

**A PRACTICAL TREATISE ON  
DIVORCE AND MATRIMONIAL  
JURISDICTION UNDER THE ACT  
OF 1857 AND NEW ORDERS**

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A Practical Treatise on Divorce and Matrimonial Jurisdiction Under the Act of 1857 and New Orders by John Fraser Macqueen

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**JOHN FRASER MACQUEEN**

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*Order Book*  
To Mr Sidney Smith Esq  
with kind regards  
From the Author.

A PRACTICAL TREATISE

ON

DIVORCE AND MATRIMONIAL JURISDICTION.

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SCOTC  
ENGL  
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A  
PRACTICAL TREATISE  
ON  
**DIVORCE AND MATRIMONIAL**  
**JURISDICTION-**

UNDER  
**THE ACT OF 1857 AND NEW ORDERS;**

INCLUDING

ENGLISH AND SCOTCH MARRIAGES.	DUTIES OF THE CLERGY.
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ENGLISH LAW OF DIVORCE.	JUDICIAL SEPARATIONS.
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PROVISION FOR THE WIFE.	RULES OF EVIDENCE.
CUSTODY OF THE CHILDREN.	AUTHORITIES AND ILLUSTRATIONS.

WITH NUMEROUS PRECEDENTS.

BY  
**JOHN FRASER MACQUEEN, Esq.,**  
OF LINCOLN'S INN, BARRISTER-AT-LAW,  
HONORARY SECRETARY TO H.M. DIVORCE COMMISSION, &c.

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MATRIMONIAL CAUSES.**

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2. The Lord Chief Justice of England.
3. The Lord Chief Justice of the Common Pleas.
4. The Lord Chief Baron.
5. The Senior Puisne Judge of the Queen's Bench.
6. The Senior Puisne Judge of the Common Pleas.
7. The Senior Puisne Baron.
8. The Judge of Her Majesty's Court of Probate.

**THE FULL COURT.**

A Quorum of Three Judges, the Judge of the Probate Court to be one.

**THE ORDINARY COURT.**

The Judge of the Probate Court alone, or with one or more of the other Judges.

*When the Judge of the Probate Court is temporarily absent,*

His place to be supplied by,—

The Master of the Rolls,  
The Judge of the Admiralty Court,  
Either of the Lords Justices,  
Any Vice Chancellor, or  
Any Common Law Judge.

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## PREFACE.

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THIS book opens with a statement of the English law of marriage, because the first question in every case will be, are the parties really united in holy wedlock? I say holy wedlock; for marriage, however entered into, is more than a merely civil contract. It is divine in its essence, though temporal and arbitrary in its multiform methods of external celebration. To use the language of M. Portalis, we cannot prescribe a term to it.

The law of Scotland as to this great contract, the parent of society, is also given shortly. Why? Because Scotch marriages may frequently give occasion for the exercise of jurisdiction in the new Tribunal.

It has been my endeavour throughout to vindicate the legislation as far as possible, consistently with right. I believe it will be found that I invariably urge a strict administration, feeling sensible that some at least of the remedies granted are but a choice of evils.

The duties cast on the Judges are more than ordinarily serious. For this reason the Act requires them to sift the evidence, and call for more, when they are dissatisfied or doubtful. This the House of Lords always did.

The great and difficult measure of last Session reflects credit on the Government, and also on the Opposition, in both Houses of Parliament; socially and morally, it is by much the most important and useful Act in the Statute Book. Yet is it very strangely put together. The labours of the pitchfork are visible in every page. Things having nothing to do with each other are placed in juxtaposition. Things intimately connected are far asunder. Not a few of the clauses are puzzling. Sometimes they disappoint by doing too little; next they startle by doing too much. Often we are at a loss to comprehend why what is plainly before the eye is overlooked entirely. Already grievances are felt which a line would have