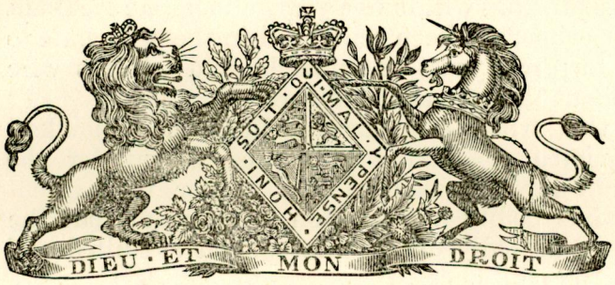
This PUBLIC BILL *originated in the* LEGISLATIVE COUNCIL, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE ASSEMBLY *for its concurrence.*

Legislative Council Chamber,
Sydney, 3rd July, 1890.

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO QUARTO

VICTORIÆ REGINÆ.

* *

No. .

An Act to amend and extend the Law of Divorce.

WHEREAS it is desirable to extend the provisions of the Law of Divorce, and also in certain particulars to amend the existing law. Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:— Preamble.

1. Any married person, who, at the time of the institution of the suit, shall have been domiciled in this Colony for three years and upwards (provided that he or she shall not have resorted to the Colony for the purpose of such institution) may present a petition to the Supreme Court in the form prescribed by the "Matrimonial Causes Act" (thirty-sixth Victoria number nine), or by the Rules made under the same, praying that his or her marriage with the respondent may be dissolved, or praying that a judicial separation may be granted in either case on one or more of the grounds in this section mentioned, that is to say— Divorce in what cases.

(*a*) On the ground that the respondent has, without just cause or excuse, wilfully deserted the petitioner, and, without any such cause or excuse, left him or her continuously so deserted during three years and upwards. And no wife who was Desertion.

domiciled in New South Wales when the desertion commenced shall be deemed to have lost her domicile by reason only of her husband having thereafter acquired a foreign domicile.

(*b*) On the ground that the respondent has, during three years and upwards, been an habitual drunkard, and either habitually left his wife without the means of support, or habitually been guilty of cruelty towards her, or, being the petitioner's wife, has, for a like period, been an habitual drunkard, and habitually neglected her domestic duties or rendered herself unfit to discharge them. Habitual drunkenness, with cruelty or neglect, &c.

(*c*) On the ground that, at the time of the presentation of the petition, the respondent has been imprisoned for a period of not less than three years, and is still in prison, under a commuted sentence for a capital crime, or under sentence to penal servitude or imprisonment for seven years or upwards, or, being a husband, has within five years undergone frequent convictions for crime, and been sentenced in the aggregate to imprisonment for three years or upwards, and left his wife habitually without the means of support. Sentence for crime.

(*d*) On the ground that, within one year previously, the respondent has been convicted of having attempted to murder the petitioner, or of having assaulted him or her with intent to inflict grievous bodily harm, or on the ground that the respondent has repeatedly during that period assaulted and cruelly beaten the petitioner. Violent assaults, &c.

2. If in the opinion of the Court the petitioner's own habits or conduct induced or contributed to the wrong complained of, the petition may be dismissed. But in all other cases under this Act, if the Court is satisfied that the case of the petitioner is established, the Court shall pronounce the decree prayed for. Provided that where the petitioner's case if for dissolution of the marriage has failed, or the petition been dismissed, but a case for judicial separation has been established, the Court may pronounce a decree for a judicial separation. Divorce when pronounced, &c.

3. So far as they severally are applicable, all the provisions of the "Matrimonial Causes Act" and the Acts amending the same shall apply to petitions and suits under this Act, and to the parties and all proceedings therein, and to all persons affected thereby. And in every such suit the parties shall have the same right of Appeal, against any Decree or Order, as they would be entitled to in respect of a Decree or Order pronounced or made under the firstmentioned Act, and shall have the same right of trial of contested matters of fact by a jury. And every Decree or Order may, on Appeal, be reversed or varied as the Court shall think proper. Previous Acts made applicable. Appeal and Trial by Jury.

4. The Court shall have the same power of granting Orders to sue or defend *in formâ pauperis*, in any suit under this or the recited Act or Acts, as in cases at law or in equity—and may in any suit, at any stage thereof, and from time to time, make an Order forbidding the publication of the evidence therein, or any report or account of such evidence, either as to the whole or portions thereof. And the breach of any such Order may be dealt with as for Contempt of Court. Pauper suits or defences, and forbidding publication of evidence.

5. The Court may in any case direct any issue of fact in a matrimonial or divorce suit to be tried on Circuit, and for that purpose may make all necessary orders for the setting down of the case and the return of the finding or findings therein, and respecting the costs of such trial; and the Circuit Court Judge shall have the same power of forbidding the publication of evidence as is by the preceding section conferred on the Judge exercising matrimonial jurisdiction. Trying issues on Circuit.

6.

6. The Court shall have the same power in suits under this Act, as well as under the Matrimonial Causes Acts of 1873 and 1884, whether the suit be for divorce or for judicial separation only, to make all such orders in respect of the wife's property, and of alimony to her, when the decree made is for judicial separation, as the Court could make under the said Acts of 1873 and 1884 or one of them if the decree made was for divorce. Wife's property and alimony.

7. The word "Court" in this Act shall ordinarily be taken to mean the Judge exercising jurisdiction in matrimonial causes, but for the purposes of an Appeal shall, after its institution, mean the Supreme Court consisting of three Judges sitting as in banco. And this Act may be cited as the "Divorce Amendment and Extension Act of 1890." The term "Court" and short title.

Sydney: Charles Potter, Government Printer.—1890.

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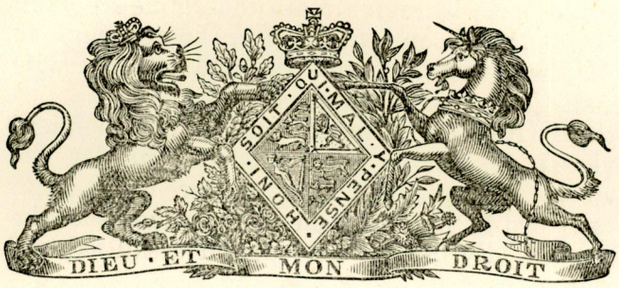

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1. Any married person, who, at the time of the institution of the suit, shall have been domiciled in this Colony for three years and upwards (provided that he or she shall not have resorted to the Colony for the purpose of such institution) may present a petition to the Supreme Court in the form prescribed by the "Matrimonial Causes Act" (thirty-sixth Victoria number nine), or by the Rules made under the same, praying that his or her marriage with the respondent may be dissolved, or praying that a judicial separation may be granted in either case on one or more of the grounds in this section mentioned, that is to say— Divorce in what cases.

(*a*) On the ground that the respondent has, without just cause or excuse, wilfully deserted the petitioner, and, without any such cause or excuse, left him or her continuously so deserted during three years and upwards. And no wife who was Desertion.

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domiciled in New South Wales when the desertion commenced shall be deemed to have lost her domicile by reason only of her husband having thereafter acquired a foreign domicile.

(*b*) On the ground that the respondent has, during three years and upwards, been an habitual drunkard, and either habitually left his wife without the means of support, or habitually been guilty of cruelty towards her, or, being the petitioner's wife, has, for a like period, been an habitual drunkard, and habitually neglected her domestic duties or rendered herself unfit to discharge them. Habitual drunkenness, with cruelty or neglect, &c.

(*c*) On the ground that, at the time of the presentation of the petition, the respondent has been imprisoned for a period of not less than three years, and is still in prison, under a commuted sentence for a capital crime, or under sentence to penal servitude or imprisonment for seven years or upwards, or, being a husband, has within five years undergone frequent convictions for crime, and been sentenced in the aggregate to imprisonment for three years or upwards, and left his wife habitually without the means of support. Sentence for crime.

(*d*) On the ground that, within one year previously, the respondent has been convicted of having attempted to murder the petitioner, or of having assaulted him or her with intent to inflict grievous bodily harm, or on the ground that the respondent has repeatedly during that period assaulted and cruelly beaten the petitioner. Violent assaults, &c.

2. If in the opinion of the Court the petitioner's own habits or conduct induced or contributed to the wrong complained of, the petition may be dismissed. But in all other cases under this Act, if the Court is satisfied that the case of the petitioner is established, the Court shall pronounce the decree prayed for. Provided that where the petitioner's case if for dissolution of the marriage has failed, or the petition been dismissed, but a case for judicial separation has been established, the Court may pronounce a decree for a judicial separation. Divorce when pronounced, &c.

3. So far as they severally are applicable, all the provisions of the "Matrimonial Causes Act" and the Acts amending the same shall apply to petitions and suits under this Act, and to the parties and all proceedings therein, and to all persons affected thereby. And in every such suit the parties shall have the same right of Appeal, against any Decree or Order, as they would be entitled to in respect of a Decree or Order pronounced or made under the firstmentioned Act, and shall have the same right of trial of contested matters of fact by a jury. And every Decree or Order may, on Appeal, be reversed or varied as the Court shall think proper. Previous Acts made applicable. Appeal and Trial by Jury.

4. The Court shall have the same power of granting Orders to sue or defend *in formâ pauperis*, in any suit under this or the recited Act or Acts, as in cases at law or in equity—and may in any suit, at any stage thereof, and from time to time, make an Order forbidding the publication of the evidence therein, or any report or account of such evidence, either as to the whole or portions thereof. And the breach of any such Order may be dealt with as for Contempt of Court. Pauper suits or defences, and forbidding publication of evidence.

5. The Court may in any case direct any issue of fact in a matrimonial or divorce suit to be tried on Circuit, and for that purpose may make all necessary orders for the setting down of the case and the return of the finding or findings therein, and respecting the costs of such trial; and the Circuit Court Judge shall have the same power of forbidding the publication of evidence as is by the preceding section conferred on the Judge exercising matrimonial jurisdiction. Trying issues on Circuit.

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6. The Court shall have the same power in suits under this Act, as well as under the Matrimonial Causes Acts of 1873 and 1884, whether the suit be for divorce or for judicial separation only, to make all such orders in respect of the wife's property, and of alimony to her, when the decree made is for judicial separation, as the Court could make under the said Acts of 1873 and 1884 or one of them if the decree made was for divorce. Wife's property and alimony.

7. The word "Court" in this Act shall ordinarily be taken to mean the Judge exercising jurisdiction in matrimonial causes, but for the purposes of an Appeal shall, after its institution, mean the Supreme Court consisting of three Judges sitting as in banco. And this Act may be cited as the "Divorce Amendment and Extension Act of 1890." The term "Court" and short title.

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Legislative Council.

53° VICTORIÆ, 1890.

A BILL

To amend and extend the Law of Divorce.

[SIR ALFRED STEPHEN;—30 *April*, 1890.]

WHEREAS it is desirable, in the interests of morality, and for the relief of unoffending married persons, to extend the provisions of the Law of Divorce to certain cases of desertion, cruelty, drunkenness, and conviction for crime, in which the objects of marriage are by the conduct of the offending party equally defeated as in the case of adultery, and it is desirable also in certain other particulars to amend the existing law. Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:— Preamble.

1. Any married person, who, at the time of the institution of the suit, shall have been domiciled in this Colony for two years and upwards (provided that he or she shall not have resorted to the Colony for the purpose only of such institution) may present a petition to the Supreme Court in the form prescribed by the "Matrimonial Divorce in what cases.

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Causes Act" (thirty-sixth Victoria number nine), or by the Rules made under the same, praying on one or more of the grounds in this section mentioned that his or her marriage with the respondent may be dissolved, that is to say—

Desertion.

(*a*) On the ground that the respondent has, without just cause or excuse, wilfully deserted the petitioner, and, without any such cause or excuse, left him or her continuously so deserted during three years and upwards. And no wife who was domiciled in New South Wales when the desertion commenced shall be deemed to have lost her domicile by reason only of her husband having thereafter acquired a foreign domicile.

Habitual drunkenness, with cruelty or neglect, &c.

(*b*) On the ground that the respondent has, during two years and upwards, been an habitual drunkard, and either habitually left his wife without the means of support, or habitually been guilty of cruelty towards her, or, being the petitioner's wife, has, for a like period, been an habitual drunkard, and habitually neglected her domestic duties or rendered herself unfit to discharge them.

Sentence for crime.

(*c*) On the ground that, at the time of the presentation of the petition, the respondent has been imprisoned for a period of not less than twelve months, and is still in prison, under a commuted sentence for a capital crime, or under sentence to penal servitude for seven years or upwards, or, being a husband, has within three years undergone frequent convictions for crime, and left his wife habitually without the means of support.

Violent assaults, &c.

(*d*) On the ground that, within one year previously, the respondent has been convicted of having attempted to murder the petitioner, or of having assaulted him or her with intent to inflict grievous bodily harm, or on the ground that the respondent has repeatedly during that period assaulted and cruelly beaten the petitioner.

Divorce when pronounced, &c.

2. If in the opinion of the Court the petitioner's own habits or conduct induced or contributed to the wrong complained of, the petition may be dismissed. But in all other cases under this Act, if the Court is satisfied that the case of the petitioner is established, the Court shall pronounce a decree dissolving the marriage.

Where to be refused.

3. Provided always that no dissolution shall be decreed, if it be proved that at the time of the marriage the petitioner knew that the respondent was a person of habitually drunken habits, or was a person against whom a decree of divorce had been granted for any cause whatever—but in such cases the Court may grant a judicial separation.

Limitation as to marriage by respondents.

Provided also that it shall not be lawful for the respondent, in any case, to contract another marriage before the expiration of two years from the time when the decree was made absolute; and if he or she shall contract another marriage within that period, such respondent shall be guilty of a misdemeanour, and the marriage shall be void.

Previous Acts made applicable.

4. So far as they severally are applicable, all the provisions of the "Matrimonial Causes Act" and the Acts amending the same shall apply to petitions and suits under this Act, and to the parties and all proceedings therein, and to all persons affected thereby. And in every such suit the parties shall have the same right of Appeal, against any Decree or Order, as they would be entitled to in respect of a Decree or Order pronounced or made under the firstmentioned Act, and shall have the same right of trial of contested matters of fact by a jury. And every Decree or Order may, on Appeal, be reversed or varied as the Court shall think proper.

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