

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1860.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1860.

23 Victoria – Chapter 37

**An Act to amend the Law relating to Divorce and Matrimonial causes. Passed 9th April 1860.**

Section.

1. Jurisdiction of Court of Governor in Council under Act 31 G. 3. c. 5, vested in a Court of Divorce and Matrimonial causes.
2. Appointment of the Judge of such Court.
3. Suits in certain stages transferred.
4. Orders of Court of Governor in Council may be enforced by the new Court.
5. Neglect to appear, &c. may be pronounced a contempt: Writ *de contumace capiendo*.
6. Absolution from contempt and discharge.
7. Power to issue subpoenas.
8. Examination of witnesses.
9. Enforcement of orders by Execution.
10. Practice and proceedings.

Section.

11. Power to make regulations as to practice and procedure, forms and fees.
12. Authenticated orders and decrees, or copies, to be evidence in all Courts.
13. Appeal to Supreme Court allowed.
14. Registrar of Court of Governor in Council to be Registrar of the new Court.
15. Barristers and Attorneys of Supreme Court to be entitled to practise in new Court.
16. Terms.
17. Citations, &c. to be tested in name of the Judge.
18. Repeal of 31 G. 3, c 5. in part. 4 W. 4, c. 30. 6 W. 4, c. 34, and 10 V. c. 38.
19. Forms in Schedule.
20. Commencement of Act.

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. As soon as this Act shall come into operation, all jurisdiction now vested in or exercisable by the Court of Governor in Council, under the authority of an Act made and passed in the thirty first year of the Reign of His late Majesty King George the Third, intituled *An Act for regulating Marriage and Divorce, and for preventing and punishing incest, adultery, and fornication*, in respect of suits, controversies, and questions concerning Marriage, and contracts of Marriage, and Divorce, as well from the bond of Matrimony as Divorce and separation from bed and board, and alimony, shall belong to and be vested in a Court of Record, to be called 'The Court of Divorce and Matrimonial Causes.'
2. The Governor in Council shall appoint by Commission under the Great Seal of the Province, one of the Judges of the Supreme Court to be the Judge of the said Court for Divorce and Matrimonial Causes, who shall have power and authority to hear and determine all causes and matters cognizable therein, subject to appeal as hereinafter directed.
3. All suits and proceedings which at the time when this Act comes into operation shall be pending in the said Court of Governor in Council, shall be transferred to, dealt with, heard and

decided by the said Court for Divorce and Matrimonial Causes, as if the same had been originally instituted in such Court; and the said Court of Governor and Council shall be abolished as soon as this Act comes into operation, except as to such suits now pending in said Court in which evidence has been examined, which shall be proceeded with as if this Act had not been passed.

4. Any Order, Judgment, or Decree of the said Court of Governor and Council, which shall have been made before this Act comes into operation, may be enforced or otherwise dealt with by the said Court for Divorce and Matrimonial Causes, in the same manner as if it had been originally made by the said Court under this Act.

5. In all causes cognizable in the said Court for Divorce and Matrimonial Causes, when any person having been duly cited to appear and answer, or required to comply with any order or decree of the said Court, shall neglect or refuse to appear or to obey such order or decree, or when any person shall commit a contempt in the face of such Court, it shall be lawful for the Court to pronounce such person in contempt, and thereupon a Writ *de contumace capiendo* (A) shall issue out of said Court, directed to the Sheriff of the County in which such person may be, returnable on the first day of the next Term of the said Court, or if issued in Term, returnable on any day in such Term that the Court may direct; and all Sheriffs, gaolers, and other officers, shall execute such Writ by taking and detaining the body of the person against whom the said Writ shall issue.

6. Upon the due appearance and answer of any party so cited, or the obedience to any such order or decree, or the due submission of any party so having committed a contempt in the face of the Court, the said Court may, upon such terms as it shall deem just, pronounce such party absolved from any such contempt, and shall forthwith make an order for discharging such party out of custody; and the Sheriff or other officer in whose custody such person may be, shall on production of such order, and on payment of the costs incurred by such contempt, forthwith discharge him.

7. The Court may issue Writs of Subpoena (B), and Subpoena *duces tecum* (C), commanding the attendance of witnesses or the production of papers; and any person served with any such Writ shall be bound to attend and to be sworn and sworn and give evidence, and to produce papers in obedience thereto, in the same manner as if it had been a Writ of Subpoena or Subpoena *duces tecum* issued out of the Supreme Court in a cause pending therein.

8. The witnesses in all suits before the Court, when their attendance can be had, shall be sworn and examined orally; provided that when a witness is out of the jurisdiction of the Court, or when by reason of his illness or from other circumstances, the Court shall not think fit to enforce the attendance of the witnesses, it shall be lawful for the Court to order the examination of such witness on oath upon interrogatories or otherwise, before any person or persons to be named in such order; and all the powers given to the Supreme Court and the several Judges thereof, by an Act passed in the fifth year of the Reign of His late Majesty King William the Fourth, intituled *An Act to facilitate the examination of Witnesses before trial in the Supreme Court*, shall extend to and be applicable to this Court.

9. The Court shall have power to enforce the performance of its decrees or orders, by execution (D) against the goods and chattels, lands and tenements, of the party liable thereto; and such executions shall have the same priority and effect as executions issued upon judgments in the Supreme Court.

10. The practice and proceedings of the said Court shall be conformable, as near as may be, to the practice of the Ecclesiastical Court in England, prior to an Act of Parliament made and passed in the year one thousand eight hundred and fifty seven, intituled *An Act to amend the Law relating to Divorce and Matrimonial Causes in England*, subject however to the provisions of this Act, and the existing rules, orders, and practice as now established in the Court of Governor and Council in this Province.

11. The Court shall have power to make rules and regulations concerning the practice and procedure, and the forms to be used under this Act, and to regulate the fees payable on all proceedings therein as may be considered necessary, and to alter or revoke the same or any of them as may from time to time be considered necessary.

12. All decrees and orders, or copies of decrees or orders of the said Court, sealed with the Seal thereof, shall be received in evidence in all Courts.

13. Either party dissatisfied with any decision of the Court in any suit or proceeding, may under such rules and regulations as the Supreme Court may from time to time prescribe, appeal therefrom to the Supreme Court, whose decision shall be final.

14. The Registrar, of the said Court of Governor and Council shall be the Registrar of the Court of Divorce and Matrimonial Causes, and shall have the custody of all the records and papers thereof, sign and seal the writs and processes, tax the costs, and draw all the orders and decrees of the said Court, and attend the sittings thereof in person or by deputy.

15. All Barristers and Attorneys entitled to practise in the Supreme Court of this Province, shall be entitled to practise in the Court of Divorce and Matrimonial Causes.

16. The Terms of the said Court shall commence on the fourth Tuesdays in February, June, and October, in each year, and shall continue for the space of ten days; provided that the Judge of the said Court shall have power to continue the sittings of the said Court beyond the end of the said Terms respectively, if the causes pending in the said Court shall require it.

17. All citations, writs, or processes issued out of the said Court, shall be tested in the name of the Judge of the Court, and on the day of issuing the same.

18. All parts of an Act made and passed in the thirty first year of the Reign of His late Majesty King George the Third, intituled *An Act for regulating Marriage and Divorce, and for preventing and punishing incest, adultery, and fornication*, as are inconsistent with the provisions of this Act, and

also the three Acts of Assembly hereinafter mentioned, shall be repealed as soon as this Act comes into operation, namely—An Act made and passed in the fourth year of the Reign of His late Majesty King William the Fourth, intituled *An Act for the further regulation of the formation of the Court of Governor in Council for the determination of all suits and controversies touching and concerning Marriage and Divorce*; also an Act made and passed in the sixth year of the same Reign, intituled *An Act for altering the Terms of holding the Court of the Governor in Council for causes of Marriage and Divorce*; and an Act made and passed in the tenth year of the Reign of Her present Majesty, intituled *An Act for the further regulation of the Court of Governor in Council in Causes of Marriage and Divorce*.

19. The forms in the Schedule to this Act, or forms to the like effect, shall be deemed of the same force as if incorporated in the Sections to which they refer.

20. This Act shall come into operation on the first day of July next.

#### SCHEDULE OF FORMS.

##### A

##### *Writ de contumace capiendo.*

[L.S.] Victoria, by the Grace of God, &c.—To the Sheriff of \_\_\_\_\_ Greeting: Whereas \_\_\_\_\_ is contumacious and contemns the jurisdiction and authority of the Court for Divorce and Matrimonial Causes [here state the non-appearance or other contempt]; You are hereby commanded to attach the said \_\_\_\_\_ by his body, until he shall make satisfaction for the said contempt; and how you shall execute this Writ, notify to the said Court, on the \_\_\_ day of \_\_\_\_\_ next, and have then there this Writ.—Witness, [insert the name of the Judge] at Fredericton, the \_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of Our Reign.

A. B. Registrar.

##### B

##### *Subpoena ad testificandum.*

[L.S.] Victoria, by the Grace of God, &c.—To [names of witnesses] Greeting: We command you and every of you to be and appear in your proper persons before Our Court for Divorce and Matrimonial Causes, at Fredericton, on \_\_\_\_\_ the \_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ o'clock in the \_\_\_ noon, and so from day to day, until the cause or proceeding is heard, \* to testify the truth according to your knowledge, in a certain cause now in the said Court depending between A. B. proponent, and C. D. respondent, on the part of the said \_\_\_\_\_ and on that day to be tried; and this you, nor any of you, shall in no wise omit, under the penalty of one hundred pounds.—Witness, [insert the name of the Judge] at Fredericton, the \_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of Our Reign.

C

*Subpoena duces tecum.*

The same as the form B to the asterisk\*, then as follows:— and also that you bring with you, and produce at the time and place aforesaid, [here describe shortly the deed or paper required to be produced] then and there to testify and show all and singular those things which you or either of you know, or the said deed or instrument doth import, of and concerning a certain cause now in Our said Court depending, &c. [as in form B to the end.]

D

Execution.

[L.S.] Victoria, by the Grace of God, &c.—To the Sheriff of \_\_\_\_\_ County, Greeting:  
Whereas by an order (or decree) lately made in Our Court for Divorce and Matrimonial Causes, in a cause therein pending, wherein A. B. was proponent and C. D. respondent, it was ordered that the said \_\_\_\_\_ should pay to the said \_\_\_\_\_ the sum of [state shortly the substance of the order]; Therefore We command you, that of the goods and chattels, lands and tenements of the said \_\_\_\_\_ in your Bailiwick, you cause to be made the said sum of \_\_\_\_\_ to be rendered to the said \_\_\_\_\_ and make return on the \_\_\_ Tuesday in \_\_\_\_\_ next.—

Witness, [insert the name of the Judge] at Fredericton, the \_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of Our Reign.