

unlike the 1937 English Statute (which introduced rape, sodomy and bestiality as grounds in England) omits rape as a separate ground. Under Scottish law, cases of rape would be covered by the ordinary law regarding adultery.

6. *Dissolution of Marriage*

A married person who can establish reasonable grounds for supposing that the marital partner is dead may obtain a decree dissolving the marriage. Continuous absence for seven years, if the applicant has no reason for believing that the absent party has been living during that time, is evidence of death unless the contrary can be proved. However, there is doubt in Scots law as to the status of a subsequent remarriage should the absent partner eventually reappear. The Royal Commission on Marriage and Divorce urged that the matter be clarified, but as yet nothing has been done. (Cmnd. 9678, pp. 1195-1198.)

7. *Bars to Divorce*

Three defences to a divorce action in Scotland are: Condonation, connivance (or *lenocinium*), and collusion.

(i) *Condonation*

As in English law, condonation of the defender's adultery by the pursuer is a bar to divorce. Generally, condonation must be established by a resumption of cohabitation; a verbal expression of forgiveness which is not followed by a resumption of cohabitation does not constitute condonation. Unlike Canadian practice, or English practice before 1963, however, condoned adultery cannot be revived by the subsequent misconduct of the erring spouse.

In cases of cruelty, however, if a spouse forgives an act of cruelty and resumes cohabitation, and if the cruelty is repeated and a divorce is sought, the injured party is entitled to reopen the past history for certain purposes. Acts of cruelty prior to the reconciliation cannot form the sole basis for a divorce action, but they can be considered in the determination of the real issue of the case, whether the pursuer could with safety to health and person resume cohabitation with the defender.

(ii) *Connivance*

Connivance has never been defined either statutorily or judicially in Scotland. It is a defence that is rarely presented and even more rarely successful. An essential element that must be established is something of an active character. One spouse must have been an accessory to the conduct of the other partner, or a participant in the crime, or a direct occasion of it.

(iii) *Collusion*

The doctrine of collusion prevailing in Scotland differs from the one current in England. Scottish judges have emphatically rejected the English position. In Scotland, the definition of collusion is more limited than in England. It is "permitting a false case to be substantiated, or keeping back a just defence." (Walker vs. Walker, 1911, S. C., pp. 168-9) Collusion is only relevant in a Scottish divorce case when there has been fabrication or concealment of evidence. "Mutual desire that a decree in a consistorial cause should be obtained, and mutual action to facilitate this end, are not collusion if there be no fabrication or suppression." (Administration of Austrian Property vs. von Lorang, 1926, S. C., p. 628). If a husband or wife invites their spouse to commit adultery, and he or she does so, this is no basis for a defence of collusion. It may, however,