

And the same having been read and received.—

The Attorney General called the attention of the Council to the prayer of the Memorialists.

It was thereupon ordered, that the said Memorial be printed, with the Minutes of the Council, in the next *Government Gazette*.

Mr Lyall stated, that he would, before the next meeting, send to the Clerk of Councils notice of Motion, for submission to the Council, on the subject matter of the said Memorial.

The Council then adjourned till Monday, the 31st instant, at 12 o'clock.

By Order of His Excellency The Governor,

L. D'ALMADA F. CASTRO,  
Clerk of Councils.

No. 49.

### GOVERNMENT NOTIFICATION.

The subjoined Sections of the Act of Parliament 20 and 21 *Victoria*, Chapter 85, relating to *Divorce and Matrimonial Causes*, which have been extended to this Colony by Ordinance No. 5 of 1858, (except so far as the said Sections, or any of them, relate to the Dissolution of Marriage,) are hereby published for general information.

By Order,

W. T. BRIDGES,  
Acting Colonial Secretary.

Colonial Secretary's Office, Victoria, Hongkong, 26th May, 1858.

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

II. As soon this Act shall come into operation, all Jurisdiction now exercisable by any Ecclesiastical Court in *England* in respect of Divorces *à Mensâ et Thoro*, Suits of Nullity of Marriage, Suits of Jactitation of Marriage, Suits for Restitution of Conjugal Rights, and in all Causes, Suits, and Matters Matrimonial, shall cease to be so exercisable, except so far as relates to the granting of Marriage Licences, which may be granted as if this Act had not been passed.

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.

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 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 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

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 any Magistrate or Justices by whom such Order was made, for the Discharge thereof: Provided also, that if any Person claiming the 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 Continuance, as she would be under this Act if she obtained a Decree of Judicial Separation.

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.

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

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.

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.

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 the 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.

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 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.

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.

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.

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.

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 the same 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 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.

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.

Court to act on Principles of the Ecclesiastical Courts.

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

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

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

Also, for Purposes of Contract and suing.

Husband may claim Damages from Adulterers.

Power to Court to order Adulterer to pay Costs.

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

Questions of Fact may be tried before the Court.

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

Rights to Challenge.

Such Question to be reduced into Writing, and a Jury to be sworn to try it. Judge to have same Powers as at Nisi Prius.

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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.

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 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 Wit-  
nesses on the Courts.

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 Pro-  
cedure, and to alter  
them from Time to  
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 forma pauperis.

No Action in Eng-  
land for Criminal Con-  
versation.

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