Ref to 82 WN. Pt. 1. 540
App at pp. 535/6. 19 ALR. 191.

[HIGH COURT OF AUSTRALIA.]

HOOPER . . . . . PETITIONER;

AND

HOOPER . . . . . RESPONDENT.

H. C. OF A. 1955.

MELBOURNE, *Feb.* 23.

SYDNEY, *Mar.* 30.

Dixon C.J., McTiernan, Williams, Webb, Fullagar, Kitto and Taylor JJ.

Constitutional Law (Cth.)—Federal jurisdiction—Investing State Courts—Commonwealth legislation enabling matrimonial proceedings to be taken in States other than domicil but according to law of domicil, other than law relating to practice and procedure—Substantive rights conferred—Putting in suit—Matter "arising" under Commonwealth law—Practice and procedure—Form of decree—Time and manner of making absolute—Governed by lex fori—Effect of legislation on State legislative powers—Inter se question—"Arising"—Removal into High Court—The Constitution (63 & 64 *Vict. c.* 12) *ss.* 51 (*xxii.*), 76 (*ii.*), 77 (*iii.*)—*Judiciary Act* 1903-1950 (*No.* 6 *of* 1903—*No.* 80 *of* 1950) *s.* 40A—*Matrimonial Causes Act* 1945 (*No.* 22 *of* 1945) *ss.* 10, 11, 12 (1).

Part III of the *Matrimonial Causes Act* 1945 confers substantive rights, which, when put in suit, give rise to a "matter" which "arises" under that law within the meaning of s. 76 (ii.) of the Constitution and so authorize, by s. 77 (iii.) of the Constitution, the provisions in the Part investing the Supreme Courts of the States with federal jurisdiction in "matrimonial causes" instituted under it. *R.* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Barrett* (1945) 70 C.L.R. 141, referred to.

The State laws to which the force of federal law is given by Pt. III of the *Matrimonial Causes Act* 1945 are those which may exist from time to time. The legislative powers of the States to provide grounds for divorce or enact other matrimonial laws are not affected by the Act. Nor is the power of State legislatures to entrust jurisdiction in matrimonial causes to tribunals other than the Supreme Courts affected by the Act, although they cannot take away or abridge the jurisdiction given by it to State Supreme Courts.

The form of the decree and the time and manner of its being made absolute are matters of practice and procedure within the meaning of s. 11 of the *Matrimonial Causes Act* 1945 and are accordingly governed by the *lex fori*.

White v. *White* (1947) V.L.R. 434, approved.

In the course of hearing an undefended divorce suit brought in the Supreme Court of New South Wales under the provisions of the *Matrimonial Causes*

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Act 1945 the trial judge intimated that he was not prepared to proceed to the consideration of the suit on the merits unless and until the validity of the Act was resolved in favour of the petitioner.

Held that a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of the States had "arisen" in the suit within the meaning of s. 40A of the *Judiciary Act* 1903-1950 and the suit was automatically removed into the High Court by virtue of that section.

CAUSE removed into High Court under the *Judiciary Act* 1903-1950.

On 11th February 1954 Lilian Mavis Hooper presented a petition to the Supreme Court of New South Wales praying that her marriage with Henry Phillip Hooper might be dissolved on the ground that he had without just cause or excuse wilfully deserted her and had without any such cause or excuse left her continuously so deserted during two years and upwards. The petitioner alleged that she was domiciled in the State of Tasmania but had been, for not less than one year immediately preceding the date of the petition, resident in the State of New South Wales. The petition was presented pursuant to Pt. III of the *Matrimonial Causes Act* 1945 (Cth.). The relief was claimed under s. 9 (1) (i) of the *Matrimonial Causes Act* 1860 (Tas.) as amended.

On the suit coming on for hearing before *Nield* J. on 18th November 1954, his Honour without hearing evidence, expressed doubts as to the validity of Pt. III of the *Matrimonial Causes Act* (Cth.), and directed that the papers be marked "Removed under s. 40A of the *Judiciary Act* to the High Court."

On 10th December 1954 *Fullagar* J. heard evidence in the suit and found the allegations in the petition, including those as to domicile and residence, proved. His Honour granted leave to the Attorney-General for the Commonwealth to intervene in the suit and ordered that it be argued before a Full Court of the High Court.

M. D. Healy, for the petitioner. The *Matrimonial Causes Act* 1945, considered as a whole, is a substantive law of the Commonwealth, and not merely a procedural one. The law is on the subject of matrimonial causes within the meaning of s. 51 (xxii.) of the Constitution. The right to dissolution of marriage in cases under the Act is given by the Act. In effect it provides that married people shall be entitled to pursue matrimonial remedies on grounds prescribed by the law of their domicile in courts of their residence. The law being a substantive law of the Commonwealth enacted under s. 51 (xxii.) of the Constitution, federal jurisdiction with respect to matters arising thereunder may be conferred on State

courts under s. 77 (iii.) read with s. 76 (ii.) of the Constitution. The investing of jurisdiction is in accordance with s. 39 (2) of the *Judiciary Act* 1903-1950. Different views have been taken by State courts as to whether the form of the decree and the time and manner of its being made absolute are matters of practice and procedure. The view that the time to elapse between decree nisi and decree absolute was a matter of procedure was taken in *White* v. *White* (1) and *Tullett* v. *Tullett* (2). The contrary view was taken in *Bushell Deans* v. *Bushell Deans* (3); *Thornton* v. *Thornton* (4) and *Green* v. *Green* (5). The manner of making the decree absolute was considered to be a matter of procedure in *Thornton* v. *Thornton* (4) and *White* v. *White* (1). [He also referred to *Stevens* v. *Stevens* (6); *Walton* v. *Walton* (7); *Ferrall* v. *Ferrall* (8); *Staples* v. *Staples* (9); *Dyball* v. *Dyball* (10); *Leech* v. *Leech* (11); *Barson* v. *Barson* (12); *Miles* v. *Miles* (13); *Carr* v. *Carr* (14) and *Garde* v. *Garde* (15).]

There was no appearance for the respondent.

B. P. Macfarlan Q.C. (with him *E. N. Dawes*), for the Attorney-General for the Commonwealth, intervening by leave. The leave granted to the Attorney-General to intervene was limited to questions going to the validity of the *Matrimonial Causes Act* 1945. That is the issue of validity of Pts. I and III of the Act—Part I, because that Part contains s. 3 which includes material definitions for the extending of certain parts of Pt. III, and Pt. III which creates the right to obtain a divorce in States other than the State of the domicile. [He referred to ss. 10, 11, 13 and 15 of the Act.] Rules were made on 7th March 1946 by the Judges of the Supreme Court of New South Wales pursuant to s. 15. They are set out in *Mackenzie's Practice in Divorce* (*N.S.W.*) (1952), 6th ed., p. 531. No rule affects s. 11 of the Act. Rule 9 provides that issues of fact in matrimonial causes under the Act shall not be remitted to a district court. The only references to s. 51 (xxii.) of the Constitution in the reports are inferential ones in *Attorney-General for N.S.W.* v. *Brewery Employes Union of N.S.W.*, per *Isaacs* J. (16); per *Higgins* J. (17). By the Act the legislature has conferred the right to bring

(1) (1947) V.L.R. 434.
(2) (1947) Q.W.N. 37.
(3) (1947) 64 W.N. (N.S.W.) 13.
(4) (1948) 65 W.N. (N.S.W.) 87.
(5) (1947) Q.W.N. 12.
(6) (1946) V.L.R. 283.
(7) (1948) V.L.R. 487.
(8) (1952) V.L.R. 519.
(9) (1952) V.L.R. 25.
(10) (1953) V.L.R. 517.
(11) (1953) V.L.R. 621.
(12) (1954) V.L.R. 93.
(13) (1947) Q.W.N. 15.
(14) (1949) Q.W.N. 24.
(15) (1950) Q.W.N. 36.
(16) (1908) 6 C.L.R. 469, at p. 585.
(17) (1908) 6 C.L.R., at pp. 601, 602, 610.

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proceedings for dissolution of marriage, provided for the order of dissolution and declared the method by which the rights of the parties are to be ascertained. It does not affect the legislative powers of the States to alter or amend their own laws. The right to divorce depends upon State law operative in the domicil from time to time. In *The Commonwealth* v. *District Court of Sydney* (1) this Court held that s. 39 (2) of the *Judiciary Act* had an ambulatory effect and invested federal jurisdiction in State courts according to the limits and subject matter of those courts as they existed from time to time. Section 79 of the *Judiciary Act* provides that the laws of each State, including the laws relating to procedure etc., shall, except as otherwise provided by the Constitution or laws of the Commonwealth, be binding on all courts exercising federal jurisdiction in that State in all cases to which they are applicable. That section has been held to have an ambulatory operation. [He referred to *Commissioner of Stamp Duties (N.S.W.)* v. *Owens [No.* 2] (2); *Huddart Parker Ltd.* v. *The Ship Mill Hill* (3).] The reasoning of the Court which gives the ambulatory construction to s. 79 would equally apply if it had said that the law of some other State would apply. Apart from, or with, s. 10 (2) of the *Matrimonial Causes Act*, federal jurisdiction could be properly invested under s. 39 (2) of the *Judiciary Act* 1903-1950 in this particular case. On either view there has been an investing of federal jurisdiction in a State court by a law of the Parliament in accordance with s. 77 (iii.) of the Constitution. Investing means investment of a right declared or a jurisdiction in relation to a determination of a right declared, by a Federal law. [He referred to *R.* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Barrett*, per *Latham* C.J. (4), per *Starke* J. (5), per *Dixon* J. (6).] The right flowing from this Act is different from the right flowing from the law of the State of domicil in that the qualification to institute proceedings in a particular State is residence and not domicil in that State.

Cur. adv. vult.

March 30.

THE COURT delivered the following written judgment:—

This is a wife's undefended suit for dissolution of marriage on the ground of desertion. It comes before the Full Court in the following circumstances. It was commenced by petition in the Supreme Court of New South Wales. Under the law of New South Wales

(1) (1954) 90 C.L.R. 13.
(2) (1953) 88 C.L.R. 168, at p. 170
(3) (1950) 81 C.L.R. 502, at pp. 507-508.
(4) (1945) 70 C.L.R. 141, at pp. 149 et seq.
(5) (1945) 70 C.L.R., at pp. 159 et seq.
(6) (1945) 70 C.L.R., at pp. 164, 168.

the jurisdiction of that court to entertain such suits depends, subject to immaterial exceptions, on domicil. The respondent husband—and therefore, of course, the petitioning wife—was domiciled not in New South Wales but in Tasmania. The petitioner, however, having been resident in New South Wales for more than one year, invoked the jurisdiction which an Act of the Parliament of the Commonwealth, the *Matrimonial Causes Act* 1945, purports to confer upon the Supreme Courts of the States. The learned Judge of the Supreme Court of New South Wales before whom the suit in due course came on for hearing, *Nield* J., was disposed to think that the Commonwealth Act was unconstitutional, and that the Supreme Court, therefore, had no jurisdiction to entertain the suit. The question of the validity of the Commonwealth Act is a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of the States, and his Honour was right, we think, in holding that such a question had " arisen " in the suit within the meaning of s. 40A of the *Judiciary Act* 1903-1950. It is true that the suit was undefended, and the point was not taken by a party to the " pending cause ". But it is clear that his Honour was not prepared to proceed to a consideration of the suit on the merits unless and until the constitutional question were resolved in favour of the petitioner, and in those circumstances that constitutional question must, in our opinion, be held to have " arisen ". The consequence of its arising was that it became the duty of the Supreme Court to proceed no further in the suit, which was automatically removed into this Court by virtue of s. 40A. At a later date the suit came on for hearing before *Fullagar* J. Counsel appeared for the petitioner, but there was no appearance for the respondent. Counsel also appeared for the Commonwealth, seeking leave to intervene in order to support the validity of the Commonwealth Act, and leave was given to the Commonwealth to intervene. Having heard the petitioner's evidence, and being of opinion that the constitutional question was the only substantial question involved, *Fullagar* J. referred the matter to the Full Court.

The *Matrimonial Causes Act* 1945, by s. 3, defines the term " matrimonial causes " as including suits for dissolution of marriage, nullity of marriage, restitution of conjugal rights and judicial separation, and a number of matters as incidental to such suits. Part II of the Act deals with the " Institution of matrimonial causes against members of overseas forces and certain other persons not domiciled in Australia ". It was a temporary measure occasioned by war-time conditions, and, unless its term is extended, it

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will cease to be in force on 1st June 1955. The present proceedings were taken under Pt. III, and the validity of Pt. II is not now directly in question. If, however, Pt. III were held to be invalid, it would seem to be impossible to maintain that Pt. II is valid. Conversely, if Pt. III is valid, it would seem that Pt. II is not open to attack.

Part III relates to the "Institution of matrimonial causes by certain persons domiciled in Australia". It consists of ss. 10, 11 and 12. Section 10 is in the following terms:—"(1) Where any person domiciled in a State or Territory is resident in some other State or Territory and has resided there for not less than one year immediately prior to the institution of proceedings under this Part, that person may institute proceedings in any matrimonial cause in the Supreme Court of that other State or Territory notwithstanding that that person is not, or has not been for any period required by the law of that other State or Territory, domiciled in that other State or Territory. (2) The Supreme Court of each State is hereby invested with federal jurisdiction, and jurisdiction is hereby conferred on the Supreme Court of each Territory, to hear and determine matrimonial causes instituted under the last preceding sub-section." Section 11 provides:—"Subject to this Part, the Supreme Court of a State shall exercise any jurisdiction with which it is invested, and the Supreme Court of a Territory shall exercise any jurisdiction which is conferred on it, by the last preceding section in accordance with the law (other than the law relating to practice and procedure) of the State or Territory in which the person instituting the proceedings is domiciled." It is unnecessary to set out s. 12, which contains merely incidental provisions. Section 13, which is contained in Pt. IV, provides that:—"Any judgment, decree, order or sentence of the Supreme Court of a State or Territory given or pronounced in the exercise of any jurisdiction invested or conferred by this Act shall be of the same force and effect as if that judgment, decree, order or sentence had been given or pronounced by a court of the State or Territory in which the parties were domiciled."

The argument for the view that Pt. III of the Commonwealth Act is unconstitutional is set out in substance in the reasons given by *Nield* J., when he held that a constitutional question arose which he had no jurisdiction to decide. It may be stated quite shortly. It concedes that the law is, on its face, a law with respect to divorce and matrimonial causes, and therefore prima facie authorized by s. 51 (xxii.) of the Constitution. But it is an essential feature of the law that it purports to invest State Courts with federal jurisdiction in matrimonial causes, and the power to invest State courts with

federal jurisdiction must be sought not in s. 51 but in s. 77 of the Constitution. Section 77 (so far as material) provides that " *with respect to any of the matters mentioned in the last two sections* the Parliament may make laws . . . (iii) investing any court of a State with federal jurisdiction ". The " matters mentioned " in ss. 75 and 76 do not include divorce or matrimonial causes, and Pt. III of the *Matrimonial Causes Act* is therefore not authorized by s. 77. " The Act purports ", said his Honour, " to give federal jurisdiction to the Supreme Court of this State to deal with matters which otherwise could only be dealt with in the Supreme Courts of other States. That is not giving a federal jurisdiction at all. That seems to be an attempt to invest with the jurisdiction of another State the Supreme Court of this State ". His Honour did not overlook the fact that among the " matters " mentioned in s. 76 are matters " arising under any laws made by the Parliament ". But he said :— " Until the Federal Parliament has legislated with regard to divorce and matrimonial causes, as it may under s. 51, there is, it seems to me, no federal jurisdiction at all in matrimonial causes, and consequently there is nothing to invest this court with by way of federal jurisdiction ".

We agree with his Honour that s. 51 (xxii.) alone will not support the *Matrimonial Causes Act* 1945, and that, unless they are authorized by s. 77 (iii.) of the Constitution, the provisions of that Act which purport to invest the Supreme Courts of the States with federal jurisdiction in " matrimonial causes " are invalid. We are of opinion, however, that those provisions are authorized by s. 77 (iii.). They have, in our opinion, the effect of investing State courts with federal jurisdiction in " matters arising under a law made by the Parliament " within the meaning of s. 76 (ii.).

The essence of the argument against validity is that a " matter " cannot " arise " under a law made by the Parliament unless there is a substantive law made by the Parliament conferring rights or imposing duties, and that it is only " with respect to " substantive rights or duties so created by federal law that State courts can be validly invested with federal jurisdiction. This broad major premiss may probably be accepted as substantially correct. But it is necessary to remember that a substantive statutory right may, as a matter of drafting, be created by more than one method. According to accepted canons of drafting, the best method, wherever it is practicable, is to keep substantive and adjective matters distinct—to create the right as such and then to provide the remedy : cf. *Ilbert, Mechanics of Law Making*, p. 121. But this is not invariably the simplest or easiest course to follow, and it is by no

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means uncommon for an Act to be drafted in such a way that the two things are done, as has been said, *uno ictu*, by providing that in certain specified circumstances a person may take proceedings in a particular court to obtain a specified remedy. This is in fact the method followed in ss. 12, 13, 14, 15 and 16 of the *Matrimonial Causes Act* 1899-1951 (N.S.W.) and in ss. 75, 76 and 77 of the *Marriage Act* 1928 (Vict.). This method may sometimes give rise to difficulties, and is perhaps specially apt to do so when a jurisdiction is to be conferred on a State court and it is necessary to rely on s. 77 of the Constitution. It does not follow, however, that it will be ineffective, and the effect, when the enactment is analyzed, will generally be seen to be at once to create a right and provide a remedy. In terms this is the method which the draftsman has followed in the *Matrimonial Causes Act* 1945 (Cth.), and it is not easy to suggest any better course that could have been followed in the particular case.

In order to appreciate the real effect of Pt. III of the Act, it is necessary to read s. 10 (1) with s. 11, and s. 10 (2) is then seen as investing the Supreme Courts with the jurisdiction necessary to give effect to rights which are really created by s. 10 (1) and s. 11. Section 10 (1) says (to put it shortly) that, where a person is domiciled in one State but has been resident for one year in another State, he or she may institute a " matrimonial cause " in the Supreme Court of that other State. This, in form, merely authorizes certain persons to take proceedings of a character defined in s. 3. As a matter of substance, however, it confers rights, though it does not tell us precisely what those rights are. It is s. 11 that tells us precisely what those rights are. They are the rights which the person mentioned in s. 10 (1) has according to the law of the State in which he or she is domiciled. A substantive " law of the Commonwealth " is thus enacted, and, whenever a " matrimonial cause " is instituted putting any of those rights in suit, there is a " matter " which " arises " under that law of the Commonwealth. And " with respect to " that " matter " State courts may be lawfully invested with federal jurisdiction under s. 77 (iii.) of the Constitution.

It is no answer to the above analysis to say that the right put in suit when a " matrimonial cause " is instituted under the Act is a right created by State law—by the law of the State of the domicil. What the Act does is to give the force of federal law to the State law. The relevant law is administered in a suit instituted under the Act not because it has the authority of a State, but because it has the authority of the Commonwealth. For the purposes of the suit it is part of the law of the Commonwealth. The Act might,

in s. 11, have defined the rights to which effect was to be given in "matrimonial causes" by enacting a system of its own. Or it might have defined those rights by reference to the law of England or the law of New Zealand or the law of one particular Australian State. The fact that it chose to adopt the law of the State of the domicil in each particular case cannot affect the substance of the matter.

The view that State laws for the purposes of the Act have the force of laws of the Commonwealth does not involve any startling consequences. The State laws to which that force is given are the State laws as they may exist from time to time (cf. *The Commonwealth* v. *District Court of Sydney* (1)) and the legislative powers of the States to prescribe grounds for divorce or other matrimonial remedies are in no way affected by the Commonwealth Act. Nor does that Act take away or diminish the power of the Parliament of New South Wales to entrust jurisdiction in matrimonial causes to any tribunal it pleases. This would have been so even without s. 12 (1). The Parliament of New South Wales cannot take away or abridge the jurisdiction given to the Supreme Court by the Commonwealth Act in the special cases with which that Act deals, but otherwise the power of that Parliament to make laws with respect to matrimonial causes remains uninhibited. The fears expressed in these respects by *Nield* J. appear to us to be groundless.

The question which has arisen in this case actually arose in a somewhat more difficult form in the case of *R.* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Barrett* (2) which does not appear to have been brought to the attention of *Nield* J. The statutory provision attacked in that case was s. 58E of the *Commonwealth Conciliation and Arbitration Act* 1904-1934 (s. 81 of the Act now in force). That section (so far as material) provided that: "The Court may . . . make an order giving directions for the performance or observance of any of the rules of an organization by any person who is under an obligation to perform or observe those rules." A penalty was provided for disobedience to such an order. It had been held in *Jacka* v. *Lewis* (3) that the power given by this section was judicial power within the meaning of the Constitution, and it was argued in *R.* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Barrett* (2) that it was not within the power given by s. 77 (i.) of the Constitution because, although it was a measure "defining the jurisdiction of a federal court", it was not "with respect to" any of the matters

(1) (1954) 90 C.L.R. 13.
(2) (1945) 70 C.L.R. 141.
(3) (1944) 68 C.L.R. 455.

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mentioned in s. 75 or s. 76. The obligation which the court was given jurisdiction to enforce was, it was said, not the creation of Commonwealth law but an obligation arising out of contract. The argument was unanimously rejected by this Court. *Latham* C.J. said :—"A right is created by the provision that a court may make an order, and such a provision also gives jurisdiction to the court to make the order " (1). *Dixon* J. said :—" It appears to me, that, on the footing that s. 58E includes judicial power, it must be taken to perform a double function, namely to deal with substantive liabilities or substantive legal relations and to give jurisdiction with reference to them " (2). And then, after referring to the two forms which legislation may take, and to which reference has been made above, he said :—" But, under either form of legislation, it is quite clear that a liability is imposed and that the liability accordingly supplies an appropriate subject or ' matter ' upon which ' judicial power ' or ' jurisdiction ' may operate, whether the jurisdiction is given in the same breath or quite independently " (3). The present case is a clearer case than *R.* v. *Commonwealth Court of Conciliation and Arbitration* ; *Ex parte Barrett* (4).

There should be a decree nisi on the ground of desertion. With regard to the form of the decree and the time and manner of its being made absolute, we were referred to a number of decisions of State Supreme Courts on the question whether these matters are matters of practice or procedure within the meaning of s. 11 of the Commonwealth Act. These disclose a marked difference of opinion. We think that the correct view was taken by the Full Court of Victoria in *White* v. *White* (5) in which it was held that these matters are matters of practice and procedure and are therefore to be treated as governed by the *lex fori*. The decree in the present case will accordingly follow the New South Wales form.

The petition of the above-named Lilian Mavis Hooper dated 11th February 1954 *having been filed in the Supreme Court of New South Wales in pursuance of the Matrimonial Causes Act* 1945 *of the Commonwealth claiming relief by way of dissolution of marriage under s.* 9 (1) (i) *of the Matrimonial Causes Act* 1860, *as amended, of Tasmania and such petition having come on to be heard on 18th November* 1954 *before the Supreme Court of New South Wales and a question having thereupon arisen as to the*

(1) (1945) 70 C.L.R., at p. 155.
(2) (1945) 70 C.L.R., at p. 165.
(3) (1945) 70 C.L.R., at p. 166.
(4) (1945) 70 C.L.R. 141.
(5) (1947) V.L.R. 434.

validity of provisions of the said Matrimonial Causes Act 1945 *of the Commonwealth amounting to a question as to the limits inter se of the constitutional powers of the Commonwealth and of a State and the cause standing removed accordingly into this Court pursuant to s.* 40A *of the Judiciary Act* 1903-1950 *and such cause coming on to be heard before Fullagar J. on* 10*th December* 1954 *and the order of that date having then been made by his Honour containing the findings therein set out and directing that pursuant to s.* 18 *of the Judiciary Act* 1903-1950 *the case be argued before the Full Court, now order that the marriage celebrated on* 25*th August* 1947 *between the petitioner and the respondent be dissolved by reason that the respondent has without just cause or excuse deserted the petitioner and has without any such cause or excuse left her continuously so deserted during two years and upwards unless sufficient cause to the contrary be shown in the Supreme Court of New South Wales within six months from the service of this order on the Crown Solicitor for the said State and order that the costs of the petitioner including the costs of the proceedings in this Court be taxed by the proper officer of the Supreme Court of New South Wales and that the respondent pay into the Supreme Court of New South Wales within fourteen days after service on him of a copy of the certificate of taxation the said costs as so taxed and that such costs unless otherwise ordered by the Supreme Court of New South Wales be paid out to the petitioner or her solicitor after decree absolute and further order that the cause be remitted to the Supreme Court of New South Wales and further order that an office copy of this order and of the order of Fullagar J. be filed in the Supreme Court of New South Wales.*

Solicitors for the petitioner, *Geoffrey See, Gillis & Co.*, Sydney, by *Aitken, Walker & Strachan.*

Solicitor for the intervener, the Commonwealth of Australia, *D. D. Bell*, Crown Solicitor for the Commonwealth of Australia.

R. D. B.