

Divorce Act, 1869

Chapter 5 - Judicial Separation

No decree shall hereafter be made for a orce a mensa et toro, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion 1 [***] for two years or upwards, and such decree shall have the effect of a divorce a mensa et toro under the existing law, and such other legal effect as here in after mentioned.

1. The words "without reasonable excuse" omitted by Act 51 of 2001. section 17 (w.e.f. 3-10-2001).

Section 23 - Application for separation made by petition

Application for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the District Court1[***], and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

1. The words "or the High Court" omitted by Act 51 of 2001. section 18 (w.e.f. 3-10-2001).

Section 24 - Separated wife deemed spinster with respect to after-acquired property

In every case of a judicial separation under this Act, the wife shall from the date of the sentence, and whilst the separation conlunues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

Section 25 - Separated wife deemed spinster for purposes of contract and suing

In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceedings; and her husband shall not be liable in respect of any contact, act or costs entered into, done, omitted or incurred by her during the separation:

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Section 26 - Reversal of Decree of Separation: Decree of separation obtained during absence of husband or wife may be reversed

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 by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it 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.
