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RULES OF THE SUPREME COURT

OF THE

STATE OF VICTORIA.

1949.

RULES OF THE SUPREME COURT.

IN pursuance of the powers conferred by the Supreme Court Acts and all other powers hereunto enabling, the following rule is made and shall take effect on and after the 1st day of April, 1949:—

CHAPTER II.

RULES OF PROCEDURE IN DIVORCE AND MATRIMONIAL CAUSES.

1. On and after the first day of April, 1949, all Rules of Procedure in Divorce and Matrimonial Causes shall be repealed and of no effect except so far as regards all proceedings then pending and on the said first day of April, the Rules hereinafter set out shall come into force, and shall apply to all proceedings commenced on or after that date whether pursuant to the *Matrimonial Causes Act 1945* (No. 22 of 1945) of the Commonwealth of Australia or under the law of the State of Victoria. Commencement of Rules.

PETITION AND VERIFYING AFFIDAVIT.

2. (1) Proceedings before the Court to obtain a decree of nullity of marriage, dissolution of marriage, judicial separation or declaration as to jactitation of marriage shall be commenced by filing in the office of the Prothonotary a petition in the form in the Seventh Schedule to the *Marriage Act 1928*, or to the like effect. Every such petition shall be intitled with the number of the suit and the names of the parties and shall state as distinctly as the nature of the case permits the facts upon which the claim to relief is founded, the name, if known, of the person with whom adultery is charged and, unless otherwise directed by a Judge, shall be signed by the petitioner, or in the case of a person of unsound mind by such person's committee or guardian and shall be filed within thirty days of the signing thereof. Petitions.

(2) No petition in a suit for dissolution or nullity of marriage shall be filed unless there appear on its face in red letters the words "In case of a decree *nisi* being granted neither the petitioner nor the respondent may legally re-marry until such decree *nisi* has been made absolute" or words to the like effect.

(3) No supplemental petition shall be filed, and no petition shall be amended, without leave. An affidavit in support of the application for leave shall, unless otherwise directed, be made by the petitioner and, if necessary, some other person or persons and shall verify any new facts which are alleged and distinctly and unequivocally deny that there has been any collusion or connivance past or present, direct or indirect with the respondent or any person liable to be made respondent.

(4) No deputy Prothonotary shall allow a petition to be filed in a suit for dissolution or nullity of marriage without an order of the Court or a Judge where the Petitioner resides nearer to the office of the Prothonotary than to his office.

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Affidavit
verifying
petition.

3. Every petition commencing proceedings shall be accompanied by and have filed with it an affidavit, made by the petitioner, and, if necessary, an affidavit or affidavits by some other person or persons, verifying, paragraph by paragraph, the facts, acts, and conduct stated in the petition, distinguishing those within the personal knowledge of the deponent, and those which the deponent can verify only from belief and in the latter case stating the grounds for such belief, and stating the grounds on which the allegation of the domicile of the petitioner and the respondent is based; and also verifying fully and distinctly with dates and all other particulars so many of the following acts and circumstances as are applicable to each case, or assigning explicit reasons for omitting to do so:—

- (1) Age, and place of birth, and domicile of husband and wife respectively.
- (2) Condition of life, means of livelihood of husband and wife respectively, both before and after marriage.
- (3) Names, sexes, dates and places of birth of children, living or dead, if any.
- (4) Cohabitation, tracing it clearly from marriage to last determination, showing fully, when, why, and under what circumstances it ceased.
- (5) Separation or separations, if any, and causes thereof, and substance of deed of separation, if any executed.
- (6) Origin of the acquaintance of the adulterer or adulteress.
- (7) Fact and time of adultery.
- (8) All the occasions on which, within petitioner's knowledge, adultery has been committed.
- (9) The precise occasion when petitioner first suspected any improper or adulterous intercourse.
- (10) Reasons, if any, for not having sooner instituted proceedings.
- (11) The result of any previous proceedings between the parties with reference to the marriage.
- (12) Any other facts or circumstances within petitioner's knowledge bearing on the petition.
- (13) Distinct and unequivocal denial of all collusion or connivance, past or present, direct or indirect, with the respondent or any person liable to be made respondent.

Title of
petition for
nullity of
marriage.

4. In every petition for nullity of marriage the female party thereto shall be described in the title thereof both by the surname acquired by her as a result of going through the ceremony of marriage the subject of the proceedings and by that possessed by her immediately prior to such ceremony, the latter surname being preceded by the expression "otherwise."

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CITATION.

5. Every petitioner who files a petition and affidavit as aforesaid shall prepare a citation according to Form No. 1 in the Schedule, and shall take such citation, together with a praecipe, according to Form No. 2 in the Schedule, to the office of the Prothonotary, and shall file the praecipe, and the citation shall be then signed and sealed.

Form of
citation and
praecipe.

6. No citation in a suit for dissolution or nullity of marriage shall be issued unless there appear on its face in red letters the words, "In case of a decree *nisi* being granted neither the petitioner nor the respondent may legally re-marry until such decree *nisi* has been made absolute" or words to the like effect.

Warning
against
re-marriage.

7. No deputy Prothonotary shall issue any citation in a suit for dissolution or nullity of marriage without an order of the Court or a Judge where the petitioner resides nearer to the office of the Prothonotary than to his office.

INDORSEMENT OF ADDRESS.

8. Where the petitioner proceeds by a solicitor, every citation and petition shall have indorsed thereon the address of the petitioner, and also the name or firm and place of business of his solicitor, which shall be his address for service, if such place of business is not more than three miles from the office of the Prothonotary, and also, if his place of business shall be more than three miles from the office of the Prothonotary, another place to be his address for service, which shall not be more than three miles from the office of the Prothonotary, where writs, notices, pleadings, petitions, orders, summonses, and other documents, proceedings and written communications not requiring personal service may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

Where
petitioner
sues by
solicitor.

9. Where the petitioner proceeds in person, he shall indorse upon the citation and petition his place of residence, his occupation and a place to be his address for service, which shall not be more than three miles from the office of the Prothonotary, where writs, notices, pleadings, petitions, orders, summonses, and other documents, proceedings, and written communications not requiring personal service may be left for him.

Where
petitioner
proceeds in
person.

10. Any petitioner may from time to time substitute another address for service within the like distance by filing the same in the office of the Prothonotary, and serving a notice thereof upon every opposite party.

Change of
address.

SERVICE OF CITATION, ETC.

11. (1) Every citation, within two months after filing of the petition upon which it is issued, shall, together with a copy of the petition sealed with the seal of the Court, be served personally on the respondent and every co-respondent, by leaving a copy with each such person, and producing the original, if required so to do.

Personal
service of
citation.

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(2) The time for service may be enlarged at any time and notwithstanding that the prescribed time has expired. Where service has irregularly taken place after the expiration of the prescribed time, such service may be set aside and re-service ordered or, if the Court or a Judge thinks fit, an order may be made that further service be dispensed with.

(3) Unless the Court or a Judge otherwise orders where a petition presented by a wife charges adultery with a named person notice in writing thereof shall at least ten days before the cause is set down for trial be served upon the person with whom the husband is alleged to have committed adultery and such notice shall inform that person of her rights under section 118 of the *Marriage Act* 1928 or any subsequent corresponding enactment.

Petitioner
not to effect
service.

12. Personal service shall in no case be effected by the petitioner or counter-petitioner.

Service out of
jurisdiction.

13. (1) No citation shall be served out of the jurisdiction except by leave of the Court or a Judge, and such Court or Judge shall fix the time within which an appearance must be entered and an answer filed. A copy of the order giving such leave shall be served with the citation and the Prothonotary shall insert in the citation the time fixed in such order for appearance.

(2) An order giving leave to effect service outside the British Dominions, shall provide that notice of the citation and not the citation itself, shall, together with a sealed copy of the petition, be served.

Service of
amended and
supplemental
petitions.

14. Unless it is otherwise ordered by the Court or a Judge, where leave is given to amend a petition or issue a supplemental petition, a copy of the order giving leave, and a copy of such amended or supplemental petition sealed with the seal of the Court, shall be served personally on the respondent and every co-respondent affected thereby, together, in the case of service upon any co-respondent not previously a party, with a copy citation citing him as such.

Service on
infants.

15. Service on the father or guardian of an infant or, if there be no such person, upon the person with whom the infant resides or under whose care he is, shall, unless the Court or a Judge otherwise orders, be deemed good service on the infant and no infant shall be served personally except as directed by the Court or a Judge.

Service on
lunatics.

16. (1) When the ground of any petition for dissolution of marriage or judicial separation is the lunacy or unsoundness of mind of the respondent the petitioner shall on the issue of the citation serve a copy of the petition sealed with the seal of the Court and a copy of the citation—

(a) where the respondent is resident in Victoria—on the Public Trustee; or

(b) where the respondent is resident outside Victoria—on such person as the Court or a Judge may order—

and no further service on the respondent shall be necessary.

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(2) In all other cases service on the committee of a person of unsound mind or on the person with whom he or she resides or under whose care he or she is, shall, unless the Court or a Judge otherwise orders, be deemed good service on the person of unsound mind, provided that if such person be detained in Victoria in a mental hospital, hospital for the criminal insane, receiving house, receiving ward, private mental home or mental treatment institution within the meaning of the Mental Hygiene Acts a copy of the documents so served shall forthwith be delivered to the Public Trustee.

17. After personal service of a citation has been effected, the citation, with the certificate of service indorsed thereon, shall be forthwith returned into and filed in the office of the Prothonotary. Save by leave of a Judge a citation may not be filed unless a certificate of service is indorsed thereon.

Citation to be
filed after
service.

18. In cases where personal service cannot be effected, application may be made to the Court or a Judge to substitute some other mode of service or to dispense with service altogether; every such application shall be made upon affidavit, and may be granted upon such terms and conditions as the Court or a Judge may think fit; or in the case of a co-respondent an order may be made dismissing him from the suit.

Substituted
service.

19. Unless service has been dispensed with no further proceedings shall be taken save with the leave of the Court or a Judge until an appearance has been entered or an affidavit of service of the citation has been filed in the office of the Prothonotary.

Taking of
further
proceedings.

APPEARANCE.

20. Appearance shall be entered within the time stated in the citation or in any order dispensing with personal service of the citation, provided that an appearance may by consent in writing of the opposite party or such party's solicitor or pursuant to order of the Court or a Judge, be entered at any time before decree absolute subject nevertheless to compliance with such conditions as may appear in such consent or order.

Entry of
appearance.

21. (1) Entry of appearance shall be made by delivering to the Prothonotary a memorandum in writing in accordance with Form No. 3 of the Schedule hereto. Where such an appearance is entered by a solicitor the memorandum shall be signed by the solicitor personally.

Form and
notice of
appearance.

(2) Notice of appearance in accordance with Form No. 4 of the Schedule shall on the day on which appearance is entered be given to the opposite party or his solicitor.

22. Every entry and notice of appearance shall, where the respondent or other party appears by a solicitor, state the place of business of such solicitor, which shall be his address for service, if such place of business be not more than three miles from the office of the Prothonotary, and also if his place of business shall be more than three miles from the office of the Prothonotary, another place to be his address for service, which shall not be more than three miles from the office of the Prothonotary; and where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

Address for
service of
solicitor.

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Address for
service of
party in
person.

23. When a respondent or other party appears in person, his entry and notice of appearance shall state his address, and a place, to be his address for service, which shall not be more than three miles from the office of the Prothonotary.

Change of
address.

24. Any respondent or other party may from time to time substitute another address for service within the like distance by filing the same in the office of the Prothonotary, and serving a notice thereof upon every other party.

Question of
jurisdiction.

25. If a party wishes to raise any question as to the jurisdiction of the Court, he or she shall enter an appearance under protest.

Appearance
under protest.

26. An appearance under protest shall state concisely the grounds for disputing the jurisdiction of the Court and the party so appearing under protest shall before the expiration of the time allowed for filing an answer apply to a Judge by summons for directions as to the determination of the questions arising by reason of such appearance under protest and, in default of making any such application, such appearance shall be deemed to be an unconditional appearance. Any such directions may provide for the trial upon affidavits or oral evidence of a preliminary issue, with or without a stay of proceedings, or for the determination of the matters in question at the hearing of the cause and for any interlocutory matters incidental thereto.

Appeal from
Judge on
question of
jurisdiction.

27. If the Court or a Judge should decide the question of jurisdiction against the party raising it, such party may appeal against the decision, or may appear absolutely and file an answer within such time as the Court or Judge may direct.

Objection to
jurisdiction
after
unconditional
appearance.

28. Notwithstanding that appearance is or has become unconditional, the Court or a Judge shall have power to give leave to a party to raise a question of jurisdiction at any stage of the proceedings. Such leave, if given, shall be on such terms as to costs as the Court or Judge may think fit.

Default of
appearance.

29. On default of appearance the petitioner may set the cause down for trial.

Co-RESPONDENTS, ETC.

Applications
for dispensing
orders.

30. (1) Application to excuse a husband petitioner making the alleged adulterer a co-respondent shall, unless the Court or a Judge otherwise directs, be made by summons supported by affidavit.

(2) Except by leave of the Court or a Judge such application shall not be made at the trial.

Death of
co-respondent.

31. Where an alleged adulterer, who has been made a co-respondent or cited as a party, is dead or dies *pendente lite*, application may be made to the Court or a Judge for leave to strike his name out of the title to the proceedings and to insert the words "since deceased" after his name in the body of the petition.

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32. If the name of any alleged adulterer should be unknown to the petitioner at the time of filing his petition and afterwards becomes known to him, application must be made forthwith to the Court or a Judge to amend the petition by inserting such name therein and for further directions, and the Court or the Judge shall give directions as to such amendment, and such further directions as it or he may think fit as to the service of the amended petition.

Where name of alleged adulterer unknown.

SUITS IN "FORMA PAUPERIS."

33. Any person may, on application to a Judge, be admitted to sue or defend as a pauper on proof that he has not property exceeding Fifty pounds in value after payment of his just debts, his wearing apparel only excepted.

Paupers.

34. The provisions of Rules 22A, 23, 24, 25, 26, 27, 27A, 28, 29, 30, 31 and 31A of Order XVI. of the Rules of Procedure in Civil Proceedings shall apply *mutatis mutandis* to proceedings for divorce and other matrimonial causes.

Application of Order XVI. to divorce and matrimonial causes.

35. The affidavit, in support of an application by a wife to prosecute a suit against her husband *in forma pauperis*, shall state, to the best of her knowledge and belief, the amount of income and means of living of her husband.

Affidavit in application by wife.

36. When a husband has been admitted to prosecute a suit against his wife *in forma pauperis*, the wife may apply for an order that she be at liberty to proceed with her defence *in forma pauperis* upon affidavit that she has no separate property exceeding Fifty pounds in value after payment of her just debts.

Where husband proceeds in *forma pauperis* wife may be permitted so to defend.

37. Where a wife has been permitted to prosecute a suit against her husband *in forma pauperis*, the husband may apply for leave to proceed with his defence *in forma pauperis* upon affidavit as to his income and means of living, and proving that beside his wearing apparel he has not property exceeding Fifty pounds in value after payment of his just debts.

Where wife proceeds in *forma pauperis* husband may be permitted so to defend.

PERSONS OF UNSOUND MIND.

38. A committee duly appointed of a person of unsound mind may file a petition, take out a citation and prosecute a suit on behalf of such person as a petitioner, or enter an appearance, intervene, or proceed with the defence on behalf of such person as a respondent; but if no committee should have been appointed and statutory provisions enabling entry of appearance as guardian *ad litem* of a respondent to a petition for dissolution of marriage or judicial separation on the ground of lunacy or unsoundness of mind be inapplicable, application shall be made on summons to the Court or a Judge, who shall assign a guardian to the person of unsound mind, for the purpose of prosecuting, intervening in or defending the suit on his or her behalf; and shall give such directions as it or he thinks proper with regard to service of the summons. The affidavit in support of an application to assign a guardian shall contain adequate material relating to the mental condition of the party for whom a guardian is sought, and shall state that the proposed guardian is a suitable person to be so appointed and consents to being appointed.

Proceedings by committee or guardian.

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INFANTS.

Infant may
elect guardian.

39. An infant above the age of sixteen years may elect any one or more of his next of kin as guardian, for the purpose of proceeding on his behalf as petitioner, respondent, or intervener in a cause, and shall file in the Prothonotary's office an instrument of election in accordance with Form No. 5 of the Schedule.

Election to
be filed.

40. Until the necessary instrument of election is filed no citation shall issue or appearance be entered on behalf of the infant.

When Judge
to elect
guardian.

41. Where an infant has not elected a guardian pursuant to rule 39 or when an infant under the age of sixteen years becomes a party to a cause the Court or a Judge may, on application supported by affidavit, setting out the age of the infant and that the person proposed as guardian is suitable as such and consents to be appointed, appoint the said person or such other person as it or he may approve to be guardian. The Court or a Judge may at any time cancel an election or appointment of the guardian of an infant and in either such case appoint a new guardian.

Proceedings
by infant.

42. An infant may commence, prosecute, defend, intervene or take any proceedings in a cause by his guardian, provided that it shall not be necessary for an infant, who is joined as a co-respondent, to have a guardian for the purpose of conducting his defence.

Guardian
to infant
respondent.

43. When the respondent, being the husband or wife of the petitioner, is an infant and has not entered an appearance within the time limited therefor, the petitioner shall, before proceeding further with the cause, apply to the Court or a Judge for an order that some proper person be assigned guardian of the infant for the purpose of the cause, and the Court or the Judge may make such order and give such directions as may be necessary.

ANSWER AND FURTHER PLEADINGS.

Form and
filing of
answer.

44. Within twenty-one days from the service of the citation and sealed copy of the petition, or such further or other time as may be fixed by a Judge, the respondent, having entered an appearance, shall file his or her answer in the office of the Prothonotary according to Form No. 6 of the Schedule, otherwise the petitioner may set the cause down for trial.

Affidavit
verifying
answer.

45. There shall accompany every answer or subsequent pleading which contains matter other than a simple denial of the facts stated in the petition, an affidavit by the person filing the answer or subsequent pleading verifying such other matter so far as he has personal cognizance thereof and disposing to his belief in the truth of the rest of such other matter, provided that in no case shall any respondent be compelled to confess the commission of adultery.

Denial of
collusion.

46. The respondent, if the husband or the wife, shall, if he or she can, in an affidavit accompanying the answer fully and unequivocally state that there is not and has never been any collusion or connivance direct or indirect between the deponent and the other party to the marriage.

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47. The respondent shall file, in the office of the Prothonotary, his or her answer, together with any affidavit accompanying such answer, and on the same day deliver to the petitioner or his or her solicitor a copy of the answer. Filing and delivery of answer.

48. (1) A respondent may include with his or her answer a petition for cross-relief. Such petition shall bear a heading "Counter-Petition", and shall be divided into paragraphs numbered separately from the paragraphs of the answer. Counter-petition.

(2) No counter-petition seeking dissolution or nullity of marriage shall be filed unless there appear on its face in red letters the words, "In case of a decree *nisi* being granted neither the petitioner nor the respondent may legally re-marry until such decree *nisi* has been made absolute," or words to the like effect.

49. A petition included by the respondent with his or her answer shall, as regards pleading and otherwise, be governed by the same rules as apply to petitions generally so far as they may be applicable, but, with respect to the affidavit or affidavits required to be filed with the petition, it shall be a sufficient reason for not verifying any of the acts and circumstances numbered (1), (2), (3), (4) and (5) in Rule 3 of these Rules that it has been truly and sufficiently verified by the affidavit or affidavits filed by the petitioner with his or her petition. Affidavit verifying counter-petition.

50. Where the answer of a husband includes a counter-petition on the ground of adultery, unless it is otherwise ordered the name of the alleged adulterer shall be added to the title of the cause as "Party cited," a citation to him shall be issued, and he shall be served personally with a sealed copy of the answer and a copy of the citation. Party cited.

51. Within eight days from the filing and serving of the answer, or if there is included therein a petition for cross relief within 21 days, the petitioner may file a reply thereto, and shall on the same day deliver to the respondent or his or her solicitor a copy thereof. Reply.

52. No pleading subsequent to reply may be pleaded without leave of the Court or a Judge and then on such terms as the Court or Judge shall think fit. Any pleading subsequent to reply shall be delivered within the time specified in the order giving leave to deliver the same, or if no time be so specified, within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge.

53. At the expiration of eight days from the last day provided by the rules for filing a reply or if further pleadings are allowed, then at the expiration of eight days from the last day for filing the last of such pleadings the cause shall be deemed to be at issue. Cause at issue.

GENERAL RULES AS TO PLEADING.

54. Any party may, by leave of the Court or a Judge, and in such form and upon such terms as the Court or Judge may think fit, amend his or her petition, answer, or subsequent pleading. Amendment of pleadings.

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Time for
next proceeding
after
amendment.

55. Unless otherwise ordered, where a petition, answer or other pleading has been ordered to be amended, the time for filing and delivering a copy of the next pleading shall be reckoned from the time of the order having been compiled with.

Delivery of
amended
pleading and
time for
answer thereto.

56. Unless it is otherwise ordered, a copy of every pleading, showing the amendments made therein, shall be delivered to the opposite parties on the day such amendments are made in the pleadings filed with the Prothonotary; and the opposite parties, if they have already pleaded in answer, shall be at liberty to amend such pleading within four days, or such further time as may be allowed for the purpose.

Failure to
file or deliver
pleadings.

57. If either party in the cause fail to file or deliver a copy of the answer, reply, or other pleading, or to amend the same, or to deliver a copy of any amended pleading, within the time allowed for the purpose, the party to whom the copy of such answer, reply, or other pleading, or amended pleading, ought to have been delivered, shall not be bound to receive it if tendered, and such answer, reply or other pleading shall not be filed, or be treated or considered as having been filed, or be amended, unless by order of a Judge. The expense of obtaining such order shall fall on the party applying for it, unless the Judge shall otherwise direct.

Further
particulars.

58. Applications for further particulars of matters pleaded shall be made by summons.

GENERAL RULES AS TO SERVICE.

Personal
service of
pleadings, &c.

59. Where personal service of any pleading, notice, proceeding, or document is required, the provisions of these Rules, so far as they relate to the service of citations, shall apply, unless in any particular case the Court or a Judge otherwise orders.

Personal
service of
decree.

60. When it is necessary to serve personally any order or decree of the Court, the original order or decree, or an office copy thereof, under seal of the Court, must be produced to the party served, and a like copy marked as an exhibit by the Commissioner or other person before whom the affidavit is sworn shall be exhibited to any affidavit of such service.

Address for
service.

61. (1) It shall be sufficient to leave all pleadings, notices, notices of appeal, proceedings, and documents, which are required to be given or delivered to the opposite parties in the cause, or to their solicitors, and personal service of which is not expressly required, at the respective addresses furnished as aforesaid by or on behalf of the parties.

(2) If such address be not furnished as aforesaid, or if such address be illusory or fictitious, the opposite party may proceed by filing all such pleadings, notices, notices of appeal, proceedings, and documents in the Prothonotary's office.

Service of
notice of
motion.

62. When it is necessary to give notice of any motion to be made to the Court, such notice shall be served four clear days previously to the hearing of such motion and a copy of the notice so served shall be filed in the Prothonotary's office.

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63. If an order be obtained on motion without due notice to the opposite parties, such order may be rescinded on the application of the parties upon whom the notice should have been served; and the costs of and incidental to the rescinding of such order shall be borne by the party who obtained the order unless the Court or a Judge shall otherwise direct.

Order
obtained
without
service.

MODE OF TRIAL.

64. Except as otherwise provided by these rules all Matrimonial Causes shall be tried by a Judge without a Jury.

Trial by judge.

65. When a petition for dissolution of marriage is presented charging adultery any party may at any time before the cause is at issue give written notice to the Prothonotary and to all other parties that he or she requires the contested matters of fact in relation to any charge of adultery to be tried by a jury and upon payment of the proper jury fees by the party giving such notice the same shall be so tried.

Petition
charging
adultery.

66. When a petition for dissolution of marriage or for judicial separation contains a claim by a husband for damages on the ground that some person has committed adultery with the petitioner's wife the petitioner shall set down for trial before a jury the assessment of such damages and shall pay the proper jury fees for such trial.

Damages.

67. The petitioner or any party who has entered an appearance may within eight days from the time the cause is at issue apply to the Court or a Judge for an order under section 116 of the *Marriage Act* 1928 or any similar statutory provision for the time being in force directing that the truth of any question of fact arising in the proceedings be tried by a jury and the time and place of such trial; and if no such application be made the Court or a Judge may direct that such question shall be so tried and the time and place of such trial.

Trial by jury.

68. Issues of fact for trial before a jury shall be tried before six or twelve jurors at any sittings of the Supreme Court.

Jurors.

69. When the only questions at issue are adultery or damages the questions shall unless the Court or a Judge shall otherwise order be stated as in Form No. 7 in the Schedule. In all other cases in which a cause is to be tried before a jury the terms in which the questions at issue are to be stated shall on the application of either party be settled by the Court or a Judge.

Issue for trial.

SETTING DOWN FOR TRIAL.

70. In causes to be tried by a jury the petitioner shall, when the issues relate to adultery or damages only, within fifteen days of the cause being at issue, and in all other cases within eight days after the questions of fact have been settled, file the questions as stated in the Prothonotary's office and at the same time set down the cause for trial, and on the same day serve notice of his having done so and a copy of the said questions on each party for whom an appearance has been entered.

Questions of
fact to be filed
and cause set
down.

71. In causes to be tried without a jury, the petitioner shall, within fifteen days from the time the cause is at issue, set the cause down for trial, and on the same day give notice of having done so to each party in the cause for whom an appearance has been entered.

Where cause to
be heard
without jury.

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Respondents
may proceed
where petitioner
fails.

72. If the petitioner fails to file the questions of fact for the jury or set down the cause for trial or to give due notice thereof, for the space of one month after the questions of fact might have been filed or the cause might have been set down, any party entitled to be heard at such trial may file the questions for the jury, and set down the cause for trial, and shall on the same day serve notice of his having done so and a copy of the said questions, if any, on the petitioner and on each of the other parties to the cause for whom an appearance has been entered.

TRIAL.

Time and place
of hearing.

73. All causes shall be tried at such times as the Court or a Judge shall direct. Every cause shall, unless the Court or a Judge otherwise order, be tried in the place stated in the citation issued on behalf of the petitioner, and if no place is so stated, or ordered, in Melbourne.

Time for
hearing not
before twenty-
one days.

74. No cause shall be called on for trial until after the expiration of 21 days from the day when the same has been set down for trial and notice thereof has been given, save with the consent of all parties to the suit or by order of the Court or a Judge. Causes may be set down during any vacation.

Decree to be
entered.

75. The Associate or other officer shall enter in the Court book the finding of the jury and the decree of the Court, and shall sign the same.

Hearing
respondents
where no
answer filed.

76. After appearance has been entered by or on behalf of any party, he or she may be heard in respect of any question as to costs of suit, and a respondent being the husband or wife of the petitioner may also be heard in respect to any question as to custody of or access to children, alimony, maintenance, or settlement of property, although he or she may have filed no answer to the petition in the cause, but may not file affidavits touching matters in issue in the cause, and no such affidavit shall be read or made use of as evidence in the cause.

Procedure in
general.

77. The practice and procedure as to summoning, attendance, and challenging of jurors; summoning and attendance of witnesses; orders made or commissions or letters of request issued for the examination of witnesses; admission of documents; hearing and addresses of counsel; and all other proceedings with reference to the trial of any cause or of any issue, shall, unless otherwise provided, be as nearly as may be according to the practice and procedure of the Supreme Court in civil proceedings.

EVIDENCE TAKEN BY AFFIDAVIT.

Time for filing.

78. Where any party intends on the trial of any cause or any issue to verify his or her case in whole or in part by affidavits, such affidavits shall be filed within eight days after the cause has been set down for trial.

Counter
affidavits.

79. Affidavits in answer to such affidavits may be filed by either party within fifteen days from the filing of the affidavits which they are intended to answer.

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80. Copies of all such affidavits and affidavits in answer shall, on the day the same are filed, be served on each other party who has appeared and where the affidavits are filed by a party other than the petitioner on the petitioner. Copies to be delivered.

81. Affidavits in reply to affidavits in answer shall not be filed without leave of the Court or a Judge. Affidavits in reply.

APPLICATIONS.

82. A summons to attend before a Judge at Chambers may be taken out by any person in any matter pending in the Court, and the practice and procedure thereon in all respects shall, unless otherwise provided for by these rules, be, as nearly as may be, according to the practice and procedure in Chambers of the Supreme Court in civil proceedings. Practice on summons.

83. All applications to the Court, except those expressly required to be made by motion or petition, shall be made by summons; but the Judge before whom such summons shall be heard may direct that it shall be heard in open Court. Applications to court.

84. All orders made upon *ex parte* applications or on summonses shall be filed in the office of the Prothonotary within fourteen days after the pronouncing thereof, or in default thereof shall be deemed to have lapsed. Orders to be filed.

NEW TRIAL AND RE-HEARING.

85. An application to the Judge for a new trial of issues of fact tried by a jury, or for the re-hearing of a cause, shall unless the Judge otherwise directs, be made by motion within fourteen days from the day on which the issues were tried or the cause was heard. Motion for new trial.

REVERSAL OF PETITION FOR JUDICIAL SEPARATION.

86. Petitions for the reversal of a decree of judicial separation must set out the grounds upon which the petitioner relies according to Form No. 8 of the Schedule. Form of petition.

87. Before such a petition can be filed, an appearance on behalf of the party praying for a reversal of the decree of judicial separation must be entered in the cause in which the decree has been pronounced. Appearance.

88. A copy of such petition, under seal of the Court, shall be served personally upon the party in the cause in whose favour the decree has been made, who may, within fourteen days, file an answer thereto in the Prothonotary's office, and shall on the day on which the answer is filed serve a copy thereof upon the other party, or upon his or her solicitor. Service of petition and filing of answer.

89. All subsequent pleadings and proceedings arising from such petition and answer shall be filed and carried on in the same manner as before directed in respect of an original petition for judicial separation and answer thereto, so far as such directions are applicable. Further pleadings.

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INTERVENTION, ETC., BY THE ATTORNEY-GENERAL AND OTHERS.

Application
for leave to
intervene.

90. Application for leave to intervene in any cause pursuant to section 118 of the *Marriage Act* 1928 or any statutory provision amending or replacing such section may be made at any stage of the proceedings, and shall be made to the Court by motion supported by affidavit, and leave may be given with such directions as to appearance and otherwise as the Court shall think fit.

Interveners.

91. When any person intervening in a cause enters an appearance, the title of the cause shall be amended by adding the name of such person as "Intervener."

Pleadings.

92. Every person intervening shall join in the proceedings at the stage in which he finds them unless it is otherwise ordered by the Court.

At request
of court.

93. If in discharge of its or his duties under the *Marriage Act* the Court or a Judge requests the assistance of the Attorney-General, the Attorney-General may apply *ex parte* to the Judge hearing the petition for directions as to what part the Attorney-General shall take in the further hearing of the petition, and upon such application the Court or Judge may direct what notices shall be given to the parties or any of them and may generally give such directions as may be just, necessary or convenient with relation to the further hearing of the petition.

Costs.

94. The Court may make such order for the costs incurred by the Attorney-General, pursuant to such request as to it seems just, including an order that his costs be paid by any party to the petition.

By Attorney-
General against
decree nisi.

95. When the Attorney-General intends to intervene to oppose the making of a decree *nisi* for dissolution of marriage he shall give to the petitioner written notice of such intention.

By individual.

96. Application for leave to intervene by any person other than the Attorney-General to oppose the making of a decree *nisi* for dissolution of marriage on any ground involving adultery shall be made to the Court by motion supported by affidavit.

Procedure upon
intervention.

97. The Attorney-General shall within fourteen days after he has given notice of his intention to intervene, and any other person shall within fourteen days after he has obtained leave to intervene, enter an appearance and plead to the petition, which plea need not be verified by affidavit; and on the day after he files his plea in the Prothonotary's office he shall deliver a copy thereof to the petitioner or to his solicitor.

Subsequent
pleadings.

98. All subsequent pleadings and proceedings in respect to such intervention of the Attorney-General or other person in a cause shall be filed and carried on in the same manner as before directed in respect of the pleadings and proceedings of the original parties to the cause.

SHOWING CAUSE AGAINST A DECREE.

Form of
application
for leave.

99. Applications for leave to show cause why a decree *nisi* for dissolution or nullity of marriage should be reversed shall be made to the Court by motion supported by affidavit.

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100. Within eight days after obtaining such leave the Attorney-General or other person desiring to show cause against a decree *nisi* for dissolution or nullity of marriage being made absolute shall enter an appearance in the cause in which such decree *nisi* has been pronounced and shall within eight days after appearance file in the Prothonotary's office his plea setting forth the grounds upon which he desires to show cause as aforesaid and on the day he files his plea he shall cause a copy thereof to be served on the party in whose favour the decree *nisi* has been pronounced.

Appearance
and plea.

101. The plea of the Attorney-General pursuant to the last preceding rule need not be verified by affidavit, but the plea of any other person pursuant to such rule shall be so verified.

Verification
of plea.

102. All subsequent pleadings and proceedings in respect to such intervention to show cause shall be filed and carried on in the manner prescribed by these rules in respect of the pleadings and proceedings of the original parties to the suit.

Subsequent
pleadings.

103. The questions raised on such pleadings shall be heard and determined in the same manner as any other issue tried in the Court.

Questions
how tried.

DECREES.

104. In every case where a decree *nisi* for dissolution of marriage or a decree *nisi* or absolute of nullity of marriage is pronounced a draft thereof shall be lodged with the chief clerk within fourteen days of such pronouncement and an office copy of the decree as settled by the chief clerk together with the original draft shall be lodged at the Prothonotary's office within seven days after such decree has been settled and such times shall be deemed to be the times prescribed by the statutory provisions for the time being in force relating to the lodging, settling, passing and entering of such decree. In case of non-compliance with the foregoing provisions within the time prescribed the chief clerk or the Prothonotary (as the case may be) may permit a subsequent lodging to be made and shall permit subsequent lodging which has been ordered by a Judge.

Draft to
be lodged.

105. On every copy of a decree *nisi* for dissolution of marriage the Prothonotary shall indorse a notice that if the petitioner or respondent shall contract marriage before such decree has been made absolute he or she will be guilty of bigamy.

Indorsement
on decree *nisi*.

106. No decree *nisi* for dissolution or nullity of marriage shall be made absolute till after the expiration of three months from the pronouncing thereof.

Decree *nisi*
when made
absolute.

DISMISSAL OF PETITION.

107. When an order has been made for the dismissal of a petition on payment of costs, the cause will not be removed from the list of causes in the Court books without an order of the proper officer, to obtain which it must be shown to his satisfaction that the costs have been paid.

Removal
from list.

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APPEALS TO THE FULL COURT.

Practice on
appeals.

108. The provisions contained in Order LVIII. of the Rules of Procedure in Civil Proceedings shall, subject to any statutory provisions relating to appeals to the Full Court, apply to appeals from the decision of a single Judge so far as the same are applicable.

Time for
hearing.

109. All appeals to the Full Court shall be heard at such times during any sitting of the Full Court as that Court may direct.

ALIMONY.

Application
by petitioner.

110. The wife being petitioner in a cause may apply for alimony at any time after personal service of the citation on the husband, or after service in some other mode substituted by order of the Court, or after service on the husband has been dispensed with, provided that the fact of marriage between the parties is established by affidavit filed in the cause.

Application by
respondent.

111. The wife being the respondent in a cause after having entered an appearance to the citation may apply for alimony.

Procedure.

112. Every such application shall be by summons returnable before a Judge in Chambers and upon the application either party may require the production of documents and the attendance of the husband or wife or of any witnesses for the purpose of being examined or cross-examined upon their affidavits. Alimony *pendente lite* shall, unless otherwise ordered, commence from the date of the service of the petition instituting the suit.

Permanent
alimony.

113. Upon a decree of judicial separation being affirmed on appeal, or after the expiration of the time for appealing against the decree if no appeal be then pending, a wife may apply for an allotment of permanent alimony, whether or not alimony shall have been allotted to her *pendente lite*. Such application shall be made by summons to a Judge in Chambers whether or not alimony has been reserved by the decree and such summons shall be served on the husband or upon his solicitor on the record eight days at least before the date of hearing of such summons and shall be supported by affidavit. Upon any such application either party may require the production of documents, and the attendance upon the hearing thereof of the husband or wife or of any witnesses for the purpose of being examined or cross-examined.

Variation
of order.

114. Application by wife or husband for an increase or decrease of alimony, whether alimony *pendente lite* or permanent alimony, may be made at any time; and the course of proceeding in such case shall be the same as required by these Rules in respect of the original application for alimony and the allotment thereof, so far as the same are applicable.

Commencement
of permanent
alimony.

115. Permanent alimony shall, unless otherwise ordered, commence and be computed from the date of the final decree of the Judge, or of the Full Court on appeal, as the case may be.

To whom
payable.

116. Alimony *pendente lite* and permanent alimony shall be paid to the wife or to some person or persons nominated in writing by her and approved by the Court, as trustee or trustees on her behalf. Application for the discharge of a trustee or the appointment of a new trustee shall be made by summons supported by affidavit.

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MAINTENANCE AND SETTLEMENTS.

117. Application (whether pursuant to leave reserved or otherwise) for securing a sum of money or making weekly or monthly payments after decree *nisi* for dissolution of marriage, for variation of marriage settlements after decree *nisi* for nullity or dissolution of marriage, or for the settlement of the property of a wife after a decree of judicial separation or decree *nisi* for dissolution of marriage on the ground of her adultery, shall be made by summons to a Judge in Chambers, and application for the variation or discharge of any order for security or for weekly or monthly payments shall be likewise made. Application how made.

118. A copy of such summons shall be personally served on the husband or wife (as the case may be), and on the person or persons who may have any legal or beneficial interest in the property in respect of which the application is made, unless the Judge shall direct any other mode of service, or dispense with the service of the same on them or any of them, provided that service upon the solicitor on the record of the party to be served shall, on his undertaking in writing to appear on the hearing of the summons be deemed sufficient service. Service.

119. The costs of a wife of and arising from the application shall not be allowed on taxation of costs against the husband before the final decree in the principal cause, without direction of the Judge. Costs.

CUSTODY, MAINTENANCE AND EDUCATION OF CHILDREN.

120. (1) Applications for interim orders with respect to the custody, maintenance and education of children may be made to a Judge by summons supported by affidavit. Application and evidence.

(2) Where a petition contains a prayer for custody or maintenance of children or a decree *nisi* or final decree contains an order for, or an order thereafter has been made for, custody or maintenance of children, application with respect to custody or maintenance may (whether or not any such decree or order reserves liberty to apply with respect thereto) be made after decree *nisi*, final decree or such order to the Court or a Judge, by summons supported by affidavit, and upon such application such order as to custody, access or maintenance shall be pronounced as may be just.

(3) Unless otherwise directed, service of any such summons shall be personal, provided that service upon the solicitor on the record of the party to be served may on his undertaking in writing to appear on the hearing of the summons be deemed sufficient service.

(4) Upon such application any party may file affidavits and may require the production of documents and the attendance of the husband or wife or of any witnesses for the purpose of being examined or cross-examined.

121. A copy of a summons under Part VII. of the Marriage Act, or of a petition under section 105 of the said Act, shall be personally served on the husband or wife (as the case may be) and on any trustee, guardian or person having or claiming the custody or control of the children, unless a Judge shall direct any other mode of service, or dispense with the service of the same. Service of originating proceedings.

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- Answer.** 122. The husband or wife (as the case may be) and the other person or persons (if any) who are served with a petition under section 105 as aforesaid may, within fourteen days after service, file his, her, or their answer to the said petition together with an affidavit verifying such answer and shall on the same day deliver a copy thereof to the opposite party, or to his solicitor.
- Appearance.** 123. Any person served with a petition, not being a party to the principal cause, must enter an appearance before he or she can file an answer thereto.
- Subsequent pleadings.** 124. Within fourteen days from the filing of the answer, the opposite party may file and deliver a reply thereto, and the same period shall be allowed for filing and delivering any further pleading by way of rejoinder.
- Evidence and hearing.** 125. After such pleadings have been completed, the petitioner shall apply by motion for an order thereon, and notice of the motion shall be given to the opposite party four days previously to the motion being heard, unless the Judge shall dispense with such notice.

NOTICES AND CONSENTS.

- Notices to be in writing.** 126. Whenever it becomes necessary to give a notice to the opposite party in the cause, or to consent, such notice and consent shall, unless otherwise ordered, be in writing, signed by the party or by his or her solicitor.

OFFICE COPIES, EXTRACTS, ETC.

- How made.** 127. Office copies and extracts of documents, the originals of which are retained in the office of the Prothonotary will, if required, be examined with the originals from which the same are copies. Every copy so required to be examined shall be certified under the hand of the Prothonotary or other officer to be an examined copy.

AMENDMENT.

- General powers of.** 128. It shall be lawful for the Court or a Judge sitting in Chambers or at the trial of any cause or issue, if such Court or Judge shall see fit so to do, to amend all defects and errors in any proceeding in any cause whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs and upon such terms as to the Court or Judge may seem fit.

DAMAGES.

- Sanction of compromise.** 129. When an agreement for the compromise of a claim for damages has been arrived at, application may be made to the Court or a Judge to sanction the compromise, and for an order amending the petition, by striking out the claim for damages and the prayer to have such claim determined by a jury, discharging any jury which may have been summoned, and directing that the cause be heard by a Judge without a jury, and upon such application such order shall be made as to the Court or Judge appears fit.

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130. Application for the apportionment of damages, if made subsequently to the trial of a cause, shall be made to the Court or Judge by summons. Apportionment.

DISCONTINUANCE.

131. A petitioner may at any time prior to the hearing, or at the hearing, of a petition apply to the Court or a Judge upon motion or summons for leave to discontinue the petition, and the Court or Judge may grant such leave subject to such terms and conditions as may be thought fit. No order for discontinuance shall be effective unless such order and a notice of discontinuance is filed within fourteen days of the making of such order or within such time as may be prescribed. Leave to discontinue.

WANT OF PROSECUTION.

132. Application to dismiss a petition for want of prosecution may be made by motion to the Court or upon summons to a Judge in Chambers and on the hearing of such application, the Court or Judge may order the petition to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just. Application to dismiss for want of prosecution.

MEDICAL INSPECTION.

133. (1) In proceedings for nullity of marriage on the ground of impotence or incapacity of the respondent, 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 on summons to a Judge for the appointment of medical inspectors to examine the parties and the Judge shall upon such application order that two duly qualified medical practitioners, one to be nominated on behalf of the petitioner and one on behalf of the respondent be appointed as inspectors to examine the parties and report to the Court the result of the examination and shall order the attendance of the inspectors and the parties before the Prothonotary or other officer so that the former may be sworn and the latter identified to the former as the parties in the cause. Application and subsequent proceedings.

(2) A copy of the order indorsed with notice of the time and place of the inspection shall, unless it is otherwise directed, be served personally upon the respondent unless the respondent has appeared, in which case it may be served at the address for service stated in the notice of appearance.

(3) The reports of the inspectors shall be delivered to the Prothonotary and each party may make copies thereof.

CHANGE OF SOLICITOR.

134. A party may obtain an order to change his or her solicitor upon application by summons to a Judge. Order for change.

135. No order for change of solicitor shall be necessary if the former solicitor consents to the change and such consent is filed. Consent for change.

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Costs of
former
solicitor.

136. In case the former solicitor neglects to file his bill of costs for taxation at the time required by the order served upon him, the party may, by leave of a Judge, proceed in the cause by the new solicitor without previous payment of such costs.

Costs.

Preliminary
costs in
nullity suits.

137. (1) In any proceeding for nullity of marriage when a female, if a petitioner, has duly filed her petition or, if a respondent, has duly entered an appearance, a Judge in Chambers if he considers she has not sufficient separate estate may order—

(a) that the other party to the proceedings shall pay into Court a sum of money sufficient to enable her to have the merits of her case investigated by a solicitor and that such sum or part thereof shall on the taxing master being satisfied that such sum or part has been properly incurred or spent in ascertaining whether she has a good cause of suit or defence on the merits and giving his certificate accordingly be paid to her or her solicitor; and

(b) that if after investigating the case her solicitor is of opinion that she has a good cause of suit or defence on the merits and files a certificate to that effect in the office of the Prothonotary the other party to the proceedings shall thereupon pay into Court a sum of Twenty pounds.

(2) An order in respect of the matters referred to in clauses (a) and (b) of paragraph (1) hereof, or an order in respect of the matters referred to in clause (b) alone, may be made.

(3) No order shall be made for the taxation and payment of costs *de die in diem*, or for the payment before hearing or trial of any costs of or incidental to the hearing of the cause or for the giving of security for such costs.

Application
for preliminary
costs.

138. An application in a suit for judicial separation or for dissolution or nullity of marriage for costs of investigation or payment of £20 costs into Court shall be made by summons supported by affidavit.

Appointment
to tax.

139. In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, such costs shall unless otherwise ordered include all costs reserved for the trial judge and the solicitor of the party to whom the costs are to be paid may forthwith obtain an appointment for the taxation of his bill of costs, provided that such taxation shall not take place before the time allowed for moving for a new trial or rehearing shall have expired, or, in case a motion for a new trial or rehearing shall have been made, until it is disposed of, unless the Court or a Judge, for cause shown, direct a more speedy taxation.

Taxation.

140. Where costs are to be taxed all bills of costs shall be referred to the taxing officer of the Court for taxation, and may be taxed by him without any special order for that purpose.

Order for
payment, how
obtained.

141. If an order for payment of costs is required, the same may be obtained by summons, on the amount of such costs being certified by the taxing officer.

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142. The order for payment of costs of suit in which a respondent or co-respondent has been condemned by a decree *nisi* shall, if applied for before the decree *nisi* is made absolute, direct the payment thereof to the Prothonotary, and such costs shall not be paid out to the party entitled to receive them under the decree *nisi* until the decree absolute has been obtained.

Order for
payment
before decree
absolute.

CUSTODY OF DOCUMENTS.

143. The Prothonotary shall, except where these Rules otherwise provide, have the custody of all pleadings and other documents now or hereafter to be brought in and filed in any matter or suit pending in the Court in its Divorce and Matrimonial Causes Jurisdiction, and all orders and fees payable in respect of searches or an inspection or copies of and extracts from and attendances with documents filed in the office of the Prothonotary shall extend to such pleadings and other documents filed in the Court in its Divorce and Matrimonial Causes Jurisdiction.

General
provision.

144. The Prothonotary and the clerks and other officers of the Supreme Court shall discharge similar duties in the said Court in its Divorce and Matrimonial Causes Jurisdiction, and in the registry thereof, as they discharge in the other jurisdictions of the Court.

Officers.

SPECIAL PROVISIONS RELATING TO PROCEEDINGS UNDER THE MATRIMONIAL CAUSES ACT 1945 OF THE COMMONWEALTH.

145. A claim for relief under the Act may be made alternatively with a claim for relief under the law of the State of Victoria.

Alternative
relief.

146. All applications under the Act for decrees of nullity of marriage, dissolution of marriage, judicial separation, declaration as to jactitation of marriage, or restitution of conjugal rights shall be made by petition in accordance with Form No. 9 of the Schedule where applicable, or where not applicable, forms of the like character, with such variations as the circumstances may require, shall be used.

Petition.

147. The provisions of Rule 3 hereof shall apply in respect of every petition under the last preceding Rule and in addition the following acts and circumstances shall be verified :—

Verifying
affidavit.

Domicile of petitioner and respondent immediately before marriage and residence of each party since marriage.

148. Cross-relief claimed by a respondent in his or her answer may include a petition for nullity of marriage, dissolution of marriage, judicial separation, declaration as to jactitation of marriage, or restitution of conjugal rights. The provisions of rule 49 shall apply to such a petition and the affidavit required to be filed therewith.

Counter-
petition and
verifying
affidavit.

149. Where any proceedings instituted under the Commonwealth Act are pending in Court any party interested may apply by summons to a Judge who may make such order continuing or staying the proceedings on such terms as he may think just.

Stay of
proceedings.

Chapter II.—Divorce.

Indorsement
of petition
and counter-
petition.

150. Every petition or answer wherein any relief is asked against the petitioner shall bear an indorsement stating in accordance with the law of what State relief is sought.

SETTLING AND PASSING DECREES AND ORDERS.

Procedure.

151. All decrees and orders of the Court shall be settled and passed and entered as nearly as may be in the same manner as is provided by Order LXII. of the Rules of Procedure in Civil Proceedings, as to judgments and orders.

SUPPLEMENTARY.

Practice
where none
provided.

152. The Rules, practice and mode of procedure now or hereafter in force in the Court in its civil jurisdiction shall, so far as applicable, and where no provision is made by these Rules, be adopted and be in force in the Court in its Divorce and Matrimonial Causes Jurisdiction.

INTERPRETATION.

Meaning
of words.

153. In the construction of these Rules, unless there is something in the subject or context repugnant thereto, the several words hereinafter mentioned shall have or include the meanings following:—

- (i) "Co-respondent" shall include a party cited under rule 50;
- (ii) "Petition" shall include counter-petition; and
"Petitioner" shall include counter-petitioner;
- (iii) "Prothonotary" shall include Deputy-Prothonotary;
- (iv) "Respondent" shall include all co-respondents so far as the same is applicable to them; and
"Answer" shall include answer to counter-petition.

Practice in
matters not
provided for.

154. In all matters not hereinbefore provided for, the previous practice of the Court shall be followed, or, if there be no such practice, then the practice, if any, prevailing in the High Court in England.

Chapter II.—Divorce.

SCHEDULE.

FORMS.

FORM 1.

CITATION.

In the Supreme Court of Victoria.

Rule 5.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,

against

C.B., Respondent,

and

E.F., Co-respondent.

GEORGE THE SIXTH, by the Grace of God of Great Britain, Ireland, and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.

To C.B., and E.F., of

These are to command you that within eight days of the service hereof on you, inclusive of the day of such service, if you intend to defend this suit, you do cause an appearance to be entered at the office of the Prothonotary of this Court, in Melbourne, and take notice that, in default of so doing, the Court may proceed to hear this suit in your absence. If you intend to defend this suit you must also file an answer in the said office within twenty-one days from the service of this citation.

Place of trial:

(L.S.)

(Signed) the

day of

19 .

X.Y., Prothonotary.

Supreme Court,

William-street, Melbourne.

Indorsement to be made after service.

This citation was duly served by me, G.H., of _____ for a [judicial separation, or as the case may be]
for cause of _____ at _____ on the _____ day of _____ 19 ,

(Signed) G.H.

Note.—This form must be altered to suit when the citation is issued by a deputy-prothonotary.

FORM 2.

Rule 5.

PRAECIPE FOR CITATION.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,

against

C.B., Respondent,

and

E.F., Co-respondent.

Citation for A.B., of _____
adultery or as the case may be].

against C.B., of _____

for a [judicial separation for cause of _____

(Signed)

P.A., Solicitor for the said A.B.

[or A.B. in person.]

[Here insert the address required within three miles from the office of the Prothonotary.]

Chapter II.—Divorce.

Rule 21.

FORM 3.

ENTRY OF APPEARANCE.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,
 against
 C.B., Respondent,
 and
 E.F., Co-respondent.

The respondent, C.B., appears in person [or G.H., solicitor, appears for the respondent.]

[Here insert the address required by Rule 22 or 23.]

Entered this day of

19 .

(Signed) G.H., of ; solicitor for the respondent
 of ; or C.B., respondent in person of

Note.—If the appearance is under protest, the fact must be so stated.

Rule 21.

FORM 4.

NOTICE OF APPEARANCE.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,
 against
 C.B., Respondent,
 and
 E.F., Co-respondent.

Take notice that an appearance [or an appearance under protest] was entered herein on the day of , on behalf of the above-named respondent [and that the said respondent disputes the jurisdiction of the Court on the following ground (or grounds), that is to say:—That the petitioner is not at the present time, nor has she at any time been, domiciled in Victoria].

[Here insert the address required by Rule 22 or 23.]

The day of

19 .

(Signed) C.B., (or G.H., Solicitor for C.B.)

Rule 39.

FORM 5.

ELECTION OF A GUARDIAN.

By a Petitioner.

Whereas a suit is about to be instituted in the Supreme Court, in the Divorce and Matrimonial Causes Jurisdiction, on behalf of A.B., against C.B. (the wife of the said A.B.) and R.S.; And whereas the said A.B., is now a minor of the age of years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in his own name:

Now I, the said A.B., do hereby make choice and elect G.B., my natural and lawful father and next of kin, to be my guardian for the purpose of carrying on and prosecuting the same until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years; and I hereby appoint C.D., of &c., my solicitor, to file or cause to be filed this my election for me in the office of the Prothonotary.

In witness whereof I have hereunto set my hand and seal this day of in the year 19 .

Signed, sealed, and delivered by the within-
 named A.B., in the presence of
 [One attesting witness].

(Signed) A.B., (I.S.)

By a Respondent.

Whereas a citation bearing date the day of 19 , has issued under seal of the Supreme Court at the instance of A.B., claiming to have been lawfully married to C.B., citing the said C.B., to appear in the said Court, and then and there to make answer to a certain petition of the said A.B., filed in the Prothonotary's office; And whereas the said C.B., is now a minor of the age of years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in her own name:

Now I the said C.B., do hereby make choice of and elect G.H., my lawful and natural father and next of kin, to be my guardian for the purpose of entering an appearance for me and on my behalf in the said Court, and for the purpose of making answer for me to the said petition, and of defending me in the said cause, and to abide for me in judgment until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years; and I hereby appoint, &c.,

Chapter II.—Divorce.

FORM 6.

Rule 44.

ANSWER.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,
 against
 C.B., Respondent,
 and
 E.F., Co-respondent.

The day of 19 .

The respondent, C.B., by C.D., her solicitor, or [in person] saith [*here admit, deny, or refute the statements contained in the petition, paragraph by paragraph, and state fully and distinctly Connivance, condonation, or other matters relied on as a ground for dismissing the petition, and, if respondent can truthfully do so, here deny fully and unequivocally past or present connivance or collusion direct or indirect with the petitioner.*]

Wherefore the respondent humbly prays that your honorable Court will be pleased to reject the prayer of the said petition. &c.

FORM 7.

Rule 49.

QUESTIONS OF FACT FOR THE JURY.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

A.B., Petitioner,
 against
 C.B., Respondent,
 and
 R.S., Co-respondent.

Questions for the Jury.

1. Whether C.B., the respondent, committed adultery with R.S., the co-respondent.
2. Whether R.S., the co-respondent, committed adultery with C.B., the respondent.
3. What amount of damages should be paid by R.S., the co-respondent, in respect of the adultery (if any) by him committed.

FORM 8.

Rule 56.

PETITION FOR REVERSAL OF DECREE.

In the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

To the Supreme Court of Victoria.

The day of 19 .

The petition of A.B., of showeth—

1. That your petitioner was on the day of lawfully married to C.B., then C.D., spinster [*or widow*], at the parish of, &c. [*here state where the marriage took place.*]

2. That on the day of the said Court, by final decree pronounced in a cause then depending in the Court, entitled C.B., against A.B., decreed as follows, to wit,
 [*Here set out the decree.*]

3. That the aforesaid decree was obtained in the absence of your petitioner, who was then residing at
 [*State facts tending to show that the petitioner did not know of the proceedings; and further that had he known of them he might have offered a sufficient defence.*]

or

That there was reasonable ground for your petitioner leaving his said wife
 [*Here state any legal grounds justifying the petitioner's separation from his wife.*]

Your petitioner therefore humbly prays—

That Your Honours will be pleased to reverse the said decree.

Chapter II.—Divorce.

FORM 9.

PETITION.

Rule 146.

(Under Part II. of the Matrimonial Causes Act 1945.)

To the Supreme Court of Victoria.

Divorce and Matrimonial Causes Jurisdiction.

The day of 19 . The petition of A.B., of showeth—

1. Your petitioner was on the day of lawfully married to C.B. (if respondent is the wife, state her name prior to marriage) at (here state where the marriage took place, including the State or Territory).

2. (If the petitioner is the wife). Your petitioner was immediately before marriage domiciled in (here set out the State or Territory). The respondent is domiciled in (here state the present domicile of the respondent).

(If the petitioner is the husband). Your petitioner is domiciled in (here state present domicile). The respondent was immediately before marriage domiciled in (here set out State or Territory).

3. Your petitioner is resident in the State of Victoria.

4. Your petitioner and the respondent have not since the marriage resided together in any country outside Australia in which the respondent (if the respondent is the husband or "the petitioner" if the petitioner is the husband) was then domiciled.

5. The last (or only) matrimonial home of your petitioner and the respondent was in the State (or Territory) of (here set out State or Territory);

Or,

"The last (or only) matrimonial home of your petitioner and the respondent was not in any State or Territory of the Commonwealth."

Or,

"Your petitioner and the respondent have not at any time had a matrimonial home."

(As the case may be.)

7. On the day of 19 , and on other days between that day and the day of 19 , the said C.B., committed adultery with of (or state other facts or conduct for which relief is sought.)

Your petitioner therefore prays that Your Honours will be pleased to decree (here set out the relief sought) consonant with the law of (here set out State or Territory the law of which is sought to be applied) and that your petitioner may have such further or other relief in the premises as to Your Honours may seem meet.

Petitioner's Signature.

PETITION.

(Under Part III. of the Matrimonial Causes Act 1945.)

1. Your petitioner was on the day of lawfully married to C.B., (if the respondent is the wife state her name prior to marriage) at (here state where the marriage took place.)

2. Your petitioner is domiciled in (here set out the State or Territory.)

3. Your petitioner is resident in the State of Victoria and has been so resident for not less than one year immediately preceding the date of this petition.

4. On the day of 19 , and on the other days between that day and the day of 19 , the said C.B. committed adultery with of (Or state other facts or conduct for which relief is sought.)

Your petitioner therefore prays that Your Honours will be pleased to decree (here set out the relief sought) consonant with the law of (here set out the State or Territory the law of which is sought to be applied) and that your petitioner may have such further or other relief in the premises as to Your Honours may seem meet.

Signature of Petitioner.

E. F. HERRING, C.J.
CHARLES J. LOWE, J.
C. GAVAN DUFFY, J.
RUSSELL MARTIN, J.
NORMAN O'BRYAN, J.
W. K. FULLAGAR, J.
JOHN V. BARRY, J.
ARTHUR DEAN, J.