

CHAPTER 125**MATRIMONIAL CAUSES****MATRIMONIAL CAUSES RULES****(SECTION 7)***[Commencement 12th January, 1957]**G N 1/1957
G N 34/1957
G N 179/1958
5 cf 1987***PART I
INTRODUCTION**

1. These Rules may be cited as the Matrimonial Causes Rules. Short title.

2. In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say — Interpretation.

“the Act” means the Matrimonial Causes Act;

“the English Act” means the Matrimonial Causes Act, 1950 of England, as extended to the Colony by section 20 of the Supreme Court Act; Ch. 53.

“attorney” means counsel and attorney;

“the judge” means the Chief Justice or any Justice appointed under Constitution and exercising jurisdiction in matrimonial causes and matters; G N 34/1957

“undefended cause” means a matrimonial cause in which no answer has been filed or in which all the answers filed have been struck out, but does not include —

- (a) a cause in which relief is sought under section 8(1)(b) of the English Act;
- (b) a cause in which a co-respondent, party cited or person named, whether made a respondent or not, denies, in accordance with rule 16, a charge of adultery without filing an answer; or
- (c) a cause in which a co-respondent claims to be heard as to damages without filing an answer;

“defended cause” means a matrimonial cause not being an undefended cause;

“application for ancillary relief” means an application for any relief of the kind mentioned in rule 3(3);

“Rules of the Supreme Court of England” means the Rules of the Supreme Court of England as amended from time to time;

“Supreme Court Rules” means rules of court made or deemed to be made under the provisions of section 29 of the Supreme Court Act;

“the Registrar” means the Registrar of the Supreme Court.

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PART II

INITIATION OF PROCEEDINGS

Commencement
of proceedings

3. (1) Every matrimonial cause shall be commenced by filing a petition addressed to the Supreme Court.

(2) A petition shall not be filed if there is before the court another petition by the same petitioner which has not been dismissed or otherwise disposed of by a final order.

(3) Every application in matrimonial cause for ancillary relief, that is to say, every application —

- (a) for alimony pending suit, except where a claim for such relief is made in the petition;
- (b) for maintenance of any children of the marriage (in these Rules referred to as “maintenance of the children”), except where a claim for such relief is made in the petition;
- (c) for the payment by a husband, on a decree for divorce or nullity of marriage, of monthly or weekly sums for the maintenance and support of his wife (in these Rules referred to as “maintenance”), except where a claim for such relief is made in the petition;
- (d) for the securing by a husband, on a decree for divorce or nullity of marriage, of a gross or annual sum of money to his wife or for the benefit of the children of the marriage (in these Rules referred to as “a secured provision”), except where a claim for such relief is made in the petition;

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- (e) for the payment of alimony to a wife in whose favour a decree for judicial separation or restitution of conjugal rights has been made (in these Rules referred to as “permanent alimony”);
 - (f) for periodical payments to a wife in whose favour a decree for restitution of conjugal rights has been made, or, where a wife against whom such a decree has been made is in receipt of any profits of trade or earnings, for periodical payments of any part of such profits of trade or earnings to her husband for his own benefit, or to her husband or any other person for the benefit of the children of the marriage or either or any of them (in these Rules referred to as “periodical payments”) or for securing periodical payments to a wife in whose favour a decree for restitution of conjugal rights has been made;
 - (g) in the case of a decree for divorce or judicial separation made against the wife by reason of her adultery, desertion or cruelty, or in the case of a decree for restitution of conjugal rights made against the wife, for the settlement of any property to which she is entitled either in possession or in reversion, or any part thereof, for the benefit of her husband and of the children of the marriage or either or any of them (in these Rules referred to as “settlement of a wife’s property”);
 - (h) for the application of the whole or any part of the property comprised in any ante-nuptial or post-nuptial settlement made on the spouses, either for the benefit of the children of the marriage or of the spouses (in these Rules referred to as “variation of marriage settlements”);
 - (i) for an order (in these Rules referred to as “a modification order”) discharging, modifying or temporarily suspending any order for alimony pending suit, maintenance of the children, maintenance, a secured provision, permanent alimony, periodical payments or for securing periodical payments to a wife,

shall be made by notice in accordance with Form 1 issued out of the Registry:

*Form 1, GN
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Provided that where the parties have agreed upon the terms of the proposed order the application may be made by summons to the Registrar except in the case of an application under subparagraphs (g) or (h) of this paragraph.

(4) Except where these Rules otherwise provide, every other application in a matrimonial cause or matter —

- (a) shall be made to the Registrar; and
- (b) shall be made by summons.

Form of petition

4. (1) The petition (except in a suit for jactitation of marriage) shall state —

- (a) the names of the parties to the marriage, the place and date of the marriage and the name and status of the wife before the marriage;
- (b) the principal addresses at which the parties to the marriage have cohabitated within the jurisdiction or, if it be the case, that there has been no cohabitation within the jurisdiction;
- (c) whether there are living any children of the marriage and, if so, the names and dates of birth or ages of such children and, if it be the case, that the parentage of any living child of the wife born during the marriage is in dispute;
- (d) the occupation of the husband and the residence and domicile of the parties to the marriage (or, in the case of a petition for presumption of death and dissolution of the marriage, the residence and domicile of the petitioner) at the date of the institution of the cause;
- (e) in the case of a petition by a wife in which the court is alleged to have jurisdiction by virtue of section 18(1)(a) of the English Act, the domicile of the husband immediately before the desertion or deportation, and the date when and the circumstances in which the alleged desertion began, or as the case may be, the date of the deportation order;
- (f) in the case of a petition by a wife in which the court is alleged to have jurisdiction by virtue of section 18(1)(b) of the English Act —

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- (i) (unless otherwise directed, and in lieu of the statement as to domicile required by subparagraph (d) of this paragraph) the addresses at which the petitioner has resided during the three years immediately preceding the presentation of the petition and the length of her residence at each address, and that the husband is not domiciled in The Bahamas; and
 - (ii) whether to the knowledge of the petitioner proceedings for dissolution or nullity of the marriage or judicial separation or restitution of conjugal rights, or for other relief in respect of the marriage, are pending in any other country and, if so, the nature of those proceedings;
- (g) in the case of a petition by a wife in which the court is alleged to have jurisdiction by virtue of section 18 (2) of the English Act, (unless otherwise directed and in lieu of the statement as to domicile required by subparagraph (d) of this paragraph) the addresses at which the petitioner has resided during the three years immediately preceding the presentation of the petition and the length of her residence at each address;
- (h) whether there have been in the Supreme Court or a magistrate's court any, and if so what, previous proceedings with reference to the marriage or the children of the marriage by or on behalf of either of the parties to the marriage, the date and effect of any decree or order made in such proceedings, and, in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the making thereof;
- (i) the matrimonial offences alleged, or other grounds upon which relief is sought, setting out with sufficient particularity the individual facts relied on, but not the evidence by which they are to be proved, and, if such be the case, that any person with whom adultery or sodomy is alleged to have been committed has died before the presentation of the petition;

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- (j) in the case of a petition for presumption of death and dissolution of the marriage, the last place of cohabitation of the parties, and the circumstances in which the parties ceased to cohabit, the date when and the place where the respondent was last seen or heard of, and the steps which have been taken to trace the respondent;
 - (k) in the case of a petition for restitution of conjugal rights, the date when and the circumstances in which the respondent refused or ceased to render conjugal rights to the petitioner, the desire of the petitioner for restitution of conjugal rights and the willingness of the petitioner to render them to the respondent;
 - (l) where adultery is alleged, whether the petitioner has in any way been accessory to or connived at or condoned the adultery, and where cruelty is alleged, whether the petitioner has condoned the cruelty;
 - (m) in the case of a petition for nullity of marriage under section 8(1)(b), (c) or (d) of the English Act, whether the petitioner was at the time of the marriage ignorant of the facts alleged and whether marital intercourse with the consent of the petitioner has taken place since the discovery by the petitioner of the existence of grounds for a decree;
 - (n) whether (except in the case of a petition for restitution of conjugal rights) the petition is presented or prosecuted in collusion with the respondent or any of the co-respondents.

(2) A wife petitioner may include in her petition a claim for alimony pending suit, maintenance of the children, maintenance or a secured provision, in which case the petition shall contain a statement in general terms of her husband's income and property in so far as they are within her knowledge or belief.

(3) The petition shall conclude with a prayer setting out particulars of the relief claimed, including the amount of any claim for damages, any claim for costs, and, in appropriate cases, a prayer that the court will exercise its discretion to grant a decree *nisi* notwithstanding the adultery of the petitioner during the marriage.

The prayer may also include a claim for —

- (a) custody of the children of the marriage;
 - (b) alimony pending suit;
 - (c) maintenance of the children;
 - (d) maintenance; or
 - (e) a secured provision.
- (4) A petition for jactitation of marriage shall state —
- (a) the occupation, residence and domicile of the petitioner and the respondent at the date of the institution of the cause;
 - (b) the dates, times and places of the alleged boastings and assertions;
 - (c) that the alleged boastings and assertions are false and that the petitioner has not acquiesced therein,

and shall conclude with a prayer setting out the relief claimed.

(5) Every petition shall, if settled by an attorney, be signed by him, or by the petitioner if he is acting in person.

(6) The attorney for a petitioner represented by an attorney shall endorse on the petition his name or the name of his firm and the address of his or his firm's place of business within the jurisdiction, which shall be an address for service.

(7) A petitioner acting in person shall endorse on the petition an address for service, which shall be within two miles of the Law Court.

5. (1) Unless otherwise directed, where a husband's petition alleges adultery, the alleged adulterer shall, if living at the date of the filing of the petition, be made a co-respondent in the cause, and where a wife's petition alleges adultery with a woman named and contains a claim for costs against her, she shall be made a respondent in the cause.

Co-respondent
and interveners.

(2) Where a person charged with adultery or sodomy in a petition is not made a co-respondent or respondent under the last foregoing paragraph, he shall be entitled to appear and intervene in the proceedings.

(3) Unless otherwise directed, a party intervening in a cause under these Rules shall join in the proceedings at the stage which those proceedings have reached at the time he

appears and his name shall appear thereafter in the title of the cause.

Affidavit in support of petition.

6. (1) Every petition shall be supported by an affidavit by the petitioner verifying the facts of which he has personal knowledge and deposing as to belief in the truth of the other facts.

(2) Where the petition contains an allegation of desertion without cause for a period of at least three years immediately preceding the presentation of the petition, this rule shall be deemed to be complied with if the affidavit is sworn not more than fourteen days before the petition is filed, or such longer time as may be allowed by the judge having regard to the circumstances of the case.

(3) The affidavit in support of the petition shall be contained in the same document as the petition and shall follow at the foot or end thereof.

PART III SERVICE OF PETITION, ETC.

Notice of petition and notice of proceedings.

Forms 2, 3 and 4.

7. (1) Every copy of a petition for service on a respondent spouse shall be accompanied by a notice of petition in accordance with Form 2, a form of acknowledgement of service in accordance with Form 3 and a memorandum of appearance in duplicate in accordance with Form 4.

Forms 3, 5 and 6.

(2) Every copy of a petition for service on a correspondent or person charged with adultery or sodomy, whether made a respondent or not, shall be accompanied by a notice of proceedings in accordance with Form 5, a form of acknowledgement of service in accordance with Form 3, and a memorandum of appearance in duplicate in accordance with Form 6.

Notice of application for ancillary relief.

Forms 3, 7 and 8.

8. (1) A notice of an application for ancillary relief and every copy thereof for service shall, if the respondent to the application has not already entered an appearance to the petition in the matrimonial cause in which the application is made, contain a notice to appear in accordance with Form 7, and shall be accompanied by a form of acknowledgement of service in accordance with Form 3 and a memorandum of appearance in duplicate in accordance with Form 8.

(2) A notice of an application for alimony pending suit, maintenance of the children, maintenance, a secured provision, permanent alimony, periodical payments or for securing periodical payments to a wife, and every copy thereof for service, shall contain a notice to file evidence in accordance with Form 9.

Form 9

9. (1) Unless otherwise directed —

- (a) a copy of every petition shall be served personally or by registered post upon every respondent, co-respondent and person charged with adultery or sodomy who is named in the petition; and
- (b) a copy of every originating summons shall be served personally or by registered post upon the respondent thereto; and
- (c) a copy of every notice of an application for ancillary relief shall be served personally or by registered post upon the respondent thereto, unless the respondent thereto is the petitioner or, being respondent in the cause, has entered a general appearance to the petition in the cause in which the application is made, in which case the notice may be served by leaving it at, or sending it by prepaid post to, the address for service.

Service of
petition
originating
summons and
notice of
application for
ancillary relief

Personal service shall in no case be effected by the petitioner or the intended petitioner.

(2) For the purposes of paragraph (1) of this rule, a document shall be deemed to have been duly served by registered post if it is sent by pre-paid registered post to the party to be served, and an acknowledgement of service in accordance with Form 3, of his identity and of his receipt of the document is signed by him and returned to the attorney for the petitioner, or to the petitioner if he is acting in person at the address for service:

Provided that where the party to be served is a respondent spouse, his signature on the acknowledgement of service shall be proved at the trial or hearing.

(3) An application for leave to substitute for the modes of service prescribed by the foregoing paragraphs of this rule some other mode of service, or to substitute for service notice of the proceedings by advertisement or otherwise, shall be made *ex parte* by lodging with the judge an affidavit setting out the grounds on which the application is made.

(4) Where leave is given to substitute for service notice of the proceedings by advertisement, the form of the advertisement shall be settled by the Registrar and copies of the newspapers containing the advertisement shall be filed together with any notice of petition or notice of proceedings.

(5) Service may be dispensed with altogether in any case in which it may appear necessary or expedient to do so. An application for leave to dispense with service on a respondent spouse shall be made to the judge and an application for leave to dispense with service in any other case shall be made to the Registrar.

Service out of the
jurisdiction

10. (1) A petition, originating summons, notice or other document in a matrimonial cause or matter may be served out of the jurisdiction without leave in manner provided by these Rules or may be served in accordance with the procedure prescribed by rule 5, 6, 8 or 9 of Order 11 of the Rules of the Supreme Court of England, so however that an official certificate shall be annexed in the case of a document served personally, and show the server's means of knowledge as to the identity of the person served.

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(2) Where a petition or notice of an application for ancillary relief is to be served out of the jurisdiction the time limited for appearance which is to be entered in the notice accompanying the petition or contained in the notice shall be fixed having regard to the place or country where or within which the petition or notice is to be served in accordance with the practice adopted under rule 4(4) of the said Order 11.

(3) Where an originating summons is to be served out of the jurisdiction, the return date shall be fixed having regard to the time which would be limited for appearance under the last foregoing paragraph if the document to be served were a petition.

Proof of service
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11. Unless otherwise directed, and except where the provisions of rule 9(4) have been complied with, a petitioner shall not proceed to trial unless the respondent and every co-respondent thereto and every person named therein —

(a) has entered an appearance; or

(b) is shown by affidavit in accordance with Form 10 (which shall be filed) to have been served with the petition personally or in accordance with an order for substituted service. Such affidavit must show the means of knowledge of the deponent as to identity and where identification depends upon proof of signature the document containing the signature must be exhibited; or

Form 10

(c) has returned to the attorney for the petitioner, or to the petitioner if he is acting in person, an acknowledgement or service in accordance with Form 3, which shall be lodged with the Registrar.

Form 3

12. (1) Unless otherwise directed, service or delivery of any notice or other document in a matrimonial cause may, if no other mode of service or delivery is prescribed, be effected —

Service of other documents

(a) where the party to be served is the petitioner or has entered an appearance, by leaving the notice or document at, or by sending it by pre-paid post to, the address for service;

(b) in any other case by delivering the notice or document to the party to be served or by leaving it at, or sending it to him by pre-paid registered post to, his last known address.

(2) A copy of every affidavit filed in support of or in answer to an application for ancillary relief, or an application under rule 53, or in pursuance of an order for interrogatories or discovery shall be delivered to the opposite party, if he is the petitioner or has entered an appearance, within twenty-four hours after the affidavit has been filed. If the opposite party is not the petitioner and has not entered an appearance and the time for entering an appearance has not expired, a copy of the affidavit shall be served upon him with the originating summons or notice in support of which the affidavit is filed.

13. (1) If the person desiring to appear is acting in person he shall either leave at or send by post to the Registry a memorandum of appearance in duplicate in accordance with Forms 4, 6, 8 or 11, whichever is appropriate, containing an address for service within two miles of the Registry.

Entry of appearance

Forms 4, 6, 8 and 11

(2) If an attorney is acting on behalf of the person desiring to appear, he shall leave at or send by post to the Registry a memorandum of appearance in duplicate in accordance with Forms 4, 6, 8 or 11, whichever is appropriate, containing an address for service which shall be the place at which he carries on business within the jurisdiction.

(3) The Registrar, on receipt of the memorandum of appearance, shall forthwith enter an appearance in the court minutes, and shall send by post to the petitioner or his attorney, as the case may be, one copy of the memorandum sealed with the seal of the Registry, and shall deliver or send by post to the person entering the appearance a notice in accordance with Form 12 and the production of that notice shall be *prima facie* evidence that the appearance has been duly entered.

Form 12

PART IV INTERLOCUTORY PROCEEDINGS

14. (1) An appearance may be under protest, may be either general or limited to any claim made in the petition or by subsequent application, or to making an application under these Rules and may be entered at any time.

(2) An appearance under protest shall state concisely the grounds of protest and the party so appearing shall, before the expiration of the time allowed for filing an answer, apply for directions as to the determination of any question arising by reason of such appearance and in default of such application he shall be deemed to have entered an unconditional appearance. Any such directions may provide for the trial of a preliminary issue, with or without a stay of proceedings, or for determination of the matters in question at the hearing of the cause, and for any interlocutory matters incidental to the application.

Form of
appearance

- 15.** (1) A petition may be amended before service —
- (a) upon the filing of an affidavit by the petitioner; or
 - (b) with leave, upon the filing of an affidavit by the attorney acting for the petitioner verifying the new facts alleged.

Amended and
supplemental
petitions

After service a petition may be amended only with leave.

(2) A supplemental petition may be filed only after service of the original proceedings and only with leave.

(3) An application for leave to amend a petition after service or for leave to file a supplemental petition shall, unless otherwise directed, be supported by an affidavit by the petitioner verifying the new facts alleged and shall, unless otherwise directed, be served on every opposite party who has entered an appearance or may, if no appearance has been entered, be made *ex parte* by filing the affidavit.

(4) Any affidavit filed under this rule shall verify the new facts of which the deponent has personal knowledge and depose as to belief in the truth of the other new facts alleged. The affidavit shall, in relation to those facts, contain the information required by subparagraphs (l) and (n) of rule 4(1) in the case of the original petition.

(5) An order made under this rule shall —

- (a) in cases where an appearance has been entered in the original proceedings fix the time within which the memorandum of appearance must be amended or the answer must be filed or amended;
- (b) if made after the Registrar has given his certificate under rule 30, provide for a stay of the hearing until that certificate has been renewed.

(6) Unless otherwise directed, a copy of the amended petition or of the supplemental petition, together with a copy of the order (if any) made under this rule, shall be served upon the respondent, co-respondent or person named therein and, in the case of a respondent, co-respondent or person who is not named in the original petition or who is named therein but has not entered an appearance thereto, the amended petition or supplemental petition shall be accompanied by a notice of petition in accordance with Form 2 or, as the case may be, by a notice of proceedings in accordance with Form 5, a form of acknowledgement of service in accordance with Form 3, and a memorandum of appearance in duplicate in accordance with whichever of Forms 4 or 6 is appropriate. The provisions of rules 9, 10 and 11 shall apply to amended petitions and supplemental petitions as they apply to petitions.

Forms 2, 3, 4, 5
and 6

Answer

16. (1) A respondent, co-respondent or person named who has entered an appearance to a petition and who wishes to defend all or any charges made therein shall, within fourteen days after the expiration of the time limited for the entry of appearance, file an answer to the petition by sending it by pre-paid post to, or by leaving it at, the Registry:

Provided that a co-respondent or person named, whether made a respondent or not, who indicates in the memorandum of appearance that he intends only to deny the charges of adultery, or any of them, shall be entitled, without filing an answer, to defend at the trial by denying such charges.

(2) Where the time limited for entry of appearance has expired and no appearance has been entered, then, if the Registrar's certificate is granted under rule 30, the time for filing an answer shall be deemed to have expired notwithstanding that the said period of fourteen days has not elapsed.

Form of answer,
parties cited, and
service of answer

17. (1) Every answer or subsequent pleading containing more than a simple denial of the facts stated in the petition or answer, as the case may be, shall set out with sufficient particularity the facts relied upon but not the evidence by which they are to be proved, and, if the answer or subsequent pleading is filed by the husband or wife, it shall, in relation to those facts, contain the information required by subparagraphs (l) and (n) of rule 4(1) in the case of a petition, and shall be supported by an affidavit verifying the facts of which the deponent has personal knowledge and deposing as to belief in the truth of the other facts. The affidavit shall be contained in the same document as the answer or subsequent pleading and shall follow at the foot or end thereof.

Forms 3, 5 and 6

(2) Where the answer of a husband alleges adultery and prays for relief, or where the answer of a husband or a wife contains a claim for costs against an alleged adulterer, the alleged adulterer shall, if living at the date of the filing of the answer, be added to the title of the cause as "A.B." cited and shall, unless otherwise directed, be served with a copy of the answer accompanied by a notice of proceedings in accordance with Form 5, a form of acknowledgement of service in accordance with Form 3, and a memorandum of appearance in duplicate in accordance with Form 6, as if it were a petition.

(3) Where the answer of a husband alleges adultery, but does not pray for relief and does not contain a claim for costs against the alleged adulterer, or where the answer of a wife alleges adultery or sodomy with the person named, a copy of the answer shall, unless otherwise directed, be served on the alleged adulterer or person named, together with a notice of proceedings in accordance with Form 5, a form of acknowledgement of service in accordance with Form 3, and a memorandum of appearance in duplicate in accordance with Form 6, and the alleged adulterer or person named shall be entitled to appear and intervene in the proceedings.

(4) Service of a copy of an answer under either of the two foregoing paragraphs shall be effected and proof of service shall be given in the manner provided for by rules 9, 10 and 11 in the case of service of a copy of a petition on a co-respondent.

(5) A party cited or person named in an answer who has entered an appearance to the answer and who wishes to defend all or any charges made therein shall within fourteen days after the expiration of the time limited for the entry of appearance, file an answer to the charges by sending it by pre-paid post to, or by leaving it at, the Registry:

Provided that a party cited or person named in an answer who indicates in the memorandum of appearance that he intends only to deny the charges of adultery, or any of them, shall be entitled, without filing an answer, to defend at the trial by denying such charges.

(6) Every answer or subsequent pleading shall be signed by the attorney for the party filing it, or by that party if he is acting in person.

18. (1) No reply shall be filed without leave except where the answer contains counter-charges and a prayer for relief, in which case a reply may be filed within fourteen days from the delivery of the answer. Reply

(2) No subsequent pleading shall be filed without leave.

19. Any originating summons, notice of an application for ancillary relief, summons, pleading or other document may be amended without leave before service, Amendment of originating summons, etc

or with leave after service, subject to any directions as to verification by affidavit, as to re-service or as to consequential amendment of pleading already filed.

Pleadings out of time.

20. (1) No pleading shall be filed out of time without leave after the Registrar's certificate has been granted under rule 30.

(2) A co-respondent, party cited or person named, whether made a respondent or not, shall not, without leave, be heard to deny any charge of adultery, unless he or she has entered an appearance before the Registrar's certificate has been granted under rule 30.

Particulars.

21. (1) Any party may by letter require any other party to furnish particulars of any allegation or other matter pleaded and, if the other party fails to furnish such particulars within a reasonable time, the party requiring the particulars may apply for an order that particulars be given.

(2) All particulars, whether given in pursuance of an order or otherwise, shall be filed within twenty-four hours after being furnished to the party requiring them, and the request for the particulars, or a copy thereof, must be filed with the particulars.

Delivery of subsequent pleadings.

22. A copy of every answer (except an answer which is required to be served in the same manner as a copy of a petition), and of every reply and subsequent pleading shall, within twenty-four hours after it is filed, be delivered to the opposite parties or their attorneys.

Discovery.

23. (1) Any party to a matrimonial cause may with leave deliver interrogatories in writing for the examination of an opposite party.

(2) A copy of the interrogatories proposed to be delivered shall be lodged in the Registry when the summons is issued and a further copy shall be served with the summons.

(3) Interrogatories shall, unless otherwise ordered, be answered by affidavit to be filed within ten days.

(4) Any party to a matrimonial cause may apply for an order for discovery of documents by an opposite party, who may be ordered to make such general or limited discovery on oath as the Registrar may think fit.

24. (1) In proceedings for nullity on the ground of impotence or incapacity the petitioner shall, after an answer has been filed, or, if no answer has been filed or appearance entered to the cause, after the expiration of the time allowed for filing an answer or entering an appearance, as the case may be, apply to the Registrar for the determination of the question whether medical inspectors of the court should be appointed to examine the parties. Upon such application the Registrar shall, if in the circumstances of the case he considers it expedient so to do, appoint a medical inspector, or, if it appears to him necessary, two medical inspectors of the court to examine the parties and to report to the court the result of the examination.

Medical
inspection

(2) At the hearing of any such proceedings the court, if it thinks fit, may appoint a medical inspector, or two medical inspectors, to examine any party who has not been examined or to examine further any party who has been examined.

(3) Notice of the time and place of the inspection shall be served upon the respondent, and service shall be effected and proof of service shall be given in the manner provided for by rules 9 and 11 in the case of service of a copy of a petition on a respondent:

Provided that where the respondent has appeared by an attorney, service may be effected on the attorney in the manner provided for by rule 12.

(4) In proceedings for nullity on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage either party may apply for the appointment of medical inspectors to examine the parties and to report to the court the result of the examination. Upon such application the Registrar shall appoint a medical inspector, or, if it appears to him necessary, two medical inspectors of the court and either of the parties shall be at liberty to submit himself for examination to the inspector or inspectors so appointed.

(5) Every examination under this rule shall, if either party so requires, be held at the residence of the medical inspector, or, as the case may be, of one of the medical inspectors so appointed as aforesaid, or at some other convenient place selected by him or them, and in every other case shall be held at the Registry or at such other place as the Registrar may direct.

(6) The medical inspector or inspectors shall call upon the attorneys for the parties to identify the parties to be inspected and, after identification, the parties and their attorneys shall sign their names and the paper bearing the signatures shall be signed by the inspector or inspectors and annexed to the report.

(7) Every report made in pursuance of this rule shall be filed, and either party shall be entitled to be supplied with a copy upon payment of the prescribed fee.

Evidence
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25. (1) Subject to the provisions of the Supreme Court Act, and of the Act and this rule, the witnesses at the trial of any matrimonial cause shall be examined *viva voce* and in open court:

Provided that the judge or the Registrar may —

- (a) subject to the provisions of paragraph (2) of this rule, order that any particular facts to be specified in the order may be proved by affidavit;
- (b) order that the affidavit of any witness may be read at the trial on such conditions as the judge or the Registrar may think reasonable;
- (c) order that evidence of any particular facts to be specified in the order shall be given at the trial by statement on oath of information and belief, or by production of documents, or entries in books, or by copies of documents, or entries, or otherwise as the judge or the Registrar may direct; and
- (d) order that not more than a specified number of expert witnesses may be called.

(2) Where it appears to the judge or the Registrar that any party reasonably desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit, but the expenses of such witness at the trial shall be specially reserved.

(3) Any party may apply for the appointment of an examiner or for a commission or for letters of request to examine a party or witness in any cause, and for leave to give the depositions taken on the examination in evidence at the trial and the provisions of Rules 6 to 25 of Order 37 of the Rules of the Supreme Court of England shall apply

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to the examination, save that in rule 16 of the said Order there shall be substituted for the reference to the Central Office a reference to the Registry.

(4) Nothing in any order made under this rule shall affect the power of the judge at the trial to refuse to admit evidence tendered in accordance with the order if in the interests of justice he should think fit to do so.

26. At any time after the commencement of proceedings for restitution of conjugal rights the respondent may apply for an order to stay the proceedings on the ground that he is willing to resume or to return to cohabitation with the petitioner.

Staying
proceedings for
restitution

27. An application for directions for the separate trial of any issue or, except in a case to which rule 14(2) applies, any question as to the jurisdiction of the court shall be made to the judge.

Trial of issues

28. (1) Every party to a matrimonial cause praying that the court shall exercise its discretion to grant a decree *nisi* notwithstanding his adultery shall lodge in the Registry a statement (in this rule called “a discretion statement”) signed by him or his attorney, stating that the court will be asked to exercise its discretion in his favour notwithstanding his adultery, and setting forth particulars of the acts of adultery committed and of the fact which it is material for the court to know for the purpose of the exercise of its discretion.

Discretion
statement

(2) Where the application for the Registrar’s certificate under rule 30 is made by the party praying for the discretion of the court the discretion statement shall be lodged in a sealed envelope with the application for the Registrar’s certificate, or, where the application for that certificate is made by any other party to the cause, the discretion statement shall be lodged in a sealed envelope within ten days after the receipt of notice that the cause has been set down for trial. The envelope shall be endorsed with a certificate by the attorney for the party praying for the discretion of the court, or by that party, if he is acting in person, that the statement is signed and dated and that paragraph (4) of this rule does not apply or has been complied with.

(3) A discretion statement shall be open to the inspection of the Attorney-General, but, except by the direction of the judge, shall not be open to inspection by any other person:

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Provided that where an application is made to the Registrar by or on behalf of a party who has filed a discretion statement for leave to give his own evidence by affidavit, the discretion statement shall be open to inspection by the Registrar.

(4) Where a discretion statement contains an allegation of adultery or other matrimonial offence on the part of the other spouse which is not referable to any specific allegation in the pleadings, notice of the allegation shall be given forthwith to that spouse:

Provided that the court may at the trial dispense with the notice if it is satisfied that failure to give the notice was justified.

(5) Neither the fact that a discretion statement has been lodged or that such notice as aforesaid has been given nor the contents of the discretion statement or notice shall be given as evidence against the party lodging or giving the same in any matrimonial cause or matter except when that party has put the discretion statement or notice or the contents thereof in evidence in open court.

Mode of trial

29. All causes or issues shall be tried by the judge alone or with a jury as provided for in the Act.

Registrar's
certificate and
directions for
trial

30. The petitioner or any party who is defending a matrimonial cause shall, before setting down the cause for trial, refer the pleadings and proceedings in the cause to the Registrar, who shall give a certificate that the cause is fit to be set down for trial if he is satisfied —

- (a) that a copy of the petition, and any document required to be served in the same manner as a copy of a petition, has been duly served;
- (b) if appearance has not been entered, that the time for entering an appearance has expired;
- (c) if an appearance has been entered, that the time for filing an answer or any subsequent pleading has expired;
- (d) in proceedings for nullity on the ground of impotence or incapacity, that a report by a medical inspector or inspectors appointed under rule 24(1) has been filed, or an order made that there shall be no medical inspection;

- (e) in proceedings for nullity on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage, that the report of any medical inspector or inspectors appointed under rule 24(4) has been filed.

PART V
TRIAL, ETC., AND DECREES

31. (1) The petitioner, after the Registrar's certificate has been obtained, or (where directions have been given for the separate trial of any issue) the plaintiff, after the directions have been complied with, shall set the cause or issue down for trial in the Registry, and shall, within twenty-four hours thereafter, give to each party who has entered an appearance notice of his having done so. If the petitioner fails to set the cause down within fourteen days after the granting of the Registrar's certificate, any party defending the cause may set it down for trial and shall, within twenty-four hours thereafter, give to the petitioner and all other parties who have entered an appearance notice of his having done so.

Setting down for trial

(2) If an undefended cause is not set down within twenty-eight days after the granting of the Registrar's certificate, it shall not thereafter be set down until the certificate has been renewed.

(3) Except with the consent of all parties who have entered appearance, or by leave of the judge, no cause shall be tried until after the expiration of ten days from the date of setting down.

(4) After the date of the hearing has been fixed, the party who has set the case down for trial shall, within twenty-four hours thereof, give notice of such date to all other parties who have entered an appearance.

32. After entering an appearance, a respondent, co-respondent, or party cited in an answer may, without filing an answer, be heard in respect of any question as to costs or damages and a respondent spouse may, without filing an answer, be heard as to any question of custody or of access to any children of the marriage:

Right of respondent, co-respondent or party cited to be heard without filing answer

Provided that —

- (a) without leave, a co-respondent or party cited in an answer shall not be heard in respect of any question as to damages unless he has entered an appearance before the Registrar's certificate has been granted under rule 30;
- (b) no allegation shall be made against a party claiming costs or damages unless the party making the allegation has filed an answer;
- (c) no bill of costs not directly referable to a decree *nisi* or decree absolute or other final decree shall be taxed against a party who has appeared (other than a spouse against whom a decree has been pronounced), unless notice has been given to such party of the intention to apply for an order that the costs should be costs in the cause; and
- (d) such party as aforesaid (whether he has appeared or not) may, before the expiration of the period mentioned in the order for payment of the costs by him after taxation, apply to the judge to discharge the order making the costs in the cause, so however that a party who has not appeared shall first enter an appearance for the purpose.

Form of decree.
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33. (1) Every decree of the court shall be signed by the Registrar.

(2) Where in any cause there has been a finding of adultery against one of the parties to the cause, but the judge has refused to exercise his discretion under section 19 of the Act, that finding and the refusal shall be set out in the decree, and where there has been such a finding but the judge has exercised his discretion, the decree shall state that it is made in the exercise of the discretion conferred on the court by the said section. ¹

(3) A sealed or other copy of any decree of the court may be issued to any person requiring it on payment of the prescribed fee.

Re-hearing.

34. An application for re-hearing of a cause where no error of the court at the hearing is alleged shall be made to

¹ Section 19 of the Act was repealed and replaced by Section 9 of the Matrimonial Causes (Amendment) Act, 1983 (No. 9 of 1983).

the judge. The application shall be by notice of motion, stating the grounds on which it is based, filed in the Registry and served upon the opposite parties (whether they have appeared or not) within six weeks after judgment. The notice shall be a fourteen days' notice and may be amended at any time by leave of the judge.

35. (1) When the Attorney-General desires to show cause against making absolute a decree *nisi*, he shall enter an appearance in the cause in which the decree has been pronounced, and shall, within fourteen days thereafter, file his plea setting forth the grounds upon which he desires to show cause, and within twenty-four hours of filing the plea shall deliver a copy thereof to the party in whose favour the decree has been pronounced and, if the plea alleges collusion, to the other party or parties to the alleged collusion.

Intervention by
the Attorney-
General

(2) Where the plea alleges adultery by the petitioner with any named person, the Attorney-General shall, unless otherwise directed, serve each such person with a copy of the plea, omitting any part thereof which contains any allegation in which the person so served is not named. Such copy shall be accompanied by a notice of proceedings in accordance with Form 5, a form of acknowledgement of service in accordance with Form 3 and a memorandum of appearance in duplicate in accordance with Form 6, so far as the same are applicable and service shall be effected and proof of service shall be given in the manner provided for by rules 8, 9 and 10 in the case of a copy of a petition served on a co-respondent.

Forms 3, 5 and 6

(3) Except as hereinafter provided, these Rules shall apply to all subsequent pleadings and proceedings in respect of the plea as if it were a petition.

(4) If no answer to the plea is filed within the time limited, or if an answer is filed and is struck out or not proceeded with, the Attorney-General may apply forthwith by motion to rescind the decree *nisi* and dismiss the petition.

(5) If any of the charges contained in the plea are not denied in the answer thereto, the party in whose favour the decree *nisi* has been pronounced shall apply for the Registrar's certificate under rule 30(1) and shall, within fourteen days after obtaining it, set the intervention down for trial and shall, within twenty-four hours thereafter, give

to the Attorney-General notice of his having done so. If default is made in setting down and giving notice to the Attorney-General as aforesaid, the Attorney-General may apply forthwith by motion to rescind the decree and dismiss the petition.

(6) If all the charges contained in the plea are denied in the answer thereto, the Attorney-General shall apply for the Registrar's certificate and shall, within fourteen days after obtaining it, set the intervention down for trial and shall, within twenty-four hours thereafter, give to the other parties to the intervention notice of his having done so.

Intervention by
person other
than the
Attorney-
General

36. (1) When any person other than the Attorney-General desires to show cause against making absolute a decree *nisi*, he shall enter an appearance in the cause in which the decree has been pronounced and shall, within four days thereafter, file an affidavit setting forth the facts upon which he relies and within twenty-four hours of filing such affidavit shall deliver a copy thereof to the party in whose favour the decree has been pronounced and, if the affidavit alleges collusion, to the other party or parties to the alleged collusion.

(2) Any party to whom a copy of the affidavit has been delivered as aforesaid may, within fourteen days thereafter, file an affidavit in answer, and shall, within twenty-four hours after filing the affidavit deliver a copy thereof to the person showing cause who may within fourteen days file an affidavit in reply and shall, within twenty-four hours after filing the affidavit, deliver a copy thereof to each party to whom he delivered a copy of his original affidavit. No further affidavit shall be filed without leave.

Decree absolute

Form 13

37. (1) An application by a spouse to make absolute a decree *nisi* pronounced in his favour shall be made by lodging in the Registry where the cause is proceeding a notice of application in accordance with Form 13 on any day after the expiration of the period prescribed for making the decree absolute. If the Registrar, after searching the court minutes, is satisfied —

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(a) that no application for rehearing under rule 34 is pending; and

- (b) that no appearance has been entered, or, if appearance has been entered, that no affidavits have been filed within the time allowed for filing, by or on behalf of any person wishing to show cause against the decree being made absolute,

the notice shall be filed:

Provided that if the application is made after the expiration of one year from the date of the decree *nisi* there shall be lodged with the notice an affidavit by the applicant accounting for the delay, and the notice shall be filed without leave.

(2) Upon the filing of the said notice the decree *nisi* shall become absolute.

(3) An application by a spouse to make absolute a decree *nisi* pronounced against him shall be made to the Registrar on not less than four days' notice and shall be accompanied by a notice of application in accordance with Form 13. On any such application the Registrar may make such order as he thinks fit, or may refer the application to the judge.

Form 13.

(4) A certificate in accordance with Form 14 or Form 15, whichever is appropriate, that the decree has been made absolute shall be prepared by the person applying for the decree and filed by the Registrar. The certificate shall be authenticated by fixing thereto the seal of the Registry.

Forms 14 and 15.

38. (1) A petition for the reversal of a decree of judicial separation shall set out particulars of the decree and the grounds for reversal on which the petitioner relies.

Reversal of decree of judicial separation.

(2) A copy of the petition, accompanied by a form of acknowledgement of service in accordance with Form 3, shall be served upon the party in whose favour the decree was pronounced, who may within fourteen days after service file an answer to the petition. A copy of the answer shall be delivered to the petitioner within twenty-four hours after the answer is filed.

Form 3.

Service of a copy of the petition shall be effected and proof of service shall be given in the manner provided for by rules 9, 10 and 11 in the case of a document served on a respondent to a petition.

(3) All subsequent proceedings on the petition shall be carried on in the same manner, so far as practicable, as the proceedings on the petition for judicial separation.

**PART VI
PROVISIONS REGARDING
MAINTENANCE, ALIMONY AND
SETTLEMENTS**

Alimony pending
suit

39. The wife petitioner who has not included in her petition a prayer for alimony pending suit may apply for alimony pending suit at any time after filing the petition, and a respondent wife may apply for alimony pending suit at any time after entering appearance to a petition.

Maintenance of
children

40. An application for maintenance of the children may be made —

- (a) by a petitioner who has not included in the petition a prayer for maintenance of the children, at any time after service of a petition in which custody of any children of the marriage is claimed or after making a subsequent application for custody;
- (b) by a respondent spouse, after entering an appearance to a petition; or
- (c) by the guardian of any children of the marriage or by any person who has obtained leave to intervene in the cause for the purpose of applying for the custody of, or who has under an order of the court, the custody or control of such children, after entering an appearance to the petition in accordance with Form 11.

Form 11

Maintenance,
secured
provision,
settlement of
wife's property
and variation of
marriage
settlements

41. (1) An application for maintenance or a secured provision, where a prayer for such relief has not been included in the petition, and an application for settlement of a wife's property, or variation of marriage settlements, in the case of proceedings for divorce, may be made by the petitioner at any time after the time for entering an appearance to the petition has expired, and by a respondent spouse at any time after entering an appearance to the petition, but no such application shall be made later than two months after final decree except by leave.

(2) An application for settlement of a wife's property, in the case of proceedings for judicial separation or for restitution of conjugal rights, may be made at any time after the decree has been pronounced.

(3) Upon an application for a secured provision, settlement of a wife's property or variation of marriage settlements, the court shall, unless it is satisfied that the secured provision or settlement makes adequate provision for any children of the marriage, or, as the case may be, that the proposed variation does not adversely affect the rights or interests of any children of the marriage, direct that the children be separately represented on the application by an attorney, and may assign a guardian *ad litem* by whom any infant children may appear upon the application. An affidavit of fitness of the proposed guardian in accordance with Form 16 shall be filed.

Form 16.

42. An application for permanent alimony may be made within a reasonable time after a decree for judicial separation or for restitution of conjugal rights, as the case may be, has been pronounced.

Permanent alimony.

43. An application for periodical payments or for securing periodical payments to a wife may be made at any time after non-compliance with a decree for restitution of conjugal rights, but where the application is one for the benefit of children of the marriage and is made by the guardian of such children or by a person who has obtained leave to intervene in the cause for the purpose of applying for custody or who has the custody or control of such children under an order of the court, he shall first enter an appearance to the petition in accordance with Form 11.

Periodical payments.

Form 11.

44. A petitioner, or a respondent if he has entered an appearance to the petition, may at any time apply for a modification order.

Variation of orders for alimony, etc.

45. (1) Where a husband is served with a petition in which alimony pending suit, maintenance of the children, maintenance or a secured provision is claimed, and enters an appearance, he shall, within fourteen days after the expiration of the time limited for appearance, file an affidavit setting out full particulars of his property and income.

Evidence on application for alimony, etc.

(2) Where a husband is served with a notice of an application for alimony pending suit, maintenance of the children, maintenance, a secured provision, permanent alimony, periodical payments or for securing periodical payments to a wife, he shall, within fourteen days after service of the notice upon him, or if he has not at the time

of such service entered an appearance, after entering an appearance and within fourteen days after the expiration of the time limited for appearance file an affidavit setting out full particulars of his property and income, unless in the case of any such application, other than an application for alimony pending suit, the wife at the time of service of the application goes notice to the husband of her intention to proceed with the application upon the evidence already filed on her application for alimony pending suit.

(3) Within fourteen days after delivery of any affidavit by a husband under this rule, the wife may file an affidavit in reply.

(4) Where a wife is served with a notice of an application for alimony pending suit, maintenance, a secured provision, permanent alimony, or periodical payments, paragraphs (2) and (3) of this rule shall have effect as if for the references to the husband there were substituted references to the wife, and for the references to the wife there were substituted references to the husband.

Evidence on application for settlement of wife's property or variation of settlements

46. (1) An application for settlement of a wife's property or variation of marriage settlements shall state the nature of the settlement or variation proposed and shall, unless otherwise directed, be supported by an affidavit by the petitioner stating the facts relied on in support of the application. The affidavit shall set out, in the case of an application for settlement of a wife's property, full particulars of the property to which she is entitled either in possession or reversion, or in the case of an application for variation of marriage settlements, full particulars of the marriage, any children of the marriage, all settlements, whether ante-nuptial or post-nuptial, and of the funds brought into the settlements by the husband and the wife.

(2) The application shall, in addition to being served on the respondent, be served on the trustees of any settlements and upon such other persons as the Registrar may direct, and any party so served may, within fourteen days after such service and after entering an appearance in accordance with Form 11, file an affidavit in answer.

Form 11

Evidence on application for modification order

47. (1) An application for a modification order shall be supported by an affidavit by the applicant setting out full particulars of his property and income and the grounds on which the application is made.

(2) The respondent to the application may, within fourteen days after delivery of the affidavit, and (unless he is the petitioner in the cause) after entering an appearance, file an affidavit in answer, but no further evidence shall be filed by any party without leave.

48. Unless the judge shall otherwise direct, an appointment shall be fixed for the hearing by the Registrar of any application for ancillary relief which has not been dealt with by the judge at the trial. Notice of the appointment shall be given by the applicant to every other party to the application who has entered an appearance and to the petitioner if he is not the applicant, and at the appointment so fixed the Registrar shall, in the presence of the parties or their attorneys, investigate the allegations made in support of and in answer to the application and may take the oral evidence of witnesses, and may order the attendance of any person for the purpose of being examined or cross-examined, and may at any stage of the proceedings order the discovery and production of any document or call for further affidavits.

Preliminary investigation by Registrar of application for ancillary relief

49. In the case of a claim, contained in a petition, for alimony pending suit, maintenance of the children, maintenance or a secured provision or of an application for ancillary relief, other than an application for settlement of a wife's property or variation of marriage settlements where there are children of the marriage, the Registrar shall, after completing his investigation under the last foregoing rule, make such order as he thinks fit, or refer the application or any question arising therefrom to the judge for his decision and, pending the final determination of the application, the Registrar may make an interim order upon such terms as he may think just.

Applications heard by Registrar

50. (1) In the case of an application for settlement of a wife's property or variation of marriage settlements where there are children of the marriage, the Registrar shall, after completing his investigation, report the result thereof in writing to the judge to whom the application shall be adjourned.

Applications heard by judge

(2) The Registrar's report under the last foregoing paragraph shall be filed and any party shall be entitled to be supplied with a copy of the report upon payment of the prescribed fee.

(3) The judge, upon hearing the application, may confirm or vary the Registrar's report or make such other order as he thinks fit.

Custody of and
access to
children.

51. (1) The petitioner, or (if he has entered an appearance to the petition for this purpose) the respondent spouse or the guardian of any children of the marriage or any person who has obtained leave to intervene in the cause for the purpose of applying for the custody of, or who has under an order of the court the custody or control of, such children may at any time, either before or after final decree, apply to the judge for an order relating to the custody or education of the children of the marriage, or for directions that proper proceedings be taken for placing such children under the protection of the court.

(2) A petitioner may at any time after filing a petition in a matrimonial cause, and a respondent spouse may at any time after entering an appearance apply for access to any children of the marriage, but an application for access by the spouse against whom a decree (whether *nisi*, final or absolute) has been made, shall be made to the judge, unless the other party consents to give access to the children and the only question for determination is the extent to which access shall be given.

Information as to
other
proceedings
relating to
children.

52. On any application under these Rules relating to any children of a marriage, there shall, if there are any proceedings relating to such children in progress in the Supreme Court, be filed a statement as to the nature of those proceedings.

Applications in
case of wilful
neglect to
maintain.

53. (1) An application by a wife who alleges that her husband has been guilty of wilful neglect to provide reasonable maintenance for her or the infant children of the marriage shall be made by originating summons in accordance with Form 17.

Form 17.

(2) There shall be filed in support of the summons an affidavit by the applicant which shall state —

- (a) the names of the parties to the marriage, the place and date of the marriage and the name and status of the applicant before the marriage;
- (b) the names and dates of birth or ages of any living children of the marriage and the place where and the person with whom such children are residing;
- (c) whether there have been in any court any, and if so what, previous proceedings, with reference to

the marriage or the children of the marriage by or on behalf of either of the parties to the marriage or any other person, the date and effect of any decree or order made in such proceedings, and, in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the making thereof;

- (d) particulars of the alleged wilful neglect by the husband to provide reasonable maintenance for the applicant or the infant children of the marriage and whether the husband is or has been making any, and if so what, payments to the applicant by way of maintenance for herself or the infant children;
- (e) the means of the applicant and of her husband in so far as they are within the applicant's knowledge or belief;
- (f) whether application is made for an order that the husband do secure the payments prayed for by the applicant; and
- (g) the facts upon which it is claimed that the court has jurisdiction to entertain the proceedings.

(3) The copy of the summons for service on respondent shall be accompanied by a form of acknowledgement of service in accordance with Form 3 and a memorandum of appearance in duplicate in accordance with Form 12, with such modifications as the case may require.

Forms 3 and 12

(4) If the respondent enters an appearance to the summons, he shall, within fourteen days after the expiration of the time limited for appearance, file an affidavit in answer to the application, setting out the grounds on which he intends to contest the application and containing in a schedule full particulars of his property and income.

(5) Where the respondent's affidavit alleges adultery, a copy of the affidavit (but omitting the schedule referred to in the last foregoing paragraph) shall, unless otherwise directed, be served on the alleged adulterer, together with a notice of proceedings in accordance with Form 5, a form of acknowledgement of service in accordance with Form 3 and a memorandum of appearance in duplicate in accordance with Form 6, with such modifications as the

Forms 3, 5 and 6

case may require, and the alleged adulterer shall be entitled to appear and intervene in the proceedings.

(6) The provisions of rules 8 and 9 relating to service of petitions shall apply to service of a copy of an affidavit under the last foregoing paragraph. If the person named as an adulterer does not enter an appearance or return an acknowledgement of service to the respondent or his attorney (which acknowledgement shall be lodged with the Registrar) such person shall, except where the provisions of rule 9(4) have been complied with, be shown by means of an affidavit in accordance with Form 10 (with such modifications as the case may require) to have been served with the copy of the affidavit personally or in accordance with an order for substituted service.

Form 10

(7) Any person named as an adulterer in the respondent's affidavit who has entered an appearance and who wishes to defend all or any charges made in the affidavit shall, within fourteen days after the expiration of the time limited for the entry of appearance, file an affidavit in answer by sending it by pre-paid post to, or by leaving it at, the Registry:

Provided that it shall not be necessary to file an affidavit in answer if the memorandum of appearance indicates an intention to deny the charge of adultery but not to defend on any other ground.

Where the person named as an adulterer has entered an appearance, his name shall appear thereafter in the title of the application.

(8) Within fourteen days after receiving the respondent's affidavit the applicant may file an affidavit in reply and shall, within twenty-four hours after filing the affidavit, deliver a copy thereof to any person named as an adulterer in the respondent's affidavit in addition to the copy required by rule 12(2) to be delivered to the respondent. No further affidavits may be filed without leave.

(9) When all the affidavits have been filed, a time and date shall be fixed for the hearing of the summons before the judge in court and the applicant shall, unless otherwise directed, serve notice thereof in accordance with Form 18 on any party who has entered an appearance.

Form 18

(10) On the hearing of the application the judge may make such order as he thinks fit, or may refer the application to the Registrar for an investigation into the means of the parties to the marriage and, pending the final determination of the application, the judge may make an interim order upon such terms as he may think just.

(11) Where an application is referred to the Registrar under the last foregoing paragraph, he shall fix an appointment for the hearing of the application and the provisions of rules 48 and 49 shall apply to the proceedings before the Registrar as if the application were an application for ancillary relief, except that where the judge has not made a finding as to the shall not make an order but shall, after completing his investigation, report thereon in writing to the judge respondent's wilful neglect to maintain, the Registrar.

(12) Every report made by the Registrar under the last foregoing paragraph shall be filed and the parties shall be entitled to be supplied with a copy upon payment of the prescribed fee.

(13) When the Registrar has not made an order on the application, the applicant shall, after the Registrar's report has been filed, apply for a date and time to be fixed for the continuance of the hearing before the judge and notice thereof in accordance with Form 18 shall, unless otherwise directed, be served by the application on any party who has entered an appearance.

Form 18

(14) An application to discharge, modify or suspend an order made under this rule shall be made to and dealt with by the Registrar in the same manner as an application for a modification order under these Rules.

(15) A wife may apply for security for her costs of an application under this rule when all the affidavits have been filed and the Registrar shall ascertain what is a sufficient sum of money to cover those costs, and if, after taking all the circumstances into account, including the means of the husband and the wife, he considers that the husband should provide security for all or some of the wife's cost of and incidental to the application, he may order the husband to pay the sum so ascertained, or some portion of it, into court, or to give security therefor within such time as he may fix.

(16) The provisions of rules 9, 10, 11, 12, 13, 14, 23 and 34 shall apply to an application under this rule as if it

were a matrimonial cause and as if the originating summons were a petition and the applicant were the petitioner.

PART VII SUPPLEMENTARY PROCEDURAL PROVISIONS

Service of
summons

54. The name of the cause or matter and of the person taking out a summons shall be endorsed on the summons, and a copy thereof shall be served on the party to whom the summons is addressed or on his attorney at least two clear days before the summons is returnable.

Hearing of
summons

55. The party taking out a summons shall, at the time appointed therein, attend with the original summons at the place appointed for hearing. If any party to the summons does not attend within a reasonable time after the time appointed, the judge or the Registrar, as the case may be, may proceed in his absence upon being satisfied by affidavit or otherwise that such party had due notice of the time appointed.

Appeals from
Registrar

56. A party may appeal from an order or decision of the Registrar to the judge in chambers by summons to be issued within seven days of the order or decision complained of and returnable on the first day on which summonses are heard after that period has elapsed, but the appeal shall not, unless otherwise ordered, act as a stay of the order or decision complained of.

Attachment and
committal

57. An application for attachment or committal shall be made to the judge, and any person attached or committed may apply to the judge for his discharge.

Enforcement of
orders

58. (1) In default of payment to any person of any sum of money at the time appointed by any order of the court for the payment thereof, a writ of *feri facias*, sequestration, or *elegit* shall be sealed and issued as of course out of the Registry upon an affidavit of service of the order and of non-payment.

(2) A decree or order requiring a person to do an act thereby ordered shall state the time within which the act is to be done, and the copy to be served upon the person required to obey the same shall be endorsed with a notice

in accordance with Form 19 and shall be served personally on that person (the original decree or order or a copy issued by the court being produced to him at the time of service) or shall be delivered to his attorney.

Form 19

(3) Where a party who has been ordered to lodge damages in court fails to do so in accordance with the order, the party in whose favour the order was made may at any time apply to the judge to vary the order by directing the payment of such damages to an individual to be specified in the application and the judge may, if satisfied that in the circumstances it is just and equitable to do so, vary the order accordingly upon an undertaking by that individual to lodge the damages in court or otherwise deal with them, as and when received, as the judge may direct. If the application is made after decree absolute or other final decree the judge may, if satisfied as aforesaid, dispense with the undertaking.

(4) Where a party who has been ordered to pay costs into court fails to do so in accordance with the order, the party in whose favour the order was made may apply to the Registrar to vary the order by directing payment to an individual to be specified in the application and the Registrar may, if satisfied that in the circumstances it is just and equitable to do so, vary the order accordingly, so however that, if the application is made before decree absolute, the order shall be made only upon an undertaking by the said individual to pay the costs into court as and when received.

59. (1) Except as otherwise provided by these Rules and unless the judge shall otherwise direct, five clear days' notice of any motion to be made to the court, other than an *ex parte* motion, shall be served on all parties who may be affected by the proposed order.

Motions

(2) A copy of the notice shall be filed in the Registry, and the affidavits to be used in support of the motion and the original documents referred to therein or intended to be used at the hearing of the motion shall at the same time be lodged in the Registry. Copies of all such affidavits or documents shall be delivered upon request to the parties who are entitled to be heard on the motion.

60. (1) An infant or a person of unsound mind may commence and prosecute any cause or make any application to which these Rules apply by his next friend and may

Infants and persons of unsound mind

defend or intervene in any such cause by his guardian *ad litem*, and, except as otherwise provided by this rule, no appointment of a guardian *ad litem* shall be necessary.

(2) Before the name of any person is used in any proceedings as next friend the attorney for the infant or person of unsound mind shall obtain a written authority signed by that person. The authority shall be attested by an attorney, who shall certify that the proposed next friend has no interest in the proceedings adverse to that of the infant or person of unsound mind.

(3) Where in any cause to which these Rules apply any document is required to be served and the person on whom service is to be effected is an infant, the document shall, unless otherwise directed, be served on the father or guardian of the infant, or, if he has no father or guardian, upon the person with whom he resides or under whose care he is, and service so effected shall be deemed good service on the infant, so however that the Registrar may order that service effected or to be effected on the infant shall be deemed good service.

(4) Where a person entitled to defend or intervene in any cause to which these Rules apply is of unsound mind, the Registrar shall, if he consents, be the guardian *ad litem* of that person:

Provided that at any stage of the proceedings an application may be made on not less than four days' notice to the Registrar for the appointment of some other person as guardian.

(5) Where in any such cause any document is required to be served and the person on whom service is to be effected is of unsound mind, then, unless otherwise directed, that document shall, if the Registrar has consented to act as guardian *ad litem*, be served on him and shall, in any other case, be served upon the person with whom the person of unsound mind resides or under whose care he is, and service so effected shall be deemed good service upon the person of unsound mind.

(6) Any document served in accordance with paragraph (5) of this rule shall be endorsed with a notice that the contents or purport of the document shall be communicated to the person of unsound mind to whom it relates unless the person on whom the document was served is satisfied, after consultation with the medical

attendant of the person of unsound mind or the medical officer of the institution in which the person of unsound mind is, that the communication would be detrimental to the mental condition of the person of unsound mind, and, in a case where any order has been made under section 29 of the Supreme Court Act, in respect of the person of unsound mind, appointing a committee or receiver of any similar order under the Mental Health Act, the document shall be endorsed with a further notice that the contents or purport of the document shall be communicated to the committee or receiver so appointed.

Ch 53

Ch 230

5 *cf* 1987, Sch

(7) After service of any document has been effected on a person of unsound mind in accordance with the last foregoing paragraph, the party at whose instance the document was served shall, unless otherwise directed, file an affidavit made by the person with whom the person of unsound mind resides or under whose care he is, stating whether or not the contents or purport of the document were communicated to the person of unsound mind and, if not, giving the reasons why the contents or purport were not so communicated.

(8) Where a person entitled to defend or intervene in any cause to which these Rules apply is of unsound mind and is detained in pursuance of any such order, under the Mental Health Act, and not otherwise, the Registrar shall be the guardian *ad litem* of that person:

Ch 230

5 *cf* 1987, Sch

Provided that at any stage of the proceedings an application may be made on not less than four days' notice to the Registrar for the appointment of some other person as guardian.

(9) In every other case in which a petition, answer or originating summons has been served on a person whom there is reasonable ground for believing to be a person of unsound mind, the party at whose instance the petition, answer or originating summons was served shall, before proceeding further with the cause, apply for an order that a guardian *ad litem* be assigned by whom such person may appear and defend or intervene in the proceedings, and on such application the Registrar may, if he considers it necessary for the proper protection and representation of such person, order that some proper person be assigned guardian *ad litem*.

Form 16

Ch 53

Ch 230

5 cf 1987, Sch

(10) An attorney (not being the Registrar), or other person seeking to enter an appearance on behalf of an infant or person of unsound mind shall file an affidavit of fitness in accordance with Form 16, and in the case of a person of unsound mind shall, if and order has been made under section 29 of the Supreme Court Act or any similar order has been made under the Mental Health Act, in respect of that person, exhibit thereto a certificate of the judge that he approves the proposed guardian, or, if no such order has been made with respect to that person, lodge with the affidavit a note from the judge under his hand to that effect.

(11) Where a petition is filed for nullity of marriage on the ground that the respondent was at the time of the marriage of unsound mind or a mental defective, or subject to recurrent fits of insanity or epilepsy the applicant or petitioner shall not proceed with the cause without leave, whether an appearance is entered or not, and the Registrar may, if he considers that the respondent is not properly represented or ought to be represented, order that some proper person be assigned guardian of the respondent by whom he may appear and defend the cause.

PART VIII COSTS AND TAXATION

Security for
wife's costs

61. (1) After the Registrar's certificate under rule 30 has been granted, or, with leave, at an earlier stage of the cause, a wife who is a petitioner or who has filed an answer may apply for security for her costs of the cause up to the hearing, and of and incidental to the hearing.

(2) At the hearing of an application for a commission or for letters of request or for the appointment of a special examiner to examine a party or witness who is outside the jurisdiction of the court, or at any time after such an examination is granted, a wife who is a petitioner or who has entered an appearance to a petition may apply for security for her costs of an incidental to the examination.

(3) Where an application for security has been made under this rule, the Registrar shall ascertain what is a sufficient sum of money to cover the costs of the wife, and if, after taking all the circumstances into account, including the means of the husband and the wife, he considers that the husband should provide security for all or some of the wife's costs, he may order the husband to

pay the sum so ascertained or some portion of it, into court or to give security therefor within such time as he may fix, and may direct a stay of the proceedings until the order is complied with.

(4) The bond taken to secure the costs of a wife under this rule shall be given to the Registrar by his name and shall be filed and shall not be delivered out or sued upon without his leave.

62. (1) Every bill of costs shall be referred to the Registrar for taxation and shall be taxed by him. The bill shall be filed and notice of the time appointed for taxation shall be given to the party filing the bill who shall give the other parties to be heard on the taxation at least three clear days' notice of the appointment, and shall at the same time, if he has not already done so, deliver to them a copy of the bill to be taxed.

Taxation

(2) If any party to be heard on the taxation does not attend within a reasonable time after the time appointed, the Registrar may proceed to tax the bill upon being satisfied by affidavit or otherwise that such party had due notice of the time appointed.

(3) In any cause or matter to which these Rules apply the costs allowed to attorneys and the taxation of such costs shall, except where these Rules otherwise provide, be in accordance with the provisions of the Rules of the Supreme Court of England so far as the same are applicable notwithstanding any provision to the contrary in the Supreme Court Rules.

(4) The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.

63. (1) Upon the Registrar's certificate as to costs being signed, an order of the court may issue for payment of the amount allowed within seven days after service of the order or such other time as the Registrar may direct.

Payment of costs

(2) An order for payment of costs contained in a decree *nisi*, if drawn up before the decree is made absolute, shall direct payment into court, and, unless otherwise directed, such costs shall not be paid out of court until the decree has been made absolute, but a wife who is unsuccessful in a cause and who at the time has obtained an order for costs may proceed forthwith to obtain payment of the amount allowed on taxation.

Payment of
money out of
court

64. A person entitled to payment of money out of court shall, on applying for payment, lodge in the Registry a form in writing setting out the date on which the money applied for was paid into court, the amount applied for, and the name and address of the person to receive it.

PART IX DECLARATIONS OF LEGITIMACY

Legitimacy
proceedings

65. (1) A petition under section 17 of the English Act shall, in addition to stating the grounds on which the petitioner relies, set out the date and place of birth of the petitioner and the maiden name of his mother, and, if the petitioner is known by a name other than that which appears in the certificate of his birth, that fact shall be stated in the petition and in any decree made thereon, and shall be filed in the Registry.

(2) The petition shall be supported by an affidavit by the petitioner verifying the facts of which he has personal knowledge and deposing as to belief in the truth of the other facts. The affidavit shall be contained in the same document as the petition and shall follow at the foot or end thereof.

(3) When the petition has been filed, notice of filing shall be given by the petitioner to the Attorney-General, who may within eight days enter an appearance to the petition.

(4) After the expiration of the time limited for appearance by the Attorney-General, the petitioner shall issue and serve upon the Attorney-General an application for directions as to what parties other than the Attorney-General shall be served with the petition. Such application shall be supported by an affidavit setting out particulars of all persons whose interests may be affected by the legitimation of the petitioner, and their relationship to the petitioner.

(5) The petitioner shall serve the persons directed to be served with a copy of the petition, endorsed with a notice to appear in accordance with Form 20 and a form of acknowledgement of service in accordance with Form 3 and a memorandum of appearance in duplicate in accordance with Form 11. Service shall be effected and proof of service shall be given in the manner provided for

Forms 3, 11 and
20

by rules 8, 9 and 10 in the case of service of a copy of a petition on a respondent. Such persons may enter an appearance to the petition by filing a memorandum of appearance in duplicate in accordance with Form 11 within the time limited for the purpose and may within fourteen days thereafter file an answer to the petition. A copy of the answer shall be delivered to the petitioner or his attorney and to the Attorney-General.

(6) The Attorney-General shall, within fourteen days after the order for directions has been made, file his answer to the petition and deliver a copy thereof to the petitioner or his attorney.

(7) Where it appears that more than one petition has been filed on behalf of petitioners claiming to be children of the same father and mother, the Attorney-General may, on giving notice to the petitioner or his attorney in each proceeding which it is sought to consolidate, apply at any time after he has entered an appearance for an order that the proceedings be consolidated.

PART X MISCELLANEOUS

66. Wherever a magistrate makes a maintenance order the clerk of the court shall draw up the order in a form to be prescribed by the judge; one of such copies shall be filed in the court making the order and a copy given to each of the parties. Certified copies of such orders shall be supplied to any person on demand and on payment of the prescribed fee.

Maintenance orders.

67. Rule 1 of Order 15 of the Rules of the Supreme Court of England shall not apply to any cause or matter to which these Rules apply.

Time.

68. Subject to the provisions of these Rules and of any enactment, the Rules of the Supreme Court of England shall notwithstanding the provisions of rule 1(3) of Order 1 thereof, apply with the necessary modifications to the practice and procedure in any cause or matter to which these Rules apply.

Application of Rules of the Supreme Court of England.

69. These Rules shall apply to any cause or matter which is pending at the date on which these Rules come into operation subject to such directions as the judge or the Registrar may think fit to give.

Application to pending proceedings.

Powers and jurisdiction of the Registrar

70. The Registrar shall have and exercise all the powers and jurisdiction which may be necessary to perform the duties imposed upon him by these Rules.

Court fees

71. The Court fees set out in the second column of the Schedule hereto shall be charged for the various matters particulars of which are set out opposite thereto in the first column of the said Schedule.

Schedule

SCHEDULE 1

FORM 1 (Rule 3)

NOTICE OF APPLICATION FOR ANCILLARY RELIEF

BAHAMA ISLANDS.
IN THE SUPREME COURT

Divorce and Matrimonial Side.

In the Matter of a Petition by for (here set out particulars of the matrimonial cause in which the application is made.)

To of

TAKE NOTICE that the petitioner (respondent) intends to apply to the Court for an order that (here set out the ancillary relief claimed).

(Insert here in appropriate cases the contents of Form 7 and/or 9).

THIS NOTICE is issued by (state name and address of applicant or attorney.)

Dated the day of, 19.....

FORM 2 (Rules 7 & 15)

NOTICE OF PETITION

(Respondent Spouse)

BAHAMA ISLANDS.
IN THE SUPREME COURT

Divorce and Matrimonial Side.

To:

TAKE NOTICE that a Petition has been presented to the Supreme Court by

A copy of it is delivered with this Notice.

You must complete the accompanying Form of Acknowledgement of Service and send it to (the attorney for) ²(1) the Petitioner, at (address)

If you do not intend to answer the charges, nor to be heard on the other claims made in the Petition, and if you do not wish to make any application on your own account, you need not do anything more than send the Form of Acknowledgement of Service to the above address. The Court may then, without further notice to you, proceed to hear the Petition and pronounce judgment, notwithstanding your absence.

If you wish to be heard on any matter in connection with the Petition you (or your attorney) must complete the accompanying Memorandum of Appearance **in duplicate** and send or deliver **both** copies (without fee) so as to reach the Registry within eight days ³(2) after you received this NOTICE. You (or your attorney) will receive notice of the case being set down for hearing. When the case is heard, you must attend the hearing.

If you wish to defend the case at the hearing, you (or your attorney) must, in addition to sending the Memorandum of Appearance send or deliver an Answer in writing together with a fee of 50c., so as to reach the Registry within fourteen days after the time allowed for sending the Memorandum of Appearance. You (or your attorney) must at the same time send a copy of your Answer to (the attorney for) ⁴(3) the Petitioner.

⁵(4) If you wish to oppose the claim for alimony, maintenance of the children, maintenance or a secured provision, you (or your attorney) must, in addition to sending the Memorandum of Appearance, also send or deliver, so as to reach the Registry within fourteen days after the time allowed for sending the Memorandum of Appearance, an affidavit (which must be sworn before a Notary Public) giving full particulars of your property and income, together with a fee of 50c. You (or your attorney) must at the same time send a copy of your affidavit to (the attorney for) ⁶(5) the Petitioner. If you wish to allege that your wife has property or income you should say so in your affidavit.

NOTE: If you intend to instruct an attorney to act for you in these proceedings you should at once complete and sign the Form of Acknowledgement of Service and then give him all the documents which have been served upon you, so that he may take the necessary steps on your behalf within the times specified.

Dated the day of, 19

The Registrar,
The Registry,
Nassau, Bahamas.

² Delete if not applicable.

³ Or as the case may be.

⁴ Delete if not applicable.

⁵ Delete or amend this paragraph as necessary.

⁶ Delete if not applicable.

FORM 3

ACKNOWLEDGEMENT OF SERVICE

BAHAMA ISLANDS.
IN THE SUPREME COURT

Divorce and Matrimonial Side.

Between Petitioner
and Respondent
andCo-respondent

I am the person named as in the Petition ⁷.

I received on the day of, 19, at
(place of receipt)

1. A copy of the Petition ⁸(filed in this case.
2. Notice of Petition/Proceedings ⁹.
3. Memorandum of Appearance in duplicate ¹⁰.

(Signed)

Dated the day of, 19

To (the Petitioner or the Respondent or his Attorney).

FORM 4

MEMORANDUM OF APPEARANCE

(Respondent Spouse)

BAHAMA ISLANDS.
IN THE SUPREME COURT

Divorce and Matrimonial Side.

Between Petitioner
and Respondent
andCo-respondent

1. Have you received and read the Petition for divorce ¹¹ by your wife/husband ¹²(2) and the Notice of Petition which are delivered with this Form?
2. On what date and at what address did you receive them?

⁷ Or as the case may be.
⁸ Or as the case may be.
⁹ Delete whichever is not applicable.
¹⁰ Delete if not applicable.
¹¹ Or as the case may be.
¹² Delete whichever is not applicable.

- 3. Are you the person named as in the Petition?
- 4. Do you intend to defend the case at the hearing?

(Answer “Yes” or “No”.)

- 5. Even if you do not wish to defend the case:

A¹³(3)

B

Do you wish to be heard as to other claims made in the Petition, namely:¹⁴

Do you wish to make any application on your own account, namely:

- | | |
|----------------------------------|----------------------------------|
| (1) Costs. | (1) Access to the children. |
| (2) Custody of the children. | (2) Custody of the children. |
| (3) Maintenance of the children. | (3) Maintenance of the children. |
| (4) Alimony. | (4) Alimony. |
| (5) Maintenance. | (5) Maintenance. |
| (6) A secured provision. | |

(Answer “Yes” or “No” against each item.)

- 6. What is your address to which communications should be sent? (It must be within two miles of the Law Courts, Nassau.)

Dated the day of, 19.....

(Signed)¹⁵

NOTE: If you intend to instruct an attorney to act for you in these proceedings, give this form to him. In any event, leave the space below blank.

(To be completed only by the Respondent’s attorney.)

On the instruction of my/our client, I enter an appearance in the terms of the above Memorandum, for Respondent in this cause.

(Signed)¹⁶

(Address for Service)

.....

.....

NOTE: If this Form is used, both copies must be completed and sent to the Registry.

¹³ To be struck out or altered if not applicable
¹⁴ NOTE -The fact that no claim under any of these heads is made in the petition does not mean that such a claim may not be made later
¹⁵ To be signed by the Respondent only if an attorney is not being instructed
¹⁶ To be signed by the Respondent only if an attorney is not being instructed

FORM 5

NOTICE OF PROCEEDINGS

(Co-respondent, party cited or person named)

BAHAMA ISLANDS.
IN THE SUPREME COURT

Divorce and Matrimonial Side.

To:

TAKE NOTICE that in proceedings in the Supreme Court by for divorce ¹⁷ it has been alleged that you have committed adultery ¹⁸ with A copy of the Petition ¹⁹ is delivered with this Notice.

You must complete the accompanying Form of Acknowledgement of Service and send it to (the attorney for) ²⁰ the Petitioner ²¹ at

If you do not intend to answer the charges, nor to be heard on the other claims made in the Petition ²², you need not do anything more than send the Form of Acknowledgement of Service to the above address. The Court may then, without further notice to you, proceed to hear the Petition ²³ and pronounce judgment, notwithstanding your absence.

If you wish to be heard on any matter in connection with the Petition ²⁴, you (or your attorney) must complete the accompanying Memorandum of Appearance **in duplicate** and send or deliver **both** copies (without fee) so as to reach the Registry within eight days ²⁵ after you received this Notice.

If you wish to defend the case only by denying the charges of adultery, or by resisting the claim for damages ²⁶, or if you wish to be heard only as to costs ²⁷, you need take no further step after sending the Memorandum of Appearance until the case is heard, when you must attend the hearing. You (or your attorney) will receive notice of the case being set down for hearing.

If you wish to defend the case at the hearing on some other ground, you (or your attorney) must, in addition to sending the Memorandum of Appearance, send or deliver an Answer in writing, together with a fee of 50c., so as to reach the Registry within

¹⁷ Or as the case may be

¹⁸ Or as the case may be

¹⁹ Or as the case may be

²⁰ Delete if not applicable

²¹ Or as the case may be

²² Or as the case may be

²³ Or as the case may be

²⁴ Or as the case may be

²⁵ Or as the case may be

²⁶ Delete if not applicable

²⁷ Delete if not applicable

fourteen days after the time allowed for sending the Memorandum of Appearance. You (or your attorney) must at the same time send a copy of your Answer to (the attorney for)²⁸ the Petitioner²⁹.

NOTE: If you intend to instruct an attorney to act for you in these proceedings you should at once complete and sign the Form of Acknowledgement of Service and then give him all the documents which have been served upon you, so that he may take the necessary steps on your behalf within the times specified.

Dated the day of, 19

The Registrar,
The Registry,
Nassau, Bahamas.

FORM 6

MEMORANDUM OF APPEARANCE (BY CO-RESPONDENT, PARTY CITED OR PERSON NAMED)

BAHAMA ISLANDS.
IN THE SUPREME COURT

Divorce and Matrimonial Side.

Between Petitioner
and Respondent
andCo-respondent

1. Have you received and read the Petition³⁰ by and the Notice of Proceedings which are delivered with this Form?
2. On what date and at what address did you receive them?
3. Are you the person named as in the Petition³¹?
4. Do you intend to defend the case by denying the charges of adultery made against you, and if so, which of them?
5. Do you intend to defend the case on any ground other than a denial of the charges of adultery made against you?
(Answer “Yes” or “No”.)
6. ³²Do you intend only to resist the claim for damages against you?
(Answer “Yes” or “No”.)

²⁸ Delete if not applicable.
²⁹ Or as the case may be.
³⁰ Or as the case may be.
³¹ Or as the case may be.
³² Not applicable if no claim for damages.

7. ³³If you do not intend to defend the case, do you wish to be heard as to costs?

(Answer “Yes” or “No”.)

8. What is your address to which communications should be sent?

(It must be in New Providence.)

Dated the day of, 19.....

(Signed ³⁴)

NOTE: If you intend to instruct an attorney to act for you in these proceedings, give this form to him. In any event, leave the space below blank.

(To be completed only by the attorney for the party appearing.)

On the instructions of my/our client, enter an appearance in the terms of the above Memorandum for the.....in this cause.

(Signed)

(Address for Service)

NOTE: If this Form is used, **both** copies must be completed and sent to the Registry.

FORM 7 (Rule 8)

ADDITIONAL NOTICE TO BE INCLUDED IN FORM 1 ONLY IF THERE HAS BEEN NO APPEARANCE TO THE PETITION

AND FURTHER TAKE NOTICE that you must complete the accompanying Form of Acknowledgement of Service and send it to (the attorney for) ³⁵the applicant, at (address.....)

If you do not intend to oppose the application, you need not do anything more than send the Form of Acknowledgement of Service to the above address. The Court may then, without further notice to you, proceed to hear the application and make such order as it may think fit, notwithstanding your absence.

If you do wish to be heard on the application you (or your attorney) must complete the accompanying Memorandum of Appearance **in duplicate** and send or deliver **both** copies (without fee) so as to reach the Registrar, the Registry, Nassau, Bahamas, within eight days ³⁶ after you received this Notice.

³³ Not applicable if no claim for costs.

³⁴ To be signed by the party appearing only if an attorney is not being instructed.

³⁵ Delete if not applicable.

³⁶ Or as the case may be.

FORM 8 (Rules 8 and 13)

MEMORANDUM OF APPEARANCE (LIMITED TO
APPLICATION FOR ANCILLARY RELIEF MADE BY
NOTICE)

BAHAMA ISLANDS.
IN THE SUPREME COURT
Divorce and Matrimonial Side.

Between Petitioner
and Respondent

1. Have you received and read the Notice of Application
for ³⁷ ³⁸ which
is delivered with this Form?

2. On what date and at what address did you receive it?

3. Are you the person named as in the Notice?

4. Do you wish to oppose the Applicant’s claim for ³⁹
.....

5. What is your address to which communications should be
sent? (It must be within two miles of the Law Courts, Nassau.)

Dated the day of, 19

(Signed) ⁴⁰

NOTE: If you intend to instruct an attorney to act for you in
these proceedings, give this Form to him. In any event, leave the
space below blank.

(To be completed only by the Respondent’s attorney.)

On the Instructions of my/our client, enter an appearance in the
terms of the above Memorandum, for
the Respondent in this cause.

(Signed)

(Address for Service)

NOTE: If this Form is used, both copies must be completed
and sent to the Registry.

FORM 9 (Rule 8)

NOTICE TO FILE EVIDENCE

AND FURTHER TAKE NOTICE that if you wish to oppose
the application and unless at the time of service hereof upon you (the
attorney for) ⁴¹(1) the applicant gives notice to you dispensing

³⁷ Insert nature of ancillary relief claimed.

³⁸ Insert nature of ancillary relief claimed.

³⁹ Insert nature of ancillary relief claimed.

⁴⁰ To be signed by the Respondent only if an attorney is not being instructed.

⁴¹ Delete if not applicable.

with this requirement you (or your attorney) must (in addition to sending the Memorandum of Appearance) ⁴²(2) send or deliver so as to reach the Registrar, the Registry, Nassau, Bahamas, within twenty-two days ⁴³(3) after you received this Notice on affidavit (which must be sworn before a Notary Public) giving full particulars of your property and income, together with a fee of 50c. You (or your attorney) must at the same time send a copy of your affidavit to (the attorney for) ⁴⁴(1) the applicant. If you wish to allege that the applicant has property or income, you should say so in your affidavit.

5 cf 1987, s 2

FORM 10 (Rule 53)

AFFIDAVIT OF SERVICE

BAHAMA ISLANDS.
IN THE SUPREME COURT

Divorce and Matrimonial Side.

Between Petitioner
and Respondent
and Co-respondent

I, of make oath and say:—

1. That a copy of the (petition, originating summons or notice) bearing date the day of, 19, filed in this Court together with a Memorandum of Appearance in duplicate. Notice of Petition/Proceedings ⁴⁵(1) and Form of Acknowledgement of Service was duly served by me on the in this case at on the day of, 19, by delivering to the said personally a copy thereof.

(Means of knowledge of identity of the person served must be inserted here.)

SWORN etc.

⁴² Delete if appearance has been entered.

⁴³ Or as the case may be, and substitute “Fourteen days” if appearance has already been entered.

⁴⁴ Delete if not applicable.

⁴⁵ Delete whichever is not applicable.

FORM 11

MEMORANDUM OF APPEARANCE

BAHAMA ISLANDS.
IN THE SUPREME COURT
Divorce and Matrimonial Side.

Between Petitioner
and Respondent
and Co-respondent

Enter an appearance (in person) ⁴⁶(1) for
the respondent ⁴⁷ in this cause.

(Signed) of whose address
for service is ⁴⁸

Dated the day of, 19

FORM 12 (Rules 13 and 53)

NOTICE OF ENTRY OF APPEARANCE

BAHAMA ISLANDS.
IN THE SUPREME COURT
Divorce and Matrimonial Side.

Between Petitioner
and Respondent
and Co-respondent

TAKE NOTICE that an appearance has been entered in the
above Registry on your behalf to the petition filed in this case (state
whether the appearance is general or limited to any particular
relief).

TAKE NOTICE further that any order, notices, copies of
pleadings or other instruments which are required to be served on
or delivered to you but of which personal service is not required
may be served or delivered by the petitioner’s attorney by leaving
them at or sending them by post to you at the address for service
given by you, namely

Dated the day of, 19

The Registrar,
The Registry,
Nassau, Bahamas.

⁴⁶ If such is the case

⁴⁷ Or as the case may be

⁴⁸ The address must be within two miles of the Law Courts, Nassau

FORM 13 (Rule 37)

NOTICE OF APPLICATION FOR DECREE *NISI* TO BE
MADE ABSOLUTE

BAHAMA ISLANDS.
IN THE SUPREME COURT
Divorce and Matrimonial Side.

Between Petitioner
and Respondent
and Co-respondent

I (full name and description)
attorney for the petitioner⁴⁹(1) give notice that application is
hereby made on behalf of the petitioner⁵⁰(1) that the decree *nisi*
pronounced in this cause on the day of
19, be made absolute.

(Signed)
Dated the day of, 19

FORM 14 (Rule 37)

CERTIFICATE OF MAKING DECREE *NISI* ABSOLUTE
(NULLITY)

BAHAMA ISLANDS.
IN THE SUPREME COURT
Divorce and Matrimonial Side.

Between Petitioner
and Respondent

Referring to the decree made in this Cause on the day of
....., 19 whereby it was ordered that the
Marriage in fact had and solemnised on the day of
....., 19, at
between the Petitioner and the Respondent be
pronounced and declared to have been and to be absolutely null
and void to all intents and purposes in law whatsoever by reason
....., and the said Petitioner
..... be pronounced to have been and to
be free of all bond of Marriage with the said Respondent
..... unless sufficient cause be shown to
the Court within months from the making
thereof why the said Decree should not be made absolute, and
no such cause having been shown, it is hereby certified that the said
Decree was on the day of, 19,

⁴⁹ Or respondent
⁵⁰ Or respondent

made final and absolute and that the said Marriage was absolutely null and void and that the said Petitioner was and is free from all bond of Marriage with the said Respondent.

Dated the day of, 19

FORM 15 (Rule 37)

**CERTIFICATE OF MAKING DECREE *NISI* ABSOLUTE
(DIVORCE)**

BAHAMA ISLANDS.
IN THE SUPREME COURT
Divorce and Matrimonial Side

Between Petitioner
and Respondent
andCo-respondent

Referring to the decree made in this Cause on the day of, 19, whereby it was decreed that the Marriage had and solemnised on the day of, 19, at between the Petitioner and the Respondent be dissolved by reason that unless sufficient cause be shown to the Court within three months from the making thereof why the said Decree should not be made absolute, and no such cause having been shown, it is hereby certified that the said Decree was on the day of, 19, made final and absolute and that the said Marriage was thereby dissolved.

Dated the.....day of....., 19.....

FORM 16 (Rules 41 and 60)

AFFIDAVIT OF FITNESS OF GUARDIAN *AD LITEM*

BAHAMA ISLANDS.
IN THE SUPREME COURT
Divorce and Matrimonial Side.

Between Petitioner
and Respondent
andCo-respondent

I, of make oath and say as follows:—

1. I am well acquainted with A.B. of and verily believe that he is a fit and proper person to act as guardian *ad litem* of the respondent⁵¹(1) in this cause. The consent of the said A.B. to act as such guardian is hereto annexed.

⁵¹ Or as the case may be.

2. The said A.B. has no interest in the matters in question in this cause adverse to that of the said

.....

SWORN at etc.

FORM 17 (Rule 53)

ORIGINATING SUMMONS UNDER RULE 53

BAHAMA ISLANDS.
IN THE SUPREME COURT

Divorce and Matrimonial Side.

In the Matter of an Application by A.B. under section 31 of the Matrimonial Causes Act (Ch. 125).

Let C.D. of (full address)
within eight days ⁵²(1) after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of A.B. who claims that he the said C.D., being the lawful husband of the applicant, has wilfully neglected to provide reasonable maintenance for her (and the infant children of the marriage) ⁵³(2) and prays that he be ordered to make to her such payments for her maintenance (and the maintenance of the said infant children) ⁵⁴(2) as may be just (and that he be further ordered to secure such payments) ⁵⁵.

Dated the day of, 20....

This Summons was taken out by
attorney for the above-named A.B.

To C.D.

TAKE NOTICE:

A copy of the affidavit to be used in support of the application is delivered herewith.

You must complete the accompanying Form of Acknowledgement of Service and send it to (the attorney for) ⁵⁶(2) the applicant, at (address)

If you do not intend to oppose the application you need not do anything more than send the Form of Acknowledgement of Service

⁵² Or as the case may be.
⁵³ Delete if not applicable.
⁵⁴ Delete if not applicable.
⁵⁵ Delete whichever is not applicable.
⁵⁶ Delete if not applicable.

to the above address. The Court may then, without further notice to you, proceed to hear the application and make such order as it may think fit, notwithstanding your absence.

If you wish to be heard on any matter in connection with this application you (or your attorney) must complete the accompanying Memorandum of Appearance **in duplicate** and send or deliver **both** copies (without fee) so as to reach the Registrar, The Registry, Nassau, Bahamas within eight days after you received this Summons.

If you wish to oppose this application you (or your attorney) must, in addition to sending the Memorandum of Appearance, send or deliver, so as to reach the Registrar within fourteen days after the time allowed for sending the Memorandum of Appearance, an affidavit (which must be sworn before a Notary Public) in answer to the applicant’s affidavit containing in a Schedule exhibited to the affidavit full particulars of your property and income, together with a fee of 50c. You (or your attorney) must at the same time send a copy of your affidavit to (the attorney for) ⁵⁷(4) the applicant .

5 cf 1987, s 2

NOTE: If you intend to instruct an attorney to act for you in these proceedings, you should at once complete and sign the Form of Acknowledgement of Service and then give him all the documents which have been served upon you, so that he may take the necessary steps on your behalf within the time specified.

FORM 18 (Rule 53)

NOTICE OF APPOINTMENT TO HEAR ORIGINATING SUMMONS UNDER RULE 53

BAHAMA ISLANDS.
IN THE SUPREME COURT
Divorce and Matrimonial Side.
To—

TAKE NOTICE that you are required to attend before at the Law Courts, in the City of Nassau on the day of, 19, at o’clock in the noon, for the adjourned ⁵⁸(1) hearing of the summons issued herein on the day of, 19, and that if you do not attend at the time and place mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

(Signed)
Attorney for the Applicant

⁵⁷ Or as the case may be
⁵⁸ Delete if not applicable

FORM 19 (Rule 58)

NOTICE TO BE ENDORSED ON A DECREE OR ORDER

TAKE NOTICE that if you the within-named A.B. neglect to obey this decree (or order) within the time therein limited you will be liable to process of execution for the purpose of compelling you to obey the same.

FORM 20 (Rule 65)

FORM OF NOTICE TO APPEAR IN LEGITIMACY PETITION

BAHAMA ISLANDS.
IN THE SUPREME COURT
Divorce and Matrimonial Side.

To of

TAKE NOTICE that by an Order of the Court dated the day of, 19, it was ordered that you the said should be served with this Petition.

AND FURTHER TAKE NOTICE that you are required to complete the accompanying Form of Acknowledgement of Service and send it to the (attorney for the) ⁵⁹(1) Petitioner and that you are at liberty within eight days ⁶⁰(2) after service of this Petition upon you, inclusive of the day of such service, to enter an appearance either in person or by your attorney at the Registry, Nassau, Bahamas, should you think fit to do so and thereafter to make answer to this Petition.

AND FURTHER TAKE NOTICE that in default of your doing so the Court will proceed to hear the Petition and pronounce judgment in the cause, notwithstanding your absence.

The Petition is filed and this Notice to Appear is issued by of

Dated the day of, 19

Registrar.

NOTE: Any person entering an appearance must at the same time furnish an address for service which must be within two miles of the Registry.

If you desire to enter an appearance by post, you must complete and send to the Registry the accompanying Memorandum of Appearance in duplicate.

The Answer should be filed within fourteen days after the time allowed for sending the Memorandum of Appearance.

⁵⁹ Delete if not applicable

⁶⁰ Or as the case may be

SCHEDULE 2 (Rule 71)**COURT FEES**

<i>Document</i>	<i>Amount</i>
Advertisement:	\$. c.
settling abstract	1.50
filing advertisement with abstract	.40
Affidavits:	
each filing	.40
each swearing	.40
Alimony:	
application for appointment as to (for each hour or part thereof)	.50
<i>Allocatur</i> , certificate of fiat (except certificate for setting down)	.75
Amending (any document) except appearance	.75
appearance	(no fee)
Ancillary Relief:	
notice of application-filing	.40
Answer, filing	.40
Appeal to Court of Appeal:	
filing notice and entering \$15.0., fee for order \$6.0	21.0
interlocutory. Notice and entering \$6.0., fee for order \$3.0	9.0
cross appeal, filing notice	6.0
cross appeal, interlocutory, filing notice	3.0
appeal to Judge from Registrar. Issuing Summons 75c., order 75c	1.50
fee for any other order such as leave to appeal or for security	3.0
Appeal to Divisional Court, filing notice and entering \$1.50., order \$6.0	7.50
Appearance	(no fee)
Appointment:	
for examination in aid of execution	1.50
before Registrar for any purpose except summons or motion (for each hour or part thereof)	1.50

Attendances (and officer's expenses in addition) for each day	6.0
Bond:	
filing	.40
vacating	1.50
Registrar's minute with settling	.95
settling undertaking	1.50
Certificate:	
Registrar's	1.50
Charging Order:	
<i>nisi</i> (both fees are taken on the order <i>nisi</i>)	.75
absolute	.75
Commission, issuing	3.0
Costs:	
<i>allocatur</i>	.75
filing	.40
on filing: a deposit of 45c. on each \$40.00 of the total costs; taxing fee 1 Sc. for every \$12.00 of the total allowed (minimum 30c.)	
objections to taxation: filing	.40
Decree:	
photographic copy	.75
Decree Absolute (application for)	1.50
Depositions:	
filing	.40
Registrar's minute	.75
Documents (production in Court)	1.50
Exhibits, marking each	.22
Garnishee Order:	
<i>nisi</i> (both fees are taken on order <i>nisi</i>)	.75
absolute	.75
Guardian:	
Consent, filing of	.40
Hearing or Trial of Cause:	
first five hours-undefended cause	3.0
first five hours-any other cause	6.0
for each additional complete hour	1.50

Interrogatories, filing each set	.40
Judgments Extension, Certificate (including affidavit)	1.50
Letters of Request, settling and issuing	3.0
Maintenance:	
application for appointment as to (for each hour or part thereof)	1.50
Medical Inspection:	
administering oath to inspectors (2)	.75
report	.40
Registrar's minute on report	.75
Minute, Registrar's (in every case)	.75
Motion, case on or notice of, filing case 75c., fee for order \$3.00	3.75
Notice, filing	.40
Oath, administering to each deponent	.40
Orders:	
made in Chambers, final	1.50
made in Chambers, interlocutory	.75
made in Court (other than at trial or for security)	3.0
made in Court for security	1.50
made in Appeal (Court interlocutory, leave to appeal or for security)	3.0
made in other orders	6.0
Originating Summons, leave to file petition within three years of marriage:	
issuing	1.50
order	.75
Originating Summons, wilful neglect to maintain:	
affidavits-filing	.40
appointment before Registrar	1.50
issuing	4.50
order by judge	6.0
order by judge, interim	3.0
order by Registrar (interlocutory)	.75
order by Registrar (final)	1.50
Particulars, filing	6.0
Petition, filing	.75

Records (production in Court)	.75
Report, filing	.40
Reply, filing	.40
Searches:	
for decree	.40
in index (each hour or part)	.40
Setting Cause Down:	
(a) Undefended including \$6.00. for hearing, \$3.00 decree, \$1.50 for Registrar's certificate	10.50
(b) Defended, including \$6.00 for hearing, \$6.00 for decree, \$1.50. for certificate	13.50
(If trial lasts for more than five hours, \$1.50 is payable for each further complete hour)	1.50
(c) Trial by jury (in addition to (a) and (b))	3.0
Subpoena (fee, on <i>praecipe</i> , for each witness)	.40
Summons (including order):	
interlocutory	1.50
final	3.00
Variation of Settlements:	
application for appointment as to (each hour or part thereof)	1.50
Writs:	
attachment: <i>elegit. fieri facias</i> : sequestration: sealing and issuing	1.50