

## DIVORCE AND MATRIMONIAL CAUSES BILL.

### EXPLANATORY MEMORANDUM.

1. THE first Divorce Act was passed in England in the year 1857. It was amended from time to time, and remained in force until 1925, when a consolidation Act was passed (15 & 16 Geo. V., c. 49, ss. 176 to 200). The first Act dealing with divorce in New Zealand was the Divorce and Matrimonial Causes Act, 1867. It was copied for the most part from the English Act of 1857. In the present consolidation of the New Zealand law it seemed desirable to take advantage of the improvements made by the English Act, and that has been done. Of these may be noted the use of the word "divorce" instead of the words "dissolution of marriage."

2. The following are the more important changes proposed to be made in the law of New Zealand by this Bill:—

(a) The failure to comply with a decree for restitution of conjugal rights is made a ground for judicial separation. It is a ground in England, and is a ground for dissolution in New Zealand.

(b) The distinction between cases of adultery happening before and cases happening after the 1st June, 1899, has been abolished. Until the Divorce Act of 1898 was brought into operation on the 1st June, 1899, a wife could not obtain a divorce on the ground of adultery only, unless it was incestuous adultery or accompanied by bigamy; she had to prove in addition either cruelty or desertion for two years. The Act of 1898 altered the law on the subject, and gave a wife a right to obtain a divorce on the ground of adultery, if committed after the Act of 1898 came into force. When the Acts were consolidated in 1908 it was considered necessary to maintain the distinction between cases happening before the 1st June, 1899, and those happening after that date, but it seems to be unnecessary after the lapse of twenty-nine years to maintain the distinction. The only possible effect of the change would be to give a wife a right to a divorce in a case where her husband had committed adultery before the 1st June, 1899, and had not committed any matrimonial offence since which would give his wife a right to a divorce. The chance of there being such a case is remote indeed. If the distinction be abolished as proposed, then sections 22 and 23 of the Act of 1908 become unnecessary, and they have been dropped.

(c) The rule as to the retention of her domicile by a deserted wife, notwithstanding that her husband has changed his domicile, is extended by clause 12 so as to apply to the case of a wife who has been separated from her husband by agreement or otherwise.

(d) The subject of collusion has been cleared up, and the law declared to be that, except in the case of adultery, collusion is only a discretionary bar to relief.

(e) It has been made clear that connivance is a bar in the case of adultery only. This is necessary, for it is absurd to talk about connivance where relief is sought on other grounds, as, for, example the existence of an agreement for separation.

(f) Clause 33, dealing with alimony and maintenance, is taken from section 190 of the English Act of 1925. It gets rid of the confusion created by the apparently conflicting provisions of sections 41 and 42 of the Act of 1908, and gives the Supreme Court the additional powers possessed by the High Court in England.

(g) Section 29 of the Act of 1908 has been dropped. It appeared for the first time in the Act of 1898. It is difficult to know what it means, and would be better out of the way.

(h) The provisions contained in sections 68, 69, 70, and 71 are unnecessary, and have been dropped. They were taken for the most part from the English Act of 1857. The English Act of 1925 does not contain any such provisions.

(i) Section 74 of the Act is unnecessary, and has been dropped. The earlier provisions make clear the rights of a husband.

(j) Section 5 of the amending Act of 1912 (relating to the validity of certain marriages) has been omitted as spent.

Hon. Mr. Rolleston.

## DIVORCE AND MATRIMONIAL CAUSES.

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## A BILL INTITLED

Title. AN ACT to consolidate and amend the law relating to Divorce and Matrimonial Causes.

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

Short Title and commencement.

1. (1) This Act may be cited as the Divorce and Matrimonial Causes Act, 1928, and it shall come into force on the *first* day of *January*, nineteen hundred and twenty-nine.

Repeals.

(2) The enactments mentioned in the *First* Schedule hereto are hereby repealed, and with respect to those enactments the following provisions shall apply :— 10

Savings.

1908, No. 50, s. 1 (2)

(a) All Orders in Council, orders, decrees, regulations, rules, scales, registers, records, certificates, instruments, and generally all acts of authority which originated under any of the said enactments and are subsisting or in force on the coming into operation of this Act shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated. 15 20

(b) All matters and proceedings commenced under any such enactment and pending or in progress on the coming into operation of this Act may be continued, completed, and enforced under this Act. 25

Act divided into Parts.

(3) This Act is divided into Parts as follows :—

PART I.—Judicial Separation and Restitution of Conjugal Rights. (Sections 5 to 9.)

PART II.—Divorce. (Sections 10 to 27.)

PART III.—Remedies against Adulterers. (Sections 28 to 32.) 30

PART IV.—Alimony and other Matters, including Provisions for the Benefit of Children. (Sections 33 to 41.)

PART V.—Procedure in Matrimonial Causes. (Sections 42 to 58.)

Interpretation.

2. In this Act, if not inconsistent with the context, "Court" means the Supreme Court. 35

Jurisdiction.

Cf. 15 & 16 Geo. V, c. 49, s. 21

3. (1) The Court shall in New Zealand have the same jurisdiction in relation to matrimonial causes and matters as was immediately before the commencement of the Matrimonial Causes Act, 1857 (Imperial), vested in or exerciseable by any Ecclesiastical Court or person in England in respect of divorce *a mensa et thoro*, nullity of marriage, jactitation of marriage, or restitution of conjugal rights, and in respect of any other matrimonial cause or matter except marriage licenses; and the Court shall have such jurisdiction also in relation to divorce and other matrimonial causes and matters as is conferred by the provisions hereinafter contained. 40 45

Court to act on principles of Ecclesiastical Courts.

1908, No. 50, s. 12

(2) In all suits and proceedings other than proceedings for divorce the Court shall proceed and act and give relief on principles and rules which, in the opinion of the Court, as nearly as may be conform to the principles and rules upon which the Ecclesiastical Courts of England acted and gave relief, but subject to the provisions of this Act and to the rules and orders made under this Act. 50

(3) Subject to the provisions of this Act and any rules made thereunder, all the powers and jurisdiction hereby given to the Court may be exercised by any Judge of the Court.

5 the 4. (1) Any three or more of the Judges of the Court, of whom the Chief Justice shall be one, may from time to time—

Power to make and alter rules for procedure, &c. 1908, No. 50, sec. 4

(a) Make rules concerning the practice, pleading, and procedure under this Act :

(b) Fix a scale of costs for all suits and proceedings, and make rules regarding such costs.

And fix scale of costs.

10 (2) All such rules shall be subject to the approval of the Governor-General in Council.

(3) Until a scale of costs has been fixed by the Judges as herein provided, costs, when allowed, shall be regulated and paid according to the scale of costs contained in the *Second* Schedule hereto ; but the 15 Court may at any time fix a sum or sums as the costs of the suit or proceedings, as the case may be, in full of all costs.

PART I.

JUDICIAL SEPARATION AND RESTITUTION OF CONJUGAL RIGHTS.

20 5. A petition for judicial separation may be presented to the Court either by the husband or the wife on the ground of adultery or cruelty, desertion without cause for not less than two years, or failure to comply with a decree for restitution of conjugal rights.

Petition for judicial separation. Cf. 15 & 16 Geo. V, c. 49, s. 185 (1)

25 6. The Court, on being satisfied that the allegations contained in the petition are true may make, in its discretion, a decree for judicial separation, and any such decree shall have the same force and effect as a decree for divorce *a mensa et thoro* had in England immediately before the commencement of the Matrimonial Causes Act, 1857 (Imperial).

Decree for judicial separation. Ibid., s. 185 (2)

30 7. (1) The Court, on the application by petition of the husband or wife against whom a decree for judicial separation has been made, and on being satisfied that the allegations contained in the petition are true, may reverse the decree at any time after the making thereof, on the ground that it was obtained in the absence of the person making the application, or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.

Decree for judicial separation may be reversed. Ibid., s. 185 (3)

35 (2) The reversal of a decree for judicial separation shall not affect the rights or remedies which any other person would have had if the decree had not been reversed in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the date of the decree and of the reversal thereof.

Ibid., s. 185 (4)

40 8. A petition for restitution of conjugal rights may be presented to the Court either by the husband or the wife, and the Court, on being satisfied that the allegations contained in the petition are true, may in its discretion make the decree accordingly.

Decree for restitution of conjugal rights. Ibid., s. 186

45 9. (1) A decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is by the wife the Court, at the time of making such decree, or at any time afterwards, may order that, in the event of the decree not being complied with within any time in that behalf limited by the Court, the respondent shall make to the petitioner such periodical payments as may be just.

Periodical payment in lieu of attachment. 1908, No. 50, s. 8

(2) Such order may be enforced in the same manner as an order for alimony in a suit for judicial separation.

(3) The Court, if it thinks fit, may order that the husband shall, to the satisfaction of the Court, secure to the wife such periodical payments, and for that purpose may refer it to the Registrar to settle and approve of a proper deed or instrument to be executed by all necessary parties. 5

## PART II.

### DIVORCE.

Grounds for divorce.  
1908, No. 50, s. 21  
1919, No. 53, s. 9  
1920, No. 70, ss. 3,  
4, 5

10. Any married person who is domiciled in New Zealand and at the time of the filing of the petition has been domiciled there for two years at least (hereinafter called the petitioner) may present a petition to the Court praying for a divorce from the other party to the marriage (hereinafter called the respondent) on any one or more of the following grounds:— 15

- (a) That the respondent has been guilty of adultery since the celebration of the marriage: 15
- (b) That the respondent without just cause has wilfully deserted the petitioner, and without just cause has left the petitioner continuously so deserted for three years or more: 20
- (c) That the respondent has for four years or more been an habitual drunkard, and has either habitually left his wife without means of support or habitually been guilty of cruelty towards her; or, being the petitioner's wife, has for a like period been an habitual drunkard, and has habitually neglected her domestic duties and rendered herself unfit to discharge them: 25
- (d) That the respondent has been convicted of, and sentenced to imprisonment for seven years or more for, attempting to commit the murder of, or wounding or doing actual bodily harm to, the petitioner or any child of the petitioner or respondent: 30
- (e) That the respondent has been convicted of the murder of a child of the petitioner or respondent: 35
- (f) 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 British dominions, for a period or periods not less in the aggregate than seven years within the period of ten years immediately preceding the filing of the petition: 40
- (g) That the respondent is a person of unsound mind and is unlikely to recover, and has been continuously a person of unsound mind for the period of seven years immediately preceding the filing of the petition, and during the final three years of the said period of seven years 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 British dominions: 45 50

(h) That the respondent has failed to comply with a decree of the Court for restitution of conjugal rights :

5 (i) That the petitioner and respondent are parties to an agreement for separation, whether made by deed or other writing or verbally, and that such agreement is in full force and has been in full force for not less than three years :

10 (j) That the petitioner and respondent are parties to a decree of judicial separation made in New Zealand, or to a separation order made by a Stipendiary Magistrate in New Zealand, and that such decree or order is in full force and has been in full force for not less than three years :

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15 (k) That the respondent, being the husband of the petitioner, has been guilty of rape or of sodomy or of bestiality since the celebration of the marriage.

20 11. (1) On a petition presented by a husband for divorce on the ground of adultery, the petitioner shall make the alleged adulterer a co-respondent, unless he is excused by the Court on special grounds from so doing. If in answer to his wife's petition for divorce a husband alleges that his wife has committed adultery, he shall make the alleged adulterer a co-respondent unless he is excused by the Court on special grounds from so doing.

Alleged adulterer to be made co-respondent. Cf. 15 & 16 Geo. V, c. 49, s. 177

25 (2) On a petition presented by a wife for divorce on the ground of adultery the Court, if it thinks fit, may direct that the person with whom the husband is alleged to have committed adultery be made a respondent.

30 12. (1) A deserted wife whose husband was domiciled in New Zealand at the time of desertion shall be deemed for the purposes of this Act to have retained her New Zealand domicile, notwithstanding that since the desertion her husband has acquired some other domicile.

Domicile of deserted wife. Cf. 1908, No. 50, s. 21 (3)

35 (2) Where a wife prays for a divorce on any of the grounds specified in paragraphs (i) and (j) of section ten of this Act, and her husband was domiciled in New Zealand when the agreement for separation or decree of judicial separation or separation order was made, 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.

Domicile of separated wife.

40 13. If a wife while separated from her husband is habitually and without just cause left by him without reasonable maintenance, the husband shall be deemed for the purposes of this Act to have deserted his wife wilfully and without just cause for the period during which she has been left without maintenance as aforesaid, whether the separation of the parties has taken place or continued by agreement, or by virtue of a judicial decree or order, or in any other manner.

Wife left without maintenance. 1913, No. 69, s. 6

45 14. On every petition for divorce the Court shall satisfy itself so far as it reasonably can as to the facts alleged, and shall inquire into any counter-charge that is made against the petitioner.

Court to satisfy itself as to facts. Cf. 15 & 16 Geo. V, c. 49, s. 178 (1)

50 15. Where there has been collusion between the petitioner and the respondent the Court shall have a discretion as to whether or not a decree of divorce shall be made, except in cases in which relief is sought on the ground of adultery.

Discretion of Court where collusion proved.

16. In every case where the petitioner's own habits or conduct induced or contributed to the wrong complained of the Court shall have a discretion as to whether or not a decree shall be made, but if

Discretion of Court where petitioner in fault. Cf. 1908, No. 50, s. 21 (2)

it shall be proved in any case that the offence of which the petitioner complains has been condoned the Court shall dismiss the petition.

Provisions where adultery ground of relief.

17. (1) In every case in which relief is sought on the ground of adultery the following provisions shall apply:—

*Cf.* 15 & 16 Geo. V, c. 49, s. 178 (3)

(a) The Court shall satisfy itself so far as it reasonably can as to whether or not the petitioner has been accessory to or has connived at or condoned the adultery. 5

(b) If on the evidence the Court is not satisfied that the alleged adultery has been committed, or finds that the petitioner has been accessory to or has connived at or condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, the Court shall dismiss the petition. 10

*Cf.* 1908, No. 50, s. 31

(c) If the Court is satisfied on the evidence that the case for the petitioner has been proved, and does not find that the petitioner has been in any manner accessory to or has connived at or condoned the adultery, or that the petition is presented or prosecuted in collusion with either of the respondents, the Court shall pronounce a decree of divorce: 15

Provided that this provision shall be subject to the discretion given to the Court by section *sixteen* of this Act. 20

Where alleged adulterer a co-respondent he may be dismissed from suit. *Ibid.*, s. 32

(2) Where on the petition of a husband for divorce the alleged adulterer is made a co-respondent, or where on the petition of a wife the person with whom her husband is alleged to have committed adultery is made a respondent, the Court, after the close of the evidence on the part of the petitioner, may direct such co-respondent or respondent to be dismissed from the suit if it thinks there is not sufficient evidence against him or her. 25

Discretion of Court in certain cases.

*Cf.* 1921-22, No. 65, s. 2

18. In every case where the ground on which relief is sought is one of those specified in paragraphs (*h*), (*i*), and (*j*) of section *ten* of this Act, and the petitioner has proved his or her case, the Court shall have a discretion as to whether or not a decree shall be made; but if upon the hearing of a petition praying for relief on the ground specified in paragraph (*i*) or paragraph (*j*) aforesaid the respondent opposes the making of a decree, and it is proved to the satisfaction of the Court that the separation was due to the wrongful act or conduct of the petitioner, the Court shall dismiss the petition. 30 35

When decree to be granted.

19. In every other case where the petitioner has proved his or her case, then, subject to the special provisions hereinbefore contained, the Court shall pronounce a decree of divorce. 40

When relief may be given to respondent. *Cf.* 15 & 16 Geo. V, c. 49, s. 180

20. If in any suit or other proceeding instituted for divorce or judicial separation the respondent shall allege in his or her answer any matter entitling either husband or wife to any relief under this Act, the Court may give to the respondent in such suit, on his or her application, the same relief as he or she would have been entitled to if he or she had filed a petition seeking such relief. 45

Registrar to send copy of petition to Solicitor-General.

1908, No. 50, s. 25

21. It shall be the duty of the Registrar, on the filing of any petition for divorce, to send a copy thereof to the Solicitor-General.

Law Officers may oppose petition.

*Ibid.*, s. 26

22. (1) The Attorney-General or the Solicitor-General, if he thinks fit, may oppose the petitioner obtaining a decree for divorce or show cause why such a decree should not be made. 50

(2) When the ground of any petition for divorce is the unsoundness of mind of the respondent it shall be the duty of the Solicitor-General

to take on behalf of the respondent such steps in the matter of the petition as he may consider necessary in the interests of the respondent.

23. By leave of the Court any other person may oppose the petitioner obtaining a decree for divorce, but such leave shall not be granted except on an affidavit showing to the satisfaction of the Court that there is reasonable ground to believe that the petitioner has been in some manner accessory to or conniving at the adultery.

Stranger may be admitted in cases of connivance to oppose divorce. 1908, No. 50, s. 27

24. (1) Every decree for a divorce shall in the first instance be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than three months from the pronouncing thereof, as the Court by general or special order from time to time directs; and during that period any person may, in such manner as the Court by general or by special order in that behalf from time to time directs, show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion, or by reason of material facts not having been brought before the Court; and on cause being so shown the Court shall deal with the case either by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice requires.

Decree *nisi*.  
Ibid., s. 33

(2) At any time during the progress of the cause, or before the decree is made absolute, any person may give information to the Attorney-General or Solicitor-General of any matter material to the due decision of the case, and the Attorney-General or the Solicitor-General may thereupon take such steps as he deems necessary or expedient.

(3) If from any such information or otherwise the Attorney-General or Solicitor-General suspects that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case, he may by leave of the Court intervene in the suit, alleging such collusion, and subpoena witnesses to prove it; and the Court may order the costs arising from such intervention to be paid by the parties, or such of them as it sees fit, including a wife if she has separate property.

25. (1) On every decree *nisi* in any suit or other proceeding for divorce the Registrar shall endorse a notice that if the petitioner or respondent contracts marriage before such decree is made absolute he or she will be guilty of bigamy.

Making decree absolute.  
Ibid., s. 34  
1913, No. 69, s. 2

(2) After the expiration of the time limited in that behalf the Registrar, on the request in writing of the petitioner, and if no matter in opposition to the final decree is then pending, may issue the decree absolute as of course.

26. The Court may, on the application of the respondent, make absolute a decree *nisi* for divorce, and shall have in respect of such an application the same powers as if the application was made by the petitioner.

Decree absolute may be made on application of respondent.  
Ibid., s. 3.

27. When a decree for divorce has been made absolute, but no sooner, it shall be lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death.

Remarriage of divorced person.  
1912, No. 22, s. 3



## PART III.

## REMEDIES AGAINST ADULTERERS.

Action for criminal conversation abolished.

*Cf.* 1908, No. 50, s. 36

Husband may claim damages for adultery.

*Cf.* *Ibid.*, s. 37 (1)

How claim to be dealt with.

*Cf.* *Ibid.*, s. 37 (2)

Damages to be ascertained by jury, &c.

*Ibid.*, s. 38

Court may order adulterer to pay costs.

*Ibid.*, s. 40

Alimony and maintenance.

*Cf.* 15 & 16 Geo. V, c. 49, s. 190

28. The action for criminal conversation is hereby abolished.

29. A husband may, on a petition for divorce or for judicial separation, claim damages from any person on the ground of his having committed adultery with the wife of the petitioner, but a petitioner shall not be entitled to claim damages in respect of adultery committed more than three years before the filing of his petition.

30. The claim made by such petition shall be heard and tried on the same principles, in the same manner, and subject to the same or the like rules as governed actions for criminal conversation when heretofore tried and decided in the Supreme Court; and all the provisions herein contained with reference to the hearing and decision of petitions to the Court shall, so far as may be necessary, be deemed applicable to the hearing and decision of petitions presented under the *last preceding* section.

31. The damages to be recovered on any such petition shall in all cases be ascertained by the verdict of a jury, although the respondents or either of them may not appear; and after the verdict has been given such damages shall be paid or applied in such manner as the Court directs, and the Court may direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife:

Provided that if any such petition is dismissed no damages shall be recovered from the adulterer.

32. Where in any petition presented by a husband the alleged adulterer has been made a co-respondent, or where in answer to his wife's petition a husband has alleged that his wife has committed adultery, and in any such case the adultery has been established, the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

## PART IV.

## ALIMONY AND OTHER MATTERS, INCLUDING PROVISIONS FOR THE BENEFIT OF CHILDREN.

33. (1) The Court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life, as, having regard to her fortune (if any), to the ability of her husband, and to the conduct of the parties, the Court may deem to be reasonable; and the Court may for that purpose order that it shall be referred to the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties, and may, if it thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.

(2) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under subsection one of this section, direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her  
5 maintenance and support as the Court may think reasonable :

Provided that—

(a) If the husband, after any such order has been made, becomes from any cause unable to make the payments, the Court may discharge or modify the order, or temporarily suspend  
10 the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part as the Court thinks fit ; and

(b) Where the Court has made any such order as is mentioned in this subsection and the Court is satisfied that the means of the husband have increased, the Court may, if it thinks  
15 fit, increase the amount payable under the order.

(3) On any petition for divorce or nullity of marriage the Court shall have the same power to make interim orders for the payment of money by way of alimony or otherwise to the wife as the Court has in  
20 proceedings for judicial separation.

(4) Where any decree for restitution of conjugal rights or judicial separation is made on the application of the wife, the Court may make such order for alimony as the Court thinks just.

(5) In all cases where the Court makes an order for alimony the  
25 Court may direct the alimony to be paid either to the wife or to a trustee approved by the Court on her behalf, and may impose such terms or restrictions as the Court thinks expedient, and may from time to time appoint a new trustee if for any reason it appears to the Court expedient so to do.

30 34. (1) Where it is proved to the satisfaction of the Court that any deed, conveyance, agreement, or instrument has been executed or made by or on behalf of, or by direction of, or in the interest of a respondent husband or wife, or a co-respondent, in order to defeat the claim or rights of the petitioner in respect of damages, alimony,  
35 costs, or maintenance of children, such deed, conveyance, agreement, or instrument may, on the application of the petitioner, and on such notices being given as the Court may direct, be set aside, on such terms as the Court thinks proper.

(2) If the Court on the hearing of the application so orders and  
40 declares, any money or property, real or personal, dealt with by such deed, conveyance, agreement, or instrument as aforesaid may be taken in execution at the suit of the petitioner, or may be charged with the payment of such sum for the maintenance of the petitioner, or of the petitioner and children, as the Court directs.

45 (3) The Court may make such order for the protection of a *bona fide* purchaser as it thinks just.

(4) The respondent or co-respondent, as the case may be, and any one acting in collusion with the respondent or co-respondent, may be ordered to pay the costs of the petitioner and of a *bona fide*  
50 purchaser of and incidental to the execution of such deed, conveyance, agreement, or instrument, and of setting the same aside.

Fraudulent deed  
may be set aside.  
1908, No. 50, s. 43

Sale to defeat  
petitioner may be  
restrained.  
1908, No. 50, s. 44

35. (1) Where it appears to the Court that there is reasonable ground for believing that a sale of real estate is about to be made by a respondent or co-respondent with intent to defeat a petitioner's claim, or any decree or order in respect of damages, alimony, maintenance of children, or costs, the Court may by order restrain such sale, or order the proceeds of the sale to be paid into Court, to be dealt with as the Court directs. 5

(2) Any sale made after an order of the Court restraining such sale as aforesaid has been served on or come to the notice of the person selling, or any auctioneer, agent, or solicitor acting in such sale, shall be null and void; and the Court may consider any claim of any person interested, and may make such order in the premises as it thinks just. 10

Court may order  
settlement of wife's  
property.  
Cf. 15 & 16 Geo. V,  
c. 49, s. 191

36. (1) If it appears to the Court in any case in which the Court pronounces a decree for divorce or for judicial separation by reason of the adultery of the wife that the wife is entitled to any property either in possession or reversion, the Court may, if it thinks fit, order such settlement as it thinks reasonable to be made of the property, or any part thereof, for the benefit of the innocent party, and of the children of the marriage, or any or either of them. Any instrument made under any order of the Court made under this section shall be valid and effectual notwithstanding the existence of coverture at the time of the execution thereof. 15 20

(2) Where the application for restitution of conjugal rights is by the husband, and it appears to the Court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the Court may, if it thinks fit, order a settlement to be made to the satisfaction of the Court of the property, or any part thereof, for the benefit of the petitioner and of the children of the marriage, or either or any of them; or may order such part of the profits of trade or earnings as the Court thinks reasonable to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either or any of them. 25 30

Court may make  
orders as to settled  
property.  
Cf. *Ibid.*, s. 192

37. The Court may, after pronouncing a decree for divorce or for nullity of marriage, inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or any part of the property settled either for the benefit of the children of the marriage or of the parties to the marriage as the Court thinks fit, and the Court may exercise the powers conferred by this section notwithstanding that there are no children of the marriage. 35 40

Custody of children.  
*Ibid.*, s. 193

38. (1) In any proceedings for divorce, or nullity of marriage, or judicial separation, the Court may from time to time, either before or by or after the final decree, make such provision as appears just with respect to the custody, maintenance, and education of the children, the marriage of whose parents is the subject of the proceedings, or, if it thinks fit, direct proper proceedings to be taken for placing the children under the protection of the Court. 45 50

(2) On an application made in that behalf the Court may, at any time before final decree, in any proceedings for restitution of conjugal

rights, or, if the respondent fails to comply therewith, after final decree, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of the children of the petitioner and respondent as might have been made by interim orders if proceedings for judicial separation had been pending between the same parties.

39. (1) In every case of judicial separation—

(a) The wife shall, as from the date of the decree and so long as the separation continues, be considered as a *feme sole* with respect to any property which she may acquire or which may devolve upon her, and any such property may be disposed of by her in all respects as a *feme sole*, and if she dies intestate shall devolve as if her husband had been then dead; and

Wife's property in case of judicial separation.  
15 & 16 Geo. V, c. 49, s. 194

(b) The wife shall, during the separation, be considered as a *feme sole* for the purpose of contract and wrongs and injuries, and of suing and being sued, and the husband shall not be liable in respect of her contracts or for any wrongful act or omission by her, or for any costs she incurs as plaintiff or defendant:

Provided that—

(i) Where on any judicial separation alimony has been ordered to be paid and has not been duly paid by the husband, he shall be liable for necessaries supplied for the use of the wife:

(ii) If the wife returns to cohabitation with her husband, any property to which she is entitled at the date of her return shall, subject to any agreement in writing made between herself and her husband while separate, be her separate property:

(iii) Nothing in this section shall prevent the wife from joining at any time during the separation in the exercise of any joint power given to herself and her husband.

(2) In any case where the decree for judicial separation is obtained by the wife, any property to which she is entitled for an estate in remainder or reversion at the date of the decree, and any property to which she becomes entitled as executrix, administratrix, or trustee after the date of the decree, shall be deemed to be property to which this section applies, and for the purpose aforesaid the death of the testator or intestate shall be deemed to be the date when the wife became entitled as executrix or administratrix.

40. (1) Where a wife obtains a decree for judicial separation, the decree shall, so far as may be necessary for the protection of any person dealing with the wife, be valid and effectual until discharged, and the discharge or variation of the decree shall not affect any rights or remedies which any person would have had, if the decree had not been discharged or varied, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done during the period between the date of the decree and the discharge or variation thereof.

Protection of third parties.  
*Ibid.*, s. 195

(2) Any person who, in reliance on any such decree as aforesaid, makes any payment to, or permits any transfer or act to be made or

done by, the wife, shall, notwithstanding the subsequent discharge or variation of the decree, or the fact that the separation has ceased or has been discontinued, be protected and indemnified in the same way in all respects as if at the time of the payment, transfer, or other act the decree were valid and still subsisting without variation in full force and effect, or the separation had not ceased or been discontinued, as the case may be, unless at that time that person had notice of the discharge or variation of the decree, or that the separation had ceased or been discontinued. 5

Court may vary order for payment of money.

15 & 16 Geo. V,  
c. 49, s. 196

41. The Court may from time to time vary or modify any order for the periodical payment of money made under the provisions of this Act relating to matrimonial causes and matters either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part, as the Court thinks just. 15

## PART V.

### PROCEDURE IN MATRIMONIAL CAUSES.

Power to allow intervention on terms.

Ibid., s. 197

42. In every case in which any person is charged with adultery with any party to a suit, or in which the Court may consider in the interest of any person not already a party to the suit that that person should be made a party to the suit, the Court, if it thinks fit, may allow that person to intervene upon such terms (if any) as the Court thinks just. 20

Questions of fact may be determined by jury.

1908, No. 50, s. 52

43. In questions of fact arising in proceedings under this Act it shall be lawful for but, except as hereinbefore provided, not obligatory on the Court to direct the truth thereof to be determined by the verdict of a jury. 25

Such questions to be tried as an issue.

Ibid., s. 53

44. Where any such question is so ordered to be tried, such question shall be decided in the manner provided by any law now or hereafter in force empowering the Court or a Judge thereof to direct an issue. 30

Affidavit verifying petition.

Cf. Ibid., s. 54

45. Every person seeking a divorce, or a decree of nullity of marriage, or a decree for judicial separation, or a decree in a suit of jactitation of marriage shall file, together with the petition or other application for relief, an affidavit verifying the same so far as the deponent is able to do so, and stating that there is not any collusion between the deponent and the other party to the marriage, and also, in every case where adultery is alleged, that there is not any connivance between the deponent and the other party to the marriage. 35 40

Serving petition.

Ibid., s. 55

46. Every such petition shall be served on the party to be affected thereby, either within or without New Zealand, in such manner as the Court by any general or special order from time to time directs, and for that purpose the Court shall have and may exercise all the powers it now possesses by law : 45

Provided that the Court may dispense with such service altogether where it seems necessary or expedient so to do.

47. The parties to any proceedings instituted in consequence of adultery, and the husbands and wives of the parties, shall be competent to give evidence in the proceedings; but no witness in any such proceedings, whether a party thereto or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery, unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery.
48. The witnesses in all proceedings before the Court, where their attendance can be had, shall be sworn and examined orally in open Court, and such attendance and the production of documents by them shall be compelled in the same manner as in an action at law; but the parties, with the leave of the Court, may verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit, on the application of the opposite party or by the direction of the Court, shall be subject to be cross-examined by or on behalf of the opposite party orally in open Court, and after such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed.
49. It shall be lawful for the Court or a Judge to order the examination of witnesses, and also to order a commission to issue for the examination of witnesses, in the same way to all intents as if the matter before it were an action pending in the ordinary jurisdiction.
50. The Court may from time to time adjourn the hearing of any petition, and may require further evidence thereon if it sees fit so to do.
51. Subject to the foregoing provisions of this Act relating to costs, the Court on the hearing of any suit, proceeding, or petition under this Act may make such order as to costs as to the Court seems just.
52. All decrees and orders made by the Court in any suit, proceeding, or petition instituted under this Act shall be enforced and put in execution in the same or in the like manner as other judgments, orders, and decrees of the Court may be enforced and put in execution.
53. The Governor-General in Council may fix from time to time the fees payable on all proceedings under this Act, but nevertheless rules may be made under section *four* hereof enabling persons to sue under this Act *in forma pauperis*.
54. All rules concerning the practice, pleading, or procedure, and all orders fixing the fees payable under this Act, shall, within one month after the making thereof, be laid before Parliament if then sitting, or if not, then within one month after the commencement of the next ensuing session.
55. The Court, on the application of either the petitioner or the respondent, or at its discretion, if it thinks it proper in the interests of public morals, may hear and try any such suit or proceeding in Chambers; and may at all times in any suit or proceeding, whether heard and tried in Chambers or in open Court, make an order forbidding the publication of any report or account of the evidence or other proceedings therein, either as to the whole or any portion thereof; and the breach of any such order, or any colourable or attempted evasion thereof, may be dealt with as contempt of Court.

Evidence of parties.  
15 & 16 Geo. V,  
c. 49, s. 198

Mode of taking  
evidence.  
1908, No. 50, s. 58  
1913, No. 69, s. 4

Commissions or  
orders for the  
examination of  
witnesses.  
1908, No. 50, s. 59

Adjournment.  
Ibid., s. 57

Costs.  
Ibid., s. 60

Enforcement of  
orders and decrees.  
Ibid., s. 61

Fees to be regulated.  
Ibid., s. 62

Orders fixing fees  
and all rules to be  
laid before  
Parliament.  
Ibid., s. 63

Proceedings may be  
heard *in camera*.  
Ibid., s. 65

Judge may sit in  
Chambers to hear  
cases.

1908, No. 50, s. 66

56. (1) Any Judge of the Court in any cause may sit in Chambers for the despatch of such part of the business of the Court as in his opinion can with advantage to the parties be heard in Chambers; and the time at which such sitting shall be held shall from time to time be fixed by such Judge :

5

Provided that no question shall be heard in Chambers which either party requires to be heard in open Court.

Power of Judge in  
Chambers.

(2) The Judge when so sitting in Chambers shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open Court.

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Court may order  
new trial.

Ibid., s. 67

57. Where any trial has been heard by a jury before the Court, or upon any issue directed by the Court, the Court may order a new trial.

Appeal to Court  
of Appeal.

Cf. Ibid., s. 72

58. Any party dissatisfied with the decision of the Court, or of any Judge thereof, in any matter may appeal therefrom to the Court of Appeal within three months after the pronouncing of such decision, and the decision of the Court of Appeal on such matter shall be final :

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Provided always that no appeal shall lie to the Court of Appeal from any decree making absolute a decree *nisi* for divorce.

## SCHEDULES.

Schedules.

## FIRST SCHEDULE.

## ENACTMENTS REPEALED.

- 1908, No. 50.—The Divorce and Matrimonial Causes Act, 1908.  
 1912, No. 22.—The Divorce and Matrimonial Causes Amendment Act, 1912.  
 1913, No. 69.—The Divorce and Matrimonial Causes Amendment Act, 1913.  
 1919, No. 53.—The Divorce and Matrimonial Causes Amendment Act, 1919.  
 1920, No. 70.—The Divorce and Matrimonial Causes Amendment Act, 1920.  
 1921–22, No. 65.—The Divorce and Matrimonial Causes Amendment Act, 1921–22.

## SECOND SCHEDULE.

## SCALE OF COSTS.

	Lower Scale.	Higher Scale.
Suits in which neither the respondent nor the co-respondent has appeared at the trial or hearing	£ 15	£ 25
Suits in which the respondent or co-respondent has appeared at the trial or hearing—		
Petitioner .. .. .	30	45
Respondent .. .. .	25	40
Co-respondent .. .. .	20	30

The Court shall determine under which scale the costs of any suit are to be allowed. The costs of any exceptional proceeding—as, for example, of a Commission to take evidence—shall be fixed by the Court by analogy to the scale of costs for the time being in force under the Code of Civil Procedure in the Supreme Court. When a trial or hearing has extended beyond one day the Court may certify for an extra allowance not exceeding £15 15s. for every day after the first day. In addition to the above, all disbursements for fees of Court, fees of officers, expenses of service, witnesses' expenses actually paid, and all other necessary payments shall be allowed.