A HANDY BOOK ON THE NEW LAW OF DIVORCE AND MATRIMONIAL CAUSES:
WITH THE ACTS 21 & 22 VIC.
C.85, AND 21 & 22 VIC. C.108 AND THE PRACTICE OF THE DIVORCE COURT POPULARLY EXPLAINED, PP. 6-117

Published @ 2017 Trieste Publishing Pty Ltd

#### ISBN 9780649503162

A Handy Book on the New Law of Divorce and Matrimonial Causes: With the Acts 21 & 22 Vic. C.85, and 21 & 22 Vic. C.108 and the Practice of the Divorce Court Popularly Explained, pp. 6-117 by James Peter Byrne

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd. Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

# **JAMES PETER BYRNE**

A HANDY BOOK ON THE NEW LAW OF DIVORCE AND MATRIMONIAL CAUSES:
WITH THE ACTS 21 & 22 VIC.
C.85, AND 21 & 22 VIC. C.108 AND THE PRACTICE OF THE DIVORCE COURT POPULARLY EXPLAINED, PP. 6-117



# A HANDY BOOK

ON THE

## NEW LAW

07

# DIVORCE & MATRIMONIAL CAUSES;

WITH THE

ACTS 21 & 22 VIC. c. 85, AND 21 & 22 VIC. c. 108.

AND THE

# PRACTICE OF THE DIVORCE COURT POPULARLY EXPLAINED.

BY

The Author of "The Law of Bills of Sale," "A Handy Book on Patents," &c.

#### LONDON:

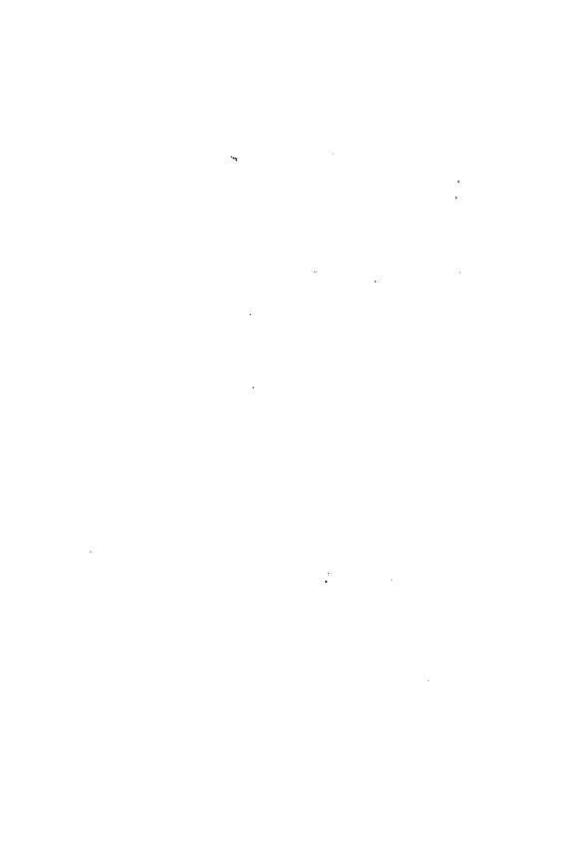
DAVIS & SON, 57, CARRY STREET, LINCOLN'S INN. J. WHITE, 28, COLLEGE GREEN, DUBLIN.

1860.

<sup>&</sup>quot; Bester is a dry morsel and quietness therewith, than an bouse full of sacrifices with strife," Pros. xvii. 1.

#### PREFACE.

The writer's first intention was to publish merely a short statement of the new law of Divorce, for the use of those only who consulted him professionally, with the view, as far as possible, to obviate the necessity of entering upon discussions which not unfrequently are of a most delicate nature. But, finding the subject interesting, his observations were extended to a much greater length than he had proposed; and he now publishes them, feeling assured that a more important statute than the "Divorce and Matrimonial Causes Act of '57" never was passed by the Legislature; or one better calculated "to elevate the character, and promote, and secure, the morality and happiness of a people."



## CONTENTS.

#### CHAPTER I.

#### OF MARRIAGE AND DIVORCE GENERALLY.

- Marriage a civil contract, apart from Scriptural declarations.
- 2. Solemnity of the marriage vows.
- 3. Marriage naturally indissoluble in certain cases. 4. Cases in which the natural law admits of Divorce
- 5. Natural causes of irreconcileable differences between married couples.
  6. Classification of married persons.
- Dissolution by voluntary consent should be allowed.
   Scriptural obligations in reference to Divorce.
   The civil law—adultery the foundation of relief.

- Early exercise by Parliament of the power of Divorce.
   Irish suitors must proceed in England for relief.
   Administration of the law of Divorce in Scotland.

- Divorces by mutual consent allowed in Prussia.
   Divorces in France—the Roman Catholic doctrines.
- 15. Voluntary separations intended to be provided for by the new
- Marriage the basis of proceedings for Divorce.
   The fact must be tried with reference to the laws where the marriage took place.
- The ancient law of marriage in Ireland.
   The existing law of marriage in Ireland.
   The law of marriage in England.
   The Scotch law—marriage by mere consent.

- 22. Gretna Green marriages.
- 23. The intention must be to marry, or a marriage will not be constituted.
- 24. Marriage " by habit and repute."

#### CHAPTER IL

#### THE NEW LAW.

#### DIVORCE-PROCEEDINGS BY THE HUSBAND.

- Divorce, legal meaning of the term.
   Husband may petition Court; adulterer to pay the costs.
- Court empowered to make decree.
- Different footing of adultery by unfe and by husband.
   Adultery by wife entitles husband to decree, if not barred.
   Eleven Bars to remedy enumerated.
- 7. 1st Bar, being accessory to the adultery, defined and ex-
- plained.

  8. 2nd Bar, connivance, defined and explained.

  9. 3rd Bar, collusion, defined and explained.

  10. 4th Bar, condonation, defined and explained.
- Four preceding bars peremptory—seven following discretionary.
- 12. 5th Bar, recrimination, defined and explained.

- 6th Bar, cruelty, defined and explained.
   7th Bar, desertion defined and explained.
   8th Bar, wilful separation, defined and explained.
   9th Bar, wilful neglect, defined and explained.
   10th Bar, misconduct, defined and explained.

- 18. 11th Bar, unreasonable delay, explained

#### CHAPTER III.

#### DIVORCE-PROCEEDINGS BY THE WIFE

- 1. Wife may petition for incestuous adultery alone.
- Husband bound to bear expenses.
- 2. Other offences necessary when adultery not incestnous.
- 4. Nature of the offences.
- 5. Cruelty explained.
  6. Cruelty provoked meets no redress.
  7. Desertion explained.
- Recapitulation of wives' rights.
- 9. Bars to her remedy.
- 10. Condonation less stringent against wife.
- 11. Decree to be pronounced-in what event.

#### CHAPTER IV.

#### PROCEEDINGS—PETITION—ANSWERS—EVIDENCE.

1. Proceedings must commence by petition.

Form of petition and general requisites.

3, Adulterer to be correspondent to husband's petition,

4. Husband's concubine need not be co-respondent to wife's

petition.

5. Reasons for the distinction.

6. Affidavit to be filed with petition—reasons for requiring contents.

7. Must be sworn at Westminster.

8. Citation issues when petition and affidewit filed.

Served with copy petition on respondent and co-respondent.
 Application to Court if service cannot be effected.

Court most unwilling to dispense with service.

12. Respondent to file answer in 21 days.

Form of answer and contents.

Petitioner and respondent may file further pleadings.
 Questions of fact may be tried by a jury.
 Trial—how proceeded with.
 Ahmony allowed to wife, pending mit.

18. Proof requisite to support averment of adultery.

Confession of either party sufficient.
 Duty imposed upon the Court.

#### CHAPTER V.

## DECREE DISSOLVING MARRIAGE-ITS EFFECT. RE-MARBIAGE—CUSTODY OF CHILDREN—PROPERTY AND MAINTENANCE.

- 1. Decree of divorce—when pronounced.
  2. Marriage tie dissolved effectually as by death.
  3. Time within which parties cannot re-marry.
  4. When they can re-marry—wife's maiden name.
  5. Liberty of marriage extends to all parties.
  6. The custody of children.
  7. The rights of the father—the mother's claim.
  8. Power of the Lord Chancellor.
  9. Jurisdiction given to the Judges of New Court.
  10. Effects of decree as to property.

Effects of decree as to property.
 Legal difficulties will arise.

12. Childrens' rights not affected.

13. Court may order re-settlement of wife's separate property.

14. Damages obtained from adulterer may be settled.

Provision to be made for wife.
 Provision to be made for children.

#### CHAPTER VIL

#### JUDICIAL SEPARATION-PROTECTION OF WIFE'S EARNINGS.

Judicial separation similar to divorce a mensa et thore.
 To be applied for by petition.

- 3. Decree to be granted.
  4. Alimony to wife—maintenance of children.
  5. Custody of children, &c.
  6. Grounds for obtaining judicial separation.

7. Bars to the remedy. 8. Wife's new social status.

- 9. She must sue and be sued as a feme sole.

10. Husband not liable for her acts or contracts.

11. Decree may be reversed.

12. Appeal to full Court.

13. Protection of wife's earnings—Order, &c.

14. Reversal of order.

## CHAPTER VI.

#### SUITS OF NULLITY AND JACTITATION OF MARRIAGE.

1. Power of Court to make decree.

2. Petition may be presented.

3. Proceedings same as on petition for divorce.
4. Decree—children made illegitimate.
5. Void marriages.

- 6. Marriages only voidable.
- 7. Who may institute suit.
- 8. Jactitation of marriage.

#### CHAPTER VIII.

#### RESTITUTION OF CONJUGAL RIGHTS.

1. Husband and wife living reparate without cause.

ŭ,

- 2, Petition for Restitution of conjugal rights.
- 3. Bars to the remedy.
- 4. The decree-its effect.