

## ■ Matrimonial Causes Act of 1857 (excerpts)

**Date:** August 28, 1857

**Authors:** Parliament of the United Kingdom

**Genre:** Legislation (Excerpts)

### Summary Overview

*The right to freely enter into marriage and to dissolve marriage is a human right recognized by several 20th century agreements. Divorce, however, has been difficult to obtain and subject to terms that heavily favor men in many places. In 1857, the Parliament of the United Kingdom passed the Matrimonial Causes Act, which simplified that process of divorce in the United Kingdom and moved the process out of the ownership of the Church of England and into the secular court system. It also provided for financial self-determination for women going through the process of divorce.*

### Defining Moment

Divorce was, technically, illegal in the United Kingdom before the Matrimonial Causes Act of 1857. In order to dissolve a marriage, one had to obtain an annulment from the Church of England. Annulments, however, were complex and only granted in instances where the marriage was considered to be invalid in the first place, such as in cases of fraud, one of the spouses being underage, or mental illness. Divorce—the legal dissolving of a marriage—was an option in England but only by means of a Private Act of Parliament. A Private Act is, put simply, an act of Parliament introduced by a member for the benefit of an individual rather than applying to the nation as a whole. Securing such an act was very expensive and out of reach for most people, particularly since the process also involved cases needing to go through three separate court procedures. Legal scholar Danaya Wright has found that of the 379 “Parliamentary divorces” sought between 1670 and 1857, 324 was granted. There was, however, a great disparity based on sex: only eight of the divorces requested were by women, and only four were granted. There was a double standard, in terms of what the grounds on which divorce could be granted. Husbands had to prove adultery; wives, however, had to prove adultery that was exacerbated by other factors such as incest, cruelty, desertion, rape, or other factors. For those who could not obtain a divorce or annulment, the only

option was a divorce *à mensâ et thoro*, which was akin to a legal separation and was adjudicated through the Church of England’s ecclesiastical courts.

Scholar Kelly Hager notes that the process that led to the passage of the Act was “intertwined with the campaigns for women’s rights that emerged at mid-century.” In 1850, a royal commission examined the state of divorce in the United Kingdom and the impact of the system as it existed at the time, particularly the time and expense involved. A bill to reform divorce was introduced into Parliament in 1854, but it lacked support and was not passed. Following this, publicity and support was generated via advocates for women’s rights and publications such as Caroline Norton’s “A Letter to the Queen.” The bill was reintroduced in 1856 and, this time, was successful, receiving the assent of Queen Victoria in August, 1857 and going into effect January 1, 1858.

### Authors’ Biography

The Matrimonial Causes Act was passed by the Parliament of the United Kingdom: the national legislature consists of the House of Lords (hereditary nobles, nobles whose titles were granted by the monarch, and high officials of the Church of England) and the House of Commons (elected representatives). There were some individuals who played a role in shaping the legislation and placing it on Par-

liament's agenda. The procedures for civil divorce (rather than ecclesiastical divorce) contained within the Act were developed by John Campbell, the 1st Baron Campbell (1779-1861). Campbell was a lawyer and politician who, at the time, was serving as Lord Chief Justice—the head of the judicial system.

He held this position from 1850 to 1859. The Act was reintroduced to Parliament in 1856 with the support of the Prime Minister Henry John Temple, Lord Palmerston (1784-1865). Palmerston served two separate terms as prime minister, 1855-1858 and 1859-1865.



## Historical Document

WHEREAS it is expedient to amend the law relating to divorce, and to constitute a court with exclusive jurisdiction in matters matrimonial in England, and with authority in certain cases to decree the dissolution of a marriage: Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, as follows:

1. This act shall come into operation on such day, not sooner than the first day of January, one thousand eight hundred and fifty-eight, as her majesty shall by order in council appoint, provided that such order be made one month at least previously to the day so to be appointed.
2. As soon as this act shall come into operation, all Jurisdiction now exercisable by any ecclesiastical court in in matters 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 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.
3. Any decree or order of any ecclesiastical court of competent jurisdiction which shall have been made before this act comes into operation, in any cause or matter matrimonial, may be enforced or otherwise dealt with by the court for divorce and matrimonial causes hereinafter mentioned, in the same way as if it had been originally made by the said court under this act.
4. All suits and proceedings in causes and matters matrimonial which at the time when this act comes into operation shall be pending in any ecclesiastical court in England shall be transferred to, dealt with and decided by the said court operation. for divorce and matrimonial causes as if the same had been originally instituted in the said court.
6. As soon as this act shall come into operation, all juris diction now vested in or exercisable by any ecclesiastical court or person in England in respect of divorces à mensâ et thoro, suits of nullity of marriage, suits for restitution of conjugal rights or jactitation of marriage, and in all causes, suits and matters matrimonial, except in respect of marriage licences, shall belong to and be vested in her majesty, and such jurisdiction, together with the jurisdiction conferred by this act, shall be exercised in the name of her majesty in a court of record to be called "The Court for Divorce and Matrimonial Causes."

7. 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.

9. The judge of the court of probate shall be called the judge ordinary of the said court, and shall have full authority, either alone or with one or more of the other judges of the said court, to hear and determine all matters arising therein, except petitions for the dissolving of or annulling marriage, and applications for new trials of questions or issues before a jury, bills of exception, special verdicts and special cases, and, except as aforesaid, may exercise all the powers and authority of the said court.

10. All petitions, either for the dissolution or for a sentence of nullity of marriage, and applications for new trials of questions or issues before a jury, shall be heard and determined by three or more judges of the said court, of whom the judge of the court of probate shall be one.

16. 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.

21. 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 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 order protecting her earnings and property acquired since the commencement of such desertion, from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a feme sole: provided always, that every such order, if made by a police magistrate or justices at petty sessions, shall, within ten days after the making thereof, be entered with the registrar of the county court within whose jurisdiction the wife is resident; and that it shall be lawful for the husband, and any creditor or other person claiming under him, to apply to the court, or to the magistrate or justices by whom such order was made, for the discharge thereof: provided also, that if the husband or any creditor or person claiming under the husband shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife

(which she is hereby empowered to bring) to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such as aforesaid: if any such order of protection be made, the wife shall during the continuance thereof be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts, and suing and being sued, as she would be under this act if she obtained a decree of judicial separation

23. 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 reversed. 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.

24. In all cases in which the court shall make any decree 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.

25. 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.

26. In every case of a judicial separation the wife shall, purposes of whilst so separated, be considered as a feme sole for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding ; and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant ; provided, that where upon any such judicial separation alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for

necessaries supplied for her use provided also, that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

27. It shall be lawful for any husband to present a petition to the said court, praying that his marriage may be dissolved, on the ground that his wife has since the celebration thereof been guilty of adultery; and it shall be lawful for any wife to present a petition to the said court, praying that her marriage may be dissolved, on the ground that since the celebration thereof her husband has been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce à mensâ et thoro, or of adultery coupled with desertion, without reasonable excuse, for two years or upwards ; and every such petition shall state as distinctly as the nature of the case permits the facts on which the claim to have such marriage dissolved is founded : provided that for the purposes of this act incestuous adultery shall be taken to mean adultery committed by a husband with a woman with whom if his wife were dead he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity or affinity ; and bigamy shall be taken to mean marriage of any person, being married, to any other person during the life of the former husband or wife, whether the second marriage shall have taken place within the dominions of her majesty or elsewhere.

28. Upon any such petition presented by a husband the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless on special grounds, to be allowed by the court, he shall be excused from so doing ; and on every petition presented by a wife for dissolution of marriage the court, if it see fit, may direct that the person with whom the husband is alleged to have committed adultery be made a respondent ; and the parties or either of them may insist on having the contested matters of fact tried by a jury as hereinafter mentioned.

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

30. In case the court, on the evidence in relation to any Dismissal of such petition, shall not be satisfied that the alleged adultery has been committed, or shall find that the petitioner has during the marriage been accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, then and in any of the said cases the court shall dismiss the said petition.

31. 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 decree for 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 the court shall pronounce a decree declaring such marriage to be dissolved : provided always, that the court shall not be bound to pronounce such decree if it shall find that the petitioner has during the marriage been guilty of adultery, or if the petitioner shall, in the opinion of the court, have been guilty of unreasonable delay in presenting or prosecuting such petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse, or of such wilful neglect or misconduct as has conduced to the adultery.

32. The court may, if it shall think fit, on any such decree, order that the husband shall to the satisfaction of the court secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any) , to the ability of the husband, and to the conduct of the parties, it shall deem reasonable, and for that purpose may refer it to any one of the conveyancing counsel of the court of chancery to settle and approve of a proper deed or instrument to be executed by all necessary parties ; and the said court may in such case, if it shall see fit, suspend the pronouncing of its decree until such deed shall have been duly executed ; and upon any petition for dissolution of marriage the court shall have the same power to make interim orders for payment of money, by way of alimony or otherwise, to the wife, as it would have in a suit instituted for judicial separation.

33. 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.

34. 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.

35. 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.

45. In any case in which the court shall pronounce a sentence of divorce or judicial separation for adultery of 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.

55. 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 there from to the full court, whose decision shall be final.

56. Either party dissatisfied with the decision of the full court on any petition for the dissolution of a marriage may, within three months after the pronouncing thereof, appeal therefrom to the house of lords if parliament be then sitting, or if parliament be not sitting at the end of such three months, then within fourteen days next after its meeting; and on the hearing of any such appeal the house of lords may either dismiss the appeal or reverse the decree, or remit the case to the court, to be dealt with in all respects as the house of lords shall direct.

57. When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death : provided always, that no clergyman in holy orders of the united church of England and Ireland shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved on the ground of his or her adultery, or shall be liable

to any suit, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

59. After this act shall have come into operation no action shall be maintainable in England for criminal conversation.



## Glossary

**desertion:** the act of abandoning a spouse without obtaining a separation or divorce

**divorce à mensâ et thoro:** A legal separation (but not a full divorce) granted by an ecclesiastical court

**feme sole:** an unmarried woman

**suits of jactitation:** a legal action alleging that a person claimed they were married to someone to whom they were not actually married

## Document Analysis

The opening statement sets out that the law creates a new court to handle “matters matrimonial”—that is, issues concerning marriage and divorce and paragraph 1 establishes the date the law will become effective. Paragraph 2 addresses what will happen when the law goes into effect: the Church of England’s ecclesiastical (church) courts will no longer have responsibility for any legal dealings regarding the dissolving of marriage. The terms used here are a bit archaic and illustrate the complexity of the means and methods of ending marriage at the time. “Divorces à mensâ et thoro” is a Latin phrase meaning “divorce from board and hearth”—this was a type of legal separation in which a husband and wife were allowed to live apart but would remain legally married. This form of separation was easier to obtain than a full divorce (see “Defining Moment,” above) but did not free the husband or wife to remarry. “Jactitation of marriage” was a type of legal action brought when one person claimed they were married to someone to whom they were not actually married. While the church is no longer responsible for dissolution of marriages, they may still issue marriage licenses. Paragraph 3 confirms that decisions made by church courts before the law goes into effect are still valid, while paragraph 4 explains that cases that have begun in the courts, but have not yet concluded, will be transferred to the new courts. This new court is named in Paragraph 6 as “The Court for Divorce and Matrimonial Causes.” Paragraph 7 abolishes the divorce à mensâ et thoro, replacing it with a “judicial separation.” Paragraphs 9 and 10 establish the make-up of the court, specifying that three judges will hear the cases, one of which is the judge of the probate court. Paragraph 16 details the conditions for a judicial separation—one partner inflicting cruelty or committing adultery for at least two years.

Paragraph 21 establishes the conditions under which a wife may protect herself and her assets if her husband deserts her. Officials will issue “an order to protect any money or property” that the wife earns or otherwise acquires after the separation. The order protects these resources from her husband, or people to whom her husband owes money. In some cases, the



Lord Campbell, who designed the procedures for civil divorce contained within the Act. Portrait by Thomas Woolnoth, date unknown. Image via Wikimedia Commons. [Public domain.]

order may extend to money and property acquired since the desertion rather than simply from the point of making a claim. The paragraph notes that the wife will be considered a feme sole under these circumstances. This means, in a legal sense, she would be considered as a single, independent woman in terms of her finances and property. Further, if a husband or anyone working on his behalf, keep property to which the wife is entitled, they may be liable to be sued for double the amount.

Paragraph 23 confirms that if one spouse obtains a judicial separation, the other spouse may request the court to reverse it if the grounds for the separation were not met. Paragraph 24 mandates that any alimony payments to the wife should be made directly to her or to a trustee approved by the court. Paragraphs 25 and 26 establishes that the wife, in the case of a judicial separation, will have the status of a feme sole

with regard to her finances as well as her ability to enter into contracts, and being subject to lawsuits.

Paragraph 27 lays out causes for petition for a divorce. A husband may ask for a divorce to be granted if his wife has committed adultery; a wife may ask for a divorce if “her husband has been guilty of 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 mensâ et thoro, or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.” Paragraphs 28 through 34 explain the judicial process of proving the adultery, including involving the persons with whom the spouse is alleged to have committed the adultery.

Paragraph 35 provides judges with the authority to make decisions about the care of any children involved in the proceedings while the case is still going on, if necessary. Paragraph 45 allows the court to reserve some of the financial settlement owed to the wife for the benefit of the children. Articles 55, 56, and 57 provide requirements for appealing the decisions of the court, first to the full court, then to the House of Lords. Following the period allowed for appeals, each spouse is legally able to marry; however, no member of the clergy can be forced to perform the marriage ceremony if adultery was a cause of the previous divorce.

Finally, paragraph 59 abolishes the ability to bring a lawsuit for “criminal conversation.” “Conversation” is an obsolete, euphemistic term for sexual intercourse. Paragraph 59, in a sense, legalizes sex outside of marriage. It can still be grounds for divorce, but not subject to separate lawsuits.

### Essential Themes

The Matrimonial Causes Act of 1857 was a landmark for the rights of women in the United Kingdom to obtain a divorce and maintain control over their own assets during that process. There were, however, aspects of the Act that reflected the ongoing inequi-

ties and sexual double standards of the time. Men could obtain a divorce on the grounds of adultery; women, however, had to prove adultery that had been “aggravated” in some way, a higher bar for women to clear than for men, in terms of gaining a divorce. This difference relates to the concept that men whose wives commit adultery experience greater damage to their reputation and honor than women in the same situation. While this law did provide new freedoms for women to control their relationships and exercise personal autonomy, it also makes clear that the uneven playing field between men and women was deeply ingrained in society.

—Aaron Gulyas, MA

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