

DIVORCE.

ANALYSIS.

| | |
|---|--|
| Title. | |
| Preamble. | |
| 1. Short Title. | |
| 2. Commencement. | |
| 3. Divorce, in what cases. | |
| 4. Divorce may be substituted for judicial separation. | |
| 5. Law Officers may oppose petition. | |
| 6. Decree <i>nisi</i> . | |
| 7. Making decree absolute. | |
| 8. Power to order monthly or weekly payments to wife from husband on dissolution of marriage. | |
| 9. "The Divorce and Matrimonial Causes Act, 1867": section 29 amended. | |
| 10. Power to grant relief to respondent. | |
| 11. Power to order husband to pay money to wife to have her case investigated. | |
| 12. "The Divorce and Matrimonial Causes Act, 1867": section 27 amended. Power to | order security for alimony in case of judicial separation. |
| | 13. Fraudulent deeds may be set aside. |
| | 14. Sale to defeat petitioner may be restrained. |
| | 15. Periodical payments in lieu of attachment. |
| | 16. Settlement of wife's property. |
| | 17. Non-compliance with decree deemed desertion. |
| | 18. Custody of children. |
| | 19. Extension of powers of Court under section 37 of "The Divorce and Matrimonial Causes Act, 1867." |
| | 20. Limitation of time for recovery of damages. |
| | 21. Custody of children. |
| | 22. Parties competent as witnesses. |
| | 23. Suits may be heard in Chambers. Proceedings not to be published. |
| | 24. Judges may fix scale of costs. |
| | 25. Stipendiary Magistrate may order that wife be not bound to cohabit, &c. |
| | 26. Repeal. |

A BILL INTITLED

AN ACT to amend the Law of Divorce.

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

5 1. The Short Title of this Act is "The Divorce Act, 1894," and it shall be read and construed as a part of "The Divorce and Matrimonial Causes Act, 1867."

10 2. This Act shall come into operation on a day to be fixed by the Governor, by Proclamation in the *Gazette*; such day to be not less than one month from the day upon which notice of Her Majesty's approval of the same shall be published in the said *Gazette*.

15 3. Any married person, who at the time of the institution of the suit or other proceeding is domiciled in New Zealand, or shall have been resident in New Zealand for two years continuously immediately before the institution of such suit or proceeding, may present a petition to the Court praying on one or more of the grounds in this section mentioned that his or her marriage with the respondent may be dissolved:—

20 (1.) On the ground that the respondent has, since the celebration of the marriage, and the coming into operation of this Act, been guilty of adultery;

- (2.) On the ground that the respondent has without just cause wilfully deserted the petitioner, and without any such cause left him or her continuously so deserted during three years or upwards;
- (3.) On the ground that the respondent has during three years or upwards been a habitual drunkard, and either habitually left his wife without the means of support or habitually been guilty of cruelty towards her, or, being the petitioner's wife has for a like period been a habitual drunkard and habitually neglected her domestic duties or rendered herself unfit to discharge them;
- (4.) On the ground that at the time of the presentation of the petition the respondent has been imprisoned for a period of not less than three years, and is still in prison under a commuted sentence for a capital crime, or under sentence to penal servitude for seven years or upwards, or, being a husband, has within five years undergone frequent convictions for crime and been sentenced in the aggregate to imprisonment for three years or upwards, and habitually left his wife without the means of support;
- (5.) On the ground that within one year previously to the presentation of the petition the respondent has been convicted of having attempted to murder the petitioner, or of having assaulted him or her with intent to inflict grievous bodily harm, or on the ground that the respondent has repeatedly during that period assaulted and cruelly beaten the petitioner.

If in the opinion of the Court the petitioner's own habits or conduct induced or contributed to the wrong complained of, such petition may be dismissed; but in all other cases under this section, if the Court is satisfied that the case of the petitioner is established, the Court shall pronounce a decree dissolving the marriage.

A deserted wife who 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 her husband may have since the desertion acquired any foreign domicile.

4. It shall be lawful for the Court, on the petition of either of the parties to a decree of judicial separation pronounced by the Court, when such decree is in full force and has so continued for not less than three years, to pronounce a decree of dissolution of marriage between the parties in substitution for the decree of judicial separation; and in making such decree, and in all proceedings incidental thereto, the Court shall have the same powers as it has in making a decree of dissolution in the first instance.

5. It shall be lawful for the Attorney-General, or the Solicitor-General, if he think fit, to oppose the petitioner obtaining a decree of dissolution of marriage, or to show cause why such decree should not issue.

6. Every decree for dissolution of marriage 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 shall by general or special order from time to time direct,

Divorce may be substituted for judicial separation.

Law Officers may oppose petition.

Decree *nisi*.

and during that period any person shall be at liberty, in such manner as the Court shall by general or by special order in that behalf from time to time direct, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or
 5 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 may require; and at any time during the progress of the cause, or before the decree is
 10 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 may deem necessary or expedient; and if from any such information or otherwise the Attorney-General,
 15 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 it shall be lawful for the Court to order the costs arising
 20 from such intervention to be paid by the parties or such of them as it shall see fit, including a wife, if she have separate property.

7. On every decree *nisi* in any suit or other proceeding for dissolution of marriage after the coming into operation of this Act the Registrar shall indorse a notice that, if the petitioner or respondent
 25 shall contract marriage before such decree shall be made absolute, he or she will be guilty of bigamy; but it shall not be necessary for the petitioner to move to make absolute any decree *nisi* hereafter pronounced. After the expiration of the time limited in that behalf, the Registrar, on the request in writing of the petitioner, and if no
 30 matter in opposition to the final decree is then pending, may issue the decree absolute as of course. If, for the period of one month after the expiration of the time so limited as aforesaid, the petitioner neglect or fail to so apply, then the Registrar, on the request in writing of the respondent, and after the respondent shall have given
 35 to the petitioner three days' notice, or such substituted notice as the Court may allow, and if no matter in opposition to the final decree is then pending, may issue the decree absolute as of course, and the Court shall have the same powers as it would have if the application were made by the petitioner.

40 8. Whenever a decree for dissolution of marriage is obtained against a husband who has no property on which, in the opinion of the Court, the payment of any gross or annual sum can be secured to the wife, it shall be lawful for the Court to make an order on the husband for payment to the wife during their joint lives of such monthly
 45 or weekly sums for her maintenance and support as the Court may think reasonable: Provided always that if the husband shall afterwards, from any cause, become less able to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same, as to the whole or any part of the
 50 money so ordered to be paid, and again to revive the same order, wholly or in part, as to the Court may seem fit: Provided also that if the wife shall marry again, or if there be any other just cause for so

Making decree absolute.

Power to order monthly or weekly payments to wife from husband on dissolution of marriage.

doing, the Court may, on proof thereof, discharge the order, or, if there be infant children in her custody, may vary the same.

"The Divorce and Matrimonial Causes Act, 1867": section 29 amended.

9. Section twenty-nine of "The Divorce and Matrimonial Causes Act, 1867," is hereby amended by adding thereto the following words: "In cases where under this Act there shall be no right of appeal, the parties respectively shall be at liberty to marry again at any time after the pronouncing or issue of the decree absolute." 5

Power to grant relief to respondent.

10. In any suit or other proceeding instituted for dissolution of marriage or judicial separation, if the respondent shall oppose the relief sought on the ground of any cause entitling either husband or wife to any relief under "The Divorce and Matrimonial Causes Act, 1867," the Court may in such a suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had filed a petition seeking such relief. 10

Power to order husband to pay money to wife to have her case investigated.

11. When a wife in any such suit or proceeding has as petitioner duly filed her petition, or as respondent has duly entered an appearance, the Court, if it considers she has not sufficient separate estate, may order the husband to pay into Court a sum of money sufficient to enable her to have the merits of her case investigated by a solicitor, and such sum or part thereof may, on the certificate of the Registrar be paid to the wife or her solicitor on such Registrar being satisfied that sum has been properly incurred or spent in ascertaining whether the wife has a good cause of suit or defence on the merits thereof; and if after investigating the case the wife's solicitor is of opinion that she has a good cause of suit or defence on the merits, he may file a certificate to that effect in the office of the Registrar, and thereupon the husband shall pay into Court a sum not exceeding *twenty* pounds, to be fixed by the Registrar; and no order shall be made for the taxation and payment of costs *de die in diem*, or for the payment before hearing or trial of any costs incidental to the hearing of the cause, or for the giving of security for such costs by the husband. The costs of the wife of or incidental to any such suit or proceeding in which she is either petitioner or respondent shall be in the discretion of the Court, and when the decision of the Court or the verdict of the jury is against the wife, the Court may, notwithstanding, if it thinks the suit was a reasonable one to maintain or defend, order that she shall receive the costs of or incidental to the suit, or at or after such decision or verdict, for an amount to be paid to her for such costs in accordance with the husband's ability to pay such costs. 15 20 25 30 35

"The Divorce and Matrimonial Causes Act, 1867": section 27 amended.

Power to order security for alimony in case of judicial separation.

Fraudulent deeds may be set aside.

12. Section twenty-seven of "The Divorce and Matrimonial Causes Act, 1867," is hereby amended by striking out the word "such" and adding next after the word "decree" in the first line thereof the words "for dissolution of marriage or judicial separation hereafter to be made." 40

13. 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, 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 or Judge may direct, be set aside on 45 50

such terms as the Court may think proper. And if the Court, on the hearing of the application, so order and declare, 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 charged with the payment of such sums for the maintenance of the petitioner, or of the petitioner and children, as the Court may direct. And the Court may make such order for the protection of a *bona fide* purchaser as it may think just. And 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* purchaser of and incidental to the execution of such deed, conveyance, agreement, or instrument, and of setting the same aside.

14. Where it shall appear 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 shall direct. 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 may think just.

15. From and after the passing of this Act a decree for restitution of conjugal rights shall not be enforced by attachment, but, where the application is by the wife, the Court may, at the time of making such decree, or at any time afterwards, order that, in the event of such 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; and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation. The Court may, if it shall think fit, 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.

16. Where the application for restitution of conjugal rights is by the husband, if it shall be made to appear 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 shall think fit, order a settlement to be made, to the satisfaction of the Court, of such property, or any part thereof, for the benefit of the petitioner and of the children of the marriage, or any of them, or may order such part as the Court may think reasonable of such profits of trade or earnings 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 any of them.

17. If the respondent shall fail to comply with a decree of the Court for restitution of conjugal rights, such respondent shall thereupon be deemed to have been guilty of desertion without reasonable

Sale to defeat petitioner may be restrained.

Order to restrain sale of real estate to be paid into Court.

Periodical payments in lieu of attachment.

Order to secure to wife periodical payments.

Registrar to settle and approve of deed or instrument.

Settlement of wife's property.

Order for settlement of property for benefit of petitioner and children.

Non-compliance with decree deemed desertion.

Deemed desertion without reasonable cause.

cause, and a suit for dissolution of marriage or for judicial separation may be forthwith instituted, and a decree *nisi* for the dissolution of the marriage, or a decree of judicial separation, may be pronounced on the ground of desertion, although the period of three years may not have elapsed since the failure to comply with the decree for restitution of conjugal rights. Such decree *nisi* shall not be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the Court shall fix a shorter time. 5

Custody of children. 18. The Court may at any time before final decree, on any application for restitution of conjugal rights, or after final decree if the respondent shall fail to comply forthwith, upon application for that purpose, 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 during the pending of a trial for judicial separation between the same parties. 10 15

Extension of powers of Court under section 37 of "The Divorce and Matrimonial Causes Act, 1867." 19. The Court may exercise the powers vested in it by section thirty-seven of "The Divorce and Matrimonial Causes Act, 1867," in favour of either party to the marriage, notwithstanding that there are no children. 20

Limitation of time for recovery of damages. 20. In any petition by a husband for dissolution of marriage or judicial separation on the ground of the adultery of his wife, no damages shall be claimed in respect of an act of adultery committed more than three years before the filing of the petition: Provided that nothing herein contained shall affect the right of any petitioner to a decree for dissolution of marriage or judicial separation on the ground of adultery committed more than three years before the filing of the petition. 25

Custody of children. 21. In all undefended cases, where application is made to the Court to make the decree absolute, the Court may give the wife the custody of the children; and may also do so in defended cases, on proof that the respondent has had notice of the intention of the petitioner, on the hearing of motion to make the decree absolute, to apply for the custody of the children. 30

Parties competent as witnesses. 22. The parties to any suit or proceeding, and the husbands and wives of the parties, shall be competent to give evidence in such suit or proceeding: Provided that no witness in any suit or proceeding, whether a party to the same or not, shall be liable to be asked, or bound to answer, any question tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence in the same suit or proceeding in disproof of his or her adultery. 35 40

Suits may be heard in Chambers. Proceedings not to be published. 23. The Court may, 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, hear and try any such suit or proceeding in Chambers, and may at all times in any such 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. 45 50

Judges may fix scale of costs. 24. The Judges of the Supreme Court, or any three of them, shall have power to fix a scale of costs for all suits and proceedings, and to

make rules and regulations regarding such costs, and to alter and amend the same from time to time, or to substitute any new and different scale, rules, or regulations.

25. It shall be lawful for any Stipendiary Magistrate appointed under "The Magistrates Act, 1893," and exercising extended jurisdiction, to make an order that she shall not be bound to cohabit with her husband on any of the grounds mentioned in subsections *two*, *three*, *four*, and *five* of section *three* of this Act, and such order shall have the same force and effect in all respects as a decree of judicial separation; and by any such order, or any separate order, such Magistrate may order,—

Stipendiary Magistrate may order that wife be not bound to cohabit, &c.

(1.) That the husband shall pay to his wife such weekly sum as such Magistrate may consider to be in accordance with his means, and with any means which the wife may have for her support, and the payment of any sum of money so ordered shall be enforceable, and enforced, against the husband in the same manner as the payment of money is enforced under an order for maintenance of a wife under "The Destitute Persons Act, 1877"; and such Magistrate by whom any such order for payment of money shall be made, or his successor, shall have power from time to time to vary the same on the application of either the husband or the wife, upon proof that the means of the husband or wife have altered in amount since the original order or any subsequent order varying it was made;

(2.) That the legal custody of any children of the marriage under the age of fourteen years shall be given to the wife;

(3.) That the husband shall pay the wife's costs of the proceedings:

Provided always that no order for payment of money by the husband, or for the custody of children, shall be made in favour of a wife who shall be proved to have committed adultery, unless such adultery has been condoned; and that an order for payment of money, or for the custody of children, may be discharged by the Magistrate by whom such order was made, or his successor, upon proof that the wife has since the making thereof been guilty of adultery.

26. Sections seventeen, twenty-one, twenty-six, and thirty of "The Divorce and Matrimonial Causes Act, 1867," are hereby repealed.