

This section does not confer upon the courts jurisdiction of divorce cases other than those specifically enumerated. *Wright v. Wright*, 2 Md. 450.

The mere failure of a husband to support his wife and children does not authorize a divorce *a vinculo*. *Wheeler v. Wheeler*, 101 Md. 433.

The right of the husband to a divorce on the ground of impotence existing at time of marriage, is not lost by the execution of a voluntary deed of separation. *J. G. v. H. G.*, 33 Md. 406.

For a case dealing with the acts of 1841, ch. 262, and 1844, ch. 306, and passing upon the effect upon an application for divorce under this section of the execution of a deed of separation and continued life apart thereunder, see *Brown v. Brown*, 5 Gill, 249; *Brown v. Brown*, 2 Md. Ch. 319.

For cases involving the proof of adultery, see *Pattison v. Pattison*, 132 Md. 362; *Shufeldt v. Shufeldt*, 86 Md. 519; *Kremelberg v. Kremelberg*, 52 Md. 553.

For cases involving the portion of the act of 1872, ch. 272, providing that the court might prohibit the guilty party from remarrying (repealed by the act of 1888, ch. 486), see *Dimpfel v. Wilson*, 107 Md. 338; *Garner v. Garner*, 56 Md. 128; *Elliott v. Elliott*, 38 Md. 361.

Husband not entitled to divorce for premarital unchastity of his wife when he was the first to have carnal knowledge of her. *Hoff v. Hoff*, 162 Md. 248. (Decided prior to ch. 558, 1939.)

Failure of proof of wife's misconduct, without husband's knowledge, before marriage—see notes to art. 35, sec. 4. *Wiegand v. Wiegand*, 155 Md. 645.

Cited in *Staub v. Staub*, 170 Md. 212.

The provision as to voluntary separation is applicable whether separation began before or after June 1, 1937, and does not render Act invalid. Prior agreement of separation held sufficient to show separation voluntary; prior suit for divorce. *Campbell v. Campbell*, 174 Md. 229.

"Voluntary separation" means a physical separation of the parties, by common consent and with a common intent not to resume marital relations, and does not mean a mere physical separation where one of the spouses for pleasure or business leaves the other, intending to return, with no intention of affecting their marital relationship. *France v. Safe Dep. & Tr. Co.*, 176 Md. 307.

Divorce granted after voluntary separation of 5 years. *Mooyer v. Mooyer* (Judge Lawrence, Circuit Court for Baltimore Co.), Daily Record, Mar. 9, 1939.

See notes to art. 35, sec. 4.

See notes to secs. 38 and 41.

An. Code, 1924, sec. 39. 1912, sec. 38. 1904, sec. 37. 1888, sec. 37. 1841, ch. 262, sec. 3. 1872, ch. 272. 1920, ch. 574, sec. 38.

**41.** DIVORCES A MENSA ET THORO may be decreed for the following causes, to-wit: First, cruelty of treatment; secondly, excessively vicious conduct; thirdly, abandonment and desertion; and the court may decree such divorces forever, or for a limited time; and in all cases where divorce A MENSA ET THORO is decreed, it may be revoked at any time thereafter by the court granting the same, upon the joint application of the parties to be discharged from the operation of the decree; and the court may decree a divorce A MENSA ET THORO in cases where a divorce *a vinculo matrimonii* is prayed, if the causes proved be sufficient to entitle the party to the same; and in all cases where a divorce is decreed, the court passing the same shall have full power to award to the wife such property or estate as she had when married, or the value of the same, or of such part thereof as may have been sold or converted by the husband, having regard to the circumstances of the husband at the time of the divorce, or such part of any such property as the court may deem reasonable; and shall also have power in all cases in which the care and custody of the children of parties forms part of the relief prayed whether a divorce is decreed or denied to order and direct who shall have the guardianship and custody of the children, and be charged with their support and maintenance and may at any time thereafter annul, vary or modify such order in relation to the children.

**Cruelty of treatment; vicious conduct.**

The term "excessively vicious conduct," defined. Drunkenness as an independent ground, does not justify a divorce. *Shutt v. Shutt*, 71 Md. 193; *Wheeler v. Wheeler*, 101 Md. 432.