

is invested in government and in other undoubted securities, the return therefrom will always insure a dividend to shareholders. In addition to this source of income, the revenue derived from the business done by the company would, after making suitable provision for the formation and augmentation of a reserve fund, be divided amongst the shareholders. That a change in the law of the kind already indicated is desirable is the view entertained by such eminent authorities as Lords Selborne, Herschell, and Hobhouse, as well as by many of the leading members of both branches of the legal profession in London and elsewhere. An Act of Parliament has been suggested on the following lines:—(1) to enable companies to prove wills and obtain letters of administration; (2) to enable them to charge for management; (3) to empower the court, and with the consent of the court, persons who have power of appointing new trustees to appoint a company; (4) to make provision for official audit, publication of accounts, investment of large security funds in the hands of an official, power to deal with unreclaimed funds, and such like matters. It would be impossible to go into the details which such a measure would or might comprise. Suffice it to say, in conclusion, that the principle of such a measure is deserving of very favourable consideration by all classes of the community, as one which is calculated to benefit rich and poor alike—enabling, as it will, the principle of co operation to be applied to supplement, but not to supplant individual action, in the carrying out of those trusts and the discharge of those duties which from time to time cannot fail to fall to the lot of every member of the complex society in which we live

---

## II.—*The Law of Divorce in Ireland.* By A. W. Samuels, Esq.

[Read, Tuesday, 10th May, 1887.]

THE law of Ireland in matrimonial matters is the old ecclesiastical law. The procedure of the court in administering that law is regulated by the Matrimonial Causes and Marriage Law Amendment Act of 1870. This Act transferred the jurisdiction of the ecclesiastical tribunals to the court then newly created, and this court in its turn has been absorbed into the High Court of Justice by the Judicature Act, and is now known as the Probate and Matrimonial Division of that court. Neither by the Act of 1870, nor by the Judicature Act, was authority conferred upon the court to grant any more extended relief than that formerly granted by the Ecclesiastical Courts. The procedure of the tribunal has been simplified, cheapened, and improved, but except in a few matters of practice, the powers of the Probate and Matrimonial Division of the High Court of Justice are as limited as ever were those of the Consistorial Court, at the time when the strictest jealousy of its

prerogatives was entertained by the courts of common law and Chancery.

In this paper I have no intention of raising the question whether there should be conferred on the court in Ireland any such power to dissolve marriages as is exercised by the Divorce Court in England. The strongest opposition would be offered to any measure embodying the principle of dissolution of marriage by the whole body of the Roman Catholic clergy, and by probably a great majority of the Protestant clergy in Ireland. Nor can there be said to prevail any marked desire on the part of the laity of any denomination to have such an Act passed for this country; and though we must reluctantly confess that the virtue of Erin's sons and daughters is not in practice as exalted as it is in poetry, yet on the whole, the number of cases requiring the intervention of the Divorce Court, is in proportion to the population, happily very small. Individual cases do occur, where an injured spouse has recourse to the House of Lords to seek by a divorce bill complete relief. That such a relief can be granted by a private Act, when it is denied by the ordinary law is an anomaly, and that a suitor should have to incur such expense as is entailed in procuring a parliamentary divorce, is a hardship. But most legislators would prefer to let the anomaly and hardship exist as at present, rather than provoke the storm that would undoubtedly be raised if any serious proposal was made to grant such complete divorce in this country as is decreed in England.

Leaving, however, this dangerous question aside, I shall endeavour to point out briefly some powers that might with great advantage to litigants be conferred on the Irish court. These powers are (1): To make the adulterer co-respondent in adultery suits. (2) To provide for the maintenance and custody of the children of the marriage. (3) To rectify marriage settlements. (4) To modify the relief decreed in suits for restitution of conjugal rights. And (5) to grant and enforce decrees for alimony in cases not now provided for.

#### I.—*Adulterer as co-respondent.*

A suit for divorce, on the ground of adultery in Ireland, is brought by one spouse against the other only. Supposing it to be well founded, it results in a decree of divorce *a mensa et thoro*, which is a sentence separating the husband and wife from cohabitation, and practically placing the wife in the position of a *femme sole* in respect of after acquired property. Of course neither party can marry again during the lifetime of the other. A husband bringing a suit in Ireland for divorce *a mensa et thoro* from his wife, on the ground of her adultery, has no power to make the adulterer a party to that cause. He is in truth of all men in the sorriest plight. He can be made pay all the costs of his wife before the cause comes to a hearing. He can recover no damages and no costs against the man who has ruined his home. At the common law side of the court he can indeed, if he is willing twice to submit to the prurient curiosity of the public, the story of his sorrows, bring an action and

recover damages measured by the worth of the wife he has lost; but in this action the wife is not a party. He can obtain no relief in the way of divorce, and he has thus to have recourse to two tribunals to obtain a full remedy for one wrong. A petition for judicial separation in England corresponds to a petition for divorce *a mensa et thoro* in Ireland. In England, in such a petition, as well as in a petition for dissolution of marriage, a husband may claim damages from any person on the ground of his having committed adultery with his wife. The adulterer can be made pay all the costs, and after the verdict has been given in the cause, the court has power to direct in what manner the damages are to be applied, and to order in a proper case, that the whole or part of them shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife. There is no such power vested in any Irish court. In a divorce suit here the adulterer is never a party. Damages are never recovered. If the wife is guilty, no provision is made for her by way of alimony paid by the husband. If an action of criminal conversation is brought (which it rarely is), and damages are recovered, these damages are paid to the husband—they are not secured for the benefit of the wife or of her children. The adulterer can throw aside the wife he has seduced from the shelter of her home, and contribute nothing to her maintenance when worse than widowed. The husband cannot be compelled in any way to support her. For the wife unwed, without home, and without hope, and without help, what remains? In England not alone can the husband be ordered to pay alimony to his fallen wife, when divorced from him, but the adulterer also can be compelled, as I have stated, to provide a fund which may be applied for her maintenance.

If then this provision in the law of England is just—if it punishes the guilty man—if it makes him provide, where the case is proper, in some degree for the woman he has ruined—if it, for her in her shame tempers judgment with mercy—if it relieves the wronged husband from seeking for a double remedy by a double exposure of his misery—if it does not in any way trench upon the sacredness of the marriage tie—why should it not be extended by statute to this country too?

## II.—*Custody and Maintenance of Children.*

To pass to the question of the custody and maintenance of the children of the marriage. 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 in England may make such provision as it may deem just, with respect to the custody, maintenance, and education of the children, the marriage of whose parents is the subject of the suit, and may direct proper proceedings to be taken for placing such children under the protection of the Court of Chancery. Even persons who are not parties to the suit may intervene in the cause on behalf of the children, and plead upon the question of their custody, maintenance, and education. No such power is vested in the Irish court. It cannot control the custody of the children. It can make no orders as to access to

them. In Ireland, the father, no matter how guilty and unfit for it, can claim and retain complete control over the children of the marriage, and the innocent mother cannot secure for herself the solace of their society, except in the rare instances where the Lord Chancellor may, upon children being made wards of court, deprive the father of his common law rights, on the ground of his conduct and character being so bad as to be likely to contaminate his offspring. But the jurisdiction of the Court of Chancery, both inherent and created by statute, is much narrower than that exercised by the Court of Divorce in England, where the discretionary power vested in that court by the legislature considerably exceeds that previously exercised by courts of common law or equity. In that country, in a matrimonial cause, the judge having the whole circumstances of the family history brought before him in the suit, can in that one action make a just and proper order, taking into consideration the interests of the family, for the custody and maintenance of the children, and thus prevent the delay and heartburning that renewed litigation before another tribunal must inevitably cause. The extension of the jurisdiction of the Irish court in this direction would be most beneficial. In a very large proportion of the divorce suits in Ireland, the litigants are by no means in affluent circumstances, and the advantage of determining in one cause the conflicting claims which arise between husband and wife and children cannot be too highly estimated. If the court had power to settle such claims by its decree, much pain and much expense would be saved to the parties, the spirit of modern legal reform in preventing multiplicity of actions would be observed, and a right would be extended to Irish suitors which those in England have now long enjoyed.

Under the statutory process exercised by the English court, even in cases where the marriage is declared null and void from the beginning upon any ground, the man can be compelled to provide for the woman to whom he was *de facto* married, and for any offspring of their union. For instance, in the case of *Langworthy v Langworthy*, 11 P. D. 85—a case in which, upon the petition of the husband, the marriage was in the year 1885 declared null and void, on the ground that it was not solemnized according to law, the husband, although it was decided that there had been no legal marriage, was ordered to pay £1,200 a year by way of permanent alimony to the wife he divorced, and the judge declined to make the decree *nisi* absolute until proper provision should be made for the child of the marriage. In Ireland the husband, no matter by what fraud he has brought about an illegal marriage, or how he may have ruined the life of the woman with whom he may have contracted a union, which shall upon any ground have been declared void, cannot by the court be compelled to maintain his wife or support his children. Why should not the protection that English law in such cases extends to English women and English children be granted equally to Irish women and Irish children? Even under the Guardianship of Infants Act, 1886, 49 & 50 Vic. c. 27 (though the Act extends to Ireland), the Irish court for matrimonial causes has not the powers

which by the 7th section enables the English court in cases where a decree is made for "judicial separation," or "either *nisi* or absolute for divorce," to declare the parent by reason of whose misconduct such decree is made to be a person unfit to have the custody of the children of the marriage. There is no such thing in Ireland as a "judicial separation" or "decree *nisi* or absolute for divorce," and accordingly it is clear that the section, whatever may have been the intention of the framers of the Act, does not in effect apply to this country.

### III.—*Restitution of Conjugal Rights.*

This is a peculiar jurisdiction exercised by the divorce tribunal, by which it can compel two people who detest one another to live together. It would be certainly a very difficult thing to discover a case in which the husband or wife was by the promptings of affection urged to bring a suit for the restitution of conjugal rights. If the husband is the petitioner, he is pretty sure to be some worthless scoundrel who has made his wife's home intolerable by his neglect or cruelty, until she has been compelled to take refuge elsewhere. She either has money, or comes in for some; and he forthwith seeks the interference of the court on his behalf to compel the wife to return to him, that he may bully or cajole her property out of her. Very seldom, too, does a wife bring such a suit against her husband for any other object than to secure maintenance, or for other more mercenary motives.\* It is difficult to see how harmony in married life can be expected between two people whose private quarrels have brought about their separation, and whose public litigation has brought about their reunion, and who must go to prison if they resist the decree to return home and render each to the other conjugal rights.

A very sensible Act was passed for England in 1884, dealing with suits for restitution of conjugal rights. The decree in such a suit is no longer to be enforced by attachment, but the court can order, where the wife is the petitioner, that the husband shall, if he does not return to cohabitation within a limited time, make periodical payments to the wife, and if necessary, secure such payments by deed of settlement. Where, on the other hand, the husband is the petitioner, and the wife is entitled to property, or is in the receipt of any profits of trade or earnings, the court can, if it seems a proper case to do so, order a settlement or payments to be made by the wife for the benefit of the husband and the children of the marriage. Should the respondent fail to comply with a decree of the court for restitution of conjugal rights, such disobedience shall be considered equivalent to desertion, and a decree for judicial separation on the

---

\* To quote the words of Sir James Hannen, in *Marshall v. Marshall*, 5 Pr. Div. 23:—"I must observe that so far are suits for restitution of conjugal rights from being, in truth and fact, what theoretically they purport to be—proceedings for the purpose of insisting on the fulfilment of the obligations of married persons to live together, that I have never known an instance in which it has appeared that the suit was instituted for any other purpose than to enforce a money demand."

ground of such desertion can be pronounced. In such suits, also, the court has the same powers in reference to the custody, maintenance, and education of the children of the marriage, as it possesses during a trial for judicial separation. Lastly, "this Act shall not extend to Ireland;" but it ought to.

#### IV.—*Rectification of Marriage Settlements.*

The object of marriage settlements is to provide for the various rights of husband and wife and their issue, arising under the ordinary conditions of married life. The discontinuance of the marriage by divorce cannot be contemplated in the settlement. But by a decree for a divorce the status of the parties to the marriage is altered, and it appears only reasonable that a tribunal which can separate husband and wife by its sentence, should also have power to alter the settlements entered into upon their becoming husband and wife. In Ireland the trusts of a marriage settlement cannot be altered by any court, on account of the divorce *a mensu et thoro* of the husband and wife, and the provisions of the settlement must be observed by the trustees, although the state of circumstances which the settlement contemplated has been altered. In England, however, there is a very extensive statutory power vested in the court, by which it can compel settlements to be made, or can vary the terms of settlements already executed, for the benefit of the innocent parties, or the children of the marriage. By the 45th sec. of the Matrimonial Causes Act, 1857.—

"In any case in which the court shall pronounce a sentence of divorce or judicial separation for adultery of the wife, if it shall be made appeal 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." And by sec. 5 of the Matrimonial Causes Act, 1859—"The court after a final decree of nullity of marriage, or dissolution of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and make such orders with reference to the application of the whole or a portion of the property settled, either for the benefit of the children, or of their respective parents, as to the court shall seem fit."

Why should not these powers be vested in the Irish court in reference to suits for divorce *a mensa et thoro*, and nullity of marriage?

#### V.—*Alimony.*

This paper has already run to an inordinate length. I have in the previous portions of it pointed out some powers that the English court possesses, and which do not exist in Ireland, by which provision can be made for a wife, in all cases whether of divorce or of declaration of nullity of marriage, on account of canonical or statutory impediments. In cases of adultery, such protection to a woman who may have fallen, is often the only means of rescuing her from utter ruin, and in cases of nullity of marriage, she is often a deeply injured person who has been deceived and defrauded by her

pretended husband. In all such suits it seems only just that Irish women should be placed in the same position as their English sisters, and that a discretionary power should be vested in the court to secure to them in proper cases maintenance and support. With one more suggestion, I have done. Decrees for alimony, *i.e.*, the provision for the wife decreed by the court, cannot be effectually registered as judgments against lands. There is frequently, rather invariably, great difficulty in enforcing the decree where the parties are of the farming class. A very great security for the recovery of alimony by the wife would be afforded were the decrees capable of being registered against the interest of the husband in lands, in the same way as judgments can be. The fact that alimony is subject to be varied in amount by orders of the court from time to time, need not present any great difficulty as this could be easily provided for by requiring re-registration within certain periods if the amount should be varied. There should also be a power of enforcing the decree for alimony as a judgment in any part of the United Kingdom.

The defective powers of the Irish divorce tribunal which I have alluded to, could be remedied without raising in any way the question of dissolution of marriage. A prompt, satisfactory, and final adjudication by the court, called upon to arbitrate upon the domestic relations of husband and wife, is above all things desirable. Such an adjudication, the court in this country cannot, owing to its narrow jurisdiction, give. It is to be hoped that at some not distant date the powers of the Probate and Matrimonial Division in Ireland may be extended, and that its suitors may be enabled to obtain in one cause the varied remedies their circumstances demand.

---

### III.—*Continental Land Banks and Land Registers.* By Murrough O'Brien, Esq.

[Read, Tuesday, 7th June, 1887.]

THE Statistical Society allowed me on a former occasion to give an account of a Swiss State Land Credit Bank, from the operations of which it seemed to me some useful lessons might be learned. The question of making loans with safety on small parcels of land in Ireland is a matter of vital importance in the reformation of our land system. A large amount of public money is being lent to Irish farmers on the security of their holdings, and still larger advances are in contemplation. The lending of these large sums without loss to the taxpayer, and with advantage to landlords and tenants, is supposed by some persons to be fraught with danger; it has not yet passed beyond the experimental stage. The various measures which have been passed since 1870 with this object have been characterized by vacillation, timidity, obscurity, and want of any definite principle. No sooner have they been passed, than demands are made that they should be amended, and no settled principles seem to have