

and 32 of Article 96 of the Annotated Code of Public Laws of Maryland, shall be considered as residents of the State of Maryland and of the County or of the City of Baltimore, as the case may be, in which the land is situate for the purpose of jurisdiction in the Courts of Equity of this State in all applications for divorce.

An. Code, 1924, sec. 38. 1912, 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. .  
1937, ch. 396. 1939, ch. 558.

40. 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 husband and wife shall have voluntarily lived separate and apart, without any cohabitation, for five consecutive years prior to the filing of the bill of complaint, and such separation is beyond any reasonable expectation of reconciliation.

#### 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.

Abandonment is interrupted by agreement of separation, but intent as to future separation is rebuttable by parol evidence. Validity of separation agreement. Other ground of divorce. *Melson v. Melson*, 151 Md. 202.

To justify divorce *a vinculo* on ground of abandonment, marital relations must be ended and abandonment uninterrupted for three years and deliberate and final and beyond reasonable expectation of reconciliation. *Miller v. Miller*, 153 Md. 217.

Testimony shows abandonment deliberate and final and separation beyond reasonable expectation of reconciliation. *Wald v. Wald*, 161 Md. 493.

#### Generally.

Divorce obtained in Md. recognized in D. C., notwithstanding collusion of parties, where husband's residence in Md. was *bona fide*. *Atkinson v. Atkinson*, 82F (2d) 847. (U. S. Ct. of Appeals, D. C.)

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.

A divorce *a vinculo* and a divorce *a mensa* distinguished; neither will be granted save for the causes set out in the respective sections dealing with the same. The court will not decree a divorce *a mensa* where the only ground alleged is adultery—how such question may be raised. *Stewart v. Stewart*, 105 Md. 301. And see *Schwab v. Schwab*, 93 Md. 382.