

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

*House of Representatives, 3 October 1963*

Words struck out by the Statutes Revision Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line of struck out matter; words inserted are shown in roman underlined with a double rule, or with a double rule before first line and after last line of new matter.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

*House of Representatives, 15 October 1963*

Words inserted by the Committee of the Whole are shown in roman underlined with a triple rule.

*Hon. Mr Hanan*

## MATRIMONIAL PROCEEDINGS

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## A BILL INTITULED

**An Act to consolidate and amend certain enactments of the  
General Assembly relating to matrimonial proceedings**

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

**1. Short Title and commencement**—(1) This Act may be cited as the Matrimonial Proceedings Act 1963.

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

5 **2. Interpretation**—In this Act, unless the context otherwise requires,—

10 “Child of the marriage” means any child of the husband and wife; and includes any other child (whether or not a child of the husband or of the wife) who was a member of the family of the husband and wife at the time when they ceased to live together or at the time immediately preceding the institution of proceedings, whichever first occurred; and, for the purposes of this definition, the parties to a purported marriage that is void shall be deemed to be husband and wife:

15 “Court” means the Supreme Court:

20 “Patient” means a person receiving care and treatment as a resident (otherwise than as a voluntary patient) in an institution within the meaning of the Mental Health Act 1911 or in a like institution in any country outside New Zealand; and includes a person detained in an institution under Part IV of that Act or under the corresponding provisions of the law of any country outside New Zealand:

25 “Property” includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest:

30 “Registrar” means a Registrar of the Court; and includes a Deputy Registrar.

Cf. 1928, No. 16, s. 2; Matrimonial Causes Act 1959, s. 6 (Aus.)

**3. Domicile of married woman**—(1) For the purposes of this Act, the domicile of a married woman, wherever she was married, shall be determined as if she were unmarried and (if she is a minor) as if she were adult.

*New*

40 (2) For the purposes of this Act, the domicile of any person shall be determined in accordance with the law of New Zealand.

## PART I

## RECONCILIATION

**4. Court to seek reconciliation**—(1) Where any proceedings for separation or restitution of conjugal rights or dissolution of a voidable marriage or divorce have been instituted,— 5

- (a) It shall be the duty of the Court to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage; and
- (b) If at any time it appears to the Court, either from the nature of the case, the evidence in the proceedings, or the attitude of those parties, or of either of them, that there is a reasonable possibility of such a reconciliation, the Court may adjourn the proceedings to afford those parties an opportunity to become reconciled, *(or)* and may nominate a suitable person with experience or training in marriage counselling, or in special circumstances some other suitable person, to endeavour *(with the consent of those parties)* to effect a reconciliation. 10 15 20

(2) If, not less than twenty-eight days after an adjournment under subsection (1) of this section has taken place, either of the parties to the marriage requests that the hearing be proceeded with, the hearing shall be resumed.

Cf. Matrimonial Causes Act 1959, s. 14 (Aus.) 25

**5. Statements privileged**—(1) No evidence of any information received by, or of anything said or of any admission made to a person nominated pursuant to subsection (1) of section 4 of this Act in the course of an endeavour to effect a reconciliation under that section shall be admissible in any Court or before any person acting judicially. 30

(2) Every person nominated pursuant to subsection (1) of section 4 of this Act who, except in so far as it is necessary for him to do so for the proper discharge of his functions under section 4 of this Act, discloses to any person any information received by him or any statement or admission made to him in the course of an endeavour to effect a reconciliation under that section commits an offence, and is liable on summary conviction to a fine not exceeding fifty pounds. 35

Cf. Matrimonial Causes Act 1959, s. 16 (Aus.) 40

PART II

NULLITY

5 **6. Jurisdiction in nullity cases**—A petition for a decree of nullity of a void marriage, whether the marriage is governed by New Zealand law or not, may be presented to the Court in the following cases, and in no other case:

- (a) Where the petitioner or the respondent is domiciled or resident in New Zealand at the time of the filing of the petition; or
- 10 (b) Where the marriage was solemnised in New Zealand. Cf. 1928, No. 16, s. 10B (1); 1953, No. 43, s. 3

15 **7. Grounds on which marriages void**—(1) A marriage governed by New Zealand law shall be void *ab initio*, whether or not a decree of nullity has been granted, where any of the following grounds exist, and in no other case:

- (a) In the case of a marriage that is governed by New Zealand law so far as it relates to capacity to marry—
  - 20 (i) That at the time of the ceremony of marriage either party to the marriage was already married;
  - (ii) 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;
  - 25 (iii) That the parties to the marriage are within the prohibited degrees of relationship set out in the Second Schedule to the Marriage Act 1955, and no order is in force under subsection (2) of section 15 of that Act dispensing with the prohibition:
- 30 (b) In the case of a marriage that is governed by New Zealand law so far as it relates to the formalities of marriage, that the parties knowingly and wilfully married without a marriage licence, or in the absence of an officiating minister or Registrar of Marriages, in contravention of the provisions of the Marriage Act 1955.
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(2) Nothing in subsection (1) of this section shall affect the law as to the validity in New Zealand of any marriage not governed by the law of New Zealand or the power of the  
40 Court to grant a decree of nullity of any such marriage.

(3) Every decree of nullity granted in respect of a void marriage shall be a final decree, and no decree nisi shall be issued.

Cf. 1928, No. 16, s. 10B (2), (5); 1953, No. 43, s. 3

**8. Children of putative marriages legitimate**—(1) Where a marriage is void, any child who would have been the legitimate child of the parties to the marriage if it had been valid shall, for all the purposes of the law of New Zealand, be legitimate from birth, unless at the time of the conception of the child or at the time of the marriage (whichever last happened) both parties knew that the marriage was void.

(2) The provisions of this section shall apply whether the form of marriage was gone through before or after the commencement of this Act, and whether or not the child was living at the commencement of this Act, and whether or not either of the parties was domiciled in New Zealand when the form of marriage was gone through or at any other time.

(3) Nothing in this section shall affect any estate, right, or interest in any real or personal property to which any person has become absolutely entitled before the commencement of this Act.

(4) The Court may, on making a decree of nullity in respect of a void marriage, make a declaration as to the legitimacy of any child of the parties.

Cf. Legitimacy Act 1959, s. 2 (U.K.); Marriage Act 1961, s. 91 (Aus.)

### PART III

#### SEPARATION, RESTITUTION OF CONJUGAL RIGHTS, AND OTHER PROCEEDINGS

**9. Jurisdiction in restitution cases**—A petition for separation on any of the grounds specified in section 9A of this Act or a petition for restitution of conjugal rights may be presented to the Court where the petitioner or the respondent is domiciled or resident in New Zealand at the time the petition is presented, and in no other case.

Cf. 1928, No. 16, s. 3

*New*

*Decree of Separation*

5 **9A. Grounds of decree of separation**—A decree of separation may be granted upon a petition to the Court by the husband or the wife on the ground of adultery, cruelty, desertion without cause for not less than two years, or failure to comply with a decree for restitution of conjugal rights, and on no other ground.

Cf. 1928, No. 16, s. 5

10 **9B. Grant and effect of separation decree**—(1) The Court, on being satisfied that the allegations contained in the petition are true, may, in its discretion, make a decree of separation.

15 (2) So long as a decree of separation remains in force the petitioner shall be relieved from the obligation to cohabit with the respondent, but, except as provided by this Act, the decree shall not otherwise affect the marriage or the status, rights, and obligations of the parties to the marriage.

(3) If the person against whom a decree of separation is in force—

20 (a) Enters or remains upon or in any land or building which is in the occupation of the person in whose favour the decree was made or in which that person dwells or is present, in circumstances which constitute a trespass; or

25 (b) Attempts or threatens to do any such act; or

30 (c) Molests the person in whose favour the decree was made by watching or besetting his dwellinghouse or place of business, employment, or residence, or by following or waylaying him in any public place within the meaning of section 2 of the Police Offences Act 1927,—

he commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both.

35 Cf. 1928, No. 16, s. 6

40 **9c. Effect of separation decree on property rights**—(1) As from the date of a decree of separation, and so long as the decree remains in force, any property which is acquired by or devolves upon the wife shall not be affected by any restraint upon anticipation attached to the enjoyment by the wife of any property under any settlement, agreement for settlement, will, or other instrument.

*New*

(2) If, while a decree of separation is in force, either the husband or the wife dies intestate as to any property, that property shall devolve as if the survivor has predeceased the intestate.

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(3) Notwithstanding anything in subsection (2) of this section, in any case to which that subsection applies the Court, on the application of the survivor made within the time specified in the Family Protection Act 1955 in relation to applications under that Act, may, at its discretion, order that such provision as the Court thinks fit shall be made for the survivor out of the estate of the deceased husband or wife. The provisions of that Act, as far as they are applicable and with the necessary modifications, shall apply with respect to every application under this subsection.

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(4) If on or after the making of any decree of separation maintenance has been ordered to be paid to the wife and has not been duly paid by the husband, he shall be liable for necessaries supplied for the use of the wife.

(5) In any case where the decree of 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.

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Cf. 1928, No. 16, s. 39

**9D. Separation not a bar to divorce on same grounds**—The presenting of a petition for or the making of a decree of separation shall not prevent the institution by either party of proceedings for dissolution of marriage, whether in respect of the facts on which the petition for separation was founded or in respect of other facts.

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Cf. Matrimonial Causes Act 1958, s. 57 (Aus.)

**9E. Decree of separation may be reversed**—A decree of separation which has been obtained in the absence of the respondent may at any time be reversed by the Court on the petition of the respondent, if the Court is satisfied that the decree ought not to have been made.

Cf. 1928, No. 16, s. 7



*New*

**9F. Discharge of a decree on resumption of cohabitation—**

(1) Subject to the provisions of section 19 of this Act, where  
 a decree of separation has been made, whether before or after  
 5 the commencement of this Act, and the husband and wife,  
 with the free consent of the wife, have resumed cohabitation  
 as man and wife, the decree shall on the resumption of such  
 cohabitation for all purposes cease or be deemed to have  
 ceased to have any force or effect.

10 (2) Without limiting in any way the generality of the pro-  
 visions of subsection (1) of this section, the wife or the  
 husband may apply to the Court for the discharge of the  
 decree of separation, and, on proof that the decree has ceased  
 to have effect as aforesaid, the Court shall discharge the  
 15 decree.

*Restitution of Conjugal Rights*

**10. Decree of restitution of conjugal rights—**(1) A petition  
 for restitution of conjugal rights alleging that the other party  
 has withdrawn from cohabitation and without just cause re-  
 20 fuses to resume cohabitation may be presented to the Court by  
 the husband or the wife.

(2) The Court, on being satisfied that the allegations in  
 the petition are true, may, in its discretion, make a decree  
 accordingly.

25 (3) Notwithstanding the provisions of section 9 of this Act,  
 the Court may, in its discretion, refuse to make a decree on  
 the ground that the respondent is not resident in New Zealand.

(4) A decree of restitution of conjugal rights shall not be  
 enforced by attachment.

30 Cf. 1928, No. 16, ss. 8, 9 (1)

*Declaration as to Validity of Marriage*

**11. Declaration as to validity of marriage—**(1) An applica-  
 tion for a declaration whether, according to the law of New  
 Zealand, a marriage is valid, or whether, according to the  
 35 law of New Zealand, a marriage has been validly dissolved,  
 may be made to the Court by any person, whether a  
 party to the marriage or not, and whether domiciled or  
 resident in New Zealand or not, and whether the marriage  
 was solemnised in New Zealand or not.

(2) The provisions of the Declaratory Judgments Act 1908 shall extend and apply to every such application.

(3) An application for a declaration under this section may be made, whether or not any other relief is claimed under this Act.

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## PART IV

### DISSOLUTION OF MARRIAGE

#### *Dissolution of Voidable Marriage*

**12. Dissolution of voidable marriage**—(1) A petition for dissolution of a voidable marriage on any one or more of the grounds specified in subsection (2) of this section may be presented to the Court by either party to the marriage where the petitioner or the respondent is domiciled in New Zealand, and in no other case.

(2) A petition for dissolution of a voidable marriage, whether the marriage is governed by New Zealand law or not, may be presented to the Court on the following grounds, and on no other ground:

- (a) That the marriage has not been consummated owing to the incapacity of the petitioner or the respondent or the wilful refusal of the respondent to consummate the marriage: 20
- (b) That either party to the marriage was, at the time of the marriage, a mentally defective person within the meaning of the Mental Health Act 1911, although capable at that time of consenting to the marriage: 25
- (c) That the respondent was, at the time of the marriage, suffering from venereal disease in a communicable form: 30
- (d) That the respondent was, at the time of the marriage, pregnant by some man other than the petitioner, or, that some woman other than the petitioner was, at the time of the marriage, pregnant by the respondent. 35

(3) The Court may refuse to grant a decree under this section, if in its opinion the grant of a decree would in the circumstances of the case be unjust or contrary to public policy.

(4) In any of the cases specified in paragraph (b) or paragraph (c) or paragraph (d) of subsection (2) of this section, the Court shall not grant a decree unless it is satisfied that— 40

(a) The petitioner was at the time of the marriage ignorant of the facts alleged; and

(b) Marital intercourse with the consent of the petitioner has not taken place since the discovery of the grounds for a decree.

5 (5) A decree of dissolution of a voidable marriage shall declare the marriage to be dissolved 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 solemnisation until  
10 the date of a decree dissolving it as aforesaid.

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

Cf. 1928, No. 16, s. 10B (1), (3)–(5); 1953, No. 43, s. 3

*Presumption of Death and Dissolution of Marriage*

**13. Decree of presumption of death and dissolution of marriage—**(1) Any married person domiciled in New Zealand  
20 may present a petition to the Court alleging that reasonable grounds exist for supposing that the other party to the marriage is dead and praying to have it presumed that the other party is dead and to have the marriage dissolved.

(2) The Court, on being satisfied that such reasonable  
25 grounds exist, may make a decree of presumption of death and of dissolution of the marriage.

(3) In any such proceedings, the fact that for a period of seven years or upwards the other party to the marriage has been continuously absent from the petitioner, and that nothing  
30 has happened within that time to give the petitioner reason to believe that the other party was then living, shall be evidence that he is dead in the absence of proof to the contrary.

(4) Unless the context otherwise requires, the provisions of this Act and of any other enactment, as far as they are  
35 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 of divorce respectively.

Cf. 1928, No. 16, s. 10A; 1953, No. 43, s. 2

*Divorce*

**14. Jurisdiction in divorce**—A petition for divorce from the other party to the marriage may be presented to the Court by any married person where the petitioner or the respondent is at the time of the petition domiciled in New Zealand and, where the ground alleged in the petition is one of those specified in paragraphs (m), (n), and (o) of section 15 of this Act, has been domiciled or resident in New Zealand for two years at least immediately preceding the filing of the petition, and in no other case.

Cf. 1928, No. 16, s. 10; 1953, No. 43, s. 9 (1)

**15. Grounds of divorce**—(1) A petition for divorce, whether the marriage is governed by New Zealand law or not, may be presented to the Court on one or more of the following grounds, and on no other ground:

- (a) That the respondent has since the solemnisation of the marriage been guilty of adultery:
- (b) That the respondent, being the wife of the petitioner, has since the solemnisation of the marriage and without the consent of the petitioner been artificially inseminated with the (*seed*) semen of some man other than the petitioner:
- (c) 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:
- (d) That the respondent has failed for three years or more to comply with a decree of restitution of conjugal rights made by the Court:
- (e) That the respondent—
  - (i) Being the petitioner's husband, has for three years or more been an habitual drunkard or drug addict, and has either habitually left his wife without means of support or habitually been guilty of cruelty towards her; or
  - (ii) Being the petitioner's wife, has for a like period been an habitual drunkard or drug addict, and has either habitually neglected her domestic duties and rendered herself unfit to discharge them or habitually been guilty of cruelty towards him:

- 5 (f) That the respondent has since the solemnisation of the marriage 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 188, section 198, or section 199 of the Crimes Act 1961 (which relate to wounding, discharging a firearm, doing a dangerous act, or acid throwing) against the petitioner or any such child:
- 10 (g) That the respondent has since the solemnisation of the marriage been convicted of incest, attempted rape or assault with intent to commit rape against any child (of any age) of the petitioner or respondent, or of sexual intercourse or attempted sexual intercourse with any such child under sixteen years of age:
- 15 (h) That the respondent, being the husband of the petitioner, has committed rape or sodomy or bestiality since the solemnisation of the marriage:
- 20 (i) That the respondent has since the solemnisation of the marriage been convicted of murder:
- (j) That the respondent is a person of unsound mind and is unlikely to recover, and has been a patient for a period or periods of not less in the aggregate than seven years within the period of ten years immediately preceding the filing of the petition:
- 25 (k) That the respondent is a person of unsound mind and is unlikely to recover, and has been continuously a person of unsound mind for a period of seven years immediately preceding the filing of the petition, and has been a patient during the final three years of the said period of seven years:
- 30 (l) That the respondent is a person of unsound mind and is unlikely to recover, and has been a patient for a period of five years immediately preceding the filing of the petition:
- 35 (m) That the petitioner and respondent are parties to an agreement for separation, whether made by deed or other writing or orally, and that the agreement is in full force and has been in full force for not less than three years:
- 40 (n) That—
- 45 (i) The petitioner and respondent are parties to a decree of (*judicial*) separation or a separation order made in New Zealand, or to a decree, order, or judgment made in any other country if that decree, order, or judgment has in that country the effect that the parties are not bound to live together; and

(ii) That decree of (*judicial*) separation, separation order, or other decree, order, or judgment is in full force and has been in full force for not less than three years:

(o) That the petitioner and respondent are living apart 5  
and are unlikely to be reconciled, and have been living apart for not less than seven years.

(2) Proof that the respondent has been convicted by any Court of any of the offences specified in paragraph (h) of subsection (1), of this section shall for the purposes of that 10  
subsection be conclusive proof that he has committed that offence.

Cf. 1928, No. 16, s. 10; 1930, No. 43, s. 2; 1953, No. 43, ss. 5-9; 1961, No. 43, s. 411 (1); Matrimonial Causes Act 1950, s. 5 (U.K.); Divorce (Insanity and Deser- 15  
tion) Act 1958, s. 1 (U.K.); Matrimonial Causes Act 1959, s. 28 (Aus.)

**16. Alleged adulterer to be made co-respondent—**(1) On a petition presented by either the husband or the wife for divorce on the ground of adultery, the petitioner shall make 20  
the alleged adulterer or adulteress a co-respondent, unless excused by the Court on special grounds from so doing.

(2) If in answer to a petition for divorce the respondent alleges that the petitioner has committed adultery, he or she shall make the alleged adulterer or adulteress a co-respondent, 25  
unless excused by the Court on special grounds from so doing.

(3) On any petition for divorce on the ground of adultery, the Court, after the close of the evidence on the part of the petitioner, may direct that the co-respondent be dismissed 30  
from the suit if it thinks there is not sufficient evidence against him or her.

Cf. 1928, No. 16, ss. 11, 17 (2); Matrimonial Causes Act 1959, s. 45 (Aus.)

**17. Wife left without maintenance—**If a wife while separated from her husband is habitually and without just cause left 35  
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, 40  
whether the separation of the parties has taken place or continued by agreement, or by virtue of a decree or order of the Court, or in any other manner.

Cf. 1928, No. 16, s. 13

18. **Effect of mental incapacity on desertion**—Where a party to a marriage has been wilfully deserted by the other party, the desertion shall not be deemed to be terminated by reason that the deserting party has become incapable of  
5 forming or having an intention to continue the desertion, if it appears to the Court that the desertion would probably have continued if the deserting party had not become so incapable.

10 Cf. 1928, No. 16, s. 13A; 1953, No. 43, s. 4; Matrimonial Causes Act 1959, s. 31 (Aus.)

*New*

15 **18A. Effect of adultery on desertion**—Where a party to a marriage has been wilfully deserted by the other party, the desertion shall not be deemed to be terminated by reason that the deserted party committed adultery after the desertion, unless it appears to the Court that the desertion would not have continued if the adultery had not been committed.

19. **Effect of resumption of cohabitation**—(1) Where one party to a marriage has wilfully deserted the other, or is  
20 separated from the other pursuant to a decree of (*judicial*) separation or an order of separation or an agreement to separate, the desertion (*or separation shall not be deemed to be terminated*) shall not be deemed to be terminated, or, as  
25 the case may be, the decree or order or agreement shall not be deemed to have ceased to continue in full force by reason of the parties resuming cohabitation on one occasion for a continuous period of not more than two months, whether or not there have been acts of sexual intercourse between the parties, if the Court is satisfied that reconciliation was the  
30 sole or principal motive for the resumption of cohabitation.

(2) Any period during which the parties have so cohabited shall not be taken into account in determining the length of any period of desertion or separation for the purposes of this Act.

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*New*

(3) This section shall not be construed so as to limit or affect any rule of law which provides that in any particular circumstances desertion is deemed not to have been terminated.

*New*

**19A. Effect of intercourse after separation**—Subject to the provisions of section 19 of this Act, where there have been acts of sexual intercourse between the petitioner and the respondent after the coming into effect of an agreement to separate, there shall be a presumption that the agreement is no longer in full force and effect, but the presumption may be rebutted by evidence that the parties did not intend that the agreement should cease to have effect.

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

Cf. 1928, No. 16, s. 14

**21. Petition to be dismissed in certain circumstances**—  
 (1) On any petition for divorce on the ground of adultery, the Court shall dismiss the petition if the petitioner has been accessory to or has connived at the adultery.  
 (2) On any petition for divorce on either of the grounds specified in paragraphs (m) and (n) of subsection (1) of section 15 of this Act, the Court shall dismiss the petition if the respondent opposes the granting of the decree and it is proved that the separation was due to the wrongful act or conduct of the petitioner.

(3) The Court shall dismiss any petition for divorce based upon a matrimonial wrong, if the wrong complained of has been condoned.

(4) Subject to the provisions of subsection (5) of this section the fact that there have been acts of sexual intercourse between the petitioner and the respondent after the petitioner became aware of the commission of any wrong complained of shall create a presumption that the wrong has thereby been condoned, but the presumption may be rebutted by evidence to the contrary.



(5) The fact that the parties continued, or, as the case may be, on one occasion resumed, cohabitation for a continuous period of not more than two months after the petitioner became aware of the commission of any wrong complained of whether or not there have been acts of sexual intercourse between the parties shall not amount to condonation if the Court is satisfied that reconciliation was the sole or principal motive for the continuation or resumption of cohabitation.

Cf. 1928, No. 16, ss. 16–18

10 **22. Discretion where petition presented on certain grounds**—Where a petition for divorce is presented on any of the grounds specified in paragraphs (m), (n), and (o) of subsection (1) of section 15 of this Act, and the petitioner has proved his or her case, then, subject to the provisions of  
 15 section 21 of this Act, the Court shall have a discretion whether or not to grant a decree of divorce:

Provided that the Court shall not, in the exercise of that discretion, refuse to grant a decree by reason only of the adultery of either party after their separation.

20 Cf. 1928, No. 16, s. 18; 1953, No. 43, s. 7 (2)

**23. Discretion in other cases**—The Court may dismiss any petition for divorce, if—

(a) There has been collusion between the petitioner and the respondent with intent to cause a perversion  
 25 of justice; or

(b) In the case of a petition based upon a matrimonial wrong, the petitioner's own habits or conduct have induced or contributed to the wrong complained of.

30 Cf. 1928, No. 16, ss. 15, 16; Matrimonial Causes Act 1959, s. 40 (Aus.)

**24. When petitioner entitled to decree**—Where a petition for divorce is presented on any ground other than one of those specified in paragraphs (m), (n), and (o) of subsection (1) of section 15 of this Act and the petitioner has proved his  
 35 or her case, then, subject to the provisions of sections 21 and 23 of this Act, the Court shall grant a decree of divorce.

Cf. 1928, No. 16, s. 19

*Decrees Nisi and Absolute*

**25. Decree to be decree nisi in first instance**—Every decree of presumption of death and dissolution of marriage, decree of dissolution of voidable marriage, or decree of divorce shall in the first instance be a decree nisi, not to be made absolute until after the expiration of three months from the date of granting of the decree or such shorter time, being not less than six weeks, as the Court directs by special order in any particular case. 5

Cf. 1928, No. 16, s. 24 (1) ; 1953, No. 43, s. 11 10

**26. Decree absolute**—(1) After the expiration of the time limited in that behalf, and subject to the provisions of sections 38 and 41 of this Act (which relate to the maintenance and welfare of the wife and any children of the marriage) and to the right of the Solicitor-General and other persons to intervene under subsections (5) and (6) of section 62 of this Act— 15

(a) The Court may, on the application of the petitioner, make absolute a decree nisi of presumption of death and dissolution of marriage; or 20

(b) The Court may, on the application of the petitioner or the respondent, make absolute a decree nisi of dissolution of a voidable marriage or of divorce; or

(c) The Registrar may, on the request in writing of the petitioner, and if no matter in opposition to the final decree is then pending and the Court in making the decree nisi did not require that the application for a decree absolute should be dealt with by the Court, make absolute a decree nisi of presumption of death and dissolution of marriage or a decree nisi of dissolution of a voidable marriage or a decree nisi of divorce. 25 30

(2) Where after the making of a decree nisi of divorce or of dissolution of a voidable marriage the parties resume cohabitation on one occasion for a period of not more than two months, whether or not there have been acts of sexual intercourse between the parties the Court shall not, for that reason only, refuse to grant a decree absolute if the Court is satisfied that reconciliation was the sole or principal motive for the resumption of cohabitation. 35 40

Cf. 1928, No. 16, ss. 25, 26

27. **Remarriage after dissolution of marriage**—When a decree of dissolution of a voidable marriage or a decree of divorce has been made absolute, but no sooner, it shall be lawful for the respective parties thereto to marry again as if  
5 the prior marriage had been dissolved by death.

Cf. 1928, No. 16, s. 27

## PART V

### DAMAGES FOR ADULTERY

28. **Damages for adultery may be claimed**—On any  
10 petition for divorce or separation on the ground of adultery, the petitioner may claim damages from any person alleged to have committed adultery with the wife or husband of the petitioner, as the case may be:

15 Provided that if the petition is dismissed no damages shall be recovered.

Cf. 1928, No. 16, ss. 29, 31; Matrimonial Causes Act 1959, s. 44 (Aus.)

29. **Application of damages**—(1) Any damages awarded on a claim under section 28 of this Act shall be paid and  
20 applied in such manner as the Court directs.

(2) The Court may direct that the whole or any part of the damages shall be settled for the benefit of any children of the marriage or for the maintenance of the wife or husband.

25 Cf. 1928, No. 16, s. 31; Matrimonial Causes Act 1959, s. 44 (Aus.)

30. **Court may order co-respondent to pay costs**—Where on any petition an alleged adulterer or adulteress has been made a co-respondent and the adultery has been established,  
30 the Court may order him or her to pay the whole or any part of the costs of the proceedings.

Cf. 1928, No. 16, s. 32

## PART VI

### MAINTENANCE AND RELATED MATTERS

31. **Interim maintenance**—Where any petition for divorce  
35 has been filed, the Court may, at any time before the making of the decree absolute, make such order in favour of the wife for her interim maintenance as it thinks just, and may, at any time before the making of the decree absolute, vary, modify, or extend any of the provisions of any such order in  
40 any manner it thinks just.

Cf. 1928, No. 16, s. 33 (3)

**32. Permanent maintenance**—(1) The Court may, if it thinks fit, on or at any time after the making of any decree of divorce, order the husband or his personal representative or the husband and his personal representative to pay to the wife for any term not exceeding her life such periodical sum for her maintenance and support as the Court thinks reasonable: 5

Provided that no such order shall be made if the wife has married again.

(2) Subject to any agreement by the parties to the contrary, any order under this section, and any order under section 39 10 of this Act extending or varying any such order, shall cease to have effect if the wife marries again.

Cf. 1928, No. 16, s. 33 (2); 1953, No. 43, s. 12 (2)

**33. Payment of capital sum**—(1) In addition to or instead of making any other order under this Part of this Act, the Court may, if it thinks fit, on or at any time after any decree of divorce,— 15

(a) Order the husband or his personal representative to pay to the wife such capital sum as the Court thinks fit: 20

(b) Order a settlement to be made to the satisfaction of the Court of the property of the husband or of the husband's estate, or any part thereof, for the benefit of the wife.

(2) An order under this section for the payment of a capital sum may provide that the sum shall be payable at a future date specified in the order, or shall be paid by such instalments specified in the order as the Court thinks fit. 25

Cf. 1928, No. 16, s. 33 (1); 1953, No. 43, s. 12 (1)

**34. Limit of time for applying for order against estate of deceased husband**—No application under section 32 or section 33 of this Act for an order against the personal representative of the husband shall be heard by the Court, unless the application is made before the expiration of a period of twelve months from the date of the grant in New Zealand of administration of the husband's estate: 30 35

Provided that the time for making such an application may be extended for a further period by the Court, after hearing such of the persons affected as the Court thinks necessary; and this power shall extend to cases where the time for applying has already expired, including cases where it expired before the commencement of this Act: 40

Provided also that no such extension shall be granted, unless the application for extension is made before the final distribution of the estate, and no distribution of any part of the estate before the personal representative receives notice  
 5 that the application for extension has been made to the Court, and after every notice (if any) of an intention to make an application has lapsed in accordance with subsection (6) of section 30A of the Administration Act 1952, shall be disturbed by reason of that application or of any order made thereon,  
 10 and no action shall lie against the personal representative by reason of his having made any such distribution.

**35. Principles to be followed in making order for maintenance**—In considering any application for an order under section 32 or section 33 of this Act, the Court shall have regard  
 15 to—

- (a) The ability of the wife, if she has no dependent children, to support herself or, if she has dependent children, to support herself without working; and
- 20 (b) The means and responsibilities of the husband or the extent of the husband's estate, as the case may be; and
- (c) In the case of an application for an order under section 33 of this Act, any contribution by the wife  
 25 to the assets of the husband, whether in the form of financial assistance or otherwise; and
- (d) The conduct of the parties; and
- (e) The length of time (if any) that has elapsed since the making of the decree; and
- 30 (f) Any other circumstances which the Court thinks relevant.

Cf. 1928, No. 16, s. 33 (1), (2)

- 36. Maintenance of husband and payment of capital sum**—
- (1) The Court, on or at any time after making any decree of divorce, if it is satisfied that the husband is unable by his own  
 35 means or labour to support himself, may, if it thinks fit,—
    - (a) Order the wife to pay to the husband such periodical sum for his maintenance and support for such term not exceeding her life and on such conditions as the Court thinks reasonable;
    - 40 (b) Order the wife to pay to the husband such capital sum as the Court thinks fit;
    - (c) Order a settlement to be made to the satisfaction of the Court of the property of the wife or any part thereof for the benefit of the husband.

(2) In considering any application for an order under subsection (1) of this section, the Court shall have regard to—

- (a) The means and responsibilities of the wife; and
- (b) In the case of an application for an order under paragraph (b) or paragraph (c) of that subsection, any contribution by the husband to the assets of the wife, whether in the form of financial assistance or otherwise; and
- (c) The conduct of the parties; and
- (d) The length of time (if any) that has elapsed since the making of the decree; and
- (e) Any other circumstances which the Court thinks relevant.

(3) Any order under this section for the payment of a capital sum may provide that the sum shall be payable at a future date specified in the order, or shall be paid by such instalments specified in the order as the Court thinks fit.

(4) Subject to any agreement to the contrary, any order under this section for the payment of a periodical sum (not being an order for the payment of a capital sum by instalments), and any order under section 39 of this Act extending or varying any such order, shall cease to have effect if the husband marries again.

Cf. 1928, No. 16, s. 36

**37. Security for maintenance or capital sum—**(1) On making any order under section 32 of this Act or any order under section 33 or section 36 of this Act for the payment of a capital sum, or at any subsequent time, the Court may, if it thinks fit, order the husband or his personal representative or, as the case may be, the wife to give such security as the Court thinks fit for the payment of the periodical or capital sum ordered to be paid.

(2) The Court may, for the purposes of subsection (1) of this section, direct the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties. The Court may, if it thinks fit, suspend the making of the decree of divorce until the deed or instrument has been so executed.

Cf. 1928, No. 16, s. 33(1); 1953, No. 43, s. 12 (1)

**38. Suspension of decree pending proper arrangements or compliance with order as to matrimonial home**—The Court may in any case, if it thinks fit, whether or not it makes an order under this Part of this Act, suspend the making of the  
5 decree absolute until arrangements for the maintenance, support, or welfare of the wife have been made to its satisfaction or until any order under Part VIII of this Act (which relates to the matrimonial home) has been complied with.

**39. Discharge, variation, and suspension of orders**—(1) The  
10 Court may at any time, if it thinks fit, discharge any order made under this Part of this Act.

(2) The Court may from time to time vary or extend any order under section 32 or section 33 or section 36 of this Act, in such manner as the Court thinks fit, whether as to the term  
15 of the order or by altering the times of payment or by increasing or diminishing the amount, or otherwise.

(3) The Court may temporarily suspend any such 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  
20 thinks fit.

(4) The Court may from time to time vary or extend any order under section 37 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 dim-  
25 inishing the amount or extent of any security, or otherwise.

(5) The Court may exercise the powers given by subsections (1) to (4) of this section, notwithstanding that the order discharged, varied, or extended may have been made by consent of the parties.

(6) In the exercise of its powers under this section the Court may have regard to any increase or decrease in the earning capacity of the wife or in the means of the wife or husband or the husband's estate, as the case may be, and to all other relevant circumstances.

(7) An application for an order under this section may be made by the person entitled to the benefit of the order, or by the person liable under the order, or (after his death) by his personal representative or by any creditor or other person interested in the distribution of his estate or entitled to apply  
35 for an order under the Family Protection Act 1955 in respect thereof:  
40

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 lifetime shall not be made except during his lifetime or within one year after the grant in New Zealand of administration of his estate: 5

Provided also that the time for making such an application after the death of the person liable may be extended for a further period by the Court, after hearing such of the persons affected as the Court thinks necessary; and this power shall extend to cases where the time for applying has already expired, including cases where it expired before the commencement of this Act: 10

Provided further that no such extension shall be granted unless the application for extension is made before the final distribution of the estate, and no distribution of any part of the estate before the personal representative receives notice that the application for extension has been made to the Court, and after every notice (if any) of an intention to make an application has lapsed in accordance with subsection (6) of section 30A of the Administration Act 1952, shall be disturbed by reason of that application or of any order made thereon, and no action shall lie against the personal representative by reason of his having made any such distribution. 15 20

Cf. 1928, No. 16, ss. 33 (2), 41; 1953, No. 43, s. 12 (2), 13 25

**40. Application of this Part to other matrimonial proceedings**—The provisions of this Part of this Act, as far as they are applicable and with any necessary modifications, shall apply with respect to a petition for and decree of nullity, separation, restitution of conjugal rights, and dissolution of a voidable marriage, as they apply with respect to a petition for and a decree of divorce. 30

Cf. 1928, No. 16, ss. 9 (3), 31 (3), (4)

## PART VII

### WELFARE AND CUSTODY OF CHILDREN 35

**41. Arrangements for welfare of children**—No final decree of dissolution of a voidable marriage or divorce shall be made unless the Court is satisfied that—

- (a) Arrangements have been made for the custody, maintenance, and welfare of every child of the marriage under the age of sixteen years (or in special circumstances of or over the age of sixteen years) and that 40



those arrangements are satisfactory or are the best that can be devised in the circumstances; or

- (b) It is impracticable for the party or parties appearing before the Court to make any such arrangements; or
- 5 (c) There are special circumstances justifying the making of a final decree, notwithstanding that the Court is not satisfied that any such arrangements have been made:

10        Provided that the Court shall, in every case where it makes a final decree pursuant to the provisions of this paragraph, first obtain a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the Court within a specified time.

15        Cf. Matrimonial Proceedings (Children) Act 1958, s. 2 (U.K.); Matrimonial Causes Act 1959, s. 71 (Aus.)

**42. Court may call for report**—(1) In any proceedings for dissolution of a voidable marriage or for divorce, the Court may, if it thinks fit, request any Child Welfare Officer appointed under the Child Welfare Act 1925 or any Welfare Officer appointed under the Maori Welfare Act 1962 to make to the Court a report in writing on the arrangements proposed by the parties or either of them for the custody, maintenance, and welfare of any child of the marriage and on any matter relevant thereto. The Officer shall report accordingly.

(2) A copy of the report shall be given by the Registrar to counsel appearing for the petitioner and the respondent or, if either party is not represented by counsel, to that party.

30 (3) The petitioner or respondent may tender evidence on any matter referred to in any such report.

(4) In any proceedings for the dissolution of a voidable marriage or for divorce, any such Officer shall, at the request of the Court, appear to assist the Court with respect to any matter relating to the custody, maintenance, and welfare of 35 any child of the marriage.

**43. Custody of children**—(1) In any proceedings for nullity, separation, restitution of conjugal rights, dissolution of a voidable marriage, or divorce the Court may from time to time, before or by or after the final decree, make such order 40 (whether an interim order or a permanent order) as it thinks just with respect to the custody and education of any children of the marriage under the age of sixteen years (or in exceptional cases of or over the age of sixteen years).

(2) The Court may from time to time discharge, vary, or extend any order made pursuant to subsection (1) of this section.

(3) Any order may be made under subsection (1) of this section, and any such order may be varied or extended, notwithstanding that the Court has refused to make a decree or to give any other relief sought. 5

(4) Unless otherwise specified in the order, an order for custody in respect of a child under the age of sixteen years shall expire when the child attains the age of sixteen years: 10

Provided that an order for custody, or a variation or extension of an order for custody, having effect after the child who is the subject of the order has attained the age of sixteen years shall be made only in exceptional cases.

Cf. 1928, No. 16, s. 38; Matrimonial Proceedings (Children) Act 1958, s. 3 (U.K.) 15

**44. Maintenance of children—**(1) In any proceedings for nullity, separation, restitution of conjugal rights, dissolution of a voidable marriage, or divorce, the Court may from time to time, before or by or after the final decree, make such order (whether an interim order or a permanent order) as it thinks just with respect to the maintenance by either party to the marriage of any child of the marriage— 20

(a) Who is under the age of sixteen years at the date of the making of the order; or 25

(b) Who is of or over that age at that date, in any case where it appears to the Court that the child is engaged in a course of full-time education or training or is because of physical or mental disability incapable of earning a living and that it is expedient that payments towards the maintenance of the child should be made. 30

(2) The Court may at any time, if it thinks fit, upon the application of either party to the marriage, or of any person having the custody of the child in respect of whom an order under this section is made, or of the personal representative of a party against whom the order is made, extend, vary, or cancel any order made under subsection (1) of this section. Any order extending any such order may be made under this subsection, notwithstanding that the order has expired. 35 40

(3) Any order may be made under subsection (1) of this section, and any such order may be varied or extended, notwithstanding that the Court has refused to make a decree or to give any other relief sought.

(4) Subject to the provisions of subsection (5) of this section, any permanent order for maintenance made under subsection (1) of this section and any extension thereof shall be for such term as the Court specifies.

5 (5) No order made under subsection (1) of this section in respect of a child under the age of sixteen years at the date of the making of the order, and no extension of any such order, shall have effect after the child attains the age of sixteen years, unless the Court so directs in any case where it appears to  
10 the Court that, after attaining the age of sixteen years, the child will be engaged in a course of full-time education or training or will be because of physical or mental disability incapable of earning a living and that it is expedient that payments towards the maintenance of the child should con-  
15 tinue to be made after the child attains the age of sixteen years.

(6) Any order made under this section shall, if the Court so specifies in the order or in any variation or extension thereof, bind the personal representative of the party against whom  
20 it is made.

(7) Any order made under this section having effect in respect of a child of or over the age of sixteen years, and any variation or extension of any such order, may be subject to such conditions as the Court thinks fit.

25 Cf. 1928, No. 16, s. 38

**45. Settlement of husband's or wife's property on children—**

(1) The Court may, if it thinks fit, on making any decree of nullity, separation, restitution of conjugal rights, dissolution of a voidable marriage, or divorce, order a settlement to be  
30 made to the satisfaction of the Court of the property of the husband or the wife or any part of such property for the benefit of the children of the marriage or any of them.

(2) The Court may make such other orders and give such directions as may be necessary or desirable to give effect to  
35 any order made under subsection (1) of this section.

Cf. 1928, No. 16, s. 36

**46. Representation of children in proceedings—**(1) In any proceedings under this Act, the Court may direct that any children of the marriage be represented by counsel if it is of  
40 opinion that such a course is expedient.

(2) The Court may make such order as it thinks fit as to the payment by any party to the proceedings of the costs of any such counsel.

## PART VIII

## THE MATRIMONIAL HOME

**47. Interpretation**—(1) In this Part of this Act, unless the context otherwise requires,—

“Furniture” includes household appliances and effects; 5  
and also includes furniture and household appliances  
and effects that are the subject of a hire-purchase  
agreement:

“Matrimonial home” means any dwelling (including a 10  
flat) being used exclusively or principally as a home  
by one or both of the parties to a marriage in respect  
of which a decree of divorce is or has been granted,  
in any case where—

(a) Either or both of the parties or the personal 15  
representative of one of them—

(i) Owns the dwelling; or

(ii) Owns a specified share of any estate 20  
or interest in the land on which the dwelling  
is situated and by reason of reciprocal agree-  
ments with the owners of the other shares is  
entitled to the exclusive occupation of the  
dwelling; or

(iii) Holds shares in a company which 25  
owns any estate or interest in the land on  
which the dwelling is situated, and by reason  
of holding those shares is entitled to the  
exclusive occupation of the dwelling; and

(b) Either or both of the parties owned the dwelling 30  
or the specified share in land or held the  
shares, as the case may be, at the date of  
the decree.

(2) The provisions of this Part of this Act shall apply with 35  
respect to a matrimonial home, whether or not it is a joint  
family home within the meaning of the Joint Family Homes  
Act 1950.

*New*

**47A. Rights of mortgagee, etc., not affected by order under 40**  
**this Part**—The rights conferred on the husband or wife by  
any order made under this Part of this Act shall be subject to  
the rights of the person entitled to the benefit of any mortgage,  
security, charge, or encumbrance affecting the property in  
respect of which the order is made if it was registered before  
the date of the making of the order or if the rights of that  
person arise under an instrument executed before that date:

*New*

5 Provided that, notwithstanding anything in any enactment or in any instrument, no money payable under any such mortgage, security, charge, or encumbrance shall be called up or become due by reason of the making of any such order not being an order under section 49 of this Act directing the sale of a matrimonial home.

**48. Court may make order for occupation of matrimonial home**—(1) The Court may, if it thinks fit, on making a decree of divorce or at any subsequent time, instead of or in addition to making any order under Part VI of this Act, make an order against the husband or the wife, or his or her personal representative, granting to the wife or husband, as the case may be, for such period and on such terms and subject to such conditions as the Court thinks fit, the right personally to occupy the matrimonial home.

20 (2) Where an order is made under subsection (1) of this section, the wife or husband, as the case may be, shall be entitled personally to occupy the land on which the matrimonial home is situated or which is appurtenant to the matrimonial home, or such part of that land as is specified in the order.

25 (3) The Court may make such other orders and give such directions as may be necessary or desirable to give effect to any order made under subsection (1) of this section.

(4) An order made under subsection (1) of this section against the husband or wife shall be enforceable against the personal representative of the person against whom it is made, unless the Court otherwise directs.

30 (5) Before any order is made under subsection (1) of this section, such notice as the Court directs shall be given to any person having an interest in the matrimonial home, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

35 (6) The Court may at any time, if it thinks fit, cancel any order made under subsection (1) of this section.

40 (7) The Court may from time to time vary or extend any order made under subsection (1) of this section in such manner as the Court thinks fit, whether as to the period of the order or as to the terms and conditions on which or subject to which it was made.

(8) An application under subsection (6) or subsection (7) of this section to cancel, vary, or extend any order may be made by either of the parties to the marriage, or by the personal representative against whom it was made, or by the personal representative of the person against whom it was made, or by any person having any interest in the matrimonial home. 5

(9) Where an order made under this section in respect of any matrimonial home relates to any estate or interest in land, a copy of the order sealed with the seal of the Court shall, upon application by either of the parties or, in the case of an order under subsection (6) or subsection (7) of this section, by the person upon whose application the order was made, and upon payment of the prescribed fee, be registered by the District Land Registrar or the Registrar of Deeds, as the case may be, or by the Mining Registrar in any case where the order relates to land comprised in a licence within the meaning of the Mining Tenures Registration Act 1962 that has not been registered under the Land Transfer Act 1952. 10 15

(10) An order made under subsection (1) of this section shall cease to have effect where— 20

- (a) The order is cancelled by the Court under subsection (6) of this section; or
- (b) The person in whose favour and the person against whom the order is made so agree in writing; or 25
- (c) The period for which the order was made has expired; or
- (d) The Court so directs in any other case.

(11) Where the District Land Registrar or Registrar of Deeds or Mining Registrar, as the case may be, is satisfied that an order made in respect of a matrimonial home and registered under subsection (9) of this section has ceased to have effect pursuant to subsection (10) of this section, he shall, on application in that behalf, endorse the register accordingly. 30 35

**49. Court may direct sale of home or direct payment—**

(1) The Court, on making a decree of divorce, if it is satisfied that both parties to the marriage have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever), may, if it thinks fit, on the application of either party made before the decree of divorce is made, make an order— 40

(a) Directing the sale of the home (including the land on which it is situated and such other land appurtenant thereto as the Court directs) and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the Court thinks fit:

5

Provided that where the home comprises part of a building that is not used exclusively or principally as the home of the parties, or where the land appurtenant to the home is not used exclusively or principally for the purposes of a home, the Court shall not make an order under this paragraph, unless in the special circumstances of the case the Court considers it is fair and equitable; or

10

(b) Directing that either party pay to the other such sum, either in one sum or in instalments and either forthwith or at a future date and either with or without security, as the Court thinks fair and reasonable in return for the contribution made by that other party.

20

(2) In any case to which subparagraph (iii) of paragraph (a) of the definition of the term "matrimonial home" in section 47 of this Act applies, an order made under paragraph (a) of subsection (1) of this section shall direct the sale of the shares held in relation to the matrimonial home, and the succeeding provisions of this section shall be modified and construed accordingly.

25

(3) Where the Court makes an order under subsection (1) of this section, it may make such other orders and may give such directions as may be necessary or desirable to give effect to the order.

30

(4) Before any order is made under subsection (1) of this section, such notice as the Court directs shall be given to any person having an interest in the property that would be affected by the order, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

35

(5) Where the Court directs the sale of the matrimonial home pursuant to subsection (1) of this section, it may, if it thinks fit, instead of directing division of the proceeds between the parties to the marriage, direct that the whole or any part of the proceeds be paid or applied for the benefit of the children of the marriage or any of them, and may give such other directions as may be necessary or desirable to give effect to that direction.

45

(6) The amount payable to either party to the marriage under any order made pursuant to paragraph (b) of subsection (1) of this section shall constitute a debt owing to that party by the other and shall be recoverable accordingly, and, in the case of an order made in respect of any estate or interest in land, shall also constitute a charge against that estate or interest, and may be registered against that estate or interest under the provisions of the Statutory Land Charges Registration Act 1928. 5

(7) Where an order is made under subsection (1) of this section and a party to the marriage who has an estate or interest in the matrimonial home dies before the order has been complied with, the order shall be binding on and be complied with by the personal representative of that party. 10

(8) Without limiting the provisions of subsection (3) of this section, where the Court, under subsection (1) of this section, directs the sale of the matrimonial home and the division of the proceeds pursuant to paragraph (a) of the said subsection (1) or the application of the proceeds pursuant to subsection (5) of this section, the Court may appoint a person to sell the matrimonial home and divide or apply the proceeds accordingly. 15 20

(9) The execution of any instrument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the matrimonial home is vested. 25

(10) The Court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of any such instrument and its execution by the person so appointed. 30

**50. Court may vest matrimonial home in parties in common—(1) Where—**

(a) The matrimonial home is owned by the petitioner or the respondent or by both of them as joint owners; and 35

(b) The Court is satisfied that both parties have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever),— 40

the Court, on making a decree of divorce, may, if it thinks fit, on the application of either party made before the decree is made, make an order vesting the home (including the land on which it is situated and such other land appurtenant thereto as the Court directs) in the parties as owners in common in such shares as the Court thinks fit. 45



(2) In any case to which subparagraph (iii) of paragraph (a) of the definition of the term “matrimonial home” in section 47 of this Act applies, an order made under subsection (1) of this section shall vest the shares held in relation to the  
 5 matrimonial home, and the provisions of this section shall be modified and construed accordingly.

*New*

(2A) Before any order is made under subsection (1) of this section, such notice as the Court directs shall be given to any  
 10 person having an interest in the matrimonial home, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(3) Where any order made under this section in respect of any matrimonial home relates to any estate or interest in land  
 15 which is registered in the office of the District Land Registrar or the Registrar of Deeds or to the land comprised in any licence within the meaning of the Mining Tenures Registration Act 1962 that has not been registered under the Land Transfer Act 1952, a copy of the order sealed with the seal of the Court  
 20 shall, upon application by either of the parties and upon payment of the prescribed fee, be registered by the District Land Registrar or the Registrar of Deeds or the Mining Registrar, as the case may require.

(4) The provisions of this section and of any order there-  
 25 under shall have effect notwithstanding any prohibition or restrictions in the articles of association of any company relating to the transfer or ownership of shares.

**51. Court may vest tenancy of dwellinghouse in petitioner or respondent—**(1) Where the Court makes a decree of  
 30 divorce, it may at the same or any subsequent time, if it thinks fit, make an order vesting in the petitioner or the respondent (in this section referred to as the applicant) the tenancy of any dwellinghouse, being a dwellinghouse within the meaning of the Tenancy Act 1955,—

35 (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

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

(2) On the taking effect of an order made under subsection (1) of this section, unless the tenancy is sooner lawfully determined, the applicant shall become 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, and the other party shall cease to be the tenant. 5

(3) 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 authorise the Court to vary, except by vesting or revesting the tenancy pursuant to this section, any express or implied term or condition of the tenancy. 10 15

(4) On the application of the other party in any case in which an order is made under subsection (1) of this section, the Court may, if the tenant has died and the tenancy has not been determined by reason thereof, or if in the opinion of the Court 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 accordingly. 20 25

(5) On the taking effect of any revesting order under subsection (4) of this section, unless the tenancy is sooner lawfully determined, the person in whose favour it is made shall become 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 revesting order. 30

(6) 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.

(7) Every order under this section shall take effect on such date as may be specified in that behalf in the order, but, if an appeal is lodged, the operation of the order shall be suspended until the appeal is determined. 35

(8) 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. 40 45

(9) 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  
 5 rule of law to continue to be the tenant of the dwellinghouse; and the term “tenancy” has a corresponding meaning.

Cf. 1928, No. 16, s. 41A (1)–(12); 1953, No. 43, s. 14

**52. Landlord to have right to appear and be heard—**  
 Notice in the prescribed form of any application for an order  
 10 under section 51 of this Act shall be served in the prescribed manner on the landlord of the dwellinghouse, who shall be entitled to appear and be heard as a party to the application.

Cf. 1928, No. 16, ss. 41B, 41C; 1953, No. 43, s. 14

**53. Order in respect of furniture—**(1) Where the Court  
 15 makes an order for occupation of the matrimonial home under section 48 of this Act or an order vesting the tenancy of a dwellinghouse under section 51 of this Act, it may, if it thinks fit, by the same or any subsequent order, grant possession of the furniture or any specified articles of furniture in the  
 20 matrimonial home or, as the case may be, in the dwellinghouse to the party in whose favour the order is made for such period and on such terms and subject to such conditions as the Court thinks fit.

(2) The Court, on making a decree of divorce and whether  
 25 or not it makes any other order under this Part of this Act, may make an order vesting the furniture or any specified articles of furniture owned by one or both of the parties to the marriage in the other party, or, as the case may be, in one of the parties, if the Court thinks it reasonable so to do  
 30 having regard to the contribution made to the home (whether a matrimonial home or not) by the party in whose favour the order is made (whether in the form of money payments, or services, or prudent management, or otherwise howsoever).

35 *New*

“(2A) Before any order is made under subsection (1) or subsection (2) of this section, such notice as the Court directs shall be given to any person having an interest in the furniture that would be affected by the order, and any such person shall  
 40 be entitled to appear and be heard in the matter as a party to the application.”

(3) In any case where any furniture is in the possession of one or both of the parties to the marriage under a hire-purchase agreement within the meaning of the Hire Purchase Agreements Act 1939, the Court, on making a decree of divorce, may, if it thinks fit, make an order vesting the rights under the hire-purchase agreement in respect of all or any of the articles that are subject to the agreement in the other party, or, as the case may be, in one of the parties, and any such order shall have effect notwithstanding anything in any such agreement. 5  
10

(4) The owner of any furniture to which any such hire-purchase agreement relates shall be entitled to appear and be heard as a party to the application for an order under subsection (3) of this section.

(5) The Court may make an order under this section in respect of any specified article of furniture, notwithstanding that the article is by law affixed to the realty: 15

Provided that where any such order is made under subsection (2) of this section the article shall thereupon cease for all purposes to be part of the realty and shall become personal property owned by the person in whose favour the order is made. 20

*New*

(6) The Court may at any time, if it thinks fit, cancel any order made under subsection (1) of this section. 25

(7) The Court may from time to time vary or extend any order made under subsection (1) of this section in such manner as the Court thinks fit, whether as to the period of the order or as to the terms and conditions on which or subject to which it was made. 30

(8) An application under subsection (6) or subsection (7) of this section to cancel, vary, or extend any order may be made by either of the parties to the marriage, or by the personal representative against whom it was made, or by the personal representative of the person against whom it was made, or by any person having any interest in the furniture affected by the order. 35

**54. Exclusion of common law rights**—Notwithstanding any rule of law to the contrary, a party to a marriage in respect of which a decree has been made under this Act who has no interest in the matrimonial home as owner or under any deed, written agreement, or instrument shall have no right, licence, or equity to occupy or to be or remain in possession of the matrimonial home otherwise than in accordance with this Part of this Act. 40  
45

**55. Power of Court under Married Women's Property Act 1952 unaffected**—(1) Nothing in this Part of this Act shall affect the powers of the Court under (*section 19 of the Married Women's Property Act 1952*) section 5 of the Matrimonial Property Act 1963 (which relates to the settlement of disputes between husband and wife as to property).

(2) Where at the time when a petition for divorce is filed proceedings under (*section 19 of the Married Women's Property Act 1952*) section 5 of the Matrimonial Property Act 1963 are pending in the Court between the parties to the petition or such proceedings are commenced before the making of the decree absolute, the Court may hear and determine those proceedings in conjunction with any proceedings between the parties under this Act.

**56. Application of this Part to nullity and other proceedings**—(1) The provisions of this Part of this Act, as far as they are applicable and with any necessary modifications, shall apply with respect to a petition for and a decree of nullity or separation or dissolution of a voidable marriage as they apply with respect to a petition for and a decree of divorce.

(2) The provisions of this Part of this Act (except sections 49 and 50 and subsection (2) of section 53), as far as they are applicable and with the necessary modifications, shall apply with respect to a petition for and decree of restitution of conjugal rights as they apply with respect to a petition for and a decree of divorce.

Cf. 1928, No. 16, s. 41A (1) ; 1953, No. 43, s. 14

## PART IX

### PROCEDURE

**57. Claim for relief by respondent**—Where any petition has been presented under this Act, the respondent may in his answer claim relief under this Act, and, if the Court is satisfied that the respondent is entitled to or ought to be granted such relief, it may be granted accordingly.

Cf. 1928, No. 16, s. 20

**58. Intervention on terms**—In any case in which the Court considers that it is in the interest of any person not already a party to any proceedings under this Act that that person

should be made a party to the proceedings, the Court, if it thinks fit, may allow that person to intervene upon such terms (if any) as the Court thinks just.

Cf. 1928, No. 16, s. 42

**59. Trial by jury—**(1) Where any question of fact arises in any proceedings under this Act, the Court may, if it thinks fit, direct the truth thereof to be determined by the verdict of a jury:

Provided that a claim for damages under section 28 of this Act shall be determined by a jury if any party applies for a jury.

*New*

(2) Where a claim for damages is made under section 28 of this Act, the Court may approve any compromise agreed upon by the parties and enter judgment accordingly.

Cf. 1928, No. 16, ss. 31, 43

**60. Evidence as to adultery—**(1) A witness in proceedings under this Act who, being a party, voluntarily gives evidence on his own behalf or, whether he is a party or not, is called by a party may be asked, and is bound to answer, a question the answer to which may show, or tend to show, adultery by or with the witness where proof of that adultery would be material to the decision of the case.

(2) Except as provided by subsection (1) of this section, a witness in proceedings under this Act (whether a party to the proceedings or not) is not liable to be asked, or bound to answer, a question the answer to which may show, or tend to show, that the witness has committed adultery.

Cf. 1908, No. 56, s. 7; 1928, No. 16, s. 47; Matrimonial Causes Act 1959, s. 99 (Aus.)

**61. Proof of birth, death, or marriage—**In any proceedings under this Act, a document purporting to be the original or a certified copy of a certificate, entry, or record of a birth, death, or marriage alleged to have taken place, whether in New Zealand or in any other country, may be received without further proof as evidence of the facts stated in the document.

Cf. Matrimonial Causes Act 1959, s. 100 (Aus.)

**62. Intervention**—(1) In any proceedings under this Act, the Attorney-General shall, if the Court so requests, appear and argue any question of law or of fact arising in the proceedings, and may file affidavits or lead evidence relating  
5 thereto.

(2) On the filing of any petition for divorce, it shall be the duty of the Registrar to send a copy of the petition to the Solicitor-General.

(3) On any petition for dissolution of a voidable marriage  
10 on the ground specified in paragraph (b) of subsection (2) of section 12 of this Act or for divorce on any of the grounds specified in paragraphs (j), (k), and (l) of subsection (1) of section 15 of this Act, it shall be the duty of the Solicitor-General to take on behalf of the respondent such steps as he  
15 may consider necessary in the interests of the respondent.

(4) At any time after the filing of a petition for divorce, and before the petition is dismissed or a decree absolute is made, any person may give information to the Solicitor-General of any matter material to the due decision of the  
20 case, and the Solicitor-General may thereupon take such steps as he considers necessary or expedient.

(5) The Attorney-General or the Solicitor-General if he thinks fit, either by reason of information given under sub-  
section (4) of this section or otherwise, may—

- 25 (a) Oppose the granting of a decree of divorce; or
- (b) Show cause against the making absolute of any decree nisi of divorce on the ground that it was obtained by collusion with intent to cause a perversion of justice or by reason of any other material facts whatsoever  
30 which were not before the Court when the decree was made or which have occurred since it was made.

(6) At any time after a decree nisi of divorce has been made and before the decree absolute has been made, any person may, with the leave of the Court, show cause against the  
35 making absolute of the decree nisi on the ground that it was obtained by collusion with intent to cause a perversion of justice or by reason of any other material facts whatsoever which were not before the Court when the decree was made or which occurred since it was made. The Court shall not  
40 grant such leave, unless it is satisfied that the person seeking it has reasonable and probable grounds for his allegation.

(7) Where an intervention takes place under this Part of this Act after a decree nisi has been made, and it is proved that the petitioner has been guilty of collusion with intent to

cause a perversion of justice or that (*material facts*) any other material facts whatsoever have not been brought before the Court, the Court may of its own motion rescind the decree.

(8) Where the Attorney-General or Solicitor-General or any other person appears in any proceedings pursuant to any of the provisions of this section, the Court may make such order as it thinks just— 5

- (a) As to the payment by any party to the proceedings of the costs incurred by the Attorney-General or the Solicitor-General or that other person in so doing; or 10
- (b) As to the payment by the Attorney-General or the Solicitor-General or that other person of any costs incurred by any of those parties by reason of his so doing. 15

(9) Except where the context otherwise requires, the provisions of this section, as far as they are applicable and with any necessary modifications, shall apply with respect to a petition for and decree of nullity, dissolution of a voidable marriage, and presumption of death and dissolution of marriage as they apply with respect to a petition for and a decree of divorce. 20

Cf. 1928, No. 16, ss. 21–23, 24; 1936, No. 58, s. 23; Matrimonial Causes Act 1959, ss. 76, 80 (Aus.)

**63. Court may order new trial**—The Court may order a new trial of any claim or issue in any proceedings under this Act that has been tried by a jury. 25

Cf. 1928, No. 16, s. 57

**64. Appeals**—(1) Any party dissatisfied with the decision of the Court, or of any Judge thereof, in any proceedings under this Act may appeal to the Court of Appeal within six weeks after the pronouncing of the decision: 30

Provided that no appeal shall lie to the Court of Appeal from any decree making absolute any decree nisi or from any decision of the Court under subsection (1) of section 4 of this Act. 35

(2) The Court of Appeal may, if it thinks fit and, where the appeal is against the making of a decree nisi, if no decree absolute has been made, extend the time for appeal on such terms and subject to such conditions as it thinks fit. 40

(3) The decision of the Court of Appeal on any appeal under this Act shall be final.

Cf. 1928, No. 16, s. 58



**65. Costs**—Subject to the foregoing provisions of this Act relating to costs, the Court on the hearing of any proceedings under this Act may make such order as to costs as to the Court seems just.

5 Cf. 1928, No. 16, s. 51

**66. Enforcement**—Subject to the provisions of subsection (4) of section 10 of this Act, all decrees and orders made by the Court in any proceedings under this Act shall be enforced in the same or in a like manner as other judgments, 10 orders, and decrees of the Court may be enforced.

Cf. 1928, No. 16, s. 52

**67. Recovery of money from estate of deceased party**—On the death of any person against whom an order for the payment of money has been made under this Act, any money 15 in arrear and unpaid at the time of his death shall constitute a debt recoverable out of his estate:

Provided that, except where the order has been made to bind the personal representative of the deceased person, and except in the case of arrears of instalments payable pursuant 20 to any order made under subsection (2) of section 33 or subsection (2) of section 36 of this Act, no such arrears in respect of a period longer than one year shall be so recoverable without the leave of the Court, which may be given on such terms and subject to such conditions as the Court thinks fit.

25 Cf. Matrimonial Causes Act 1959, s. 104 (Aus.)

**68. Maintenance or occupation or possession order where decree refused**—(1) Where a petition for divorce, nullity, dissolution of a voidable marriage, separation, or restitution of conjugal rights (in this section referred to as the principal 30 relief) has been dismissed after a hearing on the merits, and the Court is satisfied that the proceedings for the principal relief were instituted in good faith and that the parties are unlikely to become reconciled, the Court may, if it considers it desirable so to do, make any order under Part VI of this 35 Act or under section 48 or section 50 or section 51 or section 53 of this Act.

(2) The Court shall not make an order pursuant to subsection (1) of this section, other than an order varying, extending, or cancelling any such order, unless it has heard 40 the application for the order at the same time as or immediately after the petition for the principal relief.

Cf. Matrimonial Causes Act 1959, s. 89 (2)–(4) (Aus.)

**69. Discretion of Court as to orders**—Where application is made to the Court for any order under any provision of Part VI or Part VIII of this Act, the Court may, if it thinks fit, make any other order under any other provision of the said Part VI or Part VIII, as the case may be, that could have been made if application for that other order had been made when the first-mentioned application was made. 5

## PART X

### MISCELLANEOUS PROVISIONS

#### *Struck Out*

10

**70. Court may make orders as to settled property**—(1) The Court may, on making a decree of nullity, or of dissolution of a voidable marriage, or of divorce, 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. 15

(2) The Court may exercise the powers conferred by this section notwithstanding that there are no children of the marriage. 20

#### *New*

**70. Court may make orders as to settled property, etc.**—(1) The Court may, on making a decree of nullity, or of separation, or of dissolution of a voidable marriage, or of divorce, inquire into the existence of any agreement between the parties to the marriage for the payment of maintenance or relating to the property of the parties or either of them, or any ante-nuptial or post-nuptial settlement made on the parties, and may make such orders with reference to the application of the whole or any part of any property settled or the variation of the terms of any such agreement or settlement, either for the benefit of the children of the marriage or of the parties to the marriage or either of them, as the Court thinks fit. 30 35

(2) In the exercise of its discretion under this section, the Court shall have regard to the conduct of the parties, and may take into account the circumstances of the parties and any change in those circumstances since the date of the agreement or settlement and any other matters which the Court considers relevant. 40

*New*

(3) The Court may exercise the powers conferred by this section, notwithstanding that there are no children of the marriage.

5 (4) Any order made under this section may from time to time be reviewed by the Court on the application of either party to the marriage or of his or her personal representative.

Cf. 1928, No. 16, s. 37

10 **71. Dispositions may be restrained**—(1) Where it appears to the Court that any disposition of any property is about to be made, whether for value or not, by or on behalf of or by direction of or in the interests of any party to any proceedings under this Act in order to defeat the claim or rights of any person under Part VI, Part VII, or Part VIII of this Act  
15 or in respect of damages or costs, the Court may, on the application of that person and on such notice being given as the Court may direct, by order restrain the making of the disposition or may order any proceeds of the disposition to be paid into Court to be dealt with as the Court directs.

20 (2) Any disposition made after an order of the Court under subsection (1) of this section restraining the making of the disposition has been served on or come to the notice of the person disposing of the property, or any auctioneer, agent, or solicitor acting in connection with the disposition, shall be  
25 void; and the Court may consider any claim of any person interested and may make such order as it thinks just.

Cf. 1928, No. 16, s. 35

30 **72. Dispositions may be set aside**—(1) Where the Court is satisfied that any disposition of any property has been made, whether for value or not, by or on behalf of or by direction of or in the interests of any party to proceedings under this Act in order to defeat the claim or rights of any person under Part VI, Part VII, or Part VIII of this Act or in respect of damages or costs, the Court may, on the application of that  
35 person, make any order under subsection (2) of this section.

(2) In any case to which subsection (1) of this section applies, the Court may, subject to the provisions of subsection (4) of this section,—

40 (a) Order that any person to whom the disposition was made and who received the property otherwise than in good faith and for valuable consideration, or his

personal representative, shall transfer the property or any part thereof to such person as the Court directs; or

- (b) Order that any person to whom the disposition was made and who received the property otherwise than in good faith and for adequate consideration, or his personal representative, shall pay into Court, or to such person as the Court directs, a sum not exceeding the difference between the value of the consideration (if any) and the value of the property; or
- (c) Order that any person who has, otherwise than in good faith and for valuable consideration, received any interest in the property from the person to whom the disposition was so made, or his personal representative, or any person who received that interest from any such person otherwise than in good faith and for valuable consideration, shall transfer that interest to such person as the Court directs, or shall pay into Court or to such person as the Court directs a sum not exceeding the value of the interest.

(3) For the purposes of giving effect to any order under subsection (2) of this section, the Court may make such further order as it thinks fit.

(4) Relief (whether under this section, or in equity, or otherwise) in any case to which subsection (1) of this section applies shall be denied wholly or in part, if the person from whom relief is sought received the property or interest in good faith, and has so altered his position in reliance on his having an indefeasible interest in the property or interest that in the opinion of the Court, having regard to all possible implications in respect of other persons, it is inequitable to grant relief, or to grant relief in full, as the case may be.

(5) The Court may, on any application under this section, make such order as to costs as it thinks just.

Cf. 1928, No. 16, s. 34

**73. Recognition of overseas decrees—**(1) The validity of any decree or order or legislative enactment for divorce or dissolution or nullity of marriage made (whether before or after the commencement of this Act) by a Court or legislature of any country outside New Zealand shall, by virtue of this section, be recognised in all New Zealand Courts, if—

- (a) One or both of the parties were domiciled in that country at the time of the decree, order, or enactment; or

(b) That Court or legislature has exercised jurisdiction—

5 (i) In any case, on the basis of the residence of one or both of the parties to the marriage in that country if at the commencement of the proceedings any such party had in fact been resident in that country for a continuous period for not less than two years; or

10 (ii) In any case, on the basis that one or both of the parties to the marriage are nationals or citizens of that country or of the sovereign State of which that country forms part; or

15 (iii) In any case, on the basis that the wife has been deserted by her husband, or the husband has been deported, and that the husband was immediately before the desertion or deportation domiciled in that country; or

20 (iv) In any case, on the basis that the wife was legally separated from her husband, whether by order of a competent Court or by agreement, and that the husband was at the date of the order or agreement domiciled in that country; or

25 (v) In a case of nullity of marriage on any ground existing at the time of the marriage, on the basis of the celebration of the marriage in that country; or

(c) The decree or order or enactment is recognised as valid in the Courts of a country in which at least one of the parties to the marriage is domiciled.

30 (2) Nothing in this section shall affect the validity of any decree or order or legislative enactment for divorce or dissolution or nullity of marriage, or of any dissolution of marriage otherwise than by judicial process, that would be recognised in the Courts of New Zealand apart from this section.

35 Cf. 1928, No. 16, s. 12A; 1958, No. 30, s. 2

**74. Proceedings may be heard in Chambers**—The Court, on the application of any party to any proceedings under this Act or at its discretion, if it thinks it proper in the interests of public morals, may hear and try any such proceedings in  
40 Chambers.

Cf. 1928, No. 16, s. 55, 1958, No. 30, s. 3

**75. Restriction of publication of reports**—(1) The Court may at all times in any proceedings under this Act, 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. 5

(2) No particulars in relation to any proceedings under this Act shall be printed or published in any newspaper, except the following particulars, namely: 10

- (a) The names, addresses, and occupations of the parties and witnesses and any persons intervening, and the names of the Judge and of the counsel and solicitors engaged: 15
- (b) The grounds of the petition, and a concise statement of the charges, defences, and countercharges in support of which evidence has been given:
- (c) Submissions on any point of law arising in the course of the proceedings, and the decision of the Court on the submissions: 20
- (d) The summing-up of the Judge and the finding of the jury (if any), and the decision of the Court and any observations made by the Court in giving it: 25

Provided that the Court may, if it thinks fit, authorise the publication of any other particulars, subject to such conditions relating to any matter to be published as it thinks fit.

(3) If any particulars are printed or published in any newspaper in contravention of the provisions of subsection (2) of this section, every printer, publisher, and editor of the newspaper shall be guilty of an offence and liable on summary conviction,— 30

- (a) In the case of an individual, to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds, or to both: 35
- (b) In the case of a body corporate, to a fine not exceeding five hundred pounds.

(4) No prosecution for an offence against subsection (3) of this section shall be commenced except with the leave of the Attorney-General. 40

(5) Nothing in this section shall be construed to limit the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings.

(6) For the purposes of this section, the term “newspaper” means any newspaper within the meaning of the Newspapers and Printers Act 1955, or any periodical publication which is published at intervals not exceeding three months; and  
5 every document which at any time accompanies and is distributed together with any newspaper shall be deemed to form part of the newspaper:

Provided that for the purposes of this section the term “newspaper” shall not include any newspaper or periodical  
10 publication of a technical character bona fide intended for circulation among members of the legal or medical professions, psychologists, advisers in the sphere of marriage counselling, or other social welfare workers.

Cf. 1928, No. 16, ss. 55, 55A; 1958, No. 30, ss. 3, 4

15 **76. Separation agreements by persons of unsound mind—**

(1) Notwithstanding anything in any enactment or rule of law, no agreement for separation shall be void or voidable by reason of either party thereto being of unsound mind if, before the agreement is entered into by that party, it has been  
20 approved under this section on behalf of that party by a Magistrate.

(2) The Magistrate shall not approve any separation agreement under this section unless he is satisfied that the person on whose behalf it is to be approved is able to understand the nature and consequences of the agreement.  
25

(3) Any application to a Magistrate under this section shall be made by the person on whose behalf the agreement is to be approved.

(4) The Magistrate may, if he thinks fit, refer any such  
30 application to a solicitor nominated by the Magistrate, or to the Public Trustee or the Maori Trustee, or to any other person, and may order the applicant to pay the reasonable costs and expenses of any person to whom the application is so referred.

(5) Any person to whom the application is so referred may  
35 file a report in the Magistrate’s Court setting out the results of his consideration and examination of the application and making in respect thereof such recommendations as he thinks proper, and may appear and be heard at the hearing of the  
40 application; but no such person shall be under any obligation to consider or examine any such application until his reasonable costs and expenses have been paid or secured to his satisfaction.

**77. Act to bind Crown**—This Act shall bind the Crown.

Cf. 1928, No. 16, s. 41A (13); 1953, No. 43, s. 14

**78. Rules of Court**—Rules regulating the practice and procedure in proceedings under this Act may be made in the manner in which rules of Court are made under the Judicature Act 1908. 5

Cf. 1928, No. 16, ss. 4, 53

**79. Remission of fees**—Where it appears to the Registrar that the payment of the fees payable in any proceedings under this Act, or of those fees in full, would cause undue hardship to the person liable for payment thereof, he may remit the whole or such part of the fees as he thinks fit, and may, without further appropriation than this section, refund all such fees that have already been paid or any part thereof. 10

**80. Amendments**—(1) Section 15 of the Evidence Amendment Act 1945 is hereby amended by repealing subsection (2), and substituting the following subsection: 15

“(2) Nothing in this section shall affect the operation of section 6 of the principal Act or of section 60 of the Matrimonial Proceedings Act 1963.” 20

(2) Section 30A of the Administration Act 1952 (as inserted by section 2 of the Administration Amendment Act 1960) is hereby amended by inserting in subsection (1), after the words “Law Reform (Testamentary Promises) Act 1949”, the words “or under section 32 or section 33 or subsection (2) of section 39 of the Matrimonial Proceedings Act 1963”. 25

(3) Every reference to proceedings for or to a decree of nullity of marriage in any Act or in any regulations, rules, or order, or in any document or instrument whatsoever shall, unless the context otherwise requires, be deemed to include a reference to proceedings for or a decree of dissolution of a voidable marriage. 30

**81. Repeals and savings**—(1) The enactments specified in the Schedule to this Act are hereby repealed.

*Struck Out* 35

(2) Every decree of judicial separation made in New Zealand before the commencement of this Act and in force at the commencement of this Act shall continue in force and have the same effect as it had before the commencement of this Act. Proceedings for the reversal of any such decree may 40



*Struck Out*

be taken after the commencement of this Act under section 7 of the Divorce and Matrimonial Causes Act 1928 as if that section had not been repealed.

- 5 (3) The provisions of Part VI, Part VII, and Part VIII (except sections 49 and 50) of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to every decree of judicial separation made by the Court before the commencement of this Act and in force  
10 at the commencement of this Act as they apply with respect to a decree of divorce.

*New*

- (2) Every decree of judicial separation made or continuing in force under the Divorce and Matrimonial Causes Act 1928  
15 and in force at the commencement of this Act shall continue in force as if it were a decree of separation made under this Act.

- 82. Transitional provisions**—The provisions of Parts VI and VIII and of sections 67 to 70 of this Act, as far as they are  
20 applicable and with any necessary modifications, shall apply with respect to every decree or order made under the provisions of the Divorce and Matrimonial Causes Act 1928 as if it had been made under this Act.

## SCHEDULE

Section 81 (1)

## ENACTMENTS REPEALED

- 1908, No. 56—The Evidence Act 1908: Section 7. (1957 Reprint, Vol. 4, p. 695.)  
1908, No. 86—The Infants Act 1908: Section 8. (1957 Reprint, Vol. 6, p. 594.)  
1928, No. 16—The Divorce and Matrimonial Causes Act 1928. (1957 Reprint, Vol. 4, p. 235.)  
1930, No. 43—The Divorce and Matrimonial Causes Amendment Act 1930. (1957 Reprint, Vol. 4, p. 266.)  
1936, No. 31—The Law Reform Act 1936: Subsection (5) of section 16. (1957 Reprint, Vol. 7, p. 817.)  
1936, No. 58—The Statutes Amendment Act 1936: Section 23. (1957 Reprint, Vol. 4, p. 267.)  
1949, No. 51—The Statutes Amendment Act 1949: Section 6. (1957 Reprint, Vol. 4, p. 167.)  
1953, No. 43—The Divorce and Matrimonial Causes Amendment Act 1953. (1957 Reprint, Vol. 4, p. 268.)  
1958, No. 30—The Divorce and Matrimonial Causes Amendment Act 1958.  
1961, No. 43—The Crimes Act 1961: So much of the Third Schedule as relates to the Divorce and Matrimonial Causes Act 1928.