

b) (1)
 Divorce & Dissolution of ~~the~~
 Native Customary Unions

The Native Admin. Act 2 1927 provides the authority in Section 10(1) ~~for~~ and Section 12(1) for the jurisdiction ⁱⁿ ~~in~~ divorce or separation arising out of Customary Unions to be found in the Courts of N.C.s & of Chief or Headmen. And Section 11 (1) gives the necessary authority for the recognition of Native customs arising associated with ~~such~~ ^{such} unions - ~~provided~~ - except

^{See} This provision has put right the situation ^{of the Natal + N.S.} that used to exist in the Cape Provs where divorce, separation or dissolution of customary unions could not be sought in the Courts.

^{transferred} Sec 6, Act 142 of 1910 gave the magistrates jurisdiction over all questions of divorce or separation or dissolution arising out of native customary unions (except ^{republic marriages in Transvaal} see P. 142/1910 see ^{for definition} grounds for divorce).

Cape Transvaal

- (1) Return of lobolo by wife's guardian to the husband or ^{his} representative at husband or wife's request. (Whit. p. 219, ^{see N.S. wife's consent} . Magistrate under Proc 140 of 1888.)
- (2) Desertion or Abandonment
^{N.S.} Mere desertions without return of lobolo & against husband's wish not a ground of divorce unless through husband's misconduct (Whit. pp 221/2. 238.)
- (3) Repudiation or Wiving Away
 (Whit. pp 240/1.)
- (4) Refusal to eat food ^{prepared by the} on husband's part ^{wife.}

wife divorces herself by returning to her home land saying she has been driven away. Husband must fetch - wife to do so constitutes wife's allegations. wife usually asks for clothes & for male servant

(5) Refusal to provide shelter

(7) Gross ill-treatment

Whit. p. 239.

(8) Charge ^{of witchcraft against} wife of husband or his relatives

(Whit. p. 241.)

(9) Adultery - in certain instances

(1) Repeated acts.

(2) Refusal to disclose name of guilty man to enable husband to claim damages

(3) Incest (even tho' not regarded as such incest in Native law) (Whit. p. 224)

N.B. Adultery not sufficient cause if not continuous (Whit. pp. 222-3)

(9) ~~Marriage by the a girl rites~~ (Whit. p. 222)

(10) Impotency of Husband (in such case part of cattle is restored.) Whit. p. 225

(11) Ignorance of wife's misconduct prior to marriage i.e. her stuprum.

N.B. Not if he recovers damages. Under Native Custom this w^d be adultery of a married woman & subject of damages

(12) Refusal to perform lawful & domestic duties

Procedure.

- (1) Gathering of families at wife's ^{people's} kraal + case investigated. If she is upheld in allegations she is usually telekhal'd (impounded) husband must pay more lobolo to secure her return - or he is reprimanded. If she is at fault she is reprimanded + returned to her husband. Failure to return involves return of lobolo.

- (2) Appeal to Chief
On refusal to obey chief's order action lies in

- (3) Court of Native Council

NB Due cause must be alleged & proved in NCS Court.

Whit. p 218.

Summons is issued in wife's guardian's name.

- (4) Native Appeal Court

Dissolution

Grounds.

(The wife so married with another man.)

- (a) Marriage ^{of wife} ~~of the parties~~ or dissolves native marriage (Whit p. 222.)

Basotho [cf. Chap V. Native Admin Act esp. sections 22. (7). also sec 42. 1910 sec 3.]

- (b) Death of wife - in Cape but not in Transkei
Whit. p. 226-7. 229.

- (c) Death of husband.

Whit. p 232/3.

NB. One woman - one dowry.

Principle. "There is no marriage where there are no dowry cattle in the kraal of the woman's father. (Whit. p. 224)

Kraal

grounds for divorce

- 2. The consent of the father or kraal head of the intended husband, should such be legally necessary.
- 3. The declaration in public by the intended wife to the Official Witness on the marriage day that the proposed marriage is with her own free will and consent.

"It shall be the duty of the Official Witness and the husband to proceed within thirty days after the celebration of the marriage to the office of the Magistrate, for the purpose of registering the same".

Code 163 The grounds upon which a husband can maintain a suit for divorce:-

- * a. Adultery. - An offence under S. 277 (e) for males or females
- b. Continued refusal to render conjugal rights.
- c. Wilful desertion. *Whit. p 246*
- d. Continued gross misconduct. *Whit. p 246*
- e. Becoming the subject of any criminal sentence carrying five years imprisonment.

164 The grounds upon which a wife can maintain a suit for divorce:-

- * a. Adultery.
- b. Cruelty or ill-treatment.
- c. Wilful desertion. *Whit. p 246*
- d. Continued ~~gross misconduct~~ refusal to render conjugal rights.
- e. Becoming the subject of any criminal sentence carrying five years imprisonment.
- f. Continued absence for five years.

Natal

grounds for divorce

Code 163

The grounds upon which a husband can maintain a suit

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The grounds upon which a wife can maintain a suit

for divorce:-

- * a. Adultery.
- b. Cruelty or ill-treatment.
- c. Wilful desertion. *Whit. p 246*
- d. Continued ~~refusal~~ refusal to render conjugal rights.
- e. Becoming the subject of any criminal sentence carrying five years imprisonment.
- f. Continued absence for five years.

(*) Whipping. Under Act 8. 1897. There is a fine or not exceeding £10 or imprisonment with or without hard labour for any term not exceeding six months ^{in the case of a man} or to a whipping (not exceeding 15 lashes) except in the case of a woman. Civil Action also lies S. 210.

Procedure

S. 165.

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see Natal Decree p 2. H. Manjivanebe v. L. L. L.

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wh. Remarriage S. 171

Dissolution or Nullity of Marriage.

Nullity

Causes - S. 173. (see also S. 148) Whit. p 20

S. 168.

Dissolution

S. 181. Heath

Position as to Christian Marriage.

Divorce, &c

Act 9. 1929. (Whit. 312).

Zimbabwe - Code 1878.

Ropa beast = compensation for insult to father of
an abducted girl

Mlonze = catch of powder or in case of adultery,
as proof.

Mpohulo beast = beast taken (wedding party)
from home of the bride to the
kraal of bridegroom & slain there.

Iihewula (or woman's beast) : beast demanded of
women for a virgin's kraal for
possible deflowering. claim apart
reduced. Meat is eaten by the
women

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