

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 28 October 1953

Hon. Mr Webb

DIVORCE AND MATRIMONIAL CAUSES AMENDMENT

ANALYSIS

Title.	
1. Short Title and commencement.	9. Amending provisions as to domicile.
2. Decree of presumption of death and dissolution of marriage.	10. Recognition of overseas decrees.
3. Nullity of marriage.	11. Interval between decree <i>nisi</i> and decree absolute.
4. Effect of mental deficiency on desertion.	12. Maintenance of wife after husband's death.
5. Divorce on ground of conviction of attempted murder, etc., of petitioner or child, or conviction of murder.	13. Variation of orders by Court.
6. Divorce on ground of unsoundness of mind.	14. New sections inserted: 41A. Power of Court to vest tenancy of dwellinghouse in petitioner. 41B. Right of landlord to apply for cancellation or variation of vesting order. 41C. Appeals in respect of orders under last two sections.
7. Divorce on ground of separation for seven years.	15. Time allowed for appeal to Court of Appeal.
8. Failure to comply with decree for restitution of conjugal rights to be a ground for divorce only after three years.	

A BILL INTITLED

AN ACT to amend the Divorce and Matrimonial Causes Act 1928. Title.

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. (1) This Act may be cited as the Divorce and Matrimonial Causes Amendment Act 1953, and shall be read together with and deemed part of the Divorce and Matrimonial Causes Act 1928 (hereinafter referred to as the principal Act). Short Title and commencement. See Reprint of Statutes, Vol. III, p. 865

(2) This Act shall come into force on the first day of January, nineteen hundred and fifty-four.

Decree of
presumption of
death and
dissolution of
marriage.
Cf. Matrimonial
Causes Act,
1950 (14 Geo.
VI, ch. 25),
s. 16 (U.K.)

2. The principal Act is hereby amended by inserting, after section ten, the following new section:

“10A. (1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may, if he is domiciled in New Zealand, present a petition to the Court praying to have it presumed that the other party is dead and to have the marriage dissolved, and the Court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage. 5 10

“(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead in the absence of proof to the contrary. 15

“(3) Unless the context otherwise requires, the provisions of this Act and of any other enactment, so far as they are applicable and with any necessary modifications, shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree for divorce respectively. 20

“(4) In determining for the purposes of this section whether a woman is domiciled in New Zealand in any case in which she is not deemed to be domiciled there by virtue of section twelve of this Act, her husband shall be treated as having died immediately after the last occasion on which she knew or had reason to believe him to be living.” 25 30

Nullity of
marriage.
Cf. 14 Geo. VI,
ch. 25, ss. 8, 9
(U.K.)

3. The principal Act is hereby amended by inserting, after section ten A (as inserted by the *last preceding* section), the following new section:

“10B. (1) A petition for nullity of marriage on any of the grounds specified in subsections *two* and *three* of this section may be presented to the Court— 35

“(a) Where the petitioner or the respondent is domiciled in New Zealand at the time of the filing of the petition; or 40

“(b) Where the marriage was celebrated in New Zealand.

“(2) A marriage shall be void *ab initio*, whether or not a decree for nullity has been granted, where any of the following grounds exist, and in no other case:

5 “(a) That at the time of the ceremony of marriage either party to the marriage was already married:

10 “(b) That, whether by reason of duress or mistake or insanity or otherwise, there was at the time of the marriage an absence of consent by either party to marriage to the other party:

15 “(c) That the marriage is declared to be void by section nine of the Marriage Amendment Act 1946 (which relates to marriages between persons within the prohibited degrees of relationship):

“(d) That the marriage was not solemnized in due form.

20 “(3) A marriage shall be voidable on any of the following grounds, and on no other ground:

“(a) That the marriage has not been consummated owing to the incapacity or wilful refusal of the respondent to consummate the marriage:

25 “(b) That either party to the marriage was at the time of the marriage a mentally defective person within the meaning of the Mental Defectives Act 1911, although capable at that time of consenting to the marriage:

30 “(c) That the respondent was at the time of the marriage suffering from venereal disease in a communicable form:

“(d) That the respondent was at the time of the marriage pregnant by some person other than the petitioner:

35 “Provided that, in the cases specified in paragraphs (b), (c), and (d) of this subsection, the Court shall not grant a decree unless it is satisfied—

“(i) That the petitioner was at the time of the marriage ignorant of the facts alleged:

40 “(ii) That proceedings were instituted within a year from the date of the marriage; and

“(iii) That marital intercourse with the consent of the petitioner has not taken place since the discovery of the existence of the grounds for a decree.

45

1946, No. 8

See Reprint
of Statutes,
Vol. V, p. 743

“(4) A decree for nullity granted in respect of a voidable marriage as defined in subsection *three* of this section shall declare the marriage to be annulled on and from the date of the decree. Every such marriage shall be deemed to be and to have been valid from the time of its celebration until the date of a decree annulling it as aforesaid. 5

“(5) Unless the context otherwise requires, the provisions of this Act and of any other enactment, so far as they are applicable and with any necessary modifications, shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree for divorce respectively. 10

“Provided that every decree for nullity granted in respect of a void marriage as defined in subsection *two* of this section shall be a final decree, and no decree *nisi* shall be issued in any such case.” 15

Effect of mental deficiency on desertion.

4. The principal Act is hereby amended by inserting, after section thirteen, the following new section:

“13A. Where a party to a marriage has been deserted by the other party, the desertion shall not be deemed to be terminated by reason only of the mental deficiency of the deserting party if it appears to the Court that the desertion would probably have continued if the deserting party had not become mentally defective.” 20 25

Divorce on ground of conviction of attempted murder, etc., of petitioner or child, or conviction of murder.

5. Section ten of the principal Act is hereby amended by repealing paragraphs (*d*) and (*e*), and substituting the following paragraphs:

See Reprint of Statutes, Vol. II, p. 238

“(d) That since the celebration of the marriage the respondent has been convicted of attempting to commit the murder of the petitioner or any child (of any age) of the petitioner or respondent, or has been convicted of any offence under section one hundred and ninety-seven of the Crimes Act 1908 against the petitioner or any such child: 30 35

“(e) That the respondent has since the celebration of the marriage been convicted of murder: ”. 40

Divorce on ground of unsoundness of mind.

6. (1) Section ten of the principal Act is hereby amended by inserting, after paragraph (*g*), the following paragraph:

5 “(gg) That the respondent is a person of unsound mind and is unlikely to recover, and has been confined as such in New Zealand in an institution within the meaning of the Mental Defectives Act 1911, or in a like institution in any other country of the Commonwealth, for the period of five years immediately preceding the filing of the petition:”

See Reprint of Statutes, Vol. V, p. 743

10 (2) Section ten of the principal Act is hereby further amended as follows:

(a) By omitting from paragraph (f) the words “British dominions”, and substituting the word “Commonwealth”:

15 (b) By omitting from paragraph (g) the words “British dominions”, and substituting the word “Commonwealth”.

7. (1) Section ten of the principal Act is hereby amended by inserting, after paragraph (j), the following paragraph:

Divorce on ground of separation for seven years.

20 “(jj) That the petitioner and respondent are living apart and are unlikely to be reconciled, and have been living apart for not less than seven years:”

25 (2) Section eighteen of the principal Act is hereby amended as follows:

(a) By omitting the words “paragraphs (h), (i), and (j)”, and substituting the words “paragraphs (h), (i), (j), and (jj)”:

30 (b) By inserting, after the words “or paragraph (j)”, the words “or paragraph (jj)”.

8. (1) Section ten of the principal Act is hereby amended by inserting in paragraph (h), after the word “failed”, the words “for three years or more”.

Failure to comply with decree for restitution of conjugal rights to be a ground for divorce only after three years.

35 (2) Nothing in the foregoing provisions of this section shall apply with respect to any decree for restitution of conjugal rights made in a cause commenced before the fourteenth day of October, nineteen hundred and fifty-three, or any decree for divorce on the ground of failure to comply with any
40 such decree for restitution of conjugal rights; and all causes for any such decree for divorce may be commenced or continued, and all incidental proceedings in or arising out of any such cause may be taken or continued, as if this section had not been passed.

6 *Divorce and Matrimonial Causes Amendment*

Amending provisions as to domicile.

9. (1) Section ten of the principal Act is hereby amended by inserting, before the words "has been domiciled there for two years at least" the words "(where the ground is one of those specified in paragraphs (h), (i), (j), and (jj) of this section)". 5

See Reprint of Statutes, Vol. III, p. 872

(2) Section twelve of the principal Act is hereby amended by repealing subsection three (as added by section three of the Divorce and Matrimonial Causes Amendment Act 1930), and substituting the following subsections: 10

"(3) Where a wife prays for a divorce on the ground specified in paragraph (jj) of section ten of this Act, and her husband was domiciled in New Zealand when the separation commenced, the wife shall be deemed for the purposes of this Act to have retained her New Zealand domicile, notwithstanding that her husband has since acquired some other domicile. 15

"(4) Where a wife who is living apart from her husband is living in New Zealand and has been living there for three years at least, and has such intention of residing permanently in New Zealand as would constitute a New Zealand domicile in the case of an unmarried woman, she shall be deemed for the purposes of this Act to be domiciled in New Zealand and to have been domiciled there for two years at least, notwithstanding that her husband is not domiciled in New Zealand." 20 25

(3) Section three of the Divorce and Matrimonial Causes Amendment Act 1930 is hereby consequentially repealed. 30

Recognition of overseas decrees.

10. The principal Act is hereby amended by inserting, after section twelve, the following section:

"12A. The validity of any decree or order or legislative enactment for divorce or nullity of marriage made (whether before or after the commencement of this section) by a Court or legislature of any country outside New Zealand shall, by virtue of this section, be recognized in all New Zealand Courts if— 35

"(a) That Court or legislature has exercised jurisdiction— 40

"(i) In any case, on the basis of the domicile of one or both of the parties to the marriage in that country; or

“(ii) In any case, on the basis of the residence of the wife in that country for a continuous period of not less than two years; or

5 “(iii) In a case of nullity of marriage on the ground of non-consummation owing to incapacity or wilful refusal or on some ground existing at the time of the marriage, on the basis of the celebration of the marriage in that country; or

10 “(b) The decree or order or enactment is recognized as valid in the Courts of a country in which at least one of the parties to the marriage is domiciled or is deemed by the law of that country to be domiciled.”

15 **11.** Section twenty-four of the principal Act is hereby amended by omitting from subsection one the words “such time, not less than three months from the pronouncing thereof, as the Court by general or special order
20 from time to time directs”, and substituting the words “three months from the date of the pronouncing thereof or such shorter time, not less than six weeks, as the Court directs by special order in any particular case”.

Interval between decree nisi and decree absolute.

25 **12.** (1) Section thirty-three of the principal Act is hereby amended by inserting in subsection one, after the words “order that the husband”, the words “or his personal representatives”.

Maintenance of wife after husband's death.

(2) Subsection two of section thirty-three of the principal Act is hereby amended as follows:

30 (a) By omitting the words “direct the husband to pay to the wife during the joint lives of the husband and wife”, and substituting the words “order that the husband or his personal representatives shall pay to the wife for any term not exceeding her life”:

35 (b) By inserting, after the word “reasonable”, the words “and every such order made against the husband shall be enforceable against his personal representatives after his death”:

40 (c) By inserting in paragraph (a) of the proviso, after the word “husband”, the words “or his estate, as the case may be,”:

45 (d) By inserting in paragraph (b) of the proviso, after the word “husband”, the words “or of his estate, as the case may be,”.

Variation of orders by Court.

13. Section forty-one of the principal Act is hereby amended by adding the following subsections as subsections two and three thereof:

“(2) The Court may from time to time vary or modify or extend any order made under section thirty-three or section thirty-six or section thirty-seven of this Act in such manner as the Court thinks fit, whether as to the term of the order, or as to the nature of any security or settlement, or by increasing or diminishing the amount or extent of any security or the gross sum or annual sum secured, or otherwise. 5 10

“(3) An application for an order under this section or under the proviso to subsection two of section thirty-three of this Act may be made by the person entitled to the benefit of the order, or by the person liable under the order or (after his or her death) by his or her personal representatives or by any creditor or other person interested in the distribution of his or her estate or entitled to apply for an order under Part II of the Family Protection Act 1908 in respect thereof: 15 20

See Reprint of Statutes, Vol. III, p. 298

“Provided that, where an order is for a term not exceeding the life of the person liable, an application for the extension of the term beyond his or her lifetime shall not be made except during his or her lifetime or within one year after his or her death.” 25

New sections inserted.

14. The principal Act is hereby amended by adding to Part IV the following new sections:

Power of Court to vest tenancy of dwellinghouse in petitioner.

“41A. (1) Where the Court makes a decree for divorce or nullity of marriage or judicial separation or restitution of conjugal rights, the Court may at the same or any subsequent time, in its discretion, having regard to all the circumstances of the case, make an order vesting in the petitioner or respondent (in this section referred to as the applicant) the tenancy of any dwellinghouse, being a dwellinghouse within the meaning of the Tenancy Act 1948,— 30 35

1948, No. 76

“(a) Of which at the time of the making of the decree the applicant’s wife or husband (in this section referred to as the other party) is or was either the sole tenant or a tenant holding jointly or in common with the applicant; and 40

“(b) Of which at the time of the making of the order under this subsection the other party is a tenant as aforesaid; and 45

“(c) In which the applicant or the other party resides at the time of the order under this subsection.

5 “(2) On and after the taking effect of an order made under subsection *one* of this section, unless the tenancy is sooner lawfully determined, the applicant shall be deemed to be the tenant of the dwellinghouse upon and subject to the terms and conditions of the tenancy in force at the time of the making of the order.

10 “(3) On the taking effect of an order made under subsection *one* of this section, unless the tenancy is sooner lawfully determined, the other party shall be deemed to have ceased to be the tenant of the dwellinghouse.

15 “(4) The jurisdiction conferred on the Court by subsection *one* of this section may be exercised in any case where a decree as aforesaid has been made before the commencement of this section.

20 “(5) Nothing in this section or in any order made thereunder shall be construed to limit or affect the operation of any enactment or rule of law for the time being applicable to any tenancy to which this section applies or to the dwellinghouse held under the tenancy, or to authorize the Court to vary, except by vesting or
25 revesting the tenancy pursuant to this section, any express or implied term or condition of the tenancy.

30 “(6) On the application of the other party in any case in which an order is made under subsection *one* of this section, the Court may, if in its opinion the circumstances have so changed since the making of the order that the tenancy should be revested in the person or any of the persons in whom it was vested before the making of that order, make an order cancelling the first-mentioned order and revesting the tenancy
35 accordingly.

40 “(7) At any time after the death of any applicant in whom any tenancy is vested by any order made under subsection *one* of this section, the other party may, unless the tenancy has been determined by reason of the death of the applicant, apply to the Court for an order revesting the tenancy in the other party, and the Court may make an order accordingly.

“(8) On the taking effect of any re-vesting order under subsection *six* or subsection *seven* of this section, unless the tenancy is sooner lawfully determined, the person in whose favour it is made shall be deemed to be the tenant of the dwellinghouse upon and subject to the terms and conditions of the tenancy in force at the time of the making of the re-vesting order. 5

“(9) Any order under this section may be made upon and subject to such terms and conditions, not inconsistent with this Act, as the Court thinks fit. 10

“(10) Every order under this section shall take effect on such date as may be specified in that behalf in the order, being a date not earlier than two months after the date of the making of the order;

“Provided that it shall not in any case take effect— 15

“(a) If it is made subject to the performance of any condition or the occurrence of any event specified in the order, until the condition is performed or the event occurs:

“(b) If any application is made by the landlord under section *forty-one B* of this Act for the cancellation or variation of the order, and the order is confirmed with or without variation, until the order of confirmation is made or until such date as may be specified in that behalf in the confirming order: 20 25

“(c) If there is an appeal to the Court of Appeal against the order, or an appeal by the landlord against the refusal of the Supreme Court to cancel or to vary the order, until the appeal has been determined. 30

“(11) Where any dwellinghouse to which any order made under this section relates is held under any registered lease, the Registrar of the Court in which the order is made shall, on the taking effect of the order, send a copy of the order, sealed with the seal of the Court, to the District Land Registrar or, as the case may require, to the Registrar of Deeds, who shall, upon payment of the prescribed registration fee, register it in the prescribed manner. The said registration fee shall be payable by the person in whose favour the order is made. 35 40

“(12) For the purposes of this section, the term ‘tenant’, in relation to any dwellinghouse, includes any person whose tenancy has expired or been determined, and who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwellinghouse; and the term ‘tenancy’ has a corresponding meaning.

“(13) This section shall bind the Crown.

“41B. (1) Where any order vesting or revesting any tenancy is made under section *forty-one* A of this Act, the Registrar of the Court in which the order is made shall forthwith cause to be served on the landlord of the dwellinghouse a copy of the order together with a notice in the prescribed form, signed by the Registrar, informing the landlord of his right to apply to the Court to have the order cancelled or varied under this section.

Right of landlord to apply for cancellation or variation of vesting order.

“(2) The following provisions shall apply with respect to the service of the copy of the order and the notice:

“(a) They may be served by delivering them to the landlord personally or by posting them by registered letter addressed to him at his last known place of abode or business in New Zealand:

“(b) If they are so posted as aforesaid they shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered:

“(c) If the landlord is absent from New Zealand, they may be served as aforesaid on his agent in New Zealand.

“(3) Within fourteen days after service of the notice, the landlord may apply to the Court for the cancellation or variation of the order.

“(4) Notice of any such application shall be given, in such manner as the Court or a Judge thereof directs, to all parties to the proceedings in which the order was made, and every such party shall be entitled to be heard on the application.

“(5) After hearing the application the Court may, in its discretion, cancel the order, or confirm it either unconditionally or subject to such variations or conditions as the Court thinks fit.

“(6) Any application under this section may be disposed of in Chambers.

“(7) Where any order is made under this section, the Registrar shall forthwith cause a copy of the order to be served, in the manner prescribed by subsection *two* 5 of this section, on every party who was entitled to be heard on the application under this section, and the provisions of that subsection shall accordingly apply with the necessary modifications.

“41c. (1) Subject to the provisions of this section, 10 the landlord of any dwellinghouse to which any order under section *forty-one* ^A of this Act relates shall be deemed for the purposes of section fifty-eight of the principal Act (which relates to appeals) to be a party prejudicially affected by the order, and shall accordingly 15 be entitled to appeal under that section to the Court of Appeal—

“(a) Against the order:

“(b) Against the refusal of the Court to cancel the order on any application under section *forty-one* ^B of this Act: 20

“(c) Against the refusal of the Court to make any variation for which any such application as aforesaid is made.

“(2) The landlord shall not, without the leave of 25 the Court of Appeal, be entitled to appeal against the order unless he has first applied to the Supreme Court for the cancellation or variation of the order as aforesaid and the Court has refused to cancel the order or has refused to make the variation so applied for. 30

“(3) The time allowed for an appeal against the order shall not begin to run against the petitioner or respondent, or against any person affected or deemed to be affected by the order, and no such appeal may be commenced by any person, until the expiration of twenty- 35 one days after the date of the making of the order, or, in any case where an application is made by the landlord for the cancellation or variation of the order, until the landlord’s application is disposed of.”

15. Section fifty-eight of the principal Act is hereby 40 amended by omitting the words “three months”, and substituting the words “six weeks”.

Appeals in respect of orders under last two sections.

Time allowed for appeal to Court of Appeal.