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2nd Session, 6th Parliament, 22 Victoria, 1859.

BILL.

An Act to provide for the establishment of a
Court of Divorce and Matrimonial Causes.

Received and read, first time, Friday, 18th
February, 1859.

Second reading, Wednesday, 23rd Feby., 1859.

MR. GOWAN.

TORONTO :

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to provide for the establishment of a Court of Divorce and Matrimonial Causes.

WHEREAS it is expedient to amend the Law relating to Divorce, and to constitute a Court with exclusive Jurisdiction in matters Matrimonial in Upper Canada, and with authority in certain cases to decree the dissolution of a marriage; Therefore Her Majesty, &c.,
5 enacts as follows :

Preamble.

I. This Act shall come in operation on such day, not sooner than the 1st day of January, one thousand eight hundred and sixty, as His Excellency the Governor General shall by Order in Council appoint; Provided that such Order be made one month at least previously to the
10 day so to be appointed.

When Act to come into force.

II. As soon as this Act shall come into operation, jurisdiction in Upper Canada in respect of Divorces *à mensa 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
15 respect of Marriage Licenses, shall belong to and be invested in Her Majesty, and such jurisdiction, together with the jurisdiction conferred by this Act, shall be exercised in the name of Her Majesty in a Court of Record to be called "The Court for Divorce and Matrimonial Causes."

The Court for Divorce and Matrimonial Causes—its jurisdiction.

III. No decree shall be made for a Divorce *à mensa et thoro*, but in all
20 cases in which a decree for a Divorce *à mensa et thoro* might have been pronounced in England, the Court may pronounce a decree for a judicial separation, which shall have the same force and the same consequences as a Divorce *à mensa et thoro* had in England.

Divorce *à mensa et thoro* abolished.

IV. The Chief Justice of the Court of Queen's Bench, the Chief
25 Justice of the Court of Common Pleas, the Chancellor of the Court of Chancery, the Senior Puisné Judge for the time being in each of the three last mentioned Courts, and a Judge to be specially appointed to the said Court by the Governor in Council, shall be the Judges of the said Court.

Judges of said Court.

30 V. The said last Judge 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
35 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.

Judge Ordinary.

- Dissolution of Marriage to be granted by three Judges.** VI. 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 Ordinary shall be one.
- In case of absence of Judge Ordinary.** VII. During the temporary absence of the Judge Ordinary, the Chief Justice of the Queen's Bench may, by writing under his hand, authorise the Chancellor, or the Chief Justice of the Court of Common Pleas, or any Vice-Chancellor, or any Judge of the Superior Courts of Law, to act as Judge Ordinary of the said Court for Divorce and Matrimonial Causes, and the Judge then so acting shall have and exercise all the jurisdiction, power, and authority which might have been exercised by the Judge Ordinary.
- Court to sit at Toronto.** VIII. The Court for Divorce and Matrimonial Causes shall hold its sittings at such place or places in Toronto, or York, or elsewhere, as the Governor General in Council shall from time to time appoint.
- Seal of the Court.** IX. The Chief Justice of the Court of Queen's Bench 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.
- Duty of Registrar of the Surrogate Court.** X. The Clerk of Assize for the United Counties of York and Peel 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.
- Who may practise in said Court.** XI. All persons admitted to practise as Barristers, Attornies, and Solicitors entitled to practise in the Superior Courts at Osgoode Hall, 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 and enjoy.
- On what grounds sentence of Judicial Separation may be obtained.** XII. A sentence of judicial separation may be obtained, either by the husband or the wife, on the ground of adultery, or cruelty, or desertion without cause for two years and upwards.
- How application for restitution of conjugal rights or judicial separation shall be made.** XIII. 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 authorised 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 an 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, learned in the law, named in the Commission of Assize or Nisi Prius, and such Counsel shall, for
- Proviso**

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.

XIV. 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.

Judge of Assize or his Deputy—his powers as to hearing and deciding on such applications.

XV. The Court from time to time shall 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 person to whom or for whose use the same shall be directed to be paid.

Fees on such application.

XVI. 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.

Appeals.

XVII. A wife deserted by her husband may at any time after such desertion, if resident within any city, apply to a Police Magistrate, or if resident in the country, to any Justice of the Peace, 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 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 *femme sole*; Provided always, that every such order, if made by a Police Magistrate or Justice, 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 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

Wife deserted may obtain order to protect her earnings and property.

Proviso: order to be entered.

Proviso. 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 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 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 be sued, as she would be under this Act if she obtained a decree of Judicial Separation.

Decree of Separation may be reversed on certain grounds, and how. XVIII. 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 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 alimony to be paid as it may think proper. XIX. 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.

Wife judicially separated to be considered as a femme sole as to property. XX. 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 *femme 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 in all respects by her as a *femme 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.

And for the purposes of contract, wrongs, suing and being sued, &c. XXI. In every case of a Judicial Separation the wife shall, whilst so separated, be considered as a *femme 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 whereupon 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.

XXII. It shall be lawful for any husband to present a petition to the said Court, praying that his marriage may be dissolved, on the 5 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 10 incestuous adultery, or of bigamy with 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 mensa et thoro*, or of adultery coupled with desertion without reasonable excuse for two years and 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 15 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 20 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.

Dissolution of marriage to be sought by petition.

Grounds on which it may be so sought.

XXIII. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said 25 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 30 having the contested matter of fact tried by a jury, as hereinafter mentioned.

Alleged adulterer to be a co-respondent.

XXIV. Upon any such petition for the dissolution of a marriage, it shall be the duty of the Court to satisfy itself, as far as it reasonably can, not only as to the facts alleged, but also whether or no the peti- 35 tioner has been in any manner accessory to or conniving at the adultery, or has condoned the same, and shall also enquire into any counter charge which may be made against the petitioner.

Duty of Court as to such petition.

XXV. In case the Court, on the evidence in relation to such petition, shall not be satisfied that the alleged adultery has been committed, or 40 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.

Grounds of dismissal of petition.

45 XXVI. In case the Court shall be satisfied on the evidence that the case of the petitioner has been proved, and shall not find that the petitioner has been in any manner accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collu- 50 sion with either of the respondents, then the Court shall pronounce a

Court on satisfactory proof of case may dissolve the marriage.

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. 5

Court on decree of dissolution of marriage may order certain gross or annual sum to be paid by husband to wife.

XXVII. The Court may, if it thinks 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 Counsel of the Court 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. 10 15 20

Husband may claim damages from co-respondent.

XXVIII. 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 decisions 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. 25 30 35 40

Damages to be ascertained by verdict of a jury.

Court may order co-respondent to pay costs.

XXIX. 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. 45

Court may make interim orders with reference to children of marriage in dispute.

XXX. 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 50

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.

XXXI. In questions of fact arising in proceedings under this Act, 5 it shall be lawful for, but except as hereinbefore 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. Questions of fact to be determined by verdict of a jury.

XXXII. The Court, or any Judge thereof, may make all such rules 10 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, and may also make any other order which to such Court or Judge may seem requisite; and every such Jury shall consist of persons possessing the 15 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 Jurymen 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 20 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. Court to make orders for attendance of jury. Jury to be struck, &c., as for a trial in Superior Courts.

XXXIII. When any such question shall be so ordered to be tried 25 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*. Questions of fact to be reduced to writing under direction of the Court.

XXXIV. Upon the trial of any such question, or of any issue under 30 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 35 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 40 special case, shall be heard and determined by the full Courts, subject to such right of appeal as is hereinafter given in other cases. Bills of exceptions may be tendered on such trial, and proceedings had thereon as in ordinary cases before Superior Courts.

XXXV. It shall be lawful for the Court to direct one or more issue or 45 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 Toronto or York, and either by a special or common Jury, in like manner as is now done by the Court of Chancery. Issues may be tried as now ordered by Court of Chancery.

XXXVI. Every person seeking a decree of Nullity of Marriage, or a 50 decree of Judicial Separation, or a Dissolution of Marriage, or decree in a Suit of Jactitation of Marriage, shall, together with the petition or Affidavit of verification to be filed with petition in

suits under
this Act.

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.

Petition to be
served as
directed by
order of the
Court.

XXXVII. 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.

Petitioner to
attend for
examination if
required on
hearing of
petition.

XXXVIII. 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.

Hearing may
be adjourned
and further
evidence re-
quired.

XXXIX. 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 a settle-
ment of wife's
property for
benefit of inno-
cent party, or
of the children
of the mar-
riage.

XL. 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.

Witnesses to
be sworn and
examined
orally.

Deponents in
affidavits sub-
ject to cross
and re-exami-
nation.

XLI. Subject to such rules and regulations as may be established as herein provided, the witnesses in all proceedings before the Court where their attendance can be had, shall be sworn and examined orally in open Court; Provided, that parties, except as hereinbefore provided, shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party, orally in open Court, and after such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Court may
order a com-
mission for
examination of
witnesses in
certain cases.

XLII. 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 interrogations 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 Superior Courts of Law at Toronto for enabling the said Courts 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 any 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 Superior Courts of Law at Toronto, and 5 the matter before it were an action pending in such Court.

XLIII. The rules of evidence observed in the Superior Courts of Common Law at Toronto shall be applicable to and observed in the trial of all questions of fact in the Court. Rules of evidence to be those observed in Superior Courts.

XLIV. The Court may, under its seal, issue writs of subpoena, or 10 subpoena *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 the Province of Canada, and every person served with such writ shall be bound to attend, and be sworn and give evidence, in obedience thereto, in the same manner as if it had been a writ subpoena, 15 or subpoena *duces tecum*, issued from any of the said Superior Courts of Common Law, in a cause pending therein, and served in any part of the said Province of Canada, as the case may be: Provided always, 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 20 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 25 that Act. Court may order the issue of subpoenas *duces tecum*.

XLV. All persons wilfully deposing or affirming falsely in any proceeding before the Court, shall be deemed to be guilty of perjury, and shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attached thereto. Witnesses deposing falsely guilty of perjury.

XLVI. The Court, on the hearing of any suit, proceeding, or petition, under this Act,—the Court of Appeal in Upper Canada, and the *House of Lords* in England, 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 30 appeal on the subject of costs only. Court to make order as to costs—No appeal as to such order.

XLVII. All decrees and orders to be made by the Court, in any suit, proceeding, or petition to be instituted under the authority of this Act, shall be enforced and put in execution in the same or the like manner as the judgments, orders, and decrees of the Court of Chancery may be 40 now enforced and put in execution. Decrees of Court to be executed as decrees of Court of Chancery.

XLVIII. 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. Court to make rules of practice.

XLIX. 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 45 And regulate fees.
Provido as to suits in *forma pauperis*.

necessary and expedient for enabling persons to sue in the said Court in *formâ pauperis*.

Appeals from decision of Judge Ordinary to full Court.

L. 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. 5

Appeals from decision of full Court of be to Court of Appeals and thence to House of Lords.

LI. 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 Court of Appeals in Upper Canada, and if dissatisfied with the decision of the said Court of Appeals, may within three months after appeal to the *House of Lords in England*, if the British Parliament be then sitting, or if the said 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. 10 15

Upon expiration of time for appeal from decree dissolving marriage parties may marry again.

LII. 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. 20 25

Actions for crim. con. abolished.

LIII. After this Act shall have come into operation, no action shall be maintainable in Upper Canada for criminal conversation.

Expenses of Court to be paid by Receiver General

LIV. It shall be lawful for the Receiver General, 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. 30

Salaries of Judge in Ordinary.

LV. In case the Judge of the County Court of the Counties of York and Peel, or the Recorder of the City of Toronto, shall be appointed Judge Ordinary of the Court for Divorce and Matrimonial Causes, the salary of such Judge shall be the sum of _____ pounds per annum, but in case the Judge in Ordinary shall not be the Judge of the County Court of York and Peel, or the Recorder of the City of Toronto, then his salary shall be _____ pounds per annum. 35

Judge Ordinary to make regulations for transmission of Records, &c., relating to Causes Matrimonial.

LVI. The Judge Ordinary of the said Court of Divorce and Matrimonial Causes, may order every Judge, Registrar, or other officer of any Court in Upper Canada, 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 Licenses, to transmit the same at such times and in such manner to such places in Toronto, or in the County of York, and under such 40 45

regulations as the said judge in ordinary 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 as a debt under this Act in any of the Superior Courts at
 5 Toronto, 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 the Chief Justices of the Courts of Queen's Bench or of Common Pleas, or by the Chancellor of Upper Canada, and
 10 the said persons so offending shall forfeit all claim to compensation under this Act. Proviso.

LVII. 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
 15 after the making thereof, if Parliament be then sitting, or, if Parliament be not then sitting, within fourteen days after the commencement of the then next session of Parliament. Rules to be laid before Legislature.

LVIII. The Judge Ordinary of the Court for Divorce and Matrimonial Causes, for the time being, shall cause to be prepared, in each year
 20 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
 25 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
 30 always, that all such returns as aforesaid shall be presented to both Houses of Parliament on or before the tenth day of February in each year, if Parliament is then sitting, and if Parliament is not sitting, then such returns shall be presented within fourteen days of the first meeting of Parliament after the said tenth day of February in each year. Return of fees levied annually, and of salaries, &c., to be laid before Parliament. Proviso.