

ANNO VICESIMO & VICESIMO PRIMO

VICTORIÆ REGINÆ.

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CAP. LXXXV.

An Act to amend the Law relating to Divorce and Matrimonial Causes in *England*.

[28th *August* 1857.]

WHEREAS it is expedient to amend the Law relating to Divorce, and to constitute a Court with exclusive Jurisdiction in Matters Matrimonial in *England*, and with 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 Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Commencement of Act.

I. This Act shall come into operation on such Day, not sooner than the First Day of *January* One thousand eight hundred and fifty-eight, as Her Majesty shall by Order in Council appoint, provided that such Order be made One Month at least previously to the Day so to be appointed.

Jurisdiction in Matters Matrimonial now vested in Ecclesiastical Courts to cease.

II. As soon as this Act shall come into operation, all Jurisdiction now exerciseable by any Ecclesiastical Court in *England* in respect of Divorces *à Mensâ et Thoro*, Suits of Nullity of Marriage, Suits of

of Jactitation of Marriage, Suits for Restitution of Conjugal Rights, and in all Causes, Suits, and Matters Matrimonial, shall cease to be so exerciseable, except so far as relates to the granting of Marriage Licences, which may be granted as if this Act had not been passed.

The Court may enforce Decrees or Orders made before this Act comes into operation.

III. Any Decree or Order of any Ecclesiastical Court of competent Jurisdiction which shall have been made before this Act comes into operation, in any Cause or Matter Matrimonial, may be enforced or otherwise dealt with by the Court for Divorce and Matrimonial Causes herein-after mentioned, in the same Way as if it had been originally made by the said Court under this Act.

As to Suits pending when this Act comes into operation.

IV. All Suits and Proceedings in Causes and Matters Matrimonial which at the Time when this Act comes into operation shall be pending in any Ecclesiastical Court in *England* shall be transferred to, dealt with, and decided by the said Court for Divorce and Matrimonial Causes as if the same had been originally instituted in the said Court.

Power to Judges whose Jurisdiction is determined to deliver written Judgments.

V. Provided, That if at the Time when this Act comes into operation any Cause or Matter which would be transferred to the said Court for Divorce and Matrimonial Causes under the Enactment hereinbefore contained shall have been heard before any Judge having Jurisdiction in relation to such Cause or Matter, and be then standing for Judgment, such Judge may at any Time within Six Weeks after the Time when this Act comes into operation give in to One of the Registrars attending the Court for Divorce and Matrimonial Causes a written Judgment thereon signed by him; and a Decree or Order, as the Case may require, shall be drawn up in pursuance of such Judgment, and every such Decree or Order shall have the same Force and Effect as if it had been drawn up in pursuance of a Judgment of the Court for Divorce and Matrimonial Causes on the Day on which the same was delivered to the Registrar, and shall be subject to Appeal under this Act.

Jurisdiction over Causes Matrimonial to be exercised by the Court for Divorce and Matrimonial Causes.

VI. As soon as this Act shall come into operation, all Jurisdiction now vested in or exerciseable by any Ecclesiastical Court or Person in *England* in respect of Divorces *à Mensâ et Thoro*, Suits of Nullity of Marriage, Suits for Restitution of Conjugal Rights, or Jactitation of Marriage, and in all Causes, Suits, and Matters Matrimonial, except in respect of Marriage Licences, shall belong to and be vested in Her Majesty, and such Jurisdiction, together with the Jurisdiction conferred by this Act, shall be exercised in the Name of Her Majesty

Majesty in a Court of Record to be called "The Court for Divorce and Matrimonial Causes."

No Decree for Divorce à Mensâ et Thoro to be made hereafter, but a Judicial Separation.

VII. No Decree shall hereafter be made for a Divorce *à Mensâ et Thoro*, but in all Cases in which a Decree for a Divorce *à Mensâ et Thoro* might now be pronounced the Court may pronounce a Decree for a Judicial Separation, which shall have the same Force and the same Consequences as a Divorce *à Mensâ et Thoro* now has.

Judges of the Court.

VIII. The Lord Chancellor, the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, the Lord Chief Baron of the Court of Exchequer, the Senior Puisne Judge for the Time being in each of the Three last-mentioned Courts, and the Judge of Her Majesty's Court of Probate constituted by any Act of the present Session, shall be the Judges of the said Court.

Judge of the Court of Probate to be the Judge Ordinary, and shall have full Authority, &c.

IX. The Judge of the Court of Probate shall be called the Judge Ordinary of the said Court, and shall have full Authority, either alone or with One or more of the other Judges of the said Court, to hear and determine all Matters arising therein, except Petitions for the dissolving of or annulling Marriage, and Applications for new Trials of Questions or Issues before a Jury, Bills of Exception, Special Verdicts, and Special Cases, and, except as aforesaid, may exercise all the Powers and Authority of the said Court.

Petitions for Dissolution of a Marriage, &c. to be heard by Three Judges.

X. All Petitions, either for the Dissolution or for a Sentence of Nullity of Marriage, and Applications for new Trials of Questions or Issues before a Jury, shall be heard and determined by Three or more Judges of the said Court, of whom the Judge of the Court of Probate shall be One.

Who to act as Judge during Absence of the Judge Ordinary.

XI. During the temporary Absence of the Judge Ordinary, the Lord Chancellor may by Writing under his Hand authorize the Master of the Rolls, the Judge of the Admiralty Court, or either of the Lords Justices, or any Vice-Chancellor, or any Judge of the Superior Courts of Law at *Westminster*, to act as Judge Ordinary of the said Court for Divorce and Matrimonial Causes, and the Master of the Rolls, the Judge of the Admiralty Court, Lord Justice, Vice-Chancellor, or Judge of the Superior Courts, shall, when so acting, have and exercise all the Jurisdiction, Power, and Authority which might have been exercised by the Judge Ordinary.

Sittings of the Court.

XII. The Court for Divorce and Matrimonial Causes shall hold its Sittings at such Place or Places in *London* or *Middlesex* or elsewhere

elsewhere as Her Majesty in Council shall from Time to Time appoint.

Seal of the Court.

XIII. The Lord Chancellor shall direct a Seal to be made for the said Court, and may direct the same to be broken, altered, and renewed, at his Discretion; and all Decrees and Orders, or Copies of Decrees or Orders, of the said Court, sealed with the said Seal, shall be received in Evidence.

Officers of the Court.

XIV. The Registrars and other Officers of the Principal Registry of the Court of Probate shall attend the Sittings of the Court for Divorce and Matrimonial Causes, and assist in the Proceedings thereof, as shall be directed by the Rules and Orders under this Act.

Power to Advocates, Barristers, &c. of Ecclesiastical and Superior Courts to practise in the Court.

XV. All Persons admitted to practise as Advocates or Proctors respectively in any Ecclesiastical Court in *England*, and all Barristers, Attornies, and Solicitors entitled to practise in the Superior Courts at *Westminster*, shall be entitled to practise in the Court of Divorce and Matrimonial Causes; and such Advocates and Barristers shall have the same relative Rank and Precedence which they now have in the Judicial Committee of the Privy Council, unless and until Her Majesty shall otherwise order.

Sentence of Judicial Separation may be obtained by Husband or Wife for Adultery, &c.

XVI. A Sentence of Judicial Separation (which shall have the Effect of a Divorce *à Mensâ et Thoro* under the existing Law, and such other legal Effect as herein mentioned,) 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.

XVII. 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, or to any Judge of Assize at the Assizes held for the County in which the Husband and Wife reside or last resided together, and which Judge of Assize is hereby authorized and required to hear and determine such Petition, according to the Rules and Regulations which shall be made under the Authority of this Act; and the Court or Judge to which such Petition is addressed, 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 shall be deemed just: Provided always, that any Judge of Assize to whom such Petition shall be presented may refer the same to any of Her Majesty's Counsel or Serjeant at Law named in the Commission

sion of Assize or Nisi Prius, and such Counsel or Serjeant shall, for the Purpose of deciding upon the Matters of such Petition, have all the Powers that any such Judge would have had by virtue of this Act or otherwise.

Powers of Judges of Assize for Purposes of deciding Applications under Authority of this Act.

XVIII. For the Purpose of hearing and deciding all Applications under the Authority of this Act, the Judge of Assize or Person nominated by him as aforesaid shall be entitled to avail himself of the Services of all Officers, and use and exercise all Powers and Authorities, which the Court of Assize may employ, use, and exercise for the Determination of Causes and other Matters now usually heard and decided by them respectively, and the said Judge of Assize or other Person shall also for the Purpose have and be entitled to exercise all the Powers and Authorities hereby given to the Court for the hearing and deciding Applications made to it, and also the Powers hereby given to the Court to make Provision touching the Custody, Maintenance, and Education of Children; and every Order made by any Judge of Assize or other Person under the Authority of this Act may, on the Application of the Person obtaining the same, be entered as an Order of the Court, and when so entered shall have the same Force and Effect, and be enforced in the same Manner, as if such Order had been originally made by the Court.

The Court to regulate Fees on Proceedings before Judges, &c.

XIX. The Court shall from Time to Time fix and regulate the Fees which shall be payable upon all Proceedings under any Application to a Judge of Assize under this Act; and such Fees shall be received in Money, for their own Benefit, by the Persons to whom or for whose Use the same shall be directed to be paid.

Orders may be reviewed.

XX. Any Order so entered as aforesaid may be reviewed, and either altered or reversed on Appeal to the Judge Ordinary of the Court, but such Appeal shall not stay the intermediate Execution of the Order, unless the Judge Ordinary shall so direct, who shall have Power, if such Appeal be dismissed or abandoned, to order the Appellant to pay to the other Party the full Costs incurred by reason of such Appeal.

Wife deserted by her Husband may apply to a Police Magistrate or Justices in Petty Sessions for Protection.

XXI. A Wife deserted by her Husband may at any Time after such Desertion, if resident within the Metropolitan District, apply to a Police Magistrate, or if resident in the Country to Justices in Petty Sessions, or in either Case to the Court, for an Order to protect any Money or Property she may acquire by her own lawful Industry, and Property which she may become possessed of, after such Desertion, against her Husband or his Creditors, or any Person claiming under him; and such Magistrate or Justices or Court, if satisfied of

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the Fact of such Desertion, and that the same was without reasonable Cause, and that the Wife is maintaining herself by her own Industry or Property, may make and give to the Wife an Order protecting her Earnings and Property acquired since the Commencement of such Desertion, from her Husband and all Creditors and Persons claiming under him, and such Earnings and Property shall belong to the Wife as if she were a Feme Sole: Provided always, that every such Order, if made by a Police Magistrate or Justices at Petty Sessions, shall, within Ten Days after the making thereof, be entered with the Registrar of the County Court within whose Jurisdiction the Wife is resident; and that it shall be lawful for the Husband, and any Creditor or other Person claiming under him, to apply to the Court, or to the Magistrate or Justices by whom such Order was made, for the Discharge thereof: Provided also, that if the Husband or any Creditor of or Person claiming under the Husband shall seize or continue to hold any Property of the Wife after Notice of any such Order, he shall be liable, at the Suit of the Wife (which she is hereby empowered to bring), to restore the specific Property, and also for a Sum equal to double the Value of the Property so seized or held after such Notice as aforesaid: If any such Order of Protection be made, the Wife shall during the Continuance thereof be and be deemed to have been, during such Desertion of her, in the like Position in all respects, with regard to Property and Contracts, and suing and being sued, as she would be under this Act if she obtained a Decree of Judicial Separation.

Court to act on Principles of the Ecclesiastical Courts.

XXII. In all Suits and Proceedings, other than Proceedings to dissolve any Marriage, the said Court shall proceed and act and give Relief on Principles and Rules which in the Opinion of the said Court shall be as nearly as may be conformable to the Principles and Rules on which the Ecclesiastical Courts have heretofore acted and given Relief, but subject to the Provisions herein contained and to the Rules and Orders under this Act.

Decree of Separation obtained during the Absence of Husband or Wife may be reversed.

XXIII. 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 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 or affect the Rights or Remedies which any other Person would have had in case such Reversal had not been decreed, in respect of any Debts, Contracts,

Contracts, or Acts of the Wife incurred, entered into, or done between the Times of the Sentence of Separation and of the Reversal thereof.

Court may direct Payment of Alimony to Wife or to her Trustee.

XXIV. 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 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 so to do.

In case of Judicial Separation the Wife to be considered a Feme Sole with respect to Property she may acquire, &c.;

XXV. 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 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 whilst separate.

also, for Purposes of Contract and suing.

XXVI. 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.

On Adultery of Wife or Incest, &c. of Husband, Petition for Dissolution of Marriage may be presented.

XXVII. It shall be lawful for any Husband to present a Petition to the said Court, praying that his Marriage may be dissolved, on the Ground that his Wife has since the Celebration thereof been guilty of Adultery; and it shall be lawful for any Wife to present a Petition to the said Court, praying that her Marriage may be dissolved, on the Ground that since the Celebration thereof her Husband has been guilty of incestuous Adultery, or of Bigamy with Adultery,

Adultery, or of Rape, or of Sodomy or Bestiality, or of Adultery coupled with such Cruelty as without Adultery would have entitled her to a Divorce *à Mensâ et Thoro*, or of Adultery coupled with Desertion, without reasonable Excuse, for Two Years or upwards; and every such Petition shall state as distinctly as the Nature of the Case permits the Facts on which the Claim to have such Marriage dissolved is founded: 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 Marriage by reason of her being within the prohibited Degrees of Consanguinity or Affinity; and Bigamy shall be taken to mean Marriage of any Person, being married, to any other Person during the Life of the former Husband or Wife, whether the Second Marriage shall have taken place within the Dominions of Her Majesty or elsewhere.

As to "Incestuous Adultery."

Adulterer to be a Co-Respondent.

XXVIII. 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 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 herein-after mentioned.

Cause may be tried by a Jury.

Court to be satisfied of Absence of Collusion.

XXIX. 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.

Dismissal of Petition.

XXX. 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.

Power to Court to pronounce Decree for dissolving Marriage.

XXXI. 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

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 always, 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, and without reasonable Excuse, or of such wilful Neglect or Misconduct as has conduced to the Adultery.

Alimony.

XXXII. 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 the Husband, and to the Conduct of the Parties, it shall deem reasonable, and for that Purpose may refer it to any one of the Conveyancing Counsel of the Court of Chancery to settle and approve of a proper Deed or Instrument to be executed by all necessary Parties; and the said Court may in such Case, if it shall see fit, suspend the pronouncing of its Decree until such Deed shall have been duly executed; and upon any Petition for Dissolution of Marriage the 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.

Husband may claim Damages from Adulterers.

XXXIII. Any Husband may, either in a Petition for Dissolution of Marriage or for Judicial Separation, or in a Petition limited to such Object only, claim Damages from any Person on the Ground of his having committed Adultery with the Wife of such Petitioner, and such Petition shall be served on the alleged Adulterer and the Wife, unless the 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 the like Rules and Regulations as Actions for Criminal Conversation are now tried and decided in Courts of Common Law; and all the Enactments herein contained with reference to the Hearing and Decision of Petitions to the Court 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 or applied, and to direct that the whole or any Part thereof shall be settled for the Benefit of the Children (if any) of the Marriage, or as a Provision for the Maintenance of the Wife.

Power to Court to order Adulterer to pay Costs.

XXXIV. 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.

Power to Court to make Orders as to Custody of Children.

XXXV. 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 Proceeding, and may, if it shall think fit, direct proper Proceedings to be taken for placing such Children under the Protection of the Court of Chancery.

Questions of Fact may be tried before the Court.

XXXVI. In Questions of Fact arising in Proceedings under this Act it shall be lawful for, but, except as herein-before provided, not obligatory upon, the Court to direct the Truth thereof to be determined before itself, or before any One or more of the Judges of the said Court, by the Verdict of a Special or Common Jury.

Where a Question is ordered to be tried a Jury may be summoned as in the Common Law Courts.

XXXVII. The Court, or any Judge thereof, may make all such Rules and Orders upon the Sheriff or any other Person for procuring the Attendance of a Special or Common Jury for the Trial of such Question as may now be made by any of the Superior Courts of Common Law at *Westminster*, and may also make any other Orders which to such Court or Judge may seem requisite; and every such Jury shall consist of Persons possessing the like Qualifications, and shall be struck, summoned, balloted for, and called in like Manner, as if such Jury were a Jury for the Trial of any Cause in any of the said Superior Courts; and every Juryman so summoned shall be entitled to the same Rights, and subject to the same Duties and Liabilities, as if he had been duly summoned for the Trial of any such Cause in any of the said Superior Courts; and every Party to any such Proceeding shall be entitled to the same Rights as to Challenge and otherwise as if he were a Party to any such Cause.

Rights to Challenge.

XXXVIII. When

Such Question to be reduced into Writing, and a Jury to be sworn to try it.

XXXVIII. 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 said 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 Powers, Jurisdiction, and Authority as any Judge of any of the said Superior Courts sitting at Nisi Prius.

Judge to have same Powers as at Nisi Prius.

Bill of Exceptions, Special Verdict, and Special Case.

XXXIX. Upon the Trial of any such Question or of any Issue under this Act a Bill of Exceptions may be tendered, and a General or Special Verdict or Verdicts, subject to a Special Case, may be returned, in like Manner as in any Cause tried in any of the said Superior Courts; and every such Bill of Exceptions, Special Verdict, and Special Case respectively shall be stated, settled, and sealed in like Manner as in any Cause tried in any of the said Superior Courts, and where the Trial shall not have been had in the Court for Divorce and Matrimonial Causes shall be returned into such Court without any Writ of Error or other Writ; and the Matter of Law in every such Bill of Exceptions, Special Verdict, and Special Case shall be heard and determined by the full Courts, subject to such Right of Appeal as is herein-after given in other Cases.

Court may direct Issues to try any Fact.

XL. It shall be lawful for the Court to direct One or more Issue or Issues to be tried in any Court of Common Law, and either before a Judge of Assize in any County or at the Sittings for the Trial of Causes in *London* or *Middlesex*, and either by a Special or Common Jury, in like Manner as is now done by the Court of Chancery.

Affidavit in support of a Petition.

XLI. Every Person seeking a Decree of Nullity of Marriage, or a Decree of Judicial Separation, or a Dissolution of Marriage, or Decree in a Suit of Jactitation of Marriage, shall, together with the Petition or other Application for the same, file an Affidavit verifying the same so far as he or she is able to do so, and stating that there is not any Collusion or Connivance between the Deponent and the other Party to the Marriage.

Service of Petition.

XLII. Every such Petition shall be served on the Party to be affected thereby, either within or without Her Majesty's Dominions, in such Manner as the Court shall by any General or Special Order from Time to Time direct, and for that Purpose the Court shall have all the Powers conferred by any Statute on the Court of Chancery: Provided always, that the said Court may dispense with such Service altogether in case it shall seem necessary or expedient so to do.

XLIII. The

Examination of Petitioner.

XLIII. 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 show that he or she has been guilty of Adultery.

Adjournment.

XLIV. 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 so to do.

Court may order Settlement of Property for Benefit of innocent Party and Children of Marriage.

XLV. In any Case in which the Court shall pronounce a Sentence of Divorce or Judicial Separation for Adultery of the Wife, if it shall be made 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.

Mode of taking Evidence.

XLVI. 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 herein-before 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.

Court may issue Commissions or give Orders for Examination of Witnesses abroad or unable to attend.

XLVII. 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 the Witness in open Court, it shall be lawful for the Court to order a Commission to issue for the Examination of such Witness on Oath, upon Interrogatories or otherwise, or if the Witness be within the Jurisdiction of the Court to order the Examination of such Witness on Oath, upon Interrogatories or otherwise, before any Officer of the said Court, or other Person to be named in such Order for the Purpose; and all the Powers given to the Courts of Law at *Westminster* by the Acts of the Thirteenth Year of King *George* the Third, Chapter Sixty-three, and of the First Year of King *William* the Fourth, Chapter Twenty-two, for enabling the Courts of Law at *Westminster*

Westminster to issue Commissions and give Orders for the Examination of Witnesses in Actions depending in such Courts, and to enforce such Examination, and all the Provisions of the said Acts, and of any other Acts for enforcing or otherwise applicable to such Examination and the Witnesses examined, shall extend and be applicable to the Court and to the Examination of Witnesses under the Commissions and Orders of the said Court, and to the Witnesses examined, as if such Court were One of the Courts of Law at *Westminster*, and the Matter before it were an Action pending in such Court.

Rules of Evidence in Common Law Courts to be observed.

XLVIII. The Rules of Evidence observed in the Superior Courts of Common Law at *Westminster* shall be applicable to and observed in the Trial of all Questions of Fact in the Court.

Attendance of Witnesses on the Court.

XLIX. The Court may, under its Seal, issue Writs of Subpœna or Subpœna duces tecum, commanding the Attendance of Witnesses at such Time and Place as shall be therein expressed; and such Writs may be served in any Part of *Great Britain* or *Ireland;* and every Person served with such Writ shall be bound to attend, and to be sworn and give Evidence in obedience thereto, in the same Manner as if it had been a Writ of Subpœna or Subpœna duces tecum issued from any of the said Superior Courts of Common Law in a Cause pending therein, and served in *Great Britain* or *Ireland*, as the Case may be: Provided that any Petitioner required to be examined, or any Person called as a Witness or required or desiring to make an Affidavit or Deposition under or for the Purposes of this Act, shall be permitted to make his solemn Affirmation or Declaration instead of being sworn in the Circumstances and Manner in which a Person called as a Witness or desiring to make an Affidavit or Deposition would be permitted so to do under the "Common Law Procedure Act, 1854," in Cases within the Provisions of that Act.

Penalties for false Evidence.

L. All Persons wilfully deposing or affirming falsely in any Proceeding before the Court shall be deemed to be guilty of Perjury, and shall be liable to all the Pains and Penalties attached thereto.

Costs.

LI. The Court on the Hearing of any Suit, Proceeding, or Petition under this Act, and the House of Lords on the Hearing of any Appeal under this Act, may make such Order as to Costs as to such Court or House respectively may seem just: Provided always, that there shall be no Appeal on the Subject of Costs only.

Enforcement of Orders and Decrees.

LII. All Decrees and Orders to be made by the Court in any Suit, Proceeding, or Petition to be instituted under 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 High Court of Chancery may be now enforced and put in execution.

Power to make Rules, &c for Procedure, and to alter them from Time th Time.

LIII. The Court shall 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 Power from Time to Time to revoke or alter the same.

Fees to be regulated.

LIV. The Court shall have full Power to fix and regulate from Time to Time the Fees payable upon all Proceedings before it, all which Fees shall be received, paid, and applied as herein directed: Provided always, that the said 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*.

Appeal from the Judge Ordinary to the full Court.

LV. Either Party dissatisfied with any Decision of the Court in any Matter which, according to the Provisions aforesaid, may be made by the Judge Ordinary alone, may, within Three Calendar Months after the pronouncing thereof, appeal therefrom to the full Court, whose Decision shall be final.

Appeal to the House of Lords in case of Petition for Dissolution of a Marriage.

LVI. Either Party dissatisfied with the Decision of the full Court on any Petition for the Dissolution of a Marriage may, within Three Months after the pronouncing thereof, appeal therefrom to the House of Lords if Parliament be then sitting, or if Parliament be not sitting at the End of such Three Months, then within Fourteen Days next after its meeting; and on the Hearing of any such Appeal the House of Lords may either dismiss the Appeal or reverse the Decree, or remit the Case to the Court, to be dealt with in all respects as the House of Lords shall direct.

Liberty to Parties to marry again.

LVII. When the Time hereby limited for appealing against any Decree dissolving a Marriage shall have expired, and no Appeal shall have been presented against such Decree, or when any such Appeal shall have been dismissed, or when in the Result of any Appeal any Marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective Parties thereto to marry again, as if the prior Marriage had been dissolved by Death: Provided always, that

No Clergyman compelled to solemnize certain Marriages.

no Clergyman in Holy Orders of the United Church of *England* and *Ireland* shall be compelled to solemnize the Marriage of any Person whose former Marriage may have been dissolved on the Ground of his

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.

If Minister of any Church, &c. refuses to perform Marriage Ceremony, any other Minister may perform such Service.

LVIII. Provided always, That when any Minister of any Church or Chapel of the United Church of *England* and *Ireland* shall refuse to perform such Marriage Service between any Persons who but for such Refusal would be entitled to have the same Service performed in such Church or Chapel, such Minister shall permit any other Minister in Holy Orders of the said United Church, entitled to officiate within the Diocese in which such Church or Chapel is situate, to perform such Marriage Service in such Church or Chapel.

No Action in England for Criminal Conversation.

LIX. After this Act shall have come into operation no Action shall be maintainable in *England* for Criminal Conversation.

All Fees, except as herein provided, to be collected by Stamps.

LX. None of the Fees payable under this Act, except as herein expressly provided, shall be received in Money, but every such Fee shall be collected and received by a Stamp denoting the Amount of the Fee which would otherwise be payable; and the Fees to be so collected by Stamps shall be "Stamp Duties," and be under the Management of the Commissioners of Inland Revenue.

Provisions concerning Stamps for the Court of Probate to be applicable to the Purposes of this Act.

LXI. The Provisions contained in or referred to by an Act of the present Session of Parliament, "to amend the Laws relating to Probates and Letters of Administration in *England*," and applicable to the Collection and Payment and Accounts of the Fees to be received thereunder by means of Stamps, and to such Stamps, and the Vellum, Parchment, or Paper on or to which the same shall be impressed or affixed, and in relation to Documents which ought to have Stamps impressed thereon or affixed thereto, and to the Punishment of Persons for such wrongful Acts as therein mentioned in relation to Stamps, or Fees or Sums of Money which ought to be collected by means of Stamps, shall be applicable to and for the Purposes of this Act, as if such Provisions as aforesaid had been contained or referred to in this Act with reference to the like Matters, and the Court under this Act had been mentioned, instead of the Court of Probate, or the Judge thereof, as the Case may be.

Expenses of the Court to be paid out of Monies to be provided by Parliament.

LXII. It shall be lawful for the Commissioners of Her Majesty's Treasury, out of such Monies as may be provided and appropriated by Parliament for the Purpose, to cause to be paid all necessary Expenses of the Court under this Act, and other Expenses which may be incurred in carrying the Provisions of this Act into effect, except as herein otherwise provided.

LXIII. The

Stamp Duty on Admission of Proctors, and annual Certificates.

LXIII. The same Amount of Stamp Duty as is now payable on the Admission of a Proctor to any Ecclesiastical Court shall be payable by every Person to be admitted as a Proctor in the Court of Divorce and Matrimonial Causes, or in the Court of Probate, who shall not have been previously admitted as a Proctor in the other of such Courts, or in an Ecclesiastical or Admiralty Court, and have paid the Stamp Duty in respect thereof; and every Person who shall practise as a Proctor or as a Solicitor or Attorney in the said Court of Divorce and Matrimonial Causes, or the said Court of Probate, shall obtain an annual Certificate to authorize him so to do, under the Stamp Duty Acts, in the same Manner as Proctors practising in the Ecclesiastical or Admiralty Courts, and Solicitors and Attornies practising in Her Majesty's Courts at *Westminster*, are now required to do by the said Acts or any of them, and shall be subject and liable to the same Penalties and Disabilities in case of any Neglect to obtain such Certificates as such Proctors, Attornies, and Solicitors are now subject and liable to for any similar Neglect, and as if the Clauses and Provisions of the said Acts in relation to such Certificates had been inserted in this Act, and specially enacted in reference to Proctors, Solicitors, and Attornies practising in the said Court of Divorce and Matrimonial Causes and Court of Probate, provided that One annual Certificate only shall be required for any one Person, although he may practise in more than One of the Capacities aforesaid, or in several of the Courts herein-before mentioned.

Compensation to Proctors.

LXIV. Every Person who at the Time of the passing of this Act has been duly admitted and is practising as a Proctor in any Ecclesiastical Court in *England* shall, at the Expiration of Two Years from and after the Commencement of this Act, be entitled to make a Claim for Compensation to the Commissioners of Her Majesty's Treasury; and the said Commissioners, by Examination of Evidence on Oath (which they are hereby empowered to administer), or otherwise, as they shall think fit, shall inquire into and ascertain the Loss, if any, of Professional Gains and Profits in respect of Suits relating to Marriage and Divorce sustained by such Proctors respectively, upon a Comparison in each Case of the average clear Gains of the Three Years immediately before the Commencement of this Act, arising from such last-mentioned Business, and the Average of the same Gains during the Two Years immediately succeeding the Commencement of this Act; and the said Commissioners shall in each Case, having regard to all the Circumstances, award a reasonable Compensation, by way of Annuity, to the Persons sustaining such Loss, during their Lives, but in no Case shall such Annuity exceed One Half of the annual Loss so ascertained as aforesaid; and such Annuities shall be paid out of Monies to be annually provided by Parliament

Parliament for that Purpose, and the Persons receiving the same shall be subject to the Provisions contained in the Nineteenth Section of the Act of Fourth and Fifth *William* the Fourth, Chapter Twenty-four.

As to Salary of Judge of Court of Probate, if appointed Judge of Court of Divorce, &c.

LXV. In case the Judge of the Court of Probate established by any Act passed during the present Session shall be appointed Judge Ordinary of the Court for Divorce and Matrimonial Causes, the Salary of such Judge shall be the Sum of Five thousand Pounds *per Annum*; but such Judge, if afterwards appointed Judge of the Admiralty Court, shall not be entitled to any Increase of Salary.

Power to Secretary of State to order all Letters Patent, Records, &c. to be transmitted from all Ecclesiastical Courts.

LXVI. Any One of Her Majesty's Principal Secretaries of State may order every Judge, Registrar, or other Officer of any Ecclesiastical Court in *England* or the *Isle of Man*, or any other Person having the public Custody of or Control over any Letters Patent, Records, Deeds, Processes, Acts, Proceedings, Books, Documents, or other Instrument relating to Marriages, or to Suits for Divorce, Nullity of Marriage, Restitution of Conjugal Rights, or to any other Matters or Causes Matrimonial, except Marriage Licences, to transmit the same, at such Times and in such Manner, to such Places in *London* or *Westminster*, and under such Regulations, as the said Secretary of State may appoint; and if any Judge, Registrar, Officer, or other Person shall wilfully disobey such Order he shall for the First Offence forfeit the Sum of One hundred Pounds, to be recoverable by any Registrar of the Court of Probate as a Debt under this Act in any of the Superior Courts at *Westminster*, and for the Second and subsequent Offences the Judge Ordinary may commit the Person so offending to Prison for any Period not exceeding Three Calendar Months, provided that the Warrant of Committal be countersigned by One of Her Majesty's Principal Secretaries of State, and the said Persons so offending shall forfeit all Claim to Compensation under this Act.

Penalty on disobeying such Order

Rules, &c. to be laid before Parliament.

LXVII. All Rules and Regulations concerning Practice or Procedure, or fixing or regulating Fees, which may be made by the Court under this Act, shall be laid before both Houses of Parliament within One Month after the making thereof, if Parliament be then sitting, or if Parliament be not then sitting, within One Month after the Commencement of the then next Session of Parliament.

Yearly Account of Fees, &c. to be laid before Parliament.

LXVIII. The Judge Ordinary of the Court for Divorce and Matrimonial Causes for the Time being shall cause to be prepared in each Year ending *December* Thirty-one a Return of all Fees and Monies levied in such Year on account of the Fee Fund of the Court of

Divorce and Matrimonial Causes, and of any other Fund under the Authority of this Act; also, a Return of the annual Salaries of the said Judge Ordinary, and of all Persons holding Offices in the said Court, with all the incidental Expenses of the said Court, whether the Salaries and incidental Expenses aforesaid be defrayed out of Fees or out of any other Monies; also, a Return of all Superannuations, Pensions, Annuities, retiring Allowances, and Compensations made payable under this Act, in each Year, stating the gross Amount, and the Amount in detail, of such Charges: Provided always, that all such Returns as aforesaid shall be presented to both Houses of Parliament on or before the Thirty-first Day of *March* in each Year, if Parliament is then sitting, and if Parliament is not sitting, then such Returns shall be presented within One Month of the First Meeting of Parliament after the Thirty-first Day of *March* in each Year.

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