



ANNO DECIMO NONO

# GEORGI V REGIS. A.D. 1928.

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## No. 1889.

An Act to amend the law relating to Divorce, and  
for other purposes.

*[Reserved, November 1st, 1928.  
Royal Assent Proclaimed, January 16th, 1929.]*

**B**E it Enacted by the Governor of the State of South Australia,  
with the advice and consent of the Parliament thereof, as  
follows :

1. (1) This Act may be cited alone as the "Matrimonial Causes Act, 1928." Short titles.

(2) The Matrimonial Causes Acts, 1867 and 1918, and this Act may be cited together as the "Matrimonial Causes Acts, 1867 to 1928."

(3) The Matrimonial Causes Act, 1867, is hereinafter referred to as "the principal Act."

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. This Act is incorporated with the other Acts mentioned in section 1 of this Act, and those Acts and this Act shall be read as one Act. Incorporation.

4. Part III. of the principal Act is amended by inserting therein after section 24 the following section :— Amendment of principal Act, Part III.—

24A. (1) Any married person who at the time of the presentation of the petition has been domiciled in South Australia for three years or more may present a petition to the Court praying that Additional grounds for divorce.

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that his or her marriage with the respondent may be dissolved on any one or more of the following grounds, namely :—

- (a) That the respondent has without just cause or excuse deserted the petitioner, and without just cause or excuse left him or her continuously so deserted during five years or more :
- (b) That the respondent, being the petitioner's husband, has during three years or more been an habitual drunkard and has either habitually left his wife without the means of support, or habitually been guilty of cruelty towards her ; or, being the petitioner's wife, has for a like period been an habitual drunkard and habitually neglected her domestic duties and rendered herself unfit to discharge them :
- (c) That at the time of the presentation of the petition the respondent has been imprisoned for a period of not less than three years and is still in prison under a commuted sentence for a capital crime or under a sentence of imprisonment for seven years or more, or, being a husband, has within five years undergone frequent convictions for crime and been sentenced in the aggregate to imprisonment for three years or more and left his wife habitually without means of support :
- (d) That within one year previous to the presentation of the petition the respondent has been convicted of having attempted to murder the petitioner or of having assaulted him or her with intent to inflict grievous bodily harm, or has during that period repeatedly assaulted and cruelly beaten the petitioner :
- (e) That the respondent is a lunatic or person of unsound mind, and has been confined as such in any institution in accordance with the provisions of The Mental Defectives Act, 1913, for a period or periods not less in the aggregate than five years within six years immediately preceding the presentation of the petition, and is unlikely to recover from the lunacy or unsoundness of mind.

(2) If a petition is presented on any of the grounds mentioned in this section and the Court is of opinion that the petitioner's own habits or conduct induced or contributed to the existence of the state of affairs upon which the petition is founded, the petition may be dismissed.

(3) A domiciled person shall, for the purposes of this section, include a deserted wife who was domiciled in South Australia at the time of desertion, and such wife shall be deemed to have retained her South Australian domicile, although since the desertion her husband may have acquired a foreign domicile.

(4) No

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(4) No person shall be entitled to present a petition under this section if that person has resorted to South Australia for that purpose only.

(5) Any reference in this section to desertion, cruelty, drunkenness, neglect of or unfitness to perform domestic duties, imprisonment, or confinement on the ground of lunacy or unsoundness of mind, shall include such desertion, cruelty, drunkenness, neglect or unfitness, imprisonment, or confinement which commenced before the commencement of the Matrimonial Causes Act, 1928, and any reference to assaults, convictions for crime or for attempted murder, or for assault with intent to do grievous bodily harm shall include assaults and convictions taking place before the said commencement.

5. Section 26 of the principal Act is amended by inserting after the word "husband" in the first line and after the word "marriage" in the fifth line the words "and charging adultery".

Amendment of principal Act, s. 26—  
Consequential amendment.

6. Section 27 of the principal Act is amended by inserting after the word "divorce" in the second line thereof the words "on the grounds of adultery".

Amendment of principal Act, s. 27—  
Consequential amendment.

7. Section 29 of the principal Act is amended so as to read as follows:—

Amendment of principal Act, s. 29—

29. (1) Upon any petition for the dissolution of a marriage the Court shall satisfy itself so far as it reasonably can as to the facts alleged, and shall also inquire into any counter charge which is made against the petitioner.

Duty of Court to inquire as to connivance, condonation, and counter charges.

(2) Upon any petition for the dissolution of a marriage charging adultery the Court shall, so far as it reasonably can, satisfy itself whether or not 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.

8. Section 31 of the principal Act is amended so as to read as follows:—

Amendment of principal Act, s. 31—

31. (1) If the Court finds that a petition for dissolution of marriage is presented or prosecuted in collusion with the respondent or any or all of the respondents, the Court shall dismiss the petition.

Dismissal of petition.

(2) Upon any petition for dissolution of marriage charging adultery, if the Court finds that the petitioner has during the marriage been accessory to or conniving at the adultery of the other party to the marriage the Court shall dismiss the petition unless on some ground not involving adultery the petitioner is entitled to relief.

9. Section 32 of the principal Act is repealed.

Repeal of section 32 of principal Act.

10. Section

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Amendment of  
principal Act, s. 33—  
Cases in which  
Court may refuse to  
decree dissolution.

**10.** Section 33 of the principal Act is amended so as to read as follows :—

33. (1) The Court shall not be bound to pronounce a decree of dissolution of marriage if it finds that the petitioner has during the marriage been guilty of adultery which has not been condoned, or if the petitioner, in the opinion of the Court, has been guilty of unreasonable delay in presenting or prosecuting the petition, or of cruelty towards the other party to the marriage.

(2) Upon any petition for the dissolution of marriage charging adultery the Court shall not be bound to pronounce a decree of dissolution of marriage on any ground involving adultery if it finds that the petitioner has condoned the adultery complained of, or has, during the marriage, been guilty of having deserted or wilfully separated himself or herself from the other party before the adultery complained of and without reasonable excuse, or of such wilful neglect or misconduct as has conduced to the adultery.

Amendment of  
principal Act, s. 34—  
Right of respondent  
to relief in certain  
cases.

**11.** Section 34 of the principal Act is amended so as to read as follows :—

34. In any suit for dissolution of marriage, if the respondent opposes the relief sought, on any grounds of defence allowed by this Act, and those grounds are such as would entitle the respondent to relief under this Act if a petition were presented for the purpose, the Court may in that suit give to the respondent on his or her application the same relief to which he or she would have been entitled if he or she had filed such a petition.

New section 34A—  
Cases in which  
decree nisi is to be  
made.

**12.** Part III. of the principal Act is amended by inserting therein after section 34 the following section, namely :—

34A. Subject to the provisions of this Act, the Court, if it is satisfied that the case of the petitioner is established, shall pronounce a decree for dissolution of marriage.

Amendment of  
principal Act, s. 38—  
Alimony.

**13.** Section 38 of the principal Act is amended so as to read as follows :—

38. (1) The Court may, if it thinks fit, on any decree for dissolution of marriage, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life, as having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the Court may deem to be reasonable, and the Court may for that purpose order that it shall be referred to the Master of the said Court to settle and approve a proper deed or instrument, to be executed by all the necessary parties, and may, if it thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.

(2) In

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(2) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (1) of this section, direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the Court may think reasonable :

Provided that—

- (a) if the husband, after any such order has been made, becomes from any cause unable to make the payments, the Court may discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part as the Court thinks fit ; and
- (b) where the Court has made any such order as is mentioned in this subsection and the Court is satisfied that the means of the husband have increased, the Court may, if it thinks fit, increase the amount payable under the order.

(3) In any case where the Court whether before or after the commencement of the Matrimonial Causes Act, 1928, has made an order directing the husband to pay a weekly or monthly sum for the maintenance of the wife, the wife may at any time file in the office of the Clerk of the Court of Summary Jurisdiction, at Adelaide, a certified copy of that order, and thereupon so long as the said order remains in force, and subject to any suspension or modification thereof or increase of the amount payable thereunder, all proceedings for disobedience of or neglect to comply with the said order may be taken under the Maintenance Act, 1926, as if the order had been a maintenance order under the said Act. In this subsection “certified copy” means a copy certified by the Master, Deputy Master, or Chief Clerk of the Supreme Court.

(4) On any petition for dissolution of marriage the Court shall have the same power to make interim orders for the payment of money by way of alimony or otherwise to the wife as the Court has in proceedings for judicial separation.

**14.** Section 39 of the principal Act is repealed.

Consequential  
repeal of s. 39.

Reserved for the signification of His Majesty the King's pleasure thereon.

A. HORE-RUTHVEN, Governor.