

## DIVORCE.

### ANALYSIS.

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### A BILL INTITULED

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, 1895," and it shall be read and construed as a part of "The Divorce and Matrimonial Causes Act, 1867." Short Title.
- 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*. Commencement.
- 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:— Divorce, in what cases.

(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. 5

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. 10

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. 15

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 after the passing of this Act, 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. 20

5. No covenant or agreement between the parties to a suit of dissolution of marriage shall operate as a bar to a petition presented by either of them. 25

6. It shall be the duty of the Registrar, on the filing of any petition for dissolution of marriage, to send a copy thereof to the Registrar to send copy of petition to Solicitor-General. 30

7. 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. 35

8. 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, 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 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 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 40 45 50

Divorce may be substituted for judicial separation.

Covenant not to be a bar.

Registrar to send copy of petition to Solicitor-General.

Law Officers may oppose petition.

Decree *nisi*.

such steps as he may deem necessary or expedient; and 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 it shall be lawful for the Court to order the costs arising 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.

9. 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 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 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 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.

Making decree absolute.

10. 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 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 money so ordered to be paid, and again to revive the same order, wholly or in part, as the Court may seem fit: Provided also that if the wife shall marry again, or if there be any other just cause for so doing, the Court may, on proof thereof, discharge the order, or, if there be infant children in her custody, may vary the same.

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

11. 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."

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

12. 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

Power to grant relief to respondent.

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.

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

13. 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 or of 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.

"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.

14. 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 of the words "for dissolution of marriage or judicial separation hereafter to be made."

15. 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 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* pur-

chaser of and incidental to the execution of such deed, conveyance, agreement, or instrument, and of setting the same aside.

16. 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.

Sale to defeat petitioner may be restrained.

17. 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.

Periodical payments in lieu of attachment.

18. 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, and whether subject to restraint on anticipation or not, 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.

Settlement of wife's property.

19. 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 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.

Non-compliance with decree deemed desertion.

20. The Court may at any time before final decree, on any application for restitution of conjugal rights, or after final decree if

Custody of children.

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. 5

Extension of powers of Court under section 37 of "The Divorce and Matrimonial Causes Act, 1867."

21. 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. 10

Limitation of time for recovery of damages.

22. 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. 15

Custody of children in undefended cases, &c.

23. 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. 20

Suits may be heard in Chambers.

24. 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 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. 25

Proceedings not to be published.

25. 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 scales, rules, or regulations. Until a scale of costs shall have 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 Schedule hereto; but the Court may at any time fix a sum or sums as the costs of the suit or proceeding, as the case may be, in full of all costs. 30 40

Judges may fix scale of costs.

**SCHEDULE.**  
SCALE OF COSTS.

Schedule.

—	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 to 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.