

1904.  
NEW ZEALAND.

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# “THE STATUTES COMPILATION ACT, 1902”:

MEMORANDUM BY THE SOLICITOR-GENERAL ON THE DIVORCE AND MATRIMONIAL CAUSES ACTS COMPILATION BILL, 1904.

*Presented to both Houses of the General Assembly by Act.*

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## MEMORANDUM.

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No alteration has been made in the wording of the Acts compiled, except as follows:—

“The Divorce and Matrimonial Causes Act, 1867,” No. 94:—

In section 3 the words “to whom any judicial district shall have been assigned” are omitted.

In section 5 the provisions for a Judge making rules in his own judicial district are omitted.

In section 18 the words “Irrespective of her right to petition under the last preceeding section hereof” are added at the beginning.

In section 20 “such” is omitted in first line, and “for dissolution of marriage on the ground of adultery” inserted after “by a husband”; also “on such ground” is inserted after “dissolution of marriage.”

In section 48 the words “Subject to the foregoing provisions of this Act relating to costs” are added at the beginning.

In section 57 the words “the Third, Fourth, Fifth, Sixth, or Seventh Parts of” are omitted; “present reign” is altered to “reign of Her late Majesty Queen Victoria.”

In section 58 the reference to “felony” is omitted.

In section 59 the words “the Third, Fourth, Fifth, Sixth, or Seventh Parts of” are omitted; and “under any of the said Parts” is altered to “thereunder.”

“The Divorce and Matrimonial Causes Act 1867 Amendment Act, 1881,” No. 48:—

The sections of the Act of 1881 do not appear as such in the compilation, effect being given thereto in the proper places.

“The Divorce Act, 1898,” No. 42:—

In section 3 “the coming into operation of this Act” is altered to “the first day of June, one thousand eight hundred and ninety-nine, being the date of the coming into operation of ‘The Divorce Act, 1898.’”

In section 11 the reference to the principal Act is altered to “this Act.”

In section 17 “the period of three years” is altered to “the period hereinafter fixed in the case of desertion”; after “decree nisi” the words “if of judicial separation” are inserted; and also at end of section the words “and, if for the dissolution of marriage, shall be subject to the provisions relating thereto hereinafter contained.”

In addition to the foregoing alterations, the Long and Short Titles of the compilation Act take the place of the corresponding titles of the original Act (“The Divorce and Matrimonial Causes Act, 1867”).

Moreover, a reference to the compiled Acts is made in subsection (1) of section 1; a list of these Acts is inserted as the First Schedule; and the schedule to the Act of 1898 becomes the Second Schedule of the Compilation Act.

The compilation discloses a serious defect in the existing Acts with respect to divorce.

Under the Act of 1867 section 17 gave the husband the right to petition on the ground of adultery, and section 18 gave a similar right to the wife on the ground, *inter alia*, of incestuous adultery, or of adultery coupled with desertion for two years. The amending Act of 1898 repealed section 17, but not section 18, and provided that any married person who at the time of the suit had been domiciled in New Zealand for two years might petition for divorce on the ground, *inter alia*, of adultery committed after the coming into operation of the Act, or of desertion for five years.

The consequences are curious: The Act of 1898 came into operation on the 1st June, 1899, and on that date the wife's previous matrimonial misconduct ceased to count as a ground of divorce. For, as shown, the husband is limited to the Act of 1898, and therefore cannot allege adultery committed before the commencement of the Act.

The wife, however, may proceed under either Act, and it is only where she proceeds under the Act of 1898 that her petition is subject to the same restrictions as the husband's.

Presumably this was not the intention of the Legislature, but, of course, I must compile the Acts as they are.

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Subject to the alterations above referred to, I hereby certify that the annexed compilation intituled "The Divorce and Matrimonial Causes Acts Compilation Act, 1904," is a true and correct compilation of the respective Acts specified in the First Schedule thereto.

FRED. FITCHETT, Solicitor-General

Crown Law Offices, Wellington, 10th August, 1904.

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## DIVORCE AND MATRIMONIAL CAUSES ACTS COMPI- LATION.

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|------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Title.                                                           | AN ACT to compile certain Acts relating to Divorce and Matrimonial Causes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |          |
|                                                                  | BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 5        |
| Short Title.                                                     | 1. (1.) The Short Title of this Act shall be “The Divorce and Matrimonial Causes Acts Compilation Act, 1904.”                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |
|                                                                  | (2.) This Act is a compilation of the Acts mentioned in the First Schedule hereto.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |          |
| Arrangement of sections of Act.<br>1867, No. 94, sec. 2          | 2. The sections of this Act are arranged in Parts as follows :—<br>Part I.—Decrees for Judicial Separation and Restitution of Conjugal Rights.<br>Part II.—Decrees for Dissolution of Marriage.<br>Part III.—Remedies against Adulterers.<br>Part IV.—Provisions for the Benefit of Children.<br>Part V.—Procedure in Matrimonial Causes.                                                                                                                                                                                                                                                                                                                                   | 10<br>15 |
| Interpretation.<br>Ibid, sec. 3                                  | 3. In the interpretation of this Act the words “Court” and “Supreme Court” shall, unless repugnant to or inconsistent with the context, mean the Supreme Court of New Zealand; and the Judge or Judges of the Supreme Court shall have all the powers and jurisdiction hereby given to the Court, subject to the provisions of this Act and any rules made hereunder.                                                                                                                                                                                                                                                                                                       | 20       |
| Jurisdiction.<br>Ibid, sec. 4                                    | 4. The Supreme Court shall have jurisdiction in respect of judicial separation, suits of nullity of marriage, or suits of restitution of conjugal rights, and in all causes, suits, and matters matrimonial except in respect of marriage licenses.                                                                                                                                                                                                                                                                                                                                                                                                                         | 25       |
| Power to make and alter rules for procedure, &c.<br>Ibid, sec. 5 | 5. (1.) The Judges of the Supreme Court, or any three of them, shall have power to make rules and regulations concerning the practice, pleading, and procedure under this Act, and from time to time to revoke or alter such rules or regulations as they may from time to time consider expedient.                                                                                                                                                                                                                                                                                                                                                                         | 30       |
| Judges may fix scale of costs.<br>1898, No. 42, sec. 23          | (2.) The Judges of the Supreme Court, or any three of them, shall also have power to fix a scale of costs for all suits and proceedings, and to make rules and regulations regarding such costs, and to alter and amend the same from time to time, or to substitute any new and different scales, rules, or regulations. Until a scale of costs shall have been fixed by the Judges as herein provided, costs, when allowed, shall be regulated and paid according to the scale of costs contained in the <i>Second</i> Schedule hereto; but the Court may at any time fix a sum or sums as the costs of the suit or proceeding, as the case may be, in full of all costs. | 35<br>40 |

## PART I.

### DECREES FOR JUDICIAL SEPARATION AND RESTITUTION OF CONJUGAL RIGHTS.

|                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                              |          |
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| Judicial separation substituted for divorce <i>a mensâ et thoro</i> .<br>1867, No. 94, s. c. 6 | 6. No decree shall be made for a divorce <i>a mensâ et thoro</i> , but in like cases to those in which a decree for a divorce <i>a mensâ et thoro</i> might have been heretofore pronounced in England by any Court having jurisdiction in the matter, the Supreme Court may pronounce a decree for a judicial separation, which shall have the same force and effect as a divorce <i>a mensâ et thoro</i> . | 45<br>50 |
|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|

7. A decree for a judicial separation which shall have the effect of a divorce *a mensâ et thoro* under the law heretofore existing in England, and such other legal effect as herein mentioned, may be obtained either by the husband or wife on the ground of adultery, or of cruelty, or of desertion without cause for a period of two years. Decree may be obtained by husband or wife for adultery, &c. 1867, No. 94, sec. 7
8. Application for restitution of conjugal rights or for judicial separation on any of the grounds aforesaid may be made by either husband or wife by petition to the Supreme Court; and the said Court, on being satisfied of the truth of the allegations therein contained, and that there is no legal ground why the same should not be granted, may decree such restitution of conjugal rights or judicial separation accordingly, and where the application is by the wife may make any order for alimony which shall be deemed just. Application for restitution of conjugal rights to be by petition. Ibid, sec. 8
9. From and after the passing of this Act a decree for restitution of conjugal rights shall not be enforced by attachment, but, where the application is by the wife, the Court may, at the time of making such decree, or at any time afterwards, order that, in the event of such decree not being complied with within any time in that behalf limited by the Court, the respondent shall make to the petitioner such periodical payments as may be just; and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation. The Court may, if it shall think fit, order that the husband shall, to the satisfaction of the Court, secure to the wife such periodical payments, and for that purpose may refer it to the Registrar to settle and approve of a proper deed or instrument to be executed by all necessary parties. Periodical payments in lieu of attachment. 1898, No. 42, sec. 1
10. Where the application for restitution of conjugal rights is by the husband, if it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, and whether subject to restraint on anticipation or not, or is in receipt of any profits of trade or earnings, the Court may, if it shall think fit, order a settlement to be made to the satisfaction of the Court of such property or any part thereof for the benefit of the petitioner and of the children of the marriage, or any of them, or may order such part as the Court may think reasonable of such profits of trade or earnings to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or any of them. Settlement of wife's property. Ibid, sec. 16
11. (1.) If the respondent shall fail to comply with a decree of the Court for restitution of conjugal rights, such respondent shall thereupon be deemed to have been guilty of desertion without reasonable cause, and a suit for dissolution of marriage or for judicial separation may be forthwith instituted, and a decree *nisi* for the dissolution of the marriage, or a decree of judicial separation, may be pronounced on the ground of desertion, although the period hereinafter fixed in the case of desertion may not have elapsed since the failure to comply with the decree for restitution of conjugal rights. Non-compliance with decree deemed desertion. Ibid, sec. 17
- (2.) Such decree *nisi*, if of judicial separation, shall not be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the Court shall fix a shorter time, and, if for the dissolution of the marriage, shall be subject to the provisions relating thereto hereinafter contained.

Custody of children.  
1898, No. 42, sec. 18

12. The Court may at any time before final decree, on any application for restitution of conjugal rights, or after final decree, if the respondent shall fail to comply forthwith, upon application for that purpose, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of the children of the petitioner and respondent as might have been made by interim orders during the pending of a trial for judicial separation between the same parties. 5

Court to act on principles of Ecclesiastical Courts.  
1867, No. 94, sec. 9

13. In all suits and proceedings other than proceedings to dissolve any marriage, the Court shall proceed and act and give relief on principles and rules which, in the opinion of the Court, shall be as nearly as may be conformable to the principles and rules upon which the Ecclesiastical Courts of England have heretofore acted and given relief, but subject to the provisions herein contained and to the rules and orders made by the said Court under the authority of this Act. 10 15

Decree of separation obtained during absence may be reversed.  
Ibid, sec. 10

14. Any husband or wife upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced may at any time thereafter present a petition to the Court praying for a reversal of such decree, upon the ground that it was obtained in his or her absence, and that there was reasonable ground for the alleged desertion when desertion was the ground of such decree; and the Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly, but the reversal thereof shall not prejudice or affect the rights or remedies which any other person would have had in case such reversal had not been decreed in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof. 20 25

Wife judicially separated considered a *feme sole*.  
1898, No. 42, sec. 26

15. In every case in which a wife has obtained a decree for judicial separation she shall, until the same shall be reversed or discharged, be considered as a *feme sole* for any purpose for which a wife who has obtained an order under the provisions of "The Married Women's Property Protection Act, 1880," shall be considered as a *feme sole*. 30 35

Court may direct payment of alimony to wife or to her trustee.  
1867, No. 94, sec. 11

16. In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, or remove any existing trustee thereof, if for any reason it shall appear to the Court expedient so to do. 40

In cases of separation wife to be considered as a *feme sole* with respect to any property she may acquire.  
Ibid, sec. 12

17. In every case of judicial separation the wife shall from the date of the decree, and whilst the separation shall continue, be considered as a *feme sole* with respect to property of every description which she may acquire or which may come to or devolve upon her, and such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead: Provided that if any such wife shall again cohabit with her husband all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, 45 50

subject, however, to any agreement in writing made between herself and her husband whilst separate.

18. In every case of a judicial separation the wife shall, whilst so separated, be considered as a *feme sole* for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding, and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant: Provided that where upon any such judicial separation alimony shall have been decreed or ordered to be paid to the wife and the same shall not be duly paid by the husband, he shall be liable for necessities supplied for her use: Provided always that nothing herein contained shall prevent the wife from joining at any time during such judicial separation in the exercise of any joint power given to herself and her husband.

Also as to contracts, &c.  
1867, No. 94, sec. 13

19. The provisions contained in this Act respecting the property of a wife who has obtained a decree for judicial separation, or an order for protection, shall be deemed to extend to property to which such wife has become or shall become entitled as executrix, administratrix, or trustee, since the decree for separation or the commencement of the desertion, as the case may be, and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

Wife's property in trust or in expectancy to be included in decree or protecting order.  
Ibid, sec. 14

20. In every case in which a wife obtains an order to protect her earnings or property, or a decree for judicial separation, such order or decree, until reversed or discharged, shall, so far as shall be necessary for the protection of any person dealing with the wife, be deemed valid and effectual; and no discharge, variation, or reversal of such order or decree shall prejudice or affect any rights or remedies which any person would have had in case the same had not been so reversed, varied, or discharged in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of making such order or decree and of the discharge, variation, or reversal thereof, and property of or to which the wife is possessed or entitled for an estate in remainder or reversion at the date of the desertion or decree, as the case may be, shall be deemed to be included in the protection given by the order or decree.

Discharge of decree or protecting order not to affect creditors.  
Ibid, sec. 15

21. If any person in reliance on any such order or decree as aforesaid make any payment to or permit any transfer or act to be made or done by the wife who has obtained the same, notwithstanding such order or decree may then have been discharged, reversed, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the order or decree have been discontinued, every such person shall be protected and indemnified in the same way in all respects as if at the time of such payment, transfer, or other act such order or decree were valid and still subsisting without variation in full force and effect, and the separation of the wife from the husband had not ceased or been discontinued, unless at the time of such payment, transfer, or other act such person had notice of the discharge, reversal, or variation of such decree, or of the cessation or discharge of such separation.

Indemnity to parties making payments under decree or order afterwards reversed.  
Ibid, sec. 16

PART II.

DECREES FOR DISSOLUTION OF MARRIAGES.

Grounds for divorce.  
1898, No. 42, sec. 3

22. (1.) Any married person who, at the time of the institution of the suit or other proceeding, is domiciled in New Zealand for two years, may present a petition to the Court praying on one or more of the grounds in this section mentioned that his or her marriage with the respondent may be dissolved :— 5

(a.) On the ground that the respondent has, since the celebration of the marriage, and after the first day of June, one thousand eight hundred and ninety-nine, being the date of the coming into operation of "The Divorce Act, 1898," been guilty of adultery. 10

(b.) On the ground that the respondent has without just cause wilfully deserted the petitioner, and without any such cause left him, or her, continuously so deserted during five years or upwards. 15

(c.) On the ground that the respondent has during four years and upwards been an habitual drunkard, and has either habitually left his wife without means of support or habitually been guilty of cruelty towards her; or, being the petitioner's wife, has for a like period been an habitual drunkard, and has habitually neglected her domestic duties and rendered herself unfit to discharge them. 20

(d.) On the ground that the respondent has been convicted and sentenced to imprisonment or penal servitude for seven years or upwards for attempting to take the life of the petitioner. 25

(2.) If in the opinion of the Court the petitioner's own habits or conduct induced or contributed to the wrong complained of, such petition may be dismissed; but in all other cases under this section, if the Court is satisfied that the case of the petitioner is established, the Court shall pronounce a decree dissolving the marriage. 30

(3.) A deserted wife who was domiciled in New Zealand at the time of desertion shall be deemed, for the purposes of this Act, to have retained her New Zealand domicile, notwithstanding that her husband may have since the desertion acquired any foreign domicile. 35

When wife may  
petition for  
dissolution of  
marriage.

1867, No. 94, sec. 18

23. Irrespective of her right to petition under the last preceding section hereof, it shall be lawful for any wife to present a petition to the Supreme Court praying that her marriage may be dissolved on the ground that since the celebration thereof her husband has been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy, or of bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et thoro* under the law heretofore existing in England, or of adultery coupled with desertion without reasonable excuse for two years or upwards; and every petition under this and the next preceding section shall state as distinctly as the nature of the case permits the facts on which the claim to have such marriage dissolved is founded. 40 45

Meaning of  
incestuous adultery  
and bigamy.  
Ibid, sec. 19

24. For the purposes of this Act incestuous adultery shall be taken to mean adultery committed by a husband with a woman with 50

whom, if his wife were dead, he could not lawfully contract matrimony by reason of her being within the prohibited degrees of consanguinity or affinity, and bigamy shall be taken to mean marriage of any person being married to any other person during the life of his or her former wife or husband, whether the second marriage shall have taken place within the dominions of His Majesty or elsewhere.

25. Upon any petition presented by a husband for dissolution of marriage on the ground of adultery the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless on special grounds, to be stated in such petition and allowed by the Court, he shall be excused from so doing; and on every petition presented by a wife for dissolution of marriage on such ground the Court, if it see fit, may direct that the person with whom the husband is alleged to have committed adultery be made a respondent; and the parties, or either of them, may insist on having the contested matters of fact tried by a jury as hereinafter mentioned.

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

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

28. By leave of the Court, or of a Judge, any other person may oppose the petitioner obtaining a decree of dissolution of marriage, but no such leave shall be granted except on an affidavit showing to the satisfaction of such Court or Judge that there is reasonable ground to believe that the petitioner has been in some manner accessory to or conniving at the adultery.

29. Upon any such petition for the dissolution of a marriage it shall be the duty of the Court to satisfy itself so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to or conniving at the adultery, or has condoned the same, and shall also inquire into any counter charge which may be made against the petitioner.

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

31. In case the Court, on the evidence in relation to any such petition, is not satisfied that the alleged adultery has been committed, or finds that the petitioner has during the marriage been accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with the respondents or either of them, or with any person liable to be made a respondent under the provisions hereinbefore contained, the Court shall dismiss the said petition.

32. In case the Court is satisfied on the evidence that the case of the petitioner has been proved, and does not find that the petitioner has been in any manner accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion

Adulterer to be a co-respondent.  
1867, No. 94, sec. 20

Registrar to send copy of petition to Solicitor-General.  
1898, No. 42, sec. 5

Law Officers may oppose petition.  
Ibid, sec. 6

Stranger may be admitted in cases of connivance to oppose dissolution of marriage.  
1867, No. 94, sec. 22

Court to be satisfied of absence of collusion.  
Ibid, sec. 23

Covenant not to be a bar.  
1898, No. 42, sec. 4

Cases in which petition is dismissed.  
1867, No. 94, sec. 24

Cases in which dissolution of marriage may be decreed.  
Ibid, sec. 25

with the respondents or either of them, or with any person liable to be made a respondent under the provisions herein contained, the Court shall pronounce a decree declaring such marriage to be dissolved.

Alimony.

1867, No. 94, sec. 27;  
1898, No. 42, sec. 12

33. The Court may if it think fit, on any decree for dissolution of marriage or judicial separation hereafter to be made, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her own life as, having regard to her fortune (if any), to the ability of the husband and to the conduct of the parties, it deems reasonable, and for that purpose may settle and approve or refer it to the Registrar of the said Court to settle and approve of a proper deed or instrument to be executed by all necessary parties; and the said Court may in such case, if it shall see fit, suspend the pronouncing of its decree until such deed shall have been duly executed. And upon any petition for dissolution of marriage the Court shall have the same power to make interim orders for payment of money by way of alimony or otherwise to the wife as it would have in a suit instituted for judicial separation: Provided that in every such case it shall be lawful for the Court to make an order on the husband for payment to the wife, during their joint lives, of such monthly or weekly sums for her maintenance and support as the Court may think reasonable: Provided always that, if the husband shall afterwards from any cause become unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part as to the Court may seem fit.

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

1898, No. 42, sec. 9

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

Fraudulent deeds  
may be set aside.  
Ibid, sec. 13

35. Where it is proved to the satisfaction of the Court that any deed, conveyance, agreement, or instrument has been executed or made by or on behalf of, or by direction of, or in the interest of a respondent husband or wife, or a co-respondent, in order to defeat

the claim or rights of the petitioner in respect of damages, alimony, costs, or maintenance of children, such deed, conveyance, agreement, or instrument may, on the application of the petitioner, and on such notices being given as the Court or Judge may direct, be set aside on  
 5 such terms as the Court may think proper. And if the Court on the hearing of the application so order and declare, any money or property, real or personal, dealt with by such deed, conveyance, agreement, or instrument as aforesaid may be taken in execution at the  
 10 suit of the petitioner, or charged with the payment of such sums for the maintenance of the petitioner, or of the petitioner and children, as the Court may direct. And the Court may make such order for the protection of a *bonâ fide* purchaser as it may think just. And the respondent, or co-respondent, as the case may be, and any one acting in collusion with the respondent or co-respondent, may be ordered to  
 15 pay the costs of the petitioner and of a *bonâ fide* purchaser of and incidental to the execution of such deed, conveyance, agreement, or instrument, and of setting the same aside.

36. Where it shall appear to the Court that there is reasonable ground for believing that a sale of real estate is about to be made by  
 20 a respondent or co-respondent, with intent to defeat a petitioner's claim, or any decree or order in respect of damages, alimony, maintenance of children, or costs, the Court may by order restrain such sale, or order the proceeds of the sale to be paid into Court, to be dealt with as the Court shall direct. Any sale made after an order of  
 25 the Court restraining such sale as aforesaid has been served on or come to the notice of the person selling, or any auctioneer, agent, or solicitor acting in such sale, shall be null and void; and the Court may consider any claim of any person interested, and may make such order in the premises as it may think just.

37. When on the petition of a husband for a divorce the alleged  
 30 adulterer is made a co-respondent, or when on the petition of a wife the person with whom her husband is alleged to have committed adultery is made a respondent, it shall be lawful for the Court, after the close of the evidence on the part of the petitioner, to direct such  
 35 co-respondent or respondent to be dismissed from the suit if it shall think there is not sufficient evidence against him or her, and in its discretion to award him or her costs.

38. Every decree for dissolution of marriage shall, in the first  
 40 instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than three months from the pronouncing thereof, as the Court shall by general or special order from time to time direct, and during that period any person shall be at liberty, in such manner as the Court shall by general or by special  
 45 order in that behalf from time to time direct, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion, or by reason of material facts not having been brought before the Court; and on cause being so shown the Court shall deal with the case either by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry,  
 50 or otherwise as justice may require; and at any time during the progress of the cause, or before the decree is made absolute, any person may give information to the Attorney-General or Solicitor-

Sale to defeat petitioner may be restrained.  
 1898, No. 42, sec. 1

When alleged adulterer a co-respondent he may be dismissed from suit.  
 1867, No. 94, sec. 28

Decree *nisi*.  
 1898, No. 42, sec. 7

General of any matter material to the due decision of the case, and the Attorney-General or the Solicitor-General may thereupon take such steps as he may deem necessary or expedient; and if from any such information or otherwise the Attorney-General or Solicitor-General suspects that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case, he may by leave of the Court intervene in the suit, alleging such collusion, and subpoena witnesses to prove it: and it shall be lawful for the Court to order the costs arising from such intervention to be paid by the parties, or such of them as it shall see fit, including a wife if she have separate property. 5 10

Making decree absolute.  
1898, No. 42, sec. 8

39. On every decree *nisi* in any suit or other proceeding for dissolution of marriage after the coming into operation of this Act, the Registrar shall indorse a notice that if the petitioner or respondent shall contract marriage before such decree shall be made absolute he or she will be guilty of bigamy; but it shall not be necessary for the petitioner to move to make absolute any decree *nisi* hereafter pronounced. After the expiration of the time limited in that behalf the Registrar, on the request in writing of the petitioner, and if no matter in opposition to the final decree is then pending, may issue the decree absolute as of course. If for the period of one month after the expiration of the time so limited as aforesaid the petitioner neglect or fail to so apply, then the Registrar, on the request in writing of the respondent, and after the respondent shall have given to the petitioner three days' notice, or such substituted notice as the Court may allow, and if no matter in opposition to the final decree is then pending, may issue the decree absolute as of course, and the Court shall have the same powers as it would have if the application were made by the petitioner. 15 20 25

Liberty to party to marry again.  
1867, No. 94, sec. 29

40. (1.) When the time limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death. 30 35

1898, No. 42, sec. 10

(2.) In cases where under this Act there shall be no right of appeal, the parties respectively shall be at liberty to marry again at any time after the pronouncing or issue of the decree absolute.

Power to grant relief to respondent.  
Ibid, sec. 11

41. In any suit or other proceeding instituted for dissolution of marriage or judicial separation, if the respondent shall oppose the relief sought on the ground of any cause entitling either husband or wife to any relief under this Act, the Court may in such a suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had filed a petition seeking such relief. 40 45

### PART III.

#### REMEDIES AGAINST ADULTERER.

Action for criminal conversation abolished.  
1867, No. 94, sec. 31

42. No action for criminal conversation shall be commenced in New Zealand. 50

43. Any husband may, either in a petition for dissolution of marriage or for judicial separation, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner, and such petition shall be served on the alleged adulterer and the wife, unless the Court dispense with such service or direct some other service to be substituted; and the claim made by every such petition shall be heard and tried on the same principles, in the same manner, and subject to the same or the like rules and regulations as actions for criminal conversation have heretofore been tried and decided in the Supreme Court; and all the enactments herein contained with reference to the hearing and decision of petitions to the Court shall, so far as may be necessary, be deemed applicable to the hearing and decision of petitions presented under this enactment.
44. The damages to be recovered on any such petition shall in all cases be ascertained by the verdict of a jury, although the respondents or either of them may not appear; and, after the verdict has been given, such damages shall be paid or applied in such manner as the Court directs, and it shall be lawful for the Court to direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife: Provided that if any such petition be dismissed no damages shall be given to or on the behoof of any such petitioner.
45. In any petition by a husband for dissolution of marriage or judicial separation on the ground of the adultery of his wife, no damages shall be claimed in respect of an act of adultery committed more than three years before the filing of the petition: Provided that nothing herein contained shall affect the right of any petitioner to a decree for dissolution of marriage or judicial separation on the ground of adultery committed more than three years before the filing of the petition.
46. When in any petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.
- Husband may claim damages from adulterer. 1867, No. 94, sec. 32
- Damages to be ascertained by jury, &c. Ibid, sec. 33
- Limitation of time for recovery of damages. 1898, No. 42, sec. 20
- Court may order adulterer to pay costs. 1867, No. 94, sec. 34

## PART IV.

### PROVISIONS FOR THE BENEFIT OF CHILDREN.

47. In any such suit or other proceeding for obtaining a judicial separation or a decree of nullity of marriage, and on any petition for dissolving a marriage, the Court may from time to time before making its final decree make such interim orders, and may make such provision in the final decree as it may deem just and proper with respect to the custody, maintenance, and education of the children, the marriage of whose parents is the subject of such suit or other proceeding, and may if it think fit direct proper proceedings to be taken for placing such children under the protection of the said Court.
48. The Court, after a final decree of judicial separation, nullity of marriage, or dissolution of marriage, may, upon application by petition for this purpose, make from time to time all such orders and provisions with respect to the custody, maintenance, and
- Court may make orders as to custody of children. Ibid, sec. 35
- Court after final decree may make such order. Ibid, sec. 36

education of the children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the Court, as might have been made by such final decree or by interim order in case the proceeding for obtaining such decree were still pending.

Custody of children in undefended cases, &c.

1898, No. 42, sec. 21

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

Court after final decree may inquire as to settlement and make orders therein for children.

1867, No. 94, sec. 37;  
1898, No. 42, sec. 19

50. The Court, after a final decree of nullity of marriage or dissolution of marriage, may inquire into the existence of anti-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 a portion of the property settled either for the benefit of the children of the marriage or of their respective parents, and notwithstanding that there are no children, as to the Court shall seem fit.

Court may settle property of adulterous wife for benefit of innocent party and children of marriage.

1867, No. 94, sec. 38

51. Where the Court pronounces a decree of divorce or judicial separation for adultery of the wife, if it be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court if it think proper may order such settlement as it shall think reasonable to be made of such property or any part thereof for the benefit of the innocent party, and of the children of the marriage or either or any of them.

Coverture not to invalidate instrument executed under order.

Ibid, sec. 39

52. Any instrument executed pursuant to such order made at the time or after the pronouncing of a decree of divorce or judicial separation shall be deemed valid and effectual in the law, notwithstanding the existence of the disability of coverture at the time of the execution thereof.

## PART V.

### PROCEDURE IN MATRIMONIAL CAUSES.

Questions of fact may be tried before Court.

Ibid, sec. 40

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

Such questions to be tried as an issue.

Ibid, sec. 41

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

Affidavit in support of a petition.

Ibid, sec. 42

55. Every person seeking a decree of nullity of marriage, or a decree of judicial separation, or dissolution of marriage, or a decree in a suit of jactitation of marriage, shall, together with the petition or other application for the same, file an affidavit verifying the same so far as he or she is able to do so, and stating that there is not any collusion or connivance between the deponent and the other party to the marriage.

Serving petition.

Ibid, sec. 43

56. Every such petition shall be served on the party to be affected thereby, either within or without New Zealand, in such

manner as the Court shall by any general or special order from time to time direct, and for that purpose the Court shall have and exercise all the powers it now possesses by law: Provided that the said Court may dispense with such service altogether in case it shall seem  
5 necessary or expedient so to do.

57. The Court may if it think fit order the attendance of the petitioner or respondent, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of any petition, but no such petitioner shall be bound to answer any  
10 question tending to show that he or she has been guilty of adultery.

58. The Court may from time to time adjourn the hearing of any such petition, and may require further evidence thereon if it see fit so to do.

59. The witnesses in all proceedings before the Court, where  
15 their attendance can be had, shall be sworn and examined orally in open Court, and such attendance and the production of documents by them shall be compelled in the same manner as in an action at law, but the parties shall be at liberty to verify their respective cases in whole or in part by his or her own affidavit, but so that the  
20 deponent in every such affidavit shall, on the application of the opposite party or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally in open Court, and, after such cross-examination, may be re-examined orally in open Court as aforesaid on his or her own behalf.

60. It shall be lawful for the Court or a Judge to order the examination of witnesses, and also to order a commission to issue for the examination of witnesses, in the same way to all intents as if the matter before it were an action pending in the ordinary jurisdiction.

61. Subject to the foregoing provisions of this Act relating to  
30 costs, the Court, on the hearing of any suit, proceeding, or petition under this Act, may make such order as to costs as to such Court may seem just.

62. All decrees and orders to be made by the Court in any suit, proceeding, or petition to be instituted under authority of this Act  
35 shall be enforced and put in execution in the same or in the like manner as other judgments, orders, and decrees of the said Court may be now enforced and put in execution.

63. The Governor in Council may fix from time to time the fees payable on all proceedings under this Act, but the Court may nevertheless make rules and regulations for enabling persons to sue in the  
40 said Court under this Act *in formâ pauperis*.

64. All rules and regulations concerning the practice, pleading, or procedure, and all orders fixing the fees payable under this Act, shall be laid before the Legislative Council and House of Representatives within one month after the meeting thereof if Parliament be then sitting, or, if Parliament be not then sitting, within one month after the commencement of the then next session of Parliament.

65. On any petition presented by a wife praying that her marriage may be dissolved by reason of her husband having been guilty  
50 of adultery coupled with cruelty, or of adultery coupled with desertion, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Examination of petitioner.  
1867, No. 94, sec. 44

Adjournment.  
Ibid, sec. 45

Mode of taking evidence.  
Ibid, sec. 46

Commissions or orders for the examination of witnesses.  
Ibid, sec. 47

Costs.  
Ibid, sec. 48

Enforcement of orders and decrees.  
Ibid, sec. 49

Fees to be regulated.  
Ibid, sec. 50

Order fixing fees to be laid before Parliament.  
Ibid, sec. 51

Husband and wife competent to give evidence.  
Ibid, sec. 52

Suits may be heard  
in Chambers.  
1898, No. 42, sec. 22

Proceedings not to  
be published.

Judge may sit in  
Chambers to hear  
cases.  
1867, No. 94, sec. 53

Power of Judge in  
Chambers.  
Ibid, sec. 54.

Judge may grant  
rule *nisi* for new  
trial.

Ibid, sec. 55; 1881,  
No. 48, sec. 3

Affidavits, by whom  
sworn in certain  
cases.

1867, No. 94, sec. 56

Affidavits, before  
whom to be sworn  
in certain other  
cases.

Ibid, sec. 57

Forging seal or  
signature.  
Ibid, sec. 58

66. The Court may, on the application of either the petitioner or the respondent, or at its discretion, if it thinks it proper in the interests of public morals, hear and try any such suit or proceeding in Chambers, and may at all times in any suit or proceeding, whether heard and tried in Chambers or in open Court, make an order forbidding the publication of any report or account of the evidence or other proceedings therein, either as to the whole or any portion thereof; and the breach of any such order, or any colourable or attempted evasion thereof, may be dealt with as contempt of Court.

67. It shall be lawful for any Judge of the Court in any cause to sit in Chambers for the despatch of such part of the business of the Court as in the opinion of the said Judge can with advantage to the suitors be heard in Chambers; and the time at which such sitting shall be held shall from time to time be fixed by such Judge: Provided always that no question shall be heard in Chambers which either party shall require to be heard in open Court.

68. Such Judge, when so sitting in Chambers, shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open Court.

69. Where any trial shall have been heard by a jury before the Court, or upon any issue directed by the Court, it shall be lawful for the Court to grant a rule *nisi* for a new trial.

70. In cases where it shall be necessary to obtain affidavits, declarations, or affirmations from persons residing in foreign parts out of His Majesty's dominions the same may be sworn, declared, or affirmed before any British ambassador, envoy, minister, charge d'affaires, or secretary of embassy or legation exercising his functions in any foreign country, or before any British consul-general, consul, vice-consul, acting-consul, pro-consul, or consular agent: Provided that in places where there are no such persons as are last mentioned such affidavits, declarations, or affirmations may be made, declared, and affirmed before any foreign local Magistrate or other person having authority to administer an oath there.

71. Affidavits, declarations, and affirmations for the purposes of this Act may be taken and sworn in England, Scotland, Ireland, the Isle of Man, the Channel Islands, or any colony, island, plantation, or place out of England under the dominion of His Majesty, before any Court, Judge, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively; or, as far as relates to the Isle of Man and the Channel Islands, before any commissary, ecclesiastical Judge, or surrogate, who at the time of the passing of the Act of Parliament of the United Kingdom of Great Britain and Ireland in the twentieth and twenty-first years of the reign of Her late Majesty Queen Victoria, chapter seventy-seven, was authorised to administer oaths in the Isle of Man or in the Channel Islands respectively; and all Judges, Registrars, and other officers of the Supreme Court of New Zealand shall take judicial notice of the seal or signature, as the case may be, of any such Judge, notary public, or person which shall be attached, suspended, or subscribed to any such affidavit, declaration, or affirmation, or to any other document.

72. If any person shall forge any such seal or signature as last aforesaid, or any seal or signature impressed, affixed, or subscribed

- to any affidavit, declaration, or affirmation sworn, declared, or affirmed as hereinbefore provided, and to be used for the purposes of any of the Parts aforesaid of this Act, or shall tender in evidence any such document as aforesaid with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall upon conviction be liable to be imprisoned with or without hard labour for any period not less than seven years; and whenever any such document has been admitted in evidence by virtue of this Act, the Court or the person who has admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person for such period and subject to such conditions as to the said Court or person shall seem meet.
73. Any person who shall wilfully give false evidence, or who shall wilfully swear, affirm, or declare falsely in any affidavit or deposition made under the authority of this Act before any person authorised to administer oaths thereunder, shall be liable to the penalties and consequences of wilful and corrupt perjury.
74. Either party dissatisfied with the decision of the Court or of any Judge thereof in any matter may, within three months after the pronouncing thereof, appeal therefrom to the Court of Appeal, the decision of which shall be final.
75. Either party dissatisfied with the decision of the Court on any petition for the dissolution of marriage, or for the nullity of marriage, who shall not have appealed to the Court of Appeal, may, within three months after the pronouncing thereof, appeal therefrom to His Majesty in Privy Council, subject to such terms and conditions as to alimony, custody, and maintenance of children, disposal of property, and costs of suit, as the Court may direct pending such appeal.
76. All the provisions of this Act shall apply, *mutatis mutandis*, to the case of proceedings by a husband for the purpose of obtaining a decree of dissolution of marriage against a wife, or a judicial separation.
- Persons taking a false oath guilty of perjury.  
1867, No. 94, sec. 59
- Appeal from Court or Judge to Court of Appeal.  
Ibid, sec. 61
- Appeal to Privy Council.  
Ibid, sec. 62.
- Act to apply to petition by husband.  
1898, No. 42, sec. 24.

## SCHEDULES.

Schedules.

### FIRST SCHEDULE.

Section 1.

#### ACTS COMPILED.

- 1867, No. 94.—“The Divorce and Matrimonial Causes Act, 1867.”  
1881, No. 48.—“The Divorce and Matrimonial Causes Act 1867 Amendment Act, 1881.”  
1898, No. 42.—“The Divorce Act, 1898.”

Sec. 5 (2).

1898, No. 42, Sch.

SECOND SCHEDULE.

SCALE OF COSTS.

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

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

By Authority: JOHN MACKAY, Government Printer, Wellington. — 1904.