorce and Matrimonial Causes in the Colony of New South Wales.

In re A.B. (addition), and C.B., his wife, formerly C.F. (name before marriage.)

On the _____ day of _____ in the year of our Lord one thousand eight hundred and seventy-_____.

The Petition of A.B.

Showeth:—

1. Marriage.
2. Age, place of birth, and domicile of husband and wife respectively.
3. Condition of life and means of livelihood of husband and wife respectively, and both before and after marriage.
4. Names, sexes, ages, and places of birth of living children, if any.
5. Cohabitation—tracing it clearly from marriage to last determination; showing fully when, why, and under what circumstances it ceased.
6. Separation or separations, if any, and causes thereof, and substance of deed of separation, if executed.
7. Origin of the acquaintance with the adulterer or adulteress.
8. Fact and time of adultery.
9. All the occasions on which, within petitioner's knowledge, adultery has been committed.
10. The precise occasion when petitioner first suspected any improper or adulterous intercourse.
11. Reasons, if any, for not having sooner instituted proceedings.
12. Any other facts or circumstances, within petitioner's knowledge, bearing on the petition.
13. Distinct and unequivocal denial of all collusion or connivance, past or present, directly or indirectly, with the respondent, or any person liable to be made respondent.

Your petitioner therefore humbly prays that your Honor 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 Honor may seem fit.

And your petitioner will ever pray, &c.

 No. 2.
Citation.

In the Supreme Court of New South Wales.

Divorce and Matrimonial Causes Jurisdiction.

In re (name and addition of petitioner.)

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

To A.B., of

THESE are to command you within _____ days of the service hereof on you, inclusive of the day of such service, you do appear in

Rules and Regulations.

our said Court, then and there to make answer to the petition, a copy whereof, sealed with the seal of our Court, is herewith served upon you.

And take notice that in default of your so doing, the Judge of 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.

(Signed) E.F.,
Registrar.

Indorsement to be made after service.

This citation was duly served by me, G.H., of _____ on _____ the
within-named A.B., of _____ at _____ on the
day of _____ 18 . _____
(Signed) G.H.

No. 3.

Præcipe for Citation.

In the Supreme Court of New South Wales.

Divorce and Matrimonial Causes Jurisdiction.

In re (name and addition of petitioner.)

Citation for A.B., of _____ against C.B., of _____ for a
judicial separation for cause of adultery (or as case may be).

(Signed) P.Q.,
Solicitor for the said C.B., or C.B. in person.

No. 4.

Entry of an appearance.

In the Supreme Court of New South Wales.

Divorce and Matrimonial Causes Jurisdiction.

In re (name and addition of petitioner.)

A.B., Petitioner,	}	The respondent (or co-respondent), C.B.,
v.		appears in person; or E.F.,
C.B., respondent or Co-respondent.		proctor, appears for the respondent or co-respondent.

[Here insert the address entered in Registrar's Book.]

Entered this _____ day of _____ 187 .

No. 5.

Form of Answer.

In the Supreme Court of New South Wales.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,	}	The _____ day of _____ 187 .
C.B., respondent,		
or Co-respondent.		

THE respondent C.B. (or co-respondent), by E.F., her (or his) solicitor, or (in person) saith [here admit, deny, or refute, the statements contained in the petition, paragraph by paragraph; and state

Rules and Regulations.

fully and distinctly connivance, condonation, or other matters relied on as a ground for dismissing the petition; and, if respondent (or co-respondent) can truthfully do so, here deny fully and equivocally past or present connivance or collusion directly or indirectly with the petitioner.]

Wherefore the respondent (or co-respondent) humbly prays that your Honorable Court will be pleased to reject the prayer of the said petition, &c.

No. 6.

Notice to admit Documents.

In the Supreme Court of New South Wales.

Divorce and Matrimonial Causes Jurisdiction.

A.B. v. C.B.

TAKE notice, that the petitioner or respondent (or co-respondent) in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the respondent (or co-respondent) or petitioner, at _____ on _____ between the hours of _____ and _____ and the respondent (or co-respondent) or petitioner is hereby required within _____ hours from the last-mentioned hour, to admit that such of the documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified to be copies are true copies; and that such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in the cause.

To C.B., or to E.F., Solicitor for C.B.

(Signed) A.B., or G.H., Solicitor for A.B.

[Here describe the documents.]

No. 7.

Form of Record.

In the Supreme Court of New South Wales.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner, }
 C.B., Respondent, } The _____ day of _____ 187 .
 or
 Co-respondent. }

WHEREAS A.B. affirms and C.B. denies [here state fully the fact or facts in issue]. And the Judge of the said Divorce Court is desirous of ascertaining the truth by the verdict of a Jury; and both parties pray that the same may be inquired of by the country.

Therefore let a Jury come, &c.

Rules and Regulations.

No. 8.

Petition for Alimony.

To His Honor John Fletcher Hargrave, Esquire, Judge of the Court for Divorce and Matrimonial Causes in the Colony of New South Wales.

C.B., Petitioner,)
 v.)
 A.B., Respondent) The day of 187 .
 or Co-respondent.)

The petition of C.B., the lawful wife of A.B.,

Sheweth:—

1. That the said A.B. has for many years carried on the business of at and from such business derives the net annual income of £
2. That the said A.B. holds shares of the Company, amounting in value to £ and yielding a clear annual dividend to him of £
3. That the said A.B. is possessed of stock in-trade in his said business of to the value of £ [and so on for any other faculties which the husband may possess].

Your petitioner therefore humbly prays,—

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

And your petitioner will ever pray, &c.

No. 9.

Petition for Reversal of Decree.

To His Honor John Fletcher Hargrave, Esquire, Judge of the Court for Divorce and Matrimonial Causes in the Colony of New South Wales.

The day of 187 .
 The petition of A.B., of
 Sheweth:—

1. That your petitioner was, on the day of lawfully married to C.B.
2. That on the day of your Honor, at the petition of the said C.B., pronounced a decree affecting this petitioner, to the effect following:—
 [Here set out the decree.]
3. That such decree was obtained in the absence of your petitioner, who was then residing at [State facts tending to show that the petitioner did not know of the proceedings; and further, that had he known he might have offered a sufficient defence or] that there was reasonable grounds for your petitioner leaving his said wife; for that his said wife [here state any legal grounds justifying the petitioner's separation from his wife.]

Your petitioner therefore humbly prays that your Honor will be pleased to reverse the said decree.

And your petitioner will ever pray, &c.

Rules and Regulations.

FEEs—to be taken for their own use by Solicitors practising in the Supreme Court of New South Wales, in its Court for Divorce and Matrimonial Causes.

Citations, Subpœnas, Writs, and Service of same.

	£	s.	d.
Citation, including præcipe	0	10	0
Certificate of service	0	3	6
Subpœna ad testificandum and præcipe	0	10	0
Subpœna duces tecum, if five folios or under, and præcipe...	0	12	0
If the subpœna exceeds five folios in length, for each additional folio	0	1	6
Writ of attachment, including præcipe	0	10	0
Writ of sequestration, including præcipe	0	10	0
Service of citation, petition, or subpœna, if within 2 miles of the place of business of the petitioner, or of the person employed to effect the service	0	7	6
If beyond that distance and not exceeding 10 miles, for every mile one way	0	1	6
Drawing and engrossing affidavit of service, of three folios or under	0	7	6
If above, for every additional folio, including a copy for the Court	0	2	0
In cases in which the person to be served shall avoid service, or shall reside beyond the jurisdiction, a sum to be allowed for service according to the circumstances.			

Instructions.

Instructions for citations, petitions, answers, or other pleadings, for interrogatories, special affidavits, or applications for an order for protection of a wife's earnings and property	0	10	0
Ditto, to defend suit	0	10	0
Ditto, for brief or case for hearing	1	0	0
If there are several witnesses examined and the brief or case is necessarily long or difficult, discretionary.			

Pleadings.

Drawing and engrossing petition, if ten folios or under, including a copy to file	1	10	0
If exceeding ten folios, for every additional folio, including a copy to file	0	2	0
Drawing and engrossing answers, replications and other subsequent statements, petitions for alimony and answers thereto, if ten folios or under, including a copy to file	1	10	0
If exceeding ten folios, for every additional folio, including a copy to file	0	2	0
Copies of petitions, answers, and other pleadings—also of exhibits or other documents, at per folio	0	0	8
If any exhibit or other document to be copied or any part thereof contains pencil marks or writing—or the copy thereof or any part thereof is required to be made a <i>fac simile</i> , in addition to any other fee for the copy.			
For every folio of pencil marks or writing, or <i>fac simile</i> , or part of a folio, discretionary.			

Rules and Regulations.

	£	s.	d.
Drawing the record, if fifteen folios or under, including copy to file	0	15	0
If exceeding fifteen folios, for every additional folio, including copy to file	0	1	0
Engrossing record to file, at per folio, exclusive of parchment	0	1	0
For case for motion, including fair copy for Judge	0	15	0
If necessarily more than seven folios in length, for every additional folio, including copy for Judge	0	2	0
Copy for adverse party, per folio	0	0	8
Drawing and engrossing demurrer, inclusive of the statement of any matter of law to be argued, for ten folios, or under	0	15	0
If exceeding ten folios, for every additional folio	0	1	6
Copy of the issue on demurrer, at per folio	0	0	8
Drawing bill of costs, per folio, including copy for taxation...	0	1	6
Copy for adverse party, per folio	0	0	8
Drawing any instrument to be filed in or issued by the registry, for which no other fee is herein allowed, inclusive of fair copy to be filed or issued, per folio...	0	2	0
For perusing and abstracting pleadings, affidavits, exhibits, and other documents, per folio	0	0	8

Notices.

All necessary notices of three folios or under, inclusive of copy and service	0	7	6
If exceeding three folios, for every additional folio, including copy and service	0	1	6
Copies of notices to file (if necessary), per folio	0	0	8
In all cases where service of a notice is necessary beyond two miles of the place of business of the practitioner, or of the person employed to effect service, the same fees as upon the service of a citation.			
Copy of summons, or order of the Judge, or rule and service	0	7	6

Attendances.

On entering appearance, or issuing process	0	7	6
To search for appearance to citation	0	7	6
On Counsel with brief when the fee to Counsel is £1 1s. ...	0	5	0
When the fee to Counsel exceeds £1 1s., and is under £4 4s.	0	10	0
When the fee is five guineas and upwards	0	15	0
On consultation	1	0	0
On conference	0	10	0
In pursuance of notice to admit	0	10	0
Or discretionary, not to exceed per diem	3	3	0
On trial or hearing, when cause is in paper and not tried or heard, or on motion in Court	1	0	0
On trial or hearing	2	2	0
Or discretionary, not to exceed per diem	3	3	0
Clerk's attendance, discretionary if more than one trial—or in special cases, not exceeding per day, inclusive of expenses, except travelling	1	10	0
On taxation of bill of costs	1	0	0
If very long, or several attendances, discretionary.			

Rules and Regulations.

On examination of witnesses under a Commissioner, per diem, same as on trial or hearing.			
If at a distance from place of business of practitioner, for every additional day necessarily absent	£	s.	d.
Travelling and other expenses reasonably and actually paid.	5	5	0
For all necessary attendances in Chambers before a Judge, or before a Commissioner, or Counsel, or at the Office of the Registrar, or upon the adverse parties or practitioner, for which no other fee is herein allowed	0	10	0
<i>Briefs, Cases for hearing Letters, &c.</i>			
For drawing brief or case for hearing, per folio	0	1	6
For each copy, per folio	0	0	8
Every necessary letter during the dependence of the cause..	0	5	0
Term fees, letters, and messengers	1	0	0
For maps or plans, each	3	3	0
From £1 1s. to			
Copies of same if required, each	1	0	0
From 10s. to			

Affidavits.

For drawing affidavit, five folios or under, including copy for the Court of Registry	0	10	0
If above five folios, for each additional folio, including copy for the Court	0	2	0

Interrogatories.

For drawing the same, at per folio	0	1	6
Copy thereof to be delivered to the Examiner and filed, at per folio	0	0	8
If it becomes necessary for Solicitors to transact any business for which no fee is herein specified, such fee shall be taken by them as would be allowed for similar business done in the Courts of Common Law or Equity, as the case may be.			

FEES—to be taken for the use of other persons by the Solicitor practising in the Supreme Court, in its Divorce and Matrimonial Causes Jurisdiction.

Counsel's Clerk's fees—not to exceed as under :—

Upon a fee to Counsel under 5 guineas	0	2	6
5 guineas and under 10 guineas	0	5	0
10 guineas and under 20 guineas	0	10	0
20 guineas and under 30 guineas	0	15	0
30 guineas and under 50 guineas	1	0	0
50 guineas and upwards at per cent. on fee paid	2	10	0

On Consultations :—

Senior's Clerk	0	7	6
Junior's Clerk	0	2	6
On general retainer	0	15	0
On common retainer	0	2	6
On conference	0	5	0

WITNESSES' EXPENSES.

Allowance to Witnesses including their Board and Lodging.

Common witnesses—such as labourers, journeymen, &c., &c.			
—if resident within 5 miles of the Post Office, Sydney, per diem	0	5	0
If resident beyond the distance, per diem, from	0	7	6

Rules and Regulations.

Master tradesmen, yeomen, farmers, &c.—		
If resident within 5 miles of the General Post Office,	£	s. d.
per diem, from	0	8 0
If resident beyond the distance, from	0	13 0
Auctioneers, from £0 15s. to	1	10 0
Accountants, from £1 1s. to	2	2 0
Professional men—		
If resident within 5 miles of the Post Office, Sydney,		
per diem	1	1 0
If resident beyond that distance, per diem, from	2	2 0
Clerks to attorneys or others—		
If resident within 5 miles of the Post Office, Sydney,		
per diem	0	15 0
If resident beyond that distance, per diem, from	1	1 0
Engineers and surveyors—		
If resident within 5 miles of the Post Office, Sydney,		
per diem	1	1 0
If resident beyond that distance, per diem, from	2	2 0
Notaries, per diem	1	1 0
Esquires, bankers, and merchants, per diem, from	0	15 0
Females according to station in life—		
If resident within 5 miles of the Post Office, Sydney,		
per diem, from 2s. 6d. to	0	7 6
If resident beyond that distance, per diem, from 2s. 6d. to	0	15 0
Police Inspector—		
If resident within 5 miles of the Post Office, Sydney,		
per diem	0	10 0
If resident beyond that distance, per diem, from 10s. to	1	0 0
Police Constable—		
If resident within 5 miles of the Post Office, Sydney,		
per diem	0	8 0
If resident beyond that distance, per diem, from 8s. to	0	15 0
The travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid; but in no case will there be an allowance for such expenses of more than 1s. 6d. per mile one way.		

SCALE OF FEES—To be taken in the Registrar's Office.

Filing.

Every petition	0	5 0
Every answer, reply, or other pleading or statement in nature of a pleading	0	5 0
Every application for order for protection, or for discharging of any such order	0	5 0
Engrossment of proceedings on parchment	0	5 0
Every præcipe, citation, affidavit, appearance, address, notice, or other document not herein specially provided for	0	1 0

Entering.

Appearance	0	2 6
Address	0	2 6
Decrees and orders, per folio	0	0 6

Rules and Regulations.

<i>Issue of Writs, &c.</i>		£	s.	d.
Signing and sealing every citation	... ..	0	5	0
Every subpoena	... ..	0	5	0
Every writ of fieri facias attachment, or other writ not herein specially provided for	... ..	0	5	0
Sealing copy petition	... ..	0	5	0
Affixing seal of Court to any commission or other document	... ..	1	0	0

Decrees and Orders.

For every decree	... ..	1	0	0
For every order of the Court	... ..	0	10	6

Settling.

Every advertisement	... ..	0	5	0
Perusing and settling every settlement or deed connected therewith, if not exceeding thirty folios	... ..	1	0	0
Exceeding thirty and not exceeding fifty folios	... ..	1	10	0
Exceeding fifty and not exceeding one hundred folios	... ..	2	10	0
Exceeding one hundred folios	... ..	3	0	0
Examining engrossment with draft affidavit not exceeding fifteen folios	... ..	0	3	4
If exceeding fifteen folios, then for every fifteen folios	... ..	0	3	4
Settling every bond, recognizance, or other deed or document not herein specially provided for, per folio	... ..	0	0	6
Signing approval	... ..	0	5	0

Oaths and Exhibits.

For each oath administered	... ..	0	1	6
Signing each exhibit	... ..	0	0	6

MEMO.:—The like fees to be taken by Commissioners for taking affidavits.

Miscellaneous.

For setting down cause for hearing	... ..	0	10	0
For setting down motion or other application	... ..	0	5	0
Every office search	... ..	0	1	0
If same exceed half an hour	... ..	0	2	6
Receiving or handing over exhibits or other documents deposited, and comparing same with schedule	... ..	0	5	0
Posting every notice	... ..	0	1	0
Office copy, per folio	... ..	0	0	6
Certified copy, per folio	... ..	0	0	9
Every warrant	... ..	0	3	0

Taxing costs, $2\frac{1}{2}$ per cent. on the amount allowed—

For every other proceeding not herein specially provided for, the same fees as for the like or analogous proceeding in Equity.

FEES—to be taken in Judge's Chambers.

For every summons	... ..	0	2	0
For every order thereon	... ..	0	3	0
For filing every affidavit	... ..	0	1	0

MEMO.:—All affidavits filed with the Associate, and used before the Judge, in Chambers, are to be forwarded by the Associate to the Registrar forthwith, after the application to which they relate shall have been disposed of.

For any other proceeding or business not above specifically provided for, the same fees as for like or analogous proceedings at Common Law or in Equity, as the case may be.

CASES HEARD AND DETERMINED

IN

THE SUPREME COURT OF NEW SOUTH WALES,

DIVORCE JURISDICTION.

Short v. Short.

SHORT *against* SHORT.

1873.

Windeyer applied for leave to dispense with a jury on the grounds that the petitioner had already obtained a verdict and substantial damages.

Nov. 13.
Witnesses to establish the fact of adultery must attend to be cross-examined on their affidavits. Formal evidence as to marriage may be proved without cross-examination of witnesses.

Bogen v. Bogen.

BOGEN *against* BOGEN.

Healey applied for leave to dispense with a jury on the trial of the issue of the adultery of wife and her general prostitution, should the petitioner be able to fully establish his allegations by satisfactory affidavits in addition to those filed.

HARGRAVE, J. : In both the above cases the husband and principal witnesses to establish the fact of adultery must appear before me at the hearing on their affidavits to be cross-examined, and to satisfy me under the 24th section of the Act as to there being no collusion. The formal allegations of the petition, as to marriage, &c., may be proved by the usual evidence without the witnesses appearing to be cross-examined.

Anderson v. Anderson.

ANDERSON *against* ANDERSON.

1874.

Feb.

This was an application that the costs of a wife, respondent to the petition of the husband, for a dissolution of marriage on the ground of his wife's adultery, might be taxed and paid *de die in diem*.

Fitzhardinge, in support of the application, read the notice of motion and the 31st order of the Court as to costs, and cited *Wilson v. Wilson*, 2 Haggard, 204; *M'Kean*, p. 177, and cases there cited.

The Court will not tax costs of wife against husband, he being possessed of no property whatever, although not proceeding in *forma pauperis*, but declined at his prayer to appoint a day for hearing the cause.

Davis, in opposition, read affidavit of petitioner, stating that he was not possessed of any assets, and cited *Walker v. Walker*, 1 Curtis, 560, and applied that a day might be fixed for the hearing.

HARGRAVE, J. : Refused both applications on the ground that there were no assets from which to pay the costs and following *Walker v. Walker* (*ubi sup.*). Costs to be costs in the cause.

Cases.

1874.

Feb. 16.

Where issues not drawn
nor evidence advised on
Court will not prepare
issues nor give directions.

HIGGINS *against* HIGGINS.Higgins v.
Higgins.

Buchanan and *Greer* (solicitor) attended to settle the issues, and for directions as to whether the cause should be tried by a jury or how otherwise.

HARGRAVE, J. : The issues not being drawn, nor evidence advised on, I decline to prepare the draft issues or to say whether the cause should be tried by a jury or how otherwise. The case should be brought before me again in due course on a future day.

1874.

Feb. 20.

Dissolution of marriage.
Adultery proved. Decree
nisi.

SHORT *against* SHORT AND BEATTIE.Short v. Short
and Beattie.

This was a petition for dissolution of marriage on the ground of the respondent's adultery with the co-respondent.

Windeyer appeared for petitioner.

Respondent and co-respondent did not appear. Petitioner was examined on his affidavit as to connivance and collusion, but distinctly denied both.

Mrs. Campbell, residing in Liverpool-street, Sydney, proved that the co-respondent brought the respondent to her house, in August, 1870, and introduced her as his wife; that she received the respondent and co-respondent as man and wife, and that they remained with her as such for a week.

Decree *nisi*, to be made absolute in six months.

1874.

Feb. 24.

Alimony *pendente lite*—
wife's earnings to be
taken into account, but
not as if "rent."
Husband supporting
mother and sister.
Costs.

ANDERSON *against* ANDERSON.Anderson v.
Anderson.

This was a petition for alimony, *pendente lite*, by the wife, respondent, to her husband's petition for a dissolution of marriage.

Innes, Attorney-General (*C. J. Manning* with him), for the wife, read the wife's petition for alimony of herself and child, which stated that the husband was in receipt of £4 or £5 per week.

Davis, for the husband, read the answer, which stated that the husband only earned £300 per annum; that he supported his mother and sister; that he denied the paternity of the child; and that his wife earned from 18s. to 20s. per week.

HARGRAVE, J., allowed affidavit of wife, dated the day of hearing, as to her only earning 12s. per week, and paying 4s. per week for the child's nurse-girl, to be read.

Innes, A.G., cited *Goodine v. Goodine*, 30 L.J. P. & D., 162. Now wife's earnings to be taken into consideration by the Court as "a business on her own account." No child in that case as here. The fact of the husband's supporting his mother and sister is immaterial. *Hayward v. Hayward*.

The husband having children by a former marriage is not a circumstance for the reduction of alimony. *Browne* p. *Hill v. Hill*, 33 L.J. P. & M., 104.

Cases.

Anderson v.
Anderson.

Davis: Wife's earnings only mentioned in affidavit in reply. There should be no order at all, as the trial is so near. *Coombes v. Coombes*, 1 L.R. P. & D., 218. As to wife having no means of support he cited *Maiden v. Maiden*, 37 L.J. P. & M., 10; and *Hawkes v. Hawkes and Haggard*. But here the wife had been a sempstress before marriage.

HARGRAVE, J.: Under all the circumstances of the case I think that the wife's earnings should be taken into account, but not as if they were her rents. The husband's support of his mother should also be taken into consideration. (He drew attention to *Rawlings v. Rawlings*, 34, L.J., P. & M. 147, and *Gayne v. Gayne*, 31 L.J., P. & M. 144.) There will be an order for the payment of 21s. per week from the date of service of the citation. Costs to be borne by the husband. Order accordingly.

Anderson
v.
Anderson and
Thompson.

ANDERSON against ANDERSON AND THOMPSON.

1874.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery.

The parties were married on the 28th January, 1873, and there was a child born on the 13th of August in the same year the paternity of which was denied by the petitioner.

Davis appeared for the petitioner.

Innes, A.G. (*C. J. Manning* with him), for respondent.

No one appeared for the co-respondent.

Certain conversations which occurred before marriage between the husband and wife were objected to by *Innes, A.G.*, and the objection allowed on the authority of *Linking v. Linking*, 36 L.J.P. & M. 48. Certain letters were also objected to as being "communications," but were admitted as not being within 22 Vic., No. 7, s. 4, and also under *Hebblewhite v. Hebblewhite*, 39 L.J., P. & M. 15.

Services of the citation, the order directing issues, and the notice of trial on the co-respondent were proved.

Certificate of marriage dated 28th January, 1873, was produced.

Solemnization of marriage proved by officiating clergyman.

The *Petitioner* proved that the respondent's maiden name was Martha McLane; that he had known her for seven years previously to their marriage; first knew her when she was living in Market-street, he being at that time employed by F. Hoffnung and Co. In 1872 when she lived in Waterloo-street, Strawberry Hills, used to visit her continually; had a slight knowledge of co-respondent, and saw him occasionally at the house at Strawberry Hills. In 1872 went to New Zealand and on his return on 26th November, 1872,

Feb. 26.

Petition for dissolution of marriage on the ground of wife's adultery. Adultery not proved. Admissibility of conversations in evidence. Petition dismissed. Costs of respondent and co-respondent.

Cases.

saw respondent at her house. About a fortnight after his return respondent told him she must go and see a doctor as she thought she was in the family-way. He sanctioned her going. She continually asked him to marry her until January, when they were married. They cohabited at the house of petitioner's mother. He gave her ample means. She had been a sempstress, but did not continue so by his instructions. On the 7th of February, 1873, he again left for New Zealand. Gave respondent money, and afterwards sent her more from New Zealand, as his means would allow—more than sufficient to support her as before. She joined petitioner in New Zealand at his request about June or July, and after remaining three weeks returned to Sydney. Petitioner returned to Sydney on 12th August, 1873. She was living as before at her sister's. A child was born on the following day. Received a letter on the 9th or 10th of October, which he showed to respondent on the same or following evening. Afterwards something happened between petitioner and respondent and a conversation took place in the presence of the respondent's sister, during which the respondent confessed to her infidelity with the co-respondent. Received a letter from his wife in the ordinary course of post, dated 2nd November. Went with Mr. Bloomfield to serve citation on respondent and co-respondent. Co-respondent said, "I never thought it would come to this—it is all my fault." Petitioner was a Hebrew and respondent a Christian.

Anderson
v.
Anderson and
Thompson.

Mr. Bloomfield proved serving citation on respondent. She said "Fred., it is all your fault. You kept me in a net all these years, and when I was married I could not get out of it."

James Rooney proved knowing respondent and co-respondent. Had seen them talking together at Mr. Neal's in Castlereagh-street, both before and after the marriage. Respondent worked at Neal's. Co-respondent used to stop at Neal's and wait for respondent to come down—generally at dinner-time.

Haigh, a clerk in the A.M.F. Ins. Co. proved knowing co-respondent for about 3 years. The letter received by petitioner on 9th or 10th Oct. was in co-respondent's handwriting. Co-respondent said he had known respondent a long time and was sorry petitioner had married her—that she cared for him more than for petitioner, and that he had intercourse with her. The co-respondent always called respondent "Mat."

James Rooney (re-called) proved that the co-respondent had told him he had had intercourse with the respondent the day after her marriage, and fifty times since.

F. J. Hayman proved that co-respondent had told him he had had intercourse with respondent whenever

Cases.

Anderson
v.
Anderson and
Thompson.

he liked ; that he saw them together at a ball in 1873 ; that they danced together all the evening, but openly.

After hearing the evidence and affidavits,

HARGRAVE, J., in summing up directed the Jury that their verdict must be in accordance with the sworn testimony before the Court so far as they believed it, and he further explained each point as regarded the conversations, and left these two questions to the Jury :—

1st. Was the marriage proved ?

2nd. Was the adultery proved ?

The Jury found in answer :—

1st. Yes.

2nd. No.

Petition dismissed.

Costs of respondent to be paid by petitioner.

Co-respondent no costs.

Higgins v.
Higgins.

HIGGINS against HIGGINS.

This was a wife's petition for dissolution of marriage, on the grounds of her husband's adultery, cruelty, and desertion.

Buchanan appeared for the petitioner.

The respondent did not appear.

HARGRAVE, J., reserved the question as to whether under 36 Vic. No. 9, s. 23, the person with whom the husband was alleged to be living in adultery ought to be served or not.

The parties were married on the 5th January, 1852, and cohabited for eight years, until 1860.

The record of the marriage was produced and the officiating clergyman proved the solemnization of the marriage and identified the petitioner.

The *Petitioner* proved that the respondent left her in February, 1860. She had gone to her home for ten days previously on account of his ill-treatment. He came there and said he would burn down the house. Petitioner remained there until the Monday. Petitioner was engaged about household duties, when respondent came up to her and threatened if she was not gone by the evening, to cut her down with an axe. On Tuesday he swore if petitioner was not out of the house he would burn it. Petitioner wrote to his sister and went to stay with her for several days and then again returned home. The respondent used the same threats, and petitioner again went to his sister's and remained there until March, when she once more returned home but had to leave on account of respondent's kicking her, and go again to his sister's. Petitioner never communicated with respondent again and he left without her consent and against her wish.

The identity of the respondent was proved, and also that he had been absent above two years.

HARGRAVE, J., after hearing the affidavits and evidence, considered the adultery and cruelty proved,

1874.

Mar. 3.

Dissolution of marriage.
Adultery and cruelty.
Service on person with
whom respondent is said
to be living in adultery.

Cases.

and granted a *rule nisi*, returnable in six months, He referred to *Kelly v. Kelly*, 39 L.J., P. & M. 9. and addressing the petitioner, continued: "You are at full liberty to ask your husband to leave the bad woman he is living with, and return to you and live as husband and wife should live. The six months is allowed by the Statute to you and all other petitioners for this very reason—that you may have this interval to make up your minds whether or not you will live with each other, notwithstanding all that may have passed."

Higgins v. Higgins.

1874.

Mar. 23.

Payment of alimony.
Insolvency of husband.
Costs.

ANDERSON *against* ANDERSON.

Anderson v. Anderson.

This was an application by the wife for an order calling upon the husband to show cause why he should not continue to pay 21s. per week alimony, payable under an order made by HARGRAVE, J., on the 24th February, 1874.

Innes, A. G. (*C. J. Manning* with him) for the wife.
Davis for the husband.

Since the date of the order for the payment of alimony the husband had become insolvent and his estate had been assigned for the benefit of his creditors.

Davis read the affidavit of the husband and referred to 5 Vic. No. 17, s. 30, to show that further execution of any judgment or process against the estate of an insolvent should be stayed. He also referred to sec. 42 of the Divorce Act, and the Equity Rules, p. 50.

Innes, for the wife, urged that a wife is not a creditor, and therefore that 5 Vic. No. 17, sec. 30, did not apply. He referred to sec. 45 of the Divorce Act, and argued that as to alimony such section included petitioners. He cited *Brown*, p. 296, *Epwood v. Epwood*, 31 L.J., P.M. & D., 15, and *Davidson v. Davidson*, *id.*, p. 183.

Davis, in reply, urged that the 45th section did not apply to petitioners, and cited *ex parte Moore*, 14 L.J. Bkcy., pp. 19–22.

HARGRAVE, J., granted the order as asked, with costs, against the petitioner (the husband).

1874.

Withdrawal of Petition.

ROSE *against* ROSE.

Rose v. Rose.

Windeyer applied for leave to withdraw the petition in this case and to take such further proceedings as might be advised. He referred to *Wright v. Wright*, 27 L. J. P. M. and D. Application granted.

1874.

June 26.
Service on respondent
dispensed with.

STINSON *against* STINSON.

Stinson v. Stinson.

The petition in this case was presented by the wife for a dissolution of marriage on the grounds of her husband's adultery and bigamy.

Windeyer now applied for leave to dispense with service of the citation and petition on the husband. He referred to *Quaile v. Quaile*, 28, L. J., P. and M., 5, and *Ludlow v. Ludlow*, 28 L. J., P. and M. 7.

Application granted.

Cases.

Spiller v. Spiller
and Bonnett.

SPILLER *against* SPILLER AND BONNETT.

In this cause, which was tried without a jury, the husband petitioned for a dissolution of marriage on the ground of his wife's adultery.

C. J. Manning for the petitioner.

No one appeared for the respondent or co-respondent.

There were originally only two issues, viz. :—Marriage and adultery, but at the hearing HARGRAVE, J., directed a third issue as to whether the petitioner married a certain woman under the *bonâ fide* belief that his first wife was dead. (a)

Registration of marriage put in.

The *Petitioner* proved that he was married to the respondent on the 2nd of July, 1863, she being then a widow. After the marriage they cohabited. Lived with her four years at Wagga Wagga. There were no children of the marriage. The respondent left her home about six months after the marriage, and after that frequently left her home for a week or two at a time, bringing the petitioner into debt and taking away stores. He always received her when she returned. The last time she left was in November, 1867. He afterwards saw her with Bonnett in September and October, 1868. The petitioner went once to Bonnett's place, a bush hut, about 4 miles from Wagga Wagga. He (the petitioner) waited outside until Bonnett came out, and then saw his wife on Bonnett's bed and spoke to her. He saw her with Bonnett scores of times afterwards, but she never spoke to him. In January, 1873, the petitioner was tried for bigamy, having in October, 1872, married a second time. Petitioner heard from his step-son in 1871 that his first wife was dead. He had not seen her since she left in November, 1867, until the day of the trial. After November, 1867, the respondent sued the petitioner for maintenance, but no order was made and he did not pay anything.

After hearing other affidavits read

HARGRAVE, J., decided in favour of the first and third issues, and directed the trial of the cause to stand over until the 20th August for further evidence of an independent witness.

On the 20th of August, 1874—

John Ryan proved that he had known petitioner and his wife 8 years at Wagga Wagga living as man and wife. Bonnett kept the "Farmer's Home Hotel." and in 1873 he saw the respondent and co-respondent together there. He stayed there that night and respondent and co-respondent slept in a room with only one bed in it by themselves.

HARGRAVE, J., upon the whole evidence found the second issue proved and granted a rule *nisi*, returnable in six months.

1874.

Aug. 5.

Dissolution of marriage.
Bigamy of petitioner.
Decree *nisi*.

(a) 36 Vic. No. 9, s. 27. 34 L.J.P. & M., 96.

Cases.

BAILEY *against* BAILEY AND PITT.Bailey v. Bailey
and Pitt.Dissolution of marriage.
Adultery of wife.
Collusion. Decree *nisi*.

In this cause, which was tried without a jury, the husband petitioned for a dissolution of marriage on the ground of his wife's adultery with the co-respondent.

C. J. Manning appeared for the petitioner.

Neither the respondent nor the co-respondent appeared.

The issues were:—1. Marriage; 2. Adultery; 3. Connivance or collusion.

The Rev. *Charles Vaughan*, Clerk of the Chapel of Ease at Wellington, and the proper custodian of the Registry of Marriages in that place, produced an entry of the marriage between the petitioner and respondent by *W. Watson* on the 26th of April, 1856, signed by the petitioner and respondent and two witnesses. Both *Mr. Watson* and witnesses had since died.

Mr. Marsh, W.P.M., proved the handwriting of *Mr. Watson*.

The *Petitioner* proved that he was married to the respondent at the Chapel of Ease at Stoney Creek, beyond Wellington, in the year 1856. He knew her as *Louisa Westcott* until the day of the marriage, when he first heard that her name was *Louisa Jones*, her mother having been married twice. He lived with the respondent at Stoney Creek until 1858, when they went to Bathurst. *Petitioner* kept an hotel at both places. His suspicions were first aroused at Bathurst. After that they lived at *Evans Plains*, six miles from Bathurst, until 1866, when *petitioner's* suspicions being again aroused, he spoke to respondent, and they separated by mutual consent. The petitioner left *Evans Plains* and went to Stoney Creek. Respondent said she would go into service in Bathurst. *Petitioner* remained at Stoney Creek two years, and then went to Hill End and Sydney. First heard of the co-respondent's intimacy with respondent seven months before this cause came on for trial, but made no inquiries. He instituted proceedings. Did not know Pitt. Saw respondent living at Bathurst at a *Mr. Powell's*. A *Mr. Thompson* was with petitioner then. Saw *Powell*, but did not speak to his wife. Had had no communication with his wife since they separated. *Powell's* was a private house. He told his wife she might go away and do just as she pleased. He told her he did not care about her. He did not go after her when he heard reports against her, and never applied in any way to get her back. He instituted proceedings as soon as he heard from reliable persons of her adultery. He did not anticipate that she would commit adultery. He was not living in adultery.

Mr. Thompson proved the service of the petition and citations.

Cases.

Bailey v. Bailey
and Pitt.

James Powell proved knowing respondent since she was a child. He met her in the street and she told him she was married, but did not say to whom. She came to his house with *James Pitt*, the co-respondent, and asked for rooms. He understood that co-respondent was respondent's husband. He and the neighbours knew them as Mr. and Mrs. Pitt. Respondent afterwards told him that Bailey was her husband, and was in Sydney. He spoke to her and Pitt to go as soon as they could, and they left shortly afterwards.

Manning cited *Study v. Study*, 44 L.J., P.M. & D.

HARGRAVE J., after hearing the affidavits and evidence, and on the authority of *Dering v. Dering*, 37 L.J., P.M. & D. ; *Ross v. Ross*, 38 L.J., P.M. & D. ; and *St. Paul v. St. Paul*, 38 L.J., P. & M.

Granted a decree *nisi*, to be made absolute in six months.

Bogan v. Bogan.

BOGAN *against* BOGAN.

1874.

This was a husband's petition for a dissolution of marriage on the ground of the adultery of his wife.

Sept. 2.
Dissolution of marriage.
Evidence of adulterer.
Decree *nisi*.

Windeyer appeared for the petitioner.

No one appeared for the respondent.

The *Petitioner* proved that he was married to the respondent at Braidwood on the 12th of October, 1858, and that there was one child of the marriage. He first observed his wife's bad behaviour in January, 1867. He left her, and she summoned him twice, once at Braidwood and once at Araluen, for maintenance, both of which summonses were dismissed. Had not seen her since February, 1867.

J. W. Ward proved knowing the petitioner and respondent, and remembered the marriage at Braidwood. They were very happy and comfortable at first. Respondent, at time of trial, was living with *John Ditton*, as his wife.

Upon this, and on hearing the affidavits of the petitioner and six other witnesses,

HARGRAVE, J., found that the marriage and adultery were both proved, and granted a rule *nisi*, returnable in six months.

Wilson v. Wilson.

WILSON *against* WILSON.

1874.

This cause, which was tried without a jury, was a wife's petition for a dissolution of marriage.

Oct. 22.
Dissolution of marriage.
Adultery and desertion.
Decree *nisi*.

The issues were:—1. Marriage. 2. Adultery. 3. Desertion for two years and upwards. 4. Cruelty.

Buchanan appeared for the petitioner.

No one appeared for the respondent.

The *Petitioner* proved that she was married to the respondent at Leeds, in England, on the 24th of April, 1855, by the Rev. Mr. Chapman, and that they lived together as man and wife until April, 1863, when she suspected him of infidelity with one *Isabella*

Cases.

Murphy, having seen him coming out of her room. Wilson v. Wilson. She charged him with it. He struck her and ordered the servants not to obey her. Locked her up for a fortnight. She had to leave on account of her health, and when she returned he turned her from the door. This was in 1863, and Isabella Murphy was living with him. She earned her living until 1st August, 1875. He frequently came to her house and beat her and destroyed her property. He said he would leave her for good and never see her again. She heard he had gone to San Francisco.

Photographs of the respondent and Isabella Murphy were produced and identified.

An affidavit of the Rev. Mr. Chapman was read proving the marriage, and the certificate of marriage was produced.

Affidavits of the petitioner and three other witnesses were read.

HARGRAVE, J., granted a rule *nisi* returnable in six months.

CATTON *against* CATTON.Catton v. Catton.

1874.

Nov. 19.

Dissolution of marriage.
Adultery and cruelty.
Custody of children.
Costs.

This was a wife's petition for a dissolution of marriage on the grounds of her husband's adultery and cruelty.

Innes, A. G. (C. J. Manning with him), appeared for the petitioner.

No one appeared for the respondent.

There were three issues, viz.:—1. Marriage. 2. Adultery. 3. Cruelty.

Innes, A. G., in stating the case referred to *Milford v. Milford*, 1 L. R., P. & D. 295 & 715, as to "Cruelty" in Law.*

A. C. McDonald proved being present on the occasion of the marriage between the petitioner and the respondent on the 24th of October, 1866.

The *Petitioner* proved being the wife of the respondent. She first became acquainted with him in June, 1865. There were two children of the marriage. He was a Bank clerk in Hay and Melbourne. They lived happily together for twelve months after the marriage. On the 1st of Jan., 1867, they went to some races when the husband got drunk in the afternoon and struck her. She gave no provocation and was ill. This was ten weeks after marriage. In Geelong, about July, 1867, the respondent used to keep late hours, and turned her out of doors in her night-dress. This was just before the baby was born. Respondent was given to drink. In December, 1868, he boxed her ears and shook her. She gave no provocation. He promised to amend, but a fortnight afterwards boxed her ears again and tore her dress. She sent for a Mr.

* See also the cases of *Scott v. Scott* 33 L. J., P. & M. 1, and *Hudson v. Hudson*, 3 Sw. & Tr. 314; 33 L. J., P. & M. 5.

Cases.

Catton v. Catton. Corrigan to protect her. In June, 1869, respondent chased her with a knife; Mr. Corrigan interfered and took away the knife. Respondent took a gun to her one day and threatened to shoot her. She was constantly in fear. He was always sorry afterwards and she forgave him. (1) She never told her sisters. In December, 1869, he rushed at her with a knife and said he would stab her; he nearly choked her and she had to wear a bandage. She ran to the punt-keeper and remained away six months. From January till July, 1870, he was very violent. She was very unhappy and he said he was sorry. She used to help him with accounts. He kept the pledge for four weeks, but afterwards used to strike her and kick her as before. When she remonstrated he turned her and her brother out of doors. She went away from fear and for rest. In December, 1870, she was very ill and had to see Dr. Gordon. She left in January on account of his violence, and when she went back on one or two occasions respondent told her to go away, and that he was better without her. She always said she would return if he would reform and have a home for her. She went with Mr. Berlinger, a detective, to a house where she saw her husband and a woman in her night-dress.

Mr. Robert Scott proved being the brother-in-law of petitioner. Remembered respondent tearing the petitioner's dress. Saw petitioner's arm and at another time her neck black from bruises. Knew Mr. Corrigan. He came to fetch him (Mr. Scott) in January, 1869, to take petitioner away. He took a policeman with him and went to the house, respondent was in petitioner's bedroom and said "Go to Hell." He took petitioner to his house for two or three weeks. Respondent made no objection or resistance to his taking the petitioner and child away.

Mr. E. W. Levern proved knowing the petitioner and respondent, and going to a ball with them on one occasion. After going to bed on that evening he was aroused and found petitioner in an out-house towards morning. She would not come inside. The respondent found her and rushed after her with something in his hand. Respondent was savage—not drunk. Respondent was not joking. There was no impropriety between himself and the petitioner.

Dr. Gordon proved the illness of the petitioner in 1870-1.

C. Williams, a nurse, proved seeing the respondent strike the petitioner in 1868-9, and box her ears.

Mr. Henry proved seeing a photograph of the respondent at a prostitute's at Hay.

(1) See Browne, p. 103.

Cases.

F. King, clerk to petitioner's attorney, proved serving respondent with petition and other papers at the Lands Office on 20th August, 1874. He accepted service. Catton v. Catton

The jury, after hearing the affidavits and evidence, having found a verdict for the petitioner on all three issues,—

HARGRAVE, J., granted a decree *nisi* with costs against the respondent, and ordered the custody of both children to the petitioner.

1874.

Nov. 20.

Dissolution of marriage.
Adultery with person
unknown. Identity.
Volenti non fit injuria.
Petition dismissed.

BOURNE *against* BOURNE.*

Bourne
v.
Bourne.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery.

Pilcher appeared for the petitioner.

There was no appearance for the respondent.

There were two issues:—1. Marriage. 2. Adultery after marriage with a person unknown.

The *Petitioner* proved having been married to the respondent on the 27th of November, 1858, at Port Macquarie by the Rev. Canon O'Reilly. Identified a photograph of the respondent. There were no children of the marriage. They lived together as man and wife for about ten years until the end of 1867. The respondent left him on the 19th of December, 1867, saying she was going to Sydney for awhile. He asked her intentions, and she said to stay in Sydney. He had no intercourse with her since she left him in 1867. He never separated from her before 1867, but she once went on a visit to a friend in Sydney. She said she was going to take a situation as milliner. He did not ask for her address, and took no steps to find her out since she left him.

Thomas Fae proved being present at the marriage of the petitioner and respondent. Saw her at Mrs. Cross's in King-street, Sydney, in May, 1873. Pointed her out to a Mr. Reid as Mrs. Bourne. Had not the slightest doubt that the party served with certain papers in this cause was the Mrs. Bourne he saw married.

The *Rev. Canon O'Reilly* proved marrying petitioner and respondent, and produced a copy of the register.

Charles Reid proved going with *Thomas Fae* to serve, and serving the person represented in the likeness produced, with the petition and citation. Went with a Mr. Shillington that morning to 36, College-street, and saw the same person there.

John Shillington proved knowing petitioner and Reid; went with the latter to 36, College-street. In February, 1868, he took a house in Stanley-street. On his taking the house there was one lodger in it who was to stay till her husband returned. He saw that person

* See post p. 44.

Cases.

Bourne
v
Bourne.

on the morning of this trial. He was a married man. She (the lodger) remained in the house until the end of February when she introduced a gentleman as her husband. That gentleman was certainly not Mr. Bourne (the petitioner). The gentleman remained two or three weeks, was always home at night, and occupied the same sitting-room and bedroom as she (the lodger) did. There was only one bed. Identified the likeness as that lady's likeness. She said they were going to California together. She said "her husband, Mr. McDonald, and she." They went away. Heard nothing more of her since she left. She always spoke of the gentleman as her husband. He never saw Bourne, the petitioner, until the trial.

Maria Shillington (wife of the last witness) proved that the lady and gentleman lodging in her house told her they had come from Port Macquarie. She recognized the likeness as the likeness of that lady. They occupied one bedroom in which was only one bed. She knew them as Mr. and Mrs. McDonald. Had not seen the lady since.

After hearing the affidavits and evidence,

HARGRAVE, J., in summing up referred to *Kelly v. Kelly*, 32 L.J., P. and M. 181, and pointed out that he had shown the affidavits of Mr. and Mrs. Shillington to each of those witnesses, and that such affidavit did not contain one word about McDonald, but each of them admitted that the parties went by that name while in their house. He also pointed out the fact that this husband did not seem to care about his wife's leaving him.

The jury found (1st)—That the petitioner was legally married to the respondent; (2nd)—That the adultery was not proved.

Petition dismissed.

Rose v. Rose

ROSE *against* ROSE.

1874.

This cause which was heard without a jury was a husband's petition for a dissolution of marriage on the grounds of his wife's adultery by general prostitution. Dissolution of marriage. Adultery and general prostitution of wife. Decree nisi.

Windeyer appeared for the petitioner.

No one appeared for the respondent.

The *Petitioner* proved his marriage to the respondent on the 24th of August, 1869, at Cook's River, by the Rev. G. King. He produced a certificate of marriage. In consequence of some reports he had heard he determined to have nothing more to do with his wife, and had since locked her out.

James Marshall proved knowing Mrs. Rose and a Mr. John Hogan. Mrs. Rose had been living with Mr. Hogan as his housekeeper, and went by the name of Mrs. Hogan. Saw her in the act of adultery with a Mr. C. James. Was quite certain it was her. Had had no quarrel with respondent.

Cases.

Alexander McCoy, P.C., proved knowing Mrs. Rose for three or four years as a reputed prostitute. Rose v. Rose.

HARGRAVE, J., after hearing the affidavits and evidence, found for the petitioner on all the issues, and granted a rule *nisi* returnable in six months.

1875.

Dissolution of marriage.
Connivance or collusion.
Neglect or misconduct
conducting to adultery.
Right of Attorney
General to address jury.
Amendment of record.
Admissibility of conver-
sation between husband
and wife. Costs of
Attorney General
intervening.

NAIRN *against* NAIRN AND POWER.

Nairn
v.
Nairn & Power.

The Attorney General intervening.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery with the co-respondent.

There were four issues, viz. :—1. Marriage. 2. Adultery on 15th April, 1865. 3. Connivance or collusion. 4. Neglect or misconduct conducting to adultery.

Pilcher appeared for the petitioner.

Innes on behalf of the Attorney General alleged connivance or collusion.

A question having arisen as to the Attorney General's right to address the jury on his cross-examination of witnesses, and also on all the issues,—

HARGRAVE, J., decided that under 36 Vic. No. 9, s. 25, the Attorney General had such right; ⁽¹⁾ and also on the ground that he appeared for the protection of the general public.

Pilcher, for the petitioner, wished to put in or allude to certain conversations between husband and wife, but—

HARGRAVE, J., following his ruling in *Anderson v. Anderson* (*ante* p. 33) decided that such conversations were not admissible.

Pilcher (continuing): The wife said something to the husband, who thereupon immediately left her in his house, where she remained living with the co-respondent. There was one child born to the petitioner and several after he left her. "Connivance or collusion" means "willing consent to adultery." He quoted from *Pritchard's Digest*, and cases there cited.

The petitioner's case, as proved by himself, was shortly as follows:—In 1863 he being then driving one of Messrs. Cobb and Co.'s coaches, which plied between Bathurst and Orange, met the respondent, who was at that time a domestic servant in a public-house in Bathurst, and they were married on the 6th of May in the same year by the Presbyterian minister there. In a week or two they left Bathurst and went to live at Orange at the house of a Mr. M'Kay. Subsequently he bought some land at Orange, built a house and lived there with his wife for about two years on good terms. He knew the co-respondent Power for about two years before his marriage, Power being a

⁽¹⁾ 22 & 23 Vic. c. 144, ss. 5, 7, compared with 36 Vic., No. 9, s. 28.

Cases.

Nairn
v.
Nairn & Power.

driver in the same employ as the petitioner, and was on very good terms with him. About six months after the marriage the co-respondent and petitioner took a pound at Orange together. Power came to live with him from about three weeks after he came to Orange until April, 1865, paying for his board and lodging, there being no one in the house but the petitioner, the respondent, and the co-respondent, in whom the petitioner placed his entire confidence. Petitioner was away from home every alternate night driving. In April, 1865, petitioner heard something, and coming in unexpectedly saw the co-respondent with his arm on respondent's shoulder improperly. He spoke to her—she answered him and he left immediately. He went to Bathurst and got removed up-country to Queensland, and ultimately to Armidale. He had never seen or spoken to his wife since he left her, and she had never summoned him for maintenance. He believed she was living with Power in the same house still.

The Rev. Mr. Laughton proved that he remembered marrying James Nairn and Mary Anne Sampson on the 6th of May, 1863, but could not identify the parties.

James McGregor proved knowing petitioner and respondent at the time the co-respondent was living with them at Orange. Since petitioner left, the respondent had been living with co-respondent as his wife. No one else was living in the house. Had heard respondent called "Mrs. Power."

John McDonald proved serving the petition and proceedings on the respondent.

Innes, in addressing the jury for the Attorney-General as to wilful misconduct or neglect on the part of the petitioner, which had conduced to the adultery of the respondent, pointed out that there was no proof of adultery on the 15th of April, 1865, but only a suspicion, which would not be sufficient cause for separation.

Pilcher thereupon asked to have the record amended by striking out the words "15th of April, 1865," and inserting the words "after the marriage."

HARGRAVE, J., declined to do this, but consented to amend the record by adding the words "after the marriage," and allowed *Pilcher* to finally address the jury, but not as of right.

HARGRAVE, J., in his summing up to the jury, alluded to the Act and its difficulties, and stated that a Judge could not be too watchful, and should be cautious in granting a divorce. He then explained the issues to the jury, and on the 3rd issue, as to connivance, referred to *McQueen*, pars. 8 and 9, from which it would appear that general connivance is enough. On the 4th issue, as to wilful misconduct and neglect, he referred to *St. Paul v. St. Paul*, 38 L. J., P. and M., and *Gower v. Gower*, 41 L. J., P. and M., 49, and the cases there cited.

Cases.

The Jury returned their verdict as follows :—

As to the 1st issue,—Yes.

„ 2nd „ —Since 5th April, 1865.

„ 3rd „ —No.

„ 4th „ —No.

Nairn v. Nairn
and Power.

On the 5th of March, 1875, *Pilcher*, for the petitioner, applied for a decree *nisi* and costs to be paid by co-respondent, and quoted *Pritchard*, p. 88, and 36 Vic., No. 9, ss. 27-31.

HARGRAVE, J., granted a rule *nisi*, returnable in six months. Petitioner to pay the costs of the Attorney General intervening. No other order as to costs.

1875.

WILSON *against* WILSON AND —.

Wilson v. Wilson
and —

Mar. 9.
Dissolution of marriage.
Adultery of wife. Costs.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery.

Dr. Donovan for the petitioner.

Certificate of marriage put in.

Bernard Anderson proved knowing the petitioner, respondent, and co-respondent, and that the respondent and co-respondent had been living together for two years at Walladolla as husband and wife.

John Mottey, father of the respondent, corroborated.

The *Petitioner* proved that he lived three months with his wife when she left him and went away. He had only seen her once since.

HARGRAVE, J., after hearing the affidavits, granted a decree *nisi*, to be made absolute in six months. No order as to costs.

1875.

MAYNE *against* MAYNE.

Mayne v. Mayne.

Mar. 16.
Death of co-respondent
Service dispensed with.

Want applied for leave to dispense with service where the co-respondent was dead.

HARGRAVE, J., granted the application upon regular evidence being adduced of the death.

1875.

AYRES *against* AYRES AND MATHEWS.

Ayres v. Ayres
and Mathews.

Mar. 25.
Special service on
co-respondent.

Foster applied for leave to dispense with service where the co-respondent could not be found.

HARGRAVE, J., directed that special service should be made on the co-respondent at his mother's residence, where he last resided.

1875.

BOURNE *against* BOURNE.*

Bourne
v.
Bourne.

May 20.
Adultery with person
unknown. Amended
issues. Dissolution of
marriage. Decree *nisi*.

This cause, which was a husband's petition for a dissolution of marriage, was tried before, on the 20th November, 1875, but was dismissed on a question as to the issue of adultery with "a person unknown."

* See *ante* p. 40.

Cases.

Bourne
v.
Bourne.

The case now came on again and the issues, as amended, were:—1. Marriage. 2. That after the marriage the respondent was guilty of adultery with a person unknown, as alleged in the petition of the said John Bourne in this suit. 3. That after such marriage in or about the month of February, 1868, the respondent was guilty of adultery with a man named M'Donald.

The evidence was similar to that given at the former trial (*ante*, p.)

The Jury returned a verdict as follows:—As to First issue—Yes. As to 2nd issue—"Not unknown." As to 3rd issue—Yes.

HARGRAVE, J., granted a decree *nisi*, to be made absolute in six months.

Ayres v. Ayres
and Mathews.

AYRES *against* AYRES AND MATHEWS. (1)

1875.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery with the co-respondent.

Dissolution of marriage.
Service of decree where
co-respondent cannot be
found.

Rogers appeared for the petitioner.

No one appeared for the respondent or co-respondent.

The *Petitioner* was married to the respondent on the 4th of July, 1871, and the marriage certificate was put in.

Sarah Ayres, mother of the petitioner, proved being present at the marriage, which was solemnized according to the Wesleyan service.

George Ayres, the petitioner, proved that he was married to the respondent, as in the certificate. On the 3rd of April, 1872, he saw her walking with another man. She had no cause to leave him. He gave her enough to keep her.

Eliza Jane Kerr, wife to a boardinghouse-keeper, proved that the respondent and co-respondent came to her house in September, 1874, and asked for a room for a married couple, which they occupied for two nights. There was only one bed in the room.

Michael Hunter proved that on one evening in August, 1874, the respondent and co-respondent went to bed together at co-respondent's house.

HARGRAVE, J., after hearing affidavits, granted a decree *nisi* to be made absolute in six months. The decree to be served on the co-respondent at his mother's house.

Dutton
v.
Dutton.

DUTTON *against* DUTTON.

1875.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery.

June 4.

Dissolution of marriage.
Adultery of wife.
Decree *nisi*.

The *Petitioner* proved his marriage with the respondent in 1859, and produced a certificate of such marriage.

(1) *Ante* p. 44.

Cases.

John Dawson, serjeant of police, proved that on his going to the house of a Captain Robinson, the respondent said that Dutton was her first husband. She had been living as Mrs. Robinson for 10 or 11 years.

Dutton
v.
Dutton.

Helen McBride proved that the respondent told her that she had been married to the petitioner, who was suing for a divorce. Had known her 8 years living with Captain Robinson, as man and wife.

HARGRAVE, J., after hearing affidavits, granted a rule *nisi*, returnable in six months.

1875.

Dissolution of marriage.
Adultery of wife.
Decree *nisi*.

BRADLEY *against* BRADLEY AND ARCHER.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery with the co-respondent.

Bradley
v.
Bradley and
Archer.

C. J. Manning appeared for the petitioner.

On proof of the marriage, and two witnesses having proved that the respondent and co-respondent had lived together as man and wife for five years, and after hearing affidavits—

HARGRAVE, J., granted a decree *nisi*, to be made absolute in six months.

1875.

Dissolution of marriage.
Adultery of wife.
Decree *nisi*.

MAYNE *against* MAYNE.

Mayne v. Mayne.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery.

Wisdom appeared for the petitioner.

The respondent did not appear.

On proof of the marriage of the petitioner with the respondent, and it having been proved that the respondent had lived with a man named Shoodall as his wife, that the petitioner had not spoken to her for fourteen years—and after hearing affidavits

HARGRAVE, J., granted a decree *nisi*, to be made absolute in six months.

1875.

June 15.
Custody of children.

CATTON *against* CATTON.

Catton v. Catton.

On it having been proved that all the children of the marriage between the petitioner and respondent had lived continuously with the petitioner since 1871,

HARGRAVE, J., ordered the custody of all the children to the petitioner.

1875.

July 6.
Dissolution of marriage.
Adultery of wife. Decree
nisi.

M'GARRITY *against* M'GARRITY AND GLADDENTON.

M'Garrity v.
M'Garrity and
Gladdenton.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery with the co-respondent.

It having been proved that the petitioner and respondent were married on the 24th of May, 1860, that they cohabited for 2 years, and that then the

Cases.

M'Garrity v. M'Garrity and Gladdenton.

respondent left the petitioner and lived with the co-respondent as his wife, and refused to return to the petitioner,—

HARGRAVE, J., granted a decree *nisi* to be made absolute in 6 months. No order as to costs.

Booty v. Booty and Blanchard.

BOOTY *against* BOOTY AND BLANCHARD.

1875.

This case being called on for trial, and there being no proof that either the respondent or the co-respondent had been served with the proceedings,—

HARGRAVE, J., discharged the jury and gave petitioner liberty to apply.

August 19.
No service on respondent or co-respondent. Jury discharged. Liberty to apply.

Harrison v. Harrison.

HARRISON *against* HARRISON.

1875.

The *Petitioner* in this case was suing *in formâ pauperis*.

On the case coming on for trial, HARGRAVE, J., refused—on the authority of *Hamill v. Hamill*, 27 L.J., P. & M. 107, and *Brown* p. 204—to allow *Petitioner's* Counsel to transfer his brief to a friend.

Counsel transferring brief to a friend not allowed *in formâ pauperis*.

Lynch v. Lynch.

LYNCH *against* LYNCH.

1875.

This was a petition by the wife for a dissolution of marriage on the ground of the husband's adultery and cruelty.

Forster appeared for the petitioner.

The adultery and marriage were proved; and as to the cruelty the petitioner proved that her husband had ill-treated her three months after the marriage, and ever since. Upon this evidence and the affidavits of the petitioner and two other witnesses—

HARGRAVE, J., found for the petitioner, on all the issues, and granted a rule *nisi*, returnable in six months.

Oct. 8.
Dissolution of marriage. Husband's cruelty and adultery. Rule *nisi*.

Booty v. Booty and Blanchard.

BOOTY *against* BOOTY AND BLANCHARD.

1875.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery.

Pilcher appeared for the petitioner.

No one appeared for the respondent or co-respondent.

The *Rev. Thomas Unwin*, a clergyman of the Church of England, proved marrying the petitioner and the respondent at Emu Plains on the 16th of June, 1862, and produced the certificate of such marriage.

M. D. Selby proved knowing the petitioner and the respondent since 1871. In January, 1875, the respondent was living at Black Lead in the co-respondent's house. He went to visit them there, by the respondent's invitation, on the 11th, 12th, and 13th of January, 1875. The co-respondent's house consisted of three rooms—a dining-room with one room on each side; one of the side rooms was a bed-room, and the

Nov. 18.
Dissolution of marriage. Respondent and co-respondent not appearing to be cross-examined on their affidavits. Costs of co-respondent. Decree *nisi*.

Cases.

other a lumber room. He (witness) slept on the sofa in the dining-room, and the respondent and co-respondent slept in the bedroom. After they had left the bedroom in the morning he went in to wash, and the bed appeared as if slept in, and the room as if used. There was only one bed. The respondent used to go by the name of Mrs. Blanchard. There were no other persons in the house—which was a private one.

Booty v. Booty
and Blanchard.

George Booty (the petitioner) proved that he knew the co-respondent long before his (petitioner's) marriage with the respondent. Never saw anything suspicious in the conduct of his wife until January, 1874, when she left him. She had full control over money and domestic affairs. When she left he did not know where to find her. Never ill-treated her or had any quarrel with her. The co-respondent and respondent were both born in Windsor, and knew each other long before petitioner's marriage. He endeavoured to induce his wife to return through a Mr. Lawrence, but he telegraphed, saying she would not come. He denied all collusion.

Answers of the respondent and co-respondent and affidavits were read.

The point was reserved as to whether the Judge could read the answers and affidavits of the respondent and co-respondent to the jury, or direct the jury that the petitioner must establish his case by evidence sufficient to convince their minds as against the denials upon oath of each of the parties charged with adultery.

HARGRAVE, J., in summing up, directed the jury that the respondent and co-respondent need not have answered the charge; and pointed out that though they had denied it, neither had appeared to be cross-examined on their affidavits.

The jury returned a verdict for the petitioner.

Rule *nisi* returnable in six months.

No order as to costs of the co-respondent.

1875.

Nov. 19.
Dissolution of marriage.
Number of jurors.
Decree *nisi*.
Damages against
co-respondent.

TEAS *against* TEAS AND SMITHERS. (1)

Teas v. Teas
Smithers.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery with the co-respondent.

Sir W. Manning, Q.C. (C. J. Manning with him), appeared for the petitioner.

Windeyer for the respondent.

Davis for the co-respondent.

Windeyer suggested that the case should be tried by a jury of 12, but

HARGRAVE, J., declined, saying that the case should be tried as a civil action.

(1) The full Court granted a rule for a new trial of this cause on the ground that the number of jurymen should have been 12 instead of 4, but no new trial was had.

Cases.

Teas v. Teas and
Smithers.

Ten jurors were then sworn and two names struck out by the petitioner, two by the respondent under protest, and two by the co-respondent.

The issues were 1, Marriage; 2, Adultery.

The petitioner claimed damages from the co-respondent.

Sir W. Manning in opening the case referred to *Pritchard's Digest*, p. 146.

The petitioner's case was shortly as follows:—He was married to the respondent at St. John's Church, Mudgee, on the 4th of November, 1863, and they cohabited for about twelve months in Sydney, for about three years and a half at Eden, Twofold Bay, and for five months at Manly Beach, until July, 1873, when the petitioner left Sydney for England on matters connected with his business. Previously to the petitioner's departure for England he accompanied the respondent to Mudgee, and arranged that she should reside there with her father and mother until his return to this Colony. The petitioner paid, or caused to be paid, to his wife's father the sum of £350 per annum by monthly instalments for her support during his absence. The petitioner returned to this Colony on the 7th of January, 1875, and lived with his wife. There was no separation, except while the petitioner was in England. The petitioner's suspicion was first aroused by a communication made to him in June, 1875, by Sarah Leckeron, who was in respondent's service during petitioner's visit to England.

The adultery of the respondent with the co-respondent was proved by Sarah Leckeron.

There were numerous other witnesses called, and affidavits read.

The respondent and co-respondent each filed answers to the petition, and were severally called, and distinctly denied the adultery.

HARGRAVE, J., having summed up the case, the jury returned a verdict for the petitioner on all the issues, with £2,000 damages against the co-respondent.

Decree *nisi*, to be made absolute in six months.

Strang v. Strang
and Usher.STRANG *against* STRANG AND USHER.

1875.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery with the co-respondent.

Dissolution of marriage.
Decree *nisi*. Custody of
child.

The facts were shortly as follows:—

The *Petitioner* was married to the respondent on the 9th of June, 1868, and about eighteen months after the marriage the petitioner went to the Gold Fields. On his return, on the 23rd of August, 1872, he found the respondent was married to the co-respondent, and that they were living together as man and wife. The petitioner denied all collusion.

Cases.

After hearing affidavits—

HARGRAVE J., in granting a decree *nisi*, ordered the custody of one child of the marriage, born on 19th April, 1869, to be given to the petitioner, and said the petitioner was much to blame for not sending any money to provide for his wife.

Strang v. Strang
and Usher.

1875.

Dec. 3.
Dissolution of marriage.
Decree *nisi*. Custody of
children.

HARRISON *against* HARRISON AND JOHNSON.

Harrison v.
Harrison and
Johnson.

This case, which was tried without a Jury, was a husband's petition for a dissolution of marriage on the ground of the wife's adultery with the co-respondent.

The parties were not represented by Counsel.

The marriage and adultery having been proved,—

HARGRAVE, J., granted a decree *nisi*, returnable in six months, and ordered the custody of all the children of the marriage to the petitioner.

1875.

Dissolution of marriage.
Decree *nisi*. Respon-
dent ordered to pay
costs.

DENT *against* DENT.

Dent v. Dent.

This was a petition by the wife for a dissolution of marriage on the ground of the husband's adultery and cruelty.

C. J. Manning appeared for the petitioner.

This case was heard on affidavits, and

HARGRAVE, J., considering the adultery and cruelty proved, granted a decree *nisi*, to be made absolute in six months.

Respondent to pay costs.

1875.

Dissolution of marriage
Service of decree *nisi*.

MUNRO *against* MUNRO AND WITCHER.

Munro v. Munro
and Witcher.

This was a husband's petition for a dissolution of marriage on the ground of the wife's adultery with the co-respondent.

Pilcher appeared for the petitioner.

This case was tried on affidavits, and the marriage and adultery having been proved,—

HARGRAVE, J., granted a decree *nisi*, returnable in six months, and directed such decree to be served if possible on both parties.

1876.

Mar. 7.
Dissolution of marriage
Adultery. Decree *nisi*.

PITTIS *against* PITTIS.

Pittis v. Pittis.

This was a husband's petition for a dissolution of marriage on the ground of the wife's adultery with the co-respondent.

Simpson appeared for the petitioner.

It having been proved that the parties were married on the 3rd of October, 1859, and that the respondent after a time left the petitioner and lived with the co-respondent as his wife,—

HARGRAVE, J., after hearing affidavits, granted a decree *nisi*, returnable in six months.

Cases.

Game v. Game
and Sadleir.GAME *against* GAME AND SADLEIR.

1876.

This was a husband's petition for a dissolution of marriage on the ground of the wife's adultery with the co-respondent.

Dissolution of marriage.
Adultery. Decree *nisi*.

M. H. Stephen appeared for the petitioner.

The *Petitioner* was married to the respondent in October, 1868, and lived happily until 1874, when the respondent left the petitioner and married the co-respondent, alleging her marriage with the petitioner to have been a false one. She afterwards lived with the co-respondent as his wife.

These facts having been proved, and several affidavits read—

HARGRAVE, J., granted a decree *nisi*, returnable in six months.

Craig v. Craig.

CRAIG *against* CRAIG.

1876.

This was a husband's petition for a dissolution of marriage on the ground of the wife's adultery.

May 12.
Dissolution of marriage
Adultery. Decree *nisi*.

Wisdom appeared for the petitioner.

The parties were married on the 29th November, 1858, and lived together until March, 1866, when the respondent left the petitioner and went to live with a man named Ritchie; when she returned the home was broken up. The respondent had since lived with a man named Allen as his wife, and also with other men.

On these facts being proved,—

HARGRAVE, J., after hearing affidavits, granted a decree *nisi*, returnable in six months.

Anderson
v.
Anderson.ANDERSON *against* ANDERSON.

1876.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery.

May 19.
Dissolution of marriage.
Adultery. Rule *nisi*.

Wisdom appeared for the petitioner.

The parties were married on the 1st of September, 1866, and lived together until the 29th of July, 1872, when the respondent left the petitioner and went to live with a man named Thompson. The petitioner paid 25s. a week for her maintenance. She had also committed adultery with other men.

Several affidavits were read.

HARGRAVE, J., granted a rule *nisi*, returnable in six months.

Miller v. Miller.

MILLER *against* MILLER.

1876.

This was a husband's petition for a dissolution of marriage on the ground of the wife's adultery.

May 23.
Dissolution of marriage,
Adultery. Decree *nisi*.
Costs of wife respon-
dent. Alimony.

Windeyer appeared for the petitioner.

Healy appeared for the respondent.

MATRIMONIAL CAUSES ACT.

Cases.

The parties were married on the 24th of April, 1861, *Miller v. Miller*, and lived together until the 27th of February, 1865, when the respondent left the petitioner and came to Sydney, and lived with a man named John Smith as his wife. The petitioner frequently wrote to her, and supplied her with money for two years, but she never returned.

Besides the petitioner, three other witnesses were examined, who deposed to the respondent and a man named John Smith living together as man and wife in a cottage at Liverpool.

The respondent was called, and denied the adultery, but admitted that the man Smith had said she was his wife.

Several affidavits were read.

HARGRAVE, J., found that both the marriage and adultery were proved, and granted a rule *nisi*, returnable in six months.

Healy applied for the costs of the respondent, and referred to *Holt v. Holt*, 28 L. J., 12 and 36 Vict., No. 9, sec. 41, and also applied for alimony, but

HARGRAVE, J., dismissed both applications.

1876.

Dissolution of marriage.
Adultery. Decree *nisi*
for 3 months.

HARRISON *against* HARRISON AND CHARD.

Harrison v.
Harrison and
Chard.

This was a husband's petition for a dissolution of marriage, on the ground of the wife's adultery with the co-respondent.

Windeyer appeared for the petitioner.

The petitioner was married to the respondent on the 22nd of January, 1870. There were two children of the marriage. In March, 1874, the petitioner went to Canada, whence he wrote regularly to his wife, and remitted money. On his return, in 1875, he found his wife living with the co-respondent as man and wife. The respondent had one child by the co-respondent.

Several affidavits were read.

HARGRAVE, J., granted a decree *nisi*, returnable in three months, and gave the custody of the two children to the petitioner.

1876.

June 2.
Dissolution of marriage.
Desertion and adultery.
Rule *nisi*.

WALLACE *against* WALLACE.

Wallace v.
Wallace.

This was a wife's petition for a dissolution of marriage, on the ground of her husband's adultery, coupled with desertion for 2 years.

Buchanan appeared for the petitioner.

The petitioner, who was a widow at the time, was married to the respondent on the 25th of March, 1870. A fortnight after the marriage the respondent came home intoxicated, and struck and illused the petitioner. On the 26th of December, 1871, the respondent left the petitioner without any means of support; and on the 2nd of March, 1871, he committed adultery, at Penrith, with a woman named Neville.

Cases.

Wallace v.
Wallace.

Several affidavits were read.

HARGRAVE, J., cross-examined the petitioner, and being satisfied that the desertion and adultery were proved, granted a rule *nisi*, returnable in six months.*

Heydon v.
Heydon and
Pannan.

HEYDON *against* HEYDON AND PANNAN.

This was a husband's petition for a dissolution of marriage, on the ground of the wife's adultery with the co-respondent.

1876.

Dissolution of marriage.
Adultery. Condonation.
Second adultery. Rule
nisi.

Buchanan appeared for the petitioner.

The petitioner was married to the respondent at Liverpool, in England, on the 9th of Feb., 1852; they lived together very happily for the first 4 years of their married life, when the petitioner complained of the respondent's undue familiarity with a man named Leon who was boarding in petitioner's house. After this the respondent left her husband and lived with Leon for 6 months, but the petitioner condoned this misconduct, and he and the respondent lived together again until 1873, when the petitioner and the respondent went to New England, where the co-respondent was working for him. The petitioner's suspicions were aroused on seeing the co-respondent come out of the respondent's room, and he ordered him out of the house. The respondent and co-respondent then left the husband's house, and lived together as man and wife at Murrurundi and Inverell in 1873. It was proved that the respondent and co-respondent slept together for 2 nights in a tilted cart.

Several affidavits were read.

HARGRAVE, J., considered the marriage and adultery proved, and granted a rule *nisi* returnable in six months.

Smith v. Smith†

SMITH *against* SMITH.

1876.

This was a wife's petition for a dissolution of marriage on the ground of the husband's desertion, cruelty, and adultery.

Dissolution of marriage.
Cruelty and adultery.
Imprisonment of husband not desertion.
Decree *nisi*.

Buchanan appeared for the petitioner.

The parties were married on the 27th of June, 1864, and lived together for 3 years and 6 months, when they separated by reason of the respondent's being imprisoned for 2 years and a half for forgery. On his liberation he illtreated her, and threatened to take her life. He left her in 1871 without any cause, and she had never seen him since. She was always a good and faithful wife, and worked for and kept him.

HARGRAVE, J., cross-examined the witnesses on their affidavits, and being satisfied of the adultery and cruelty granted a rule *nisi*, returnable in six months.

* This rule was subsequently discharged. See *infra* p. 59.

Cases.

1876.

Dissolution of marriage.
Desertion coupled with
adultery. Rule *nisi*.

CHIPPETT *against* CHIPPETT.

Chippett v.
Chippett.

This was a petition by the wife for a dissolution of marriage on the ground of the husband's adultery and desertion.

Healy appeared for the petitioner.

The parties were married on the 8th of Aug., 1866, and lived happily together until the end of the year 1873, when the respondent left the petitioner, saying he should return the following week. The petitioner subsequently saw her husband with a woman at an hotel, and it was proved that he was living with her as man and wife.

The certificate of marriage was produced.

HARGRAVE, J., after hearing the evidence of the petitioner and two other witnesses, and reading their affidavits, granted a rule *nisi*, returnable in six months.

1876.

June 33.
Dissolution of marriage.
Adultery and cruelty.
Rule *nisi*.

FORSTER *against* FORSTER.

Forster v.
Forster

This was a petition by the wife for a dissolution of marriage, on the grounds of the husband's adultery and cruelty.

Salamons appeared for the petitioner.

The parties were married at Bombala on the 16th of November, 1863, and lived happily together until about 2 years before the date of the petition, when the respondent commenced to illuse the petitioner, beating and threatening her so that she went in dread of losing her life. There were 3 children of the marriage. At the date of the petition the wife was supporting herself by dressmaking.

HARGRAVE, J., cross-examined the petitioner, and upon hearing the evidence of four other witnesses, and the affidavits, granted a rule *nisi*, returnable in six months.

1876.

June 30.

Service of decree *nisi*
on respondent.

ANDERSON *against* ANDERSON.

Anderson v.
Anderson.

In this cause a decree *nisi* was granted on the 19th May, 1876.

Wisdom now applied for leave to dispense with service of such decree on the respondent.

HARGRAVE, J., directed all possible efforts to be made to serve the respondent before the six months allowed by the Act should expire.

1876.

August 7.

In formá pauperis.

In re HENRIETTA JAMES, WIFE OF JOHN JAMES, THE YOUNGER.

This was an application by the wife to be allowed to sue for a divorce *in formá pauperis*.

HARGRAVE, J., said: I have perused this case, and am inclined to think that there has been no "desertion" according to the cases cited in *Brandt*, p.p. 44-50, and subsequent authorities. The correspondence between

Cases.

In re Henrietta James.

the parties, and the £1 sent to the wife, confirm this opinion, and also point suspiciously to collusion. The facts are very concisely stated, and I decline sanctioning this application in any way, unless further facts should alter my opinion.

Coughlin v. Coughlin.

COUGHLIN *against* COUGHLIN.

1876.

In this case the petition was laid before HARGRAVE, J., in accordance with 36 Vic., No. 9, s. 24, and rules 1, 2.

1 August.
Petition refused.
Volenti non fit injuria.

In refusing to accept such petition, HARGRAVE, J. said: I am not inclined without express authorities to accept this petition for a divorce. It cannot be rested upon the husband's affidavit of *non-intercourse* and the wife's declaration that the child is "illegitimate," or the affidavit of Elizabeth Coonan that the petitioner and his wife did not "cohabit" for three years before the birth of this child, and neither husband nor wife can bastardize their issue in this summary way. If the petitioner's affidavit is true as to his wife's adultery with *several* persons, he should proceed to prove such adultery in the usual way by independent testimony as to the facts of the adultery specifically charged by him in a new petition against a co-respondent. The petitioner also appears to have never taken active steps for his wife's society, and no divorce is ever granted where the husband has tacitly consented. *Volenti non fit injuria.*

Miller v. Miller and Holmes.

MILLER *against* MILLER AND HOLMES.

1876.

This was a petition by the husband for a dissolution of marriage on the ground of the wife's adultery with the co-respondent.

Sept. 23.
Dissolution of marriage
Adultery of wife. Costs.

Want appeared for the petitioner.

The petitioner was married to the respondent in 1869. The petitioner was occasionally away from home. His longest absence was in 1874, when he went for three weeks to New Zealand, and on his return found that the respondent had left. It was proved that the respondent was living with the co-respondent as his wife at Balmain and had had one child by him.

HARGRAVE, J., considered the marriage and adultery proved, and granted a rule *nisi*, returnable in six months. No order as to costs.

Dalton v. Dalton and Bryden.

DALTON *against* DALTON AND BRYDEN.

1876.

This was a petition by the wife for a dissolution of marriage on the ground of the adultery of the husband and desertion for two years.

Oct. 31.
Dissolution of marriage.
Co-respondent with whom respondent had committed bigamy, need not be joined.
Desertion and adultery.
Decree *nisi.*

The respondent had contracted a bigamous marriage with the co-respondent; and HARGRAVE, J., considering her to be an innocent party, directed that her appearance was unnecessary and omitted her from the hearing.

Cases.

The *Petitioner* was married to the respondent at Balmain on the 2nd of January, 1869, and lived with him for three months when he left her to go to a station. They continued to communicate with each other during the year 1869, and in that year she received 366 letters from him. She next saw the notice of the marriage of the respondent and co-respondent in a newspaper. The respondent had since lived with the co-respondent at various places as man and wife.

Dalton v. Dalton
and Bryden.

Several affidavits were read.

HARGRAVE, J., found the desertion and adultery proved, and granted a rule *nisi*, returnable in six months.

1876.

FIELD *against* FIELD.

Field v. Field.

Nov. 17.
Dissolution of marriage.
Adultery of wife.
Decree *nisi*.

This was a petition by the husband for a dissolution of marriage on the ground of his wife's adultery.

Want appeared for the petitioner.

The parties were married at St. Phillips's, Sydney, on the 16th of October, 1873. The petitioner shortly after the marriage had to go to Cooktown on business, and left his wife at her father and mother's house, making a provision of £1 per week for her maintenance during his absence. He also sent her £15 while he was away. He was absent six months, and on his return found that his wife had left her father and mother.

It was proved that the respondent had been living for six or seven weeks with another man as his wife.

HARGRAVE, J., granted a rule *nisi*, returnable in six months.

1876.

WILLIS *against* WILLIS.

Willis v. Willis.

Nov. 13.
Dissolution of marriage.
Desertion and adultery
of husband. Decree *nisi*.

This was a petition by the wife for a dissolution of marriage on the ground of the husband's adultery and desertion.

Dr. Donovan appeared for the petitioner.

The parties were duly married, and there were seven children issue of such marriage. The respondent left the petitioner and the children, and corresponded with her for fourteen or fifteen months up to June, 1873, during which time the petitioner received from the respondent about £8 for her and the children's support.

The respondent's adultery and desertion was proved by affidavit, and the petitioner and her witnesses were cross-examined.

HARGRAVE, J., granted a rule *nisi*, returnable in six months.

1876.

ZARTMAN *against* ZARTMAN.

Zartman v. Zartman.

Husband petitioner to pay money into Court as security for respondent's costs. Rule 31.

This was an application by the wife, respondent asking for an order upon the husband petitioner, ordering him to pay such sum as might be necessary into Court as security for the costs of the respondent.

Cases.

Zartman v.
Zartman.

Windeyer appeared for the petitioner.
Sly, for the respondent, quoted *Teas v. Teas*, ante, p. 48, *Flower v. Flower*, 3 L.R., P. & D. 132, and Rule 31. *Macqueen*, pp. 218, 222 was also cited.

HARGRAVE, J., ordered the petitioner to pay the sum of £50 into Court as security for the costs of the cause, and also the costs of both parties of this application.

Muller v. Muller.

MULLER against MULLER.

1876.

This was an application under section 41 of the Act and rule 31 to tax the costs of the petitioner (the wife.)

Dec. 12.
Application by petitioning wife to tax her costs. Sec. 41, r. 31. Costs.

Bennett, in support of the application, asked that the costs might be ordered to be taxed, and read an affidavit by the petitioner to the effect that she was in destitute circumstances, and stated that the husband had property worth £6,000 and £1,000 in the Bank. He quoted *Brown*, pp. 275, 410, and *Pritchard*, p. 95.

Windeyer, contra—"This application is by the wife, petitioner; in all the cases cited the application is by the wife respondent. The husband has already paid £300 in April last for the education of the children of the marriage." He read an affidavit of the husband denying inconstancy.

HARGRAVE, J., dismissed the application. No order as to costs.

Wallace v.
Wallace.

WALLACE against WALLACE.

1877.

This was an application to extend the time for making absolute a rule *nisi*, in order that the Attorney General might intervene.

Feb. 20.
Extension of rule *nisi*.

HARGRAVE, J., on hearing the affidavits of the respondent and co-respondent extended the time for 3 months.

M'Neilly v.
M'Neilly.

M'NEILLY against M'NEILLY.

1877.

This was a petition by the wife for a dissolution of marriage on the ground of the husband's adultery.

Feb. 23.
Wife petition for dissolution of marriage. Adultery only proved. Petition dismissed. Costs.

Buchanan appeared for the petitioner.

The respondent appeared in person.

The parties were married on the 22nd of July, 1847, at Oldbury, near Berrima.

The respondent was sworn, and denied the adultery and all the other allegations in the petition.

A Mrs. Anne Smith, who lived in the next house to the respondent, deposed to having seen him in the act of adultery with a Mrs. Simpson, and having frequently seen him coming out of Mrs. Simpson's room; but had never known him unkind to the petitioner, or seen marks of violence on petitioner.

The petitioner admitted having received £1 from the respondent from Orange.

HARGRAVE, J., dismissed the petition with costs.

Cases.

1877.

Application to make
decree *nisi* absolute.
Credibility of evidence.
Decree absolute.

SMITH *against* SMITH.

Smith v. Smith.

In this cause a decree *nisi* had been granted on the 2nd of June, 1876.

Buchanan now moved to make such decree absolute, the six months having expired.

Bennett contra read various affidavits on behalf of the respondent.

The respondent was called and deposed to having received a letter from the petitioner in which she offered to return to him and to his willingness to provide a home for her. He admitted in cross-examination having been convicted of forgery, and having been to a house of ill-fame.

Buchanan, in reply, urged the preponderance of credibility of evidence.

HARGRAVE, J., in making the degree absolute, took into consideration the differences between the petitioner and respondent—she being industrious and of good character, and he the reverse. He considered the case of *Astrobe v. Astrobe* Macq. 304, exactly in point.

Decree absolute.

1877.

May.
Dissolution of marriage.
Adultery. Separation
before adultery.
Rule *nisi*.

ZARTMAN *against* ZARTMAN.Zartman
v.
Zartman.

This was a petition by the husband for a dissolution of marriage on the ground of the wife's adultery.

Donovan appeared for the petitioner.

C. J. Manning for the respondent.

The parties were married in June, 1864, and there were 4 children of the marriage. They cohabited for 10 years, and separated in 1874 in consequence of the respondent threatening to "dose" the petitioner, and her constantly getting intoxicated.

Several witnesses proved the adultery of the respondent.

Manning urged that the separation was before the fact of adultery, and cited *Flower v. Flower*, 3 L. R., P. & D., 132.

HARGRAVE, J., in granting the order as asked, drew attention to the fact that the separation was not absolute in law, but simply for the good of the children, and a reconciliation might have been effected.

Rule *nisi*, returnable in six months.

1877.

Dissolution of marriage.
Adultery of wife.
Decree *nisi*.

ROSS *against* ROSS.

Ross v. Ross.

This was a petition by the husband for a dissolution of marriage on the ground of the adultery of the wife.

Buchanan appeared for the petitioner.

Wisdom for the respondent.

The parties were married on the 6th of December, 1853, by the Rev. Dr. Lang, and lived together until 1856, when, in consequence of the respondent getting intoxicated and going away with a man named Allen,

Cases.

Ross v. Ross. they separated. It was proved that the respondent had been living with the man Allen and other men as man and wife.

Several affidavits were read.

HARGRAVE, J., granted a decree *nisi*, to be made absolute in six months.

Manning v. Manning.

MANNING against MANNING.

1877.

This was a petition by the husband for a dissolution of marriage on the ground of the adultery of the wife. Dissolution of marriage. Adultery of wife. Decree *nisi*.

Want appeared for the petitioner.

The petitioner was married to the respondent, who was his second wife, in June, 1868, at Manly Beach, and from there they went to Albury, and resided at Billabong Creek until October, 1876.

It was proved that the respondent had committed adultery with the co-respondent at Corowa and various other places.

Several affidavits were read.

HARGRAVE, J., granted a decree *nisi*, to be made absolute in six months.

Wallace v. Wallace.

WALLACE against WALLACE.

1877

This was an application to make absolute a rule *nisi* for a dissolution of marriage, granted on the 2nd of June, 1876. Application to make rule *nisi* absolute. Attorney General intervening. Rule absolute. Costs.

July 2.

Buchanan appeared for the petitioner.

Dr. Donovan, for the Attorney General intervening to show cause against the rule being made absolute.

Evidence was given tending to show that the petitioner had committed adultery since the decree *nisi*.

HARGRAVE, J., after examination of witnesses, ordered the rule to be discharged.

The Crown did not ask for costs.

Sims v. Sims.

SIMS against SIMS.

1877.

This was an application by the respondent for leave to file an answer and to defend. Application for leave to file answer and defend.

July.

Bennett appeared for the applicant.

Cooper appeared for the petitioner.

After hearing the affidavits of the petitioner and the respondent, and six witnesses, and the arguments of counsel,

HARGRAVE, J., granted the application.

Alexander v. Alexander, 29, L.J.P. & M., 86.

Brown, p. 274 and *Wells v. Wells*, 27, L.J., P. & M. 51, were referred to.

Zartman v. Zartman.

ZARTMAN against ZARTMAN.

1877.

This case coming on upon a question of costs, HARGRAVE, J., delivered the following dictum:— Costs. July 30. Maintenance.

“Inform Mr. Zartman that the total amounts both of his own bill and Mrs. Zartman’s do not seem to me to be

Cases.

at all unreasonable. If he wishes them taxed he must proceed in the usual way through the office and at his own risk of further costs. As to Mrs. Zartman's costs he has the satisfaction of having given her the best professional protection against any mistake.

Zartman v.
Zartman.

"From my recollection of the facts I think Mr. Zartman should make some permanent provision for her maintenance, so as to save her from utter ruin if possible.

"She was under Mr. Zartman's marital control when she acquired the habits of intoxication which led to her offence. She is also the mother of Mr. Zartman's children, and although Mr. Zartman cannot be expected ever again to see her, still it is his duty to make every possible provision for her maintenance and comfort, either through her friends or other proper medium, so that she may be saved from further sin, and live to repent.

"Inform both parties of this memorandum, and bring it before me if Mr. Zartman should move to make the decree absolute."

1877.

BUCHANAN *against* BUCHANAN.Buchanan v.
Buchanan.

August.
Dissolution of marriage.
Husband's incestuous
adultery. Hearing *in*
camera. 39 Vic. No. 20.
Decree *nisi*.

This was a petition by the wife for a dissolution of marriage on the ground of her husband's incestuous adultery with her sister's daughter.

HARGRAVE, J., on the application of both parties, ordered the case to proceed *in camera*.

Manning appeared for the petitioner.

Owen for the respondent.

The issues were:—1. Marriage; 2. Adultery; 3. Whether K. E. A. Eager was a daughter of the petitioner's sister.

Manning read sec. 22 of the Act, and referred to 1 *Best & Smith*, 447.

The marriage of the petitioner and the respondent was proved, as was also the relationship of the petitioner and Miss K. E. A. Eager.

Owen, for the respondent, did not deny the adultery with Miss Eager, and did not press for further evidence, and declined to cross-examine.

HARGRAVE, J., referred to 39 Vic. No. 20, and found for the petitioner on all the issues.

Decree *nisi*, to be made absolute in six months.

1877.

SIMS *against* SIMS AND DAVIDSON.

Sept. 26.
Dissolution of marriage.
Adultery of wife. Rule
nisi. Verdict by majority
of jury accepted.

This case, which was tried before a jury of 12, was a petition by the husband for a dissolution of marriage on the ground of the wife's adultery with the co-respondent.

Sims v. Sims and
Davidson.

W. H. Cooper (*O'Connor* with him) for the petitioner.

Buchanan (*J. H. Want* with him) for the respondent.

Cases.

The evidence for the petitioner was to the following effect:—The petitioner and the respondent were married on the 19th August, 1872, at Chelsea, near London. At the latter end of the year 1875, the petitioner came out to this Colony and was joined by his wife in March, 1876. The petitioner was ordered by his employers to proceed to New Zealand, in October, 1876, and went, leaving his wife at La Perouse at the Telegraph Station, the co-respondent being employed at the station. The evidence went to show that during the petitioner's absence the respondent and co-respondent were very familiar with each other—the respondent being frequently seen in the co-respondent's room and *vice versa*—they likewise bathed together, and one witness swore to having seen them in the act of adultery. On his return from New Zealand the petitioner's suspicions were aroused, and he commenced this suit. The petitioner swore that he had never treated the respondent unkindly and had always contributed to her support and maintenance.

Sims v. Sims and Davidson.

The respondent was called and most absolutely denied the adultery and charged the petitioner with great cruelty, and called witnesses in support of her assertion, and to prove that there existed no undue familiarity between her and the co-respondent.

Buchanan for the respondent read the 26th section of the Act, and cited *Pritchard* p. 115. As to cruelty he referred to *Milner v. Milner*, 31 L.J., P. & M. 169, and as to collusion to *Barnes v. Barnes* 1 L.R., P. & D. 505.

HARGRAVE, J., in the course of summing up made the following observations:—"There never was a case which required a Judge to direct a jury to attend to the evidence more than this case. There was no concealment of the intimacy which existed between the respondent and co-respondent. Words of mouth are often very erroneous and liable to be mistaken both in voice and memory. The jury must be satisfied that the evidence as to the adultery is strictly true. The clear legal duties of the husband under the proved circumstances was to provide a home and friends, and to recognize, honor, cherish, and protect his wife."

The jury, by a majority of 8 to 4, which was accepted by both parties, found for the petitioner on all the issues, and

HARGRAVE, J., granted a rule *nisi*, returnable in six months.



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