

Decree of divorce distinguished from decree of nullity. A bill held not to be one for divorce, as it set forth none of the causes thereof, and was filed by a third party. *Ridgely v. Ridgely*, 79 Md. 305; *LeBrun v. LeBrun*, 55 Md. 502.

For a case involving the effect of the death of one of the parties upon the divorce suit, see *McCurley v. McCurley*, 60 Md. 185.

This section referred to in deciding that the act of 1830, ch. 185, sec. 1, had no relation at the time of its adoption to proceedings for divorce. *Chappell v. Chappell*, 86 Md. 541.

For cases involving the effect of the acts of 1841, ch. 262, and 1844, ch. 306, upon the legislative power to grant divorces, see *Wright v. Wright*, 2 Md. 429; *Smith v. Devecom*, 30 Md. 480; *Harrison v. State*, 22 Md. 493; *Jamison v. Jamison*, 4 Md. Ch. 293. (For present law on this subject, see Md. Constitution).

This section referred to in construing sec. 38—see notes thereto. *Fleegle v. Fleegle*, 136 Md. 632.

As to alimony, see sec. 14. See also notes to secs 14, 38, 39 and 40.

Testimony of the plaintiff in divorce cases must be corroborated—art. 35, sec. 4.

An. Code, sec. 37. 1904, sec. 36. 1888, sec. 36. 1841, ch. 262, sec. 2. 1844, ch. 306. 1846, ch. 340. 1849, ch. 245. 1872, ch. 272. 1888, ch. 486.

**38.** Upon a hearing of any bill for a divorce, the court may decree a divorce *a vinculo matrimonii* for the following causes, to wit: first, the impotence of either party at the time of the marriage; secondly, for any cause which, by the laws of this State, render a marriage null and void *ab initio*; thirdly, for adultery; fourthly, when the court shall be satisfied by competent testimony that the party complained against has abandoned the party complaining, and that such abandonment has continued uninterruptedly for at least three years, and is deliberate and final, and the separation of the parties beyond any reasonable expectation of reconciliation; fifthly, when the woman before marriage has been guilty of illicit carnal intercourse with another man, the same being unknown to the husband at the time of the marriage, and when such carnal connection shall be proved to the satisfaction of the court.

#### **Abandonment.**

Abandonment to constitute a ground of divorce under this section, must be the deliberate act of the defendant done with the intent to terminate the marriage relations; proof of abandonment. The facts upon which the opinion of a witness as to the nature of the abandonment are based, must be stated. Abandonment not made out. *Twigg v. Twigg*, 107 Md. 677; *Wheeler v. Wheeler*, 101 Md. 427; *Gill v. Gill*, 93 Md. 652; *Goodhues v. Goodhues*, 90 Md. 292; *Lynch v. Lynch*, 33 Md. 329; *Levering v. Levering*, 16 Md. 218. *Cf. Matthews v. Matthews*, 112 Md. 583.

When the action of the husband in compelling his wife to leave him, will amount to an abandonment by the husband; abandonment not made out. *Levering v. Levering*, 16 Md. 218; *Wheeler v. Wheeler*, 101 Md. 432; *Harding v. Harding*, 22 Md. 337.

In order to secure a divorce on the ground of abandonment the plaintiff must prove that the defendant deliberately left him with the intent to bring the marriage relations to an end; that the separation has continued uninterruptedly for three years, and that there is no reasonable hope of a reconciliation. *Tomkey v. Tomkey*, 130 Md. 295.

What amounts to abandonment under this section. The permanent and irrevocable refusal, without proper cause, of the wife to have sexual intercourse constitutes abandonment. *Fleegle v. Fleegle*, 136 Md. 632.

#### **Generally.**

This and the following section are not penal in their nature; they prescribe a remedy by civil suit for the violation of marital obligations. Act of 1872, ch. 272, is valid, although it had a retroactive operation. *Elliott v. Elliott*, 38 Md. 361; *Dimpfel v. Wilson*, 107 Md. 338; *Herbert v. Gray*, 38 Md. 534.