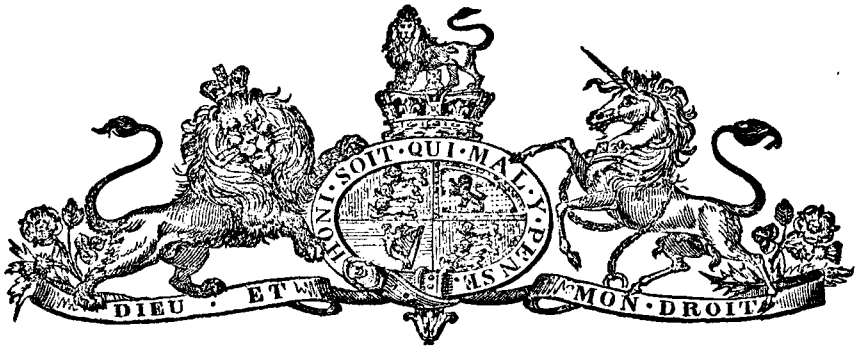


ANNO VICESIMO PRIMO & VICESIMO SECUNDO

VICTORIÆ REGINÆ.

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CAP. CVIII.

An Act to amend the Act of the Twentieth and Twenty-first *Victoria*, Chapter Eighty-five.

[2d *August* 1858.]

WHEREAS in the last Session of Parliament an Act was passed, intituled *An Act to amend the Law relating to Divorce and Matrimonial Causes in* England: And whereas it is expedient to amend the same: 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: 20 & 21 Vict.

I. It shall be lawful for the Judge Ordinary of the Court for Divorce and Matrimonial Causes for the Time being to sit in Chambers for the Despatch of such Part of the Business of the said Court as can in the Opinion of the said Judge Ordinary, with Advantage to the Suitors, be heard in Chambers; and such Sittings shall from Time to Time be appointed by the said Judge Ordinary. The Judge Ordinary of the Court for Divorce and Matrimonial Causes may sit in Chambers.

II. The Commissioners of Her Majesty's Treasury shall from Time to Time provide Chambers in which the said Judge Ordinary shall sit for the Despatch of such Business as aforesaid, and until such Chambers are provided the said Judge Ordinary shall sit in The Treasury to cause Chambers to be provided.

in Chambers in any Room which he may find convenient for the Purpose.

Powers of Judge when sitting in Chambers.

III. The said Judge Ordinary when so sitting in Chambers shall have and exercise the same Power and Jurisdiction in respect of the Business to be brought before him as if sitting in open Court.

The Registrars to do all Acts heretofore done by Surrogates.

IV. The Registrars of the Principal Registry of the Court of Probate shall be invested with and shall and may exercise with reference to Proceedings in the Court for Divorce and Matrimonial Causes the same Power and Authority which Surrogates of the Official Principal of the Court of Arches could or might before the passing of the Twentieth and Twenty-first *Victoria*, Chapter Seventy-seven, have exercised in Chambers with reference to Proceedings in that Court.

Evidence on which Divorce obtained prior to 20 & 21 Vict. c. 85. may be used in support of Petition in the Court for Divorce and Matrimonial Causes.

V. In every Cause in which a Sentence of Divorce and Separation from Bed, Board, and mutual Cohabitation has been given by a competent Ecclesiastical Court before the Act of the Twentieth and Twenty-first *Victoria*, Chapter Eighty-five, came into operation, the Evidence in the Cause in which such Sentence was pronounced in such Ecclesiastical Court may, whenever from the Death of a Witness or from any other Cause it may appear to the Court reasonable and proper, be received on the hearing of any Petition which may be presented to the said Court for Divorce and Matrimonial Causes.

Wives deserted by their Husbands may apply to the Judge for an Order to protect Property, &c. acquired by them.

VI. Every Wife deserted by her Husband, wheresoever resident in *England*, may, at any Time after such Desertion, apply to the said Judge Ordinary for an Order to protect any Money or Property in *England* she may have acquired or may acquire by her own lawful Industry, and any Property she may have become possessed of or may become possessed of after such Desertion, against her Husband and his Creditors, and any Person claiming under him; and the Judge Ordinary shall exercise in respect of every such Application all the Powers conferred upon the Court for Divorce and Matrimonial Causes under the Twentieth and Twenty-first *Victoria*, Chapter Eighty-five, Section Twenty-one.

Provisions respecting Property of Wife to extend to Property vested in her as Executrix, &c.

VII. The Provisions contained in this Act and in the said Act of the Twentieth and Twenty-first *Victoria*, Chapter Eighty-five, respecting the Property of a Wife who has obtained a Decree for Judicial Separation or an Order for Protection, shall be deemed to extend to Property to which such Wife has become 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

and the Death of the Testator or Intestate shall be deemed to be the Time when such Wife became entitled as Executrix or Administratrix.

Order for Protection of Earnings, &c. of Wife to be deemed valid.

VIII. In every Case in which a Wife shall under this Act or under the said Act of the Twentieth and Twenty-first *Victoria*, Chapter Eighty-five, have obtained an Order to protect her Earnings or Property, or a Decree for Judicial Separation, such Order or Decree shall, until reversed or discharged, so far as necessary for the Protection of any Person or Corporation who shall deal with the Wife, be deemed valid and effectual; and no Discharge, Variation, or Reversal of such Order or Decree shall prejudice or affect any Rights or Remedies which any Person would have had in case the same had not been so reversed, varied, or discharged in respect of any Debts, Contracts, or Acts of the Wife incurred, entered into, or done between the Times of the making such Order or Decree and of the Discharge, Variation, or Reversal thereof; and Property of or to which the Wife is possessed or entitled for an Estate in Remainder or Reversion at the Date of the Desertion or Decree (as the Case may be), shall be deemed to be included in the Protection given by the Order or Decree.

Order to state the Time at which the Desertion commenced.

IX. Every Order which shall be obtained by a Wife under the said Act of the Twentieth and Twenty-first *Victoria*, Chapter Eighty-five, or under this Act, for the Protection of her Earnings or Property, shall state the Time at which the Desertion in consequence whereof the Order is made commenced; and the Order shall, as regards all Persons dealing with such Wife in reliance thereon, be conclusive as to the Time when such Desertion commenced.

Indemnity to Corporations, &c. making Payments under Orders afterwards reversed.

X. All Persons and Corporations who shall, in reliance on any such Order or Decree as aforesaid, make any Payment to, or permit any Transfer or Act to be made or done by, the Wife who has obtained the same, shall, notwithstanding such Order or Decree may then have been discharged, reversed, or varied, or the Separation of the Wife from her Husband may have ceased, or at some Time since the making of the Order or Decree been discontinued, be protected and indemnified in the same Way in all respects as if, at the Time of such Payment, Transfer, or other Act, such Order or Decree were valid and still subsisting without Variation in full Force and Effect, and the Separation of the Wife from her Husband had not ceased or been discontinued, unless at the Time of such Payment, Transfer, or other Act such Persons or Corporations had Notice of the Discharge, Reversal, or Variation of such Order or Decree, or of the Cessation or Discontinuance of such Separation.

XI. In

Where alleged Adulterer a Co-Respondent Court may order him to be dismissed from the Suit.

XI. In all Cases now pending, or hereafter to be commenced 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.

Persons who administer Oaths under 20 & 21 Vict. c. 77. to administer under 20 & 21 Vict. c. 85.

XII. Registrars, Surrogates, Commissioners for taking Oaths in the Court of Chancery, and all other Persons now or hereafter authorized to administer Oaths under the Act of the Twentieth and Twenty-first *Victoria*, Chapter Seventy-seven, or under this Act, shall have Power to administer Oaths under the Act of the Twentieth and Twenty-first *Victoria*, Chapter Eighty-five.

Bills of Proctors, Attornies, &c. to be subject to Taxation.

XIII. The Bill of any Proctor, Attorney, or Solicitor, for any Fees, Charges, or Disbursements in respect of any Business transacted in the Court for Divorce and Matrimonial Causes, and whether the same was transacted before the full Court or before the Judge Ordinary, shall, as well between Proctor or Attorney or Solicitor and Client, as between Party and Party, be subject to Taxation by any One of the Registrars belonging to the Principal Registry of the Court of Probate, and the Mode in which any such Bill shall be referred for Taxation, and by whom the Costs of Taxation shall be paid, shall be regulated by the Rules and Orders to be made under the Act of the Twentieth and Twenty-first of *Victoria*, Chapter Eighty-five, and the Certificate of the Registrar of the Amount at which such Bill is taxed shall be subject to Appeal to the Judge of the said Court.

Power to enforce Decree as to Costs.

XIV. The Judge Ordinary of the Court for Divorce and Matrimonial Causes, and the Registrars of the Principal Registry of the Court of Probate, shall respectively, in any Case where an Ecclesiastical Court having Matrimonial Jurisdiction had, previously to the Commencement of the Act of the Twentieth and Twenty-first *Victoria*, Chapter Eighty-five, made any Order or Decree in respect of Costs, have the same Power of taxing such Costs, and enforcing Payment thereof, or of otherwise carrying such Order or Decree into effect, as if the Cause wherein such Decree was made had been originally commenced and prosecuted in the said Court for Divorce and Matrimonial Causes: Provided that in taxing any such Costs, or any other Costs incurred in Causes depending in any Ecclesiastical Court previously to the Commencement of the said recited Act, all Fees, Charges, and Expenses shall be

be allowed which might have been legally made, charged, and enforced according to the Practice of the Court of Arches.

Judge to exercise Power and Authority over Proctors, &c.

XV. The Judge Ordinary of the Court for Divorce and Matrimonial Causes shall have and exercise, over Proctors, Solicitors, and Attornies practising in the said Court, the like Authority and Control as is now exercised by the Judges of any Court of Equity or of Common Law over Persons practising therein as Proctors, Solicitors, or Attornies.

Commissioners may be appointed in the Isle of Man, &c.

XVI. It shall be lawful for the Judge Ordinary of the Court for Divorce and Matrimonial Causes to appoint, by Commission under Seal of the Court, any Persons practising as Solicitors in the *Isle of Man*, in the *Channel Islands*, or any of them, to administer Oaths, and to take Declarations or Affirmations, to be used in the said Court; and such Persons shall be entitled from Time to Time to charge and take such Fees as any other Persons performing the same Duties in the Court for Divorce and Matrimonial Causes may charge and take.

Appeal in Cases of Nullity of Marriage to lie to the House of Lords.

XVII. Whereas Doubts may be entertained whether the Right of Appeal given by the Act of the Twentieth and Twenty-first *Victoria*, Chapter Eighty-five, Section Fifty-six, extends to Sentences on Petitions for Nullity of Marriage: Be it enacted and declared, That either Party dissatisfied with any such Sentence may appeal therefrom in the same Manner, within the same Time, and subject to the same Regulations as affect Appeals against Sentences on Petitions for the Dissolution of Marriage.

Judge Ordinary may grant Rule Nisi for new Trial, &c.

XVIII. Where any Trial shall have been had by a Jury before the full Court or before the Judge Ordinary, or upon any Issue directed by the full Court or by the Judge Ordinary, it shall be lawful for the Judge Ordinary, subject to any Rules to be hereafter made, to grant a Rule Nisi for a new Trial, but no such Rule shall be made absolute except by the full Court.

So much of 20 & 21 Vict. c. 85. as to Applications to Judges of Assize repealed.

XIX. So much of the Act of the Twentieth and Twenty-first *Victoria*, Chapter Eighty-five, as authorizes Application to be made for Restitution of Conjugal Rights or for Judicial Separation by Petition to any Judge of Assize, and as relates to the Proceedings on such Petition, shall be and the same is hereby repealed.

Affidavits, before whom to be sworn when Parties making them reside in

XX. In Cases where it is necessary to obtain Affidavits, Declarations, or Affirmations to be used in the Court for Divorce and Matrimonial Causes from Persons residing in Foreign Parts out of Her Majesty's Dominions, the same may be sworn, declared, or affirmed before

Foreign Parts.

before the Persons empowered to administer Oaths under the Act of the Sixth of *George* the Fourth, Chapter Eighty-seven, or under the Act of the Eighteenth and Nineteenth of *Victoria*, Chapter Forty-two; provided that in Places where there are no such Persons as are mentioned in the said Acts such Affidavits, Declarations, or Affirmations may be made, declared, and affirmed before any Foreign local Magistrate or other Person having Authority to administer an Oath there.

Affidavits, before whom to be sworn.

XXI. Affidavits, Declarations, and Affirmations to be used in the Court for Divorce and Matrimonial Causes may be sworn and taken in *Scotland*, *Ireland*, the *Isle of Man*, the *Channel Islands*, or any Colony, Island, Plantation, or Place out of *England* under the Dominion of Her Majesty, before any Court, Judge, Notary Public, or Person lawfully authorized to administer Oaths in such Country, Colony, Island, Plantation, or Place respectively, or, so far as relates to the *Isle of Man* and the *Channel Islands*, before any Commissary, Ecclesiastical Judge, or Surrogate who at the Time of the passing of the Act of last Session, Chapter Seventy-seven, was authorized to administer Oaths in the *Isle of Man* or in the *Channel Islands* respectively; and all Registrars and other Officers of the Court for Divorce and Matrimonial Causes shall take judicial Notice of the Seal or Signature, as the Case may be, of any such Judge, Notary Public, or Person, which shall be attached, suspended, or subscribed to any such Affidavit, Declaration, or Affirmation, or to any other Document.

Persons forging Seal or Signature guilty of Felony.

XXII. If any Person shall forge any such Seal or Signature as last aforesaid, or any Seal or Signature impressed, affixed, or subscribed under the Provisions of the said Act of the Sixth of *George* the Fourth, or of the said Act of the Eighteenth and Nineteenth of *Victoria*, to any Affidavit, Declaration, or Affirmation to be used in the Court for Divorce and Matrimonial Causes, or shall tender in Evidence any such Document as aforesaid with a false or counterfeit Seal or Signature thereto, knowing the same to be false or counterfeit, he shall be guilty of Felony, and shall upon Conviction be liable to Penal Servitude for the Term of his Life, or for any Term not less than Seven Years, or to be imprisoned, with or without Hard Labour, for any Term not exceeding Three Years nor less than One Year; and whenever any such Document has been admitted in Evidence by virtue of this Act, the Court or the Person who has admitted the same may, at the Request of any Party against whom the same is so admitted in Evidence, direct that the same shall be impounded, and be kept in the Custody of some Officer of the Court or other proper Person, for such Period and subject to such Conditions as to the said Court or Person shall seem meet; and every Person charged with committing any Felony under this Act may be dealt with,

with, indicted, tried, and, if convicted, sentenced, and his Offence may be laid and charged to have been committed, in the County, District, or Place in which he may be apprehended or be in Custody; and every Accessory before or after the Fact to any such Offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his Offence laid and charged to have been committed, in any County, District, or Place in which the principal Offender may be tried.

Persons taking a false Oath before a Surrogate guilty of Perjury.

XXIII. Any Person who shall wilfully give false Evidence, or who shall wilfully swear, affirm, or declare falsely, in any Affidavit or Deposition made under the Authority of this Act before any Surrogate having Authority to administer Oaths under the Act of the Twentieth and Twenty-first *Victoria*, Chapter Seventy-seven, or before any Person who before the passing of the said Act was a Surrogate authorized to administer Oaths in any of the *Channel Islands*, or before any Person authorized to administer Oaths under this Act, shall be liable to the Penalties and Consequences of wilful and corrupt Perjury.

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