



THE MATRIMONIAL CAUSES RULES 1943

C. L. N. NEWALL, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 18th day of August, 1943

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to sections 4 and 53 of the Divorce and Matrimonial Causes Act, 1928, and sections 3 and 5 of the Judicature Amendment Act, 1930, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and of all the other members of the Rules Committee constituted under the Judicature Amendment Act, 1930 (four of such other members being Judges of the Supreme Court), doth hereby revoke the rules made under the Divorce and Matrimonial Causes Act, 1908, respectively, on the 15th day of December, 1909, the 27th day of February, 1922, and the 11th day of July, 1925, and under the Divorce and Matrimonial Causes Act, 1928, on the 12th day of December, 1935, and the Order in Council fixing fees under the Divorce and Matrimonial Causes Act, 1908, dated the 23rd day of August, 1920, and doth hereby make the rules hereunder set forth and doth hereby declare that the revocation aforesaid shall take effect and the rules hereby made shall come into force on the 1st day of December, 1943, and doth hereby further declare that all citations, orders, decrees, registers, records, certificates, instruments, and generally all judicial acts and other acts of authority, and all petitions, applications, and other documents, proceedings, matters, acts, and things and all periods of time which originated or had effect under the rules hereby revoked and are of continuing effect at the time of coming into force of the rules hereby made shall enure for the purposes of the rules hereby made as if they had originated thereunder, and shall, where necessary, be deemed to have so originated, and doth hereby further declare that the rules hereby made, in their application to causes and matters pending on the said 1st day of December, 1943, shall have effect subject to such directions as the Supreme Court, or a Judge thereof, may in any particular case think fit to give.

MATRIMONIAL CAUSES RULES

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PRELIMINARY

Title and Interpretation

1. (1) These rules may be cited as the Matrimonial Causes Rules 1943.

(2) In these rules, unless the context requires a different construction,—

“The Act” means the Divorce and Matrimonial Causes Act, 1928, and includes all Acts amending the same :

“Registrar” means a Registrar of the Court, and includes a Deputy Registrar :

“Respondent” includes all co-respondents so far as a provision in which the term occurs is applicable to them.

Book to be kept

2. In each Registry there shall be kept a book, to be called “The Divorce Proceedings Book”, in which, under the proper title of each cause under the Act, every proceeding therein, every document filed, every motion and the hearing thereof, every decree or order, and every other matter and thing done in Court or in Chambers, or in the Registrar's Office, shall be entered in chronological order, with the dates thereof, as they shall occur.

COMMENCEMENT OF MATRIMONIAL CAUSES

Petition

3. Every matrimonial cause shall be commenced by filing a petition in the Court. Such petition shall be in accordance with form No. 1 in the Schedule hereto, and shall state such further or other facts (if any) as the special circumstances of any case may require.

Affidavit verifying Petition

4. The affidavit required under section 45 of the Act to be filed with any petition shall comply with the provisions of that section in the manner indicated in form No. 2 in the Schedule hereto. In the case of any petition to which the said section 45 does not apply, each statement in the petition shall nevertheless be separately verified by affidavit.

Affidavit (Restitution of Conjugal Rights)

5. In cases where the petitioner is seeking a decree for the restitution of conjugal rights the affidavit filed with the petition shall state sufficient facts to satisfy the Registrar that a written request for cohabitation and restitution of conjugal rights has been made by the petitioner upon the party to be cited, and that after a reasonable opportunity for compliance therewith such cohabitation and restitution of conjugal rights have been withheld.

Affidavit (Petition founded on Non-compliance with Decree)

6. Where, in a petition by a husband, a dissolution of marriage or judicial separation is sought on the ground that the respondent has failed to comply with a decree for restitution of conjugal rights, the affidavit filed therewith shall show that at the time of the service of such decree, either by notice endorsed thereon or by separate notice in writing, the respondent was informed by the petitioner of the home to which she might return and, further, that non-compliance with such decree would constitute a ground upon which a petition for dissolution of marriage or judicial separation might be based.

Where Names of Adulterers unknown

7. Where adultery is a ground on which a dissolution of marriage or judicial separation is sought, if the name of any alleged adulterer or adulteress is unknown to the petitioner at the time of filing his or her petition, the same must be supplied as soon as known, and application must be made forthwith to the Court, or a Judge thereof, to amend the petition by inserting such name therein; and on such application an order shall be made as to such amendment, and directions given as to the service of the amended petition.

NOTICE TO RESPONDENT

Notice with Petition

8. There shall be annexed to every petition and every copy thereof a notice to the respondent in accordance with form No. 3 in the Schedule hereto, and the original thereof shall be filed in the registry.

Further Notice or Conditions

9. Where an application is made for any order or direction relative to the service of the petition upon a respondent, the Court or Judge hearing the same may require such further information or matter to be stated in the said notice to the respondent, and may impose such conditions as to the Court or Judge shall seem proper in the circumstances of the particular case.

ADDRESS FOR SERVICE

Notice to Respondent to contain Address for Service

10. The aforesaid notice to the respondent shall also contain at the foot thereof a memorandum stating whether the petition has been filed by the petitioner in person or by a solicitor on his behalf, and also a place, to be called the address for service, where the petitioner or his solicitor, as the case may be, may be served with notices, orders, and other written communications not required to be served personally on the petitioner. The address for service shall be not more than three miles from the Registry of the Court in which the petition is filed.

Respondents and Others to give Address for Service

11. (1) Every respondent shall give an address for service not more than three miles from the Registry in which the petition is filed.

(2) Such address for service shall be given either by subscribing at the foot of the first document filed by such respondent a memorandum specifying such address for service and stating the name and address of such respondent's solicitor, if he is acting by a solicitor, or by filing such memorandum separately and serving a copy thereof on each other party to the proceedings or his solicitor.

(3) Until a respondent shall have given an address for service as herein provided he shall not, except where personal service on him is required, be entitled to be served with notice of any further proceeding in the cause or with copies of any further affidavits or other documents filed therein, or to address the Court at any stage of the proceeding.

(4) The provisions of the preceding clauses of this rule shall apply, *mutatis mutandis*, to every person who for any purpose intervenes or applies for leave to intervene in a cause, and to every person who is served with any notice or other document in any proceeding in a cause, in the same manner as they apply to a respondent.

SERVICE

Petition and Notice to be served Personally

12. (1) Service of a petition shall be effected by personally delivering to each respondent a copy of the petition under seal of the Court with a copy, signed by the Registrar, of the notice to the respondent required by these rules to be annexed to the petition.

(2) Personal service shall in no case be effected by the petitioner, but the petitioner may be present when such service is effected.

Where Personal Service cannot be effected

13. (1) In cases where personal service cannot be effected application may be made to the Court, or a Judge thereof, to substitute some other mode of service or to dispense with service altogether.

(2) Where leave is given to substitute for personal service notice of the proceedings by advertisement, the form of the advertisement shall be settled by the Registrar and a footnote shall be added requesting friends of the respondent to forward it to him or her. In such case the pages of the newspapers, containing the advertisement and the respective dates of publication, shall be exhibited to the affidavit filed in proof of the due publication of such advertisement.

Proof of Service

14. A petition shall not be tried unless, with respect to every respondent thereto service on whom is not altogether dispensed with, either—

- (a) The Court is satisfied that the respondent has taken some step in the cause; or
- (b) An affidavit in accordance with form No. 4 in the said Schedule has been filed showing that the respondent has been personally served with the petition and the notice required to be annexed thereto, or an affidavit has been filed showing that the respondent has been otherwise duly served in accordance with the directions of the Court or Judge.

Proof of Identity of Person served

15. Where the person served is personally known to the person who makes the affidavit of service the circumstances which enable the deponent to state his personal knowledge of the person served shall be set out. Where the person served is not personally known to the person who makes the affidavit a mere acknowledgment by the person served is not sufficient evidence of his or her identity. Identity may be proved by written acknowledgment proved to be in the handwriting of the person served, by satisfactory photographs, or by any other means to the satisfaction of the Court.

Personal Service of other Documents

16. Rules 12, 13, and 15 hereof shall as far as applicable apply, *mutatis mutandis*, to the service of all other documents required to be served personally.

Service where Personal Service not required

17. The provisions of Rules 585 to 587 of the Code of Civil Procedure in the Supreme Court (as to service where personal service is not required) shall, unless otherwise provided, apply, *mutatis mutandis*, to the service of all pleadings and other documents under the Act or these rules.

Service on Natives

18. The provisions of Rule 588 of the Code of Civil Procedure in the Supreme Court shall apply, *mutatis mutandis*, to service on Natives under the Act or these rules.

ANSWER

Filing and Service of Answer

19. (1) Each respondent may, within fourteen days after service of the petition on him or her if he or she resides within twenty miles of the registry, or within twenty-one days if he or she resides within New Zealand more than twenty miles from the registry, file an

answer thereto. Where a respondent resides beyond New Zealand, the time after service within which he or she may file an answer to the petition shall, on application by the petitioner, be fixed by the Court or a Judge thereof.

(2) An answer shall be in accordance with form No. 5 in the Schedule hereto.

(3) Each respondent filing an answer shall, within the time limited for such filing, deliver a copy thereof to the petitioner, or to his or her solicitor.

Respondent may not be heard without Answer

20. A respondent who fails to file an answer within the time hereinbefore prescribed or within any extended time allowed for that purpose shall not be entitled to be heard on the petition except on questions of costs, custody of children, or other ancillary relief.

Answer to be verified in certain Cases

21. Every answer, which contains matter other than a simple denial of the facts stated in the petition, shall be accompanied by an affidavit made by the respondent, verifying such other matter so far as he or she has personal cognizance thereof, and deposing as to his or her belief in the truth of the rest of such other matter and, where section 45 of the Act is applicable, complying with the provisions thereof touching collusion and connivance. Such affidavit shall be in accordance with form No. 6 in the Schedule hereto, and shall be filed with the answer and a copy served therewith.

Prayer for Relief in Answer

22. Where a respondent intends to apply for relief under the provisions of section 20 of the Act, the answer of such respondent shall conclude with a prayer for the relief to which he or she claims to be entitled. An answer may be amended by leave of the Court, or a Judge thereof, by adding such a prayer at or before the trial.

Adulterer charged in Answer

23. (1) If in answer to her husband's petition for dissolution of marriage a wife alleges that her husband has committed adultery, the Court may, if it thinks fit, direct that the person with whom the husband is alleged to have committed adultery be made a respondent.

(2) If the husband or wife of the petitioner alleges in his or her answer that the petitioner has committed adultery, the alleged adulterer or adulteress shall, if it is required by or in pursuance of section 11 of the Act or of clause (1) of this Rule that he or she be made a co-respondent or respondent, be served personally with a copy of the answer under seal of the Court, having annexed thereto a copy, signed by the Registrar, of a notice in accordance with form No. 3 in the Schedule hereto, subject to the necessary modifications. The original notice shall be filed annexed to the answer.

(3) Where adultery is a ground on which a dissolution of marriage or judicial separation is sought in the prayer of an answer, Rule 7 shall apply *mutatis mutandis*.

REPLY

Reply to Charge in Answer

24. (1) Where the answer filed by any respondent contains any charge against the petitioner, the petitioner may, within ten days after the delivery of the answer, file a reply thereto and within that time deliver a copy of the reply to the opposite parties or their solicitors.

(2) The provisions of clause (1) of Rule 19 shall apply, *mutatis mutandis*, to the filing of a reply by a person who has been made a co-respondent or respondent by reason of a charge of adultery contained in an answer served on him or her; and the provisions of clause (3) of Rule 19 shall apply, *mutatis mutandis*, to the delivery of that reply.

GENERAL RULES AS TO PLEADINGS

Pleadings to give Particulars

25. Every pleading shall give such particulars of time, place, names of persons, and other circumstances as will suffice to inform the opposite party of the matters relied on as grounds of relief or defence.

Prayer for Relief

26. The prayer to every petition, and to every answer in which relief is claimed, and every other application to the Court, or a Judge thereof, shall state specifically the relief claimed, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court or Judge may think just, to the same extent as if it had been asked for, but a judicial separation shall not be deemed to be included in a prayer for a dissolution of marriage or in general or other relief and shall not be granted unless it is specifically asked for in the prayer.

Amendment of Pleading

27. Any party desiring to alter or amend any pleading must apply to the Court, or a Judge thereof, for leave to do so. Where the alteration or amendment is merely verbal or for the purpose of correcting a clerical error, leave to make it may be obtained *ex parte*. In any other case, it shall not be necessary to give notice of the application for leave to any party who has not then given an address for service, but on the hearing of the application such direction for the purposes of Rule 28 may be given as the case requires.

Service of Amended Pleading

28. A copy of every pleading, showing the alterations and amendments made therein, shall, unless the Court, or a Judge thereof, otherwise orders, be served on the opposite parties forthwith after such alterations and amendments are made in the pleadings filed in the registry; and the opposite parties, if they have already pleaded in answer thereto, shall be at liberty to amend such answer within four days after such service or within such further time as may be allowed for the purpose.

Time extended where Pleading amended

29. When a petition, answer, or other pleading is required to be served after being altered or amended, the time for filing and delivering a copy of the next pleading shall be reckoned from the time of such service.

Pleadings out of Time

30. No pleading shall be filed or served out of time without the leave of the Court, or a Judge thereof, after a step in default has been taken.

Further Particulars

31. The Court, or a Judge thereof, may order further particulars to be given of any matters pleaded, and that such particulars shall be verified by affidavit. In the absence of a Judge the Registrar shall have power to make such an order.

TRIAL

Sittings of Court to be appointed

32. The trial of causes under the Act shall take place at sittings of the Court to be appointed for the purpose in the manner prescribed by section 52 of the Judicature Act, 1908.

Where Cause to be tried

33. Each cause shall be tried at the sittings of the Court to be held at the place nearest to the registry in which the petition was filed; but the Court, or a Judge thereof, on the application of any party, or of the Attorney-General, or Solicitor-General, or without any application, may order a cause to be tried either wholly or as to any particular issue or issues at a sitting of the Court to be held in any other place.

Requirements Precedent to setting down for Trial

34. No cause shall, whether by leave or otherwise, be set down for trial at any sittings of the Court unless—

- (a) Before the day fixed for that sittings the time for pleading will expire or has expired; or
- (b) Before the day fixed for that sittings, and before the cause is set down for trial, the pleadings are concluded; or
- (c) Before the cause is set down for trial the time for pleading has expired, and the cause is undefended.

Setting down for Trial

35. (1) Subject to compliance with the precedent requirements set out in Rule 34, any party to a cause may set the cause down for trial at any sittings:—

- (a) At least six clear days before the day fixed for the sittings;
- (b) At any later time (whether before or after the day fixed for the sittings) if at the time of setting down the time for pleading has expired and the cause is undefended;
- (c) In any other case (whether before or after the day fixed for the sittings) by leave of the Court or a Judge thereof.

(2) When a cause has been set down pursuant to paragraph (b) of clause (1) of this rule and in the opinion of the Court or a Judge thereof it cannot be conveniently disposed of at the sittings for which it has been so set down, the Court or Judge shall adjourn the cause either to the next succeeding sittings of the Court at the same place, or *sine die*, or otherwise.

(3) Leave may be given pursuant to clause (1) of this rule, notwithstanding that any step in the proceedings has been taken by any party.

(4) Unless the Court or Judge otherwise directs, notice of an application for leave under clause (1) of this rule need not be given to any party who, when the application is filed, has not given an address for service; but if any party to whom notice has not been given thereafter gives an address for service, the party setting down shall forthwith after the address is given serve on the party giving it a copy of the order giving leave.

36. (1) No cause shall be tried at any sittings of the Court until it has been set down for trial before a Judge and jury or before a Judge alone at such sittings in the manner set out in this rule :

Provided that if after the cause is set down the hearing is adjourned by the Court or a Judge to a specified later sittings at the same place the order for adjournment shall be deemed a sufficient setting down for trial at such later sittings.

(2) All causes in which damages are claimed shall be set down for trial before a Judge and jury, and, unless previously directed otherwise, all other causes shall be set down for trial before a Judge alone.

(3) A cause shall be set down for trial by filing a *præcipe* specifying the sittings at which it is desired that the cause be tried, and having subscribed thereon or annexed thereto the statement and certificate prescribed by the next succeeding clause of this rule.

(4) Every person filing a *præcipe* as aforesaid shall subscribe thereon or annex thereto a statement in accordance with form No. 7 in the Schedule hereto stating with respect to each respondent separately :—

(a) That as at the time of the filing of such *præcipe* that respondent, as the case may be—

(i) Has filed an answer to the petition ; or

(ii) Has given an address for service but has not filed an answer to the petition ; or

(iii) Has not taken any step in the cause ; and

(b) (If an answer has not been filed) the day on which the time allowed for filing an answer will expire or has expired.

Such statement shall be certified by the Registrar as correct.

(5) A party setting down a cause for trial shall forthwith after setting it down serve on each party who has then given an address for service notice of his having done so. Where any party who has not then given an address for service thereafter gives an address for service, the party setting down shall forthwith after the address is given serve on the party giving it notice of his having set down the cause for trial.

Mode of Trial

37. Notwithstanding any provision of Rule 36, all causes shall be tried with or without a jury of twelve persons in accordance with sections 31 and 43 of the Act.

Issues of Fact

38. Where a cause is to be tried before a Judge and a jury the issues of fact to be submitted to the jury shall be settled by the Judge before or at the trial.

Application for New Trial

39. The provisions contained in Rules 276 to 285 inclusive of the Code of Civil Procedure in the Supreme Court shall apply to an application for a new trial of a cause, subject to the following modifications :—

- (a) The Court, or a Judge thereof, shall have power to extend the time fixed by Rule 284 for moving for a new trial in any cause in which a decree *nisi* for the dissolution of the marriage of the parties has not been made absolute :
- (b) Notwithstanding anything contained in the said rules, the Court, or a Judge thereof, shall have power to grant a new trial in any cause where it appears that irreparable wrong would otherwise be done.

APPLICATION FOR DECREE ABSOLUTE

Request under Section 25. Certificate on Request or Motion

40. (1) The request under section 25 of the Act to issue a decree absolute shall be in accordance with form No. 8 in the Schedule hereto, and shall be signed by the petitioner, or his or her solicitor, and shall have at the foot thereof the certificate for signature by the Registrar set out in the said form.

(2) Every motion by a petitioner or respondent to make absolute a decree *nisi* for dissolution of marriage, if neither the Attorney-General nor the Solicitor-General nor any other person has intervened or obtained leave to intervene in the cause and no matter in opposition to the final decree is then pending, shall have at the foot thereof a statement in accordance with form No. 9 in the Schedule hereto, including the certificate for signature by the Registrar set out in the said form.

(3) No decree *nisi* shall be made absolute until the Registrar has signed the certificate prescribed by clause (1) or clause (2) of this rule, as the case may be, or until every intervention and opposition (if any) is disposed of and the Court thereupon or thereafter directs that a decree absolute may issue.

ANCILLARY RELIEF

Application for Ancillary Relief

41. (1) Every application for ancillary relief—that is to say, every application for alimony pending suit and for any relief authorized by sections 9, 33, 36, 37, 38, and 41 of the Act—shall be to the Court by notice in accordance with form No. 10 in the Schedule hereto filed in the registry in which the petition was filed. Any such application may be made by a respondent, whether or not he or she has filed or intends to file an answer to the original petition.

(2) An order for custody of children may be made upon the hearing of any petition in which a prayer for such custody is contained or of any motion for a decree absolute upon such petition without the necessity of complying with the requirements of clause (1) of this rule and Rules 42 to 51 hereof except in so far as the Court may direct.

(3) Where the parties are agreed upon the terms of any order granting ancillary relief the order may, by consent of the parties, be included in the decree *nisi* and decree absolute, or either of them, without the necessity of complying with the requirements of clause (1) of this rule and Rules 42 to 51 hereof, except in so far as the Court may direct.

Time for applying for Alimony pending Suit

42. An application for alimony pending suit by a wife petitioner may be made at any time after the filing of her petition; and an application for alimony pending suit by a wife respondent may be made at any time after service on her of the husband's petition.

Affidavits in Support and as to Means

43. (1) An applicant for ancillary relief shall, at the time of filing the notice of application for the same, file an affidavit or affidavits in support thereof.

(2) A husband or wife, whose marriage is the subject of the suit, shall not be entitled to be heard upon his or her application for ancillary relief unless full particulars of his or her property and income, and also a statement in general terms of the property and income of the other party to the marriage in so far as they are within the knowledge and belief of the applicant, are set out in his or her own affidavit filed as aforesaid.

Service of Application and Affidavits

44. (1) Notice of an application for ancillary relief shall be served on the other party to the marriage, or on both parties to the marriage, 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, and on any person otherwise interested in the application, by leaving a copy thereof, under seal of the Court, at the address for service of the party to be served, if he or she has given an address for service or, if such party has not given an address for service, by personally serving the same, unless in either case the Court, or a Judge thereof, shall direct any other mode of service or dispense with service on them or any of them.

(2) A copy of every affidavit filed in support of any such application shall be served therewith.

Affidavits in Answer and as to Means

45. (1) A person who is served with notice of an application for ancillary relief may, within eight days after service in the case of an application for alimony pending suit, and in all other cases within fourteen days after service, file an affidavit or affidavits in answer thereto and within that time deliver a copy thereof to the applicant or to his or her solicitor. Such affidavit or affidavits may be filed by a respondent whether or not he or she has filed or intends to file an answer to the original petition.

(2) A husband or wife, whose marriage is the subject of the suit, shall not be entitled to be heard upon an application for ancillary relief, notice of which has been served on him or her, unless full particulars of his or her property and income are set out in his or her own affidavit filed and served as aforesaid.

Affidavits in Reply

46. The applicant may, within eight days after delivery of any affidavit under the last preceding rule, file an affidavit or affidavits in reply, and within that time deliver a copy thereof to each other party who has given an address for service or to his or her solicitor; but no further affidavits shall be filed by any party without leave.

Fixing Time for Hearing and Notice of Time

47. When the filing of affidavits relating to an application for ancillary relief is concluded or the time for filing affidavits has expired, the Registrar, upon the request of any party thereto who has given an address for service, shall fix a time for the hearing thereof; and at least four clear days' notice in writing of the time so fixed shall be given by that party to each other party to the application who has given an address for service, or to his or her solicitor, unless the Court or Judge shall dispense with such notice.

Subsequent Procedure

48. Subject to the provisions of Rule 49, all subsequent proceedings arising out of an application for ancillary relief shall be carried on, and every such application shall be heard and disposed of by the Court, or a Judge thereof, as if in all respects the matter had been commenced and had come before the Court or Judge on motion.

Reference to Registrar

49. (1) Every such matter may in the first instance be referred by the Court, or a Judge thereof, to the Registrar, who shall investigate the same in the presence of the parties or their solicitors, and who for that purpose shall be at liberty to require the production of any documents referred to in the pleadings, or to call for any affidavits. The Registrar shall report in writing to the Court the result of the investigation, and any special circumstances to be taken into consideration.

(2) After the Registrar has so reported, the application may again be brought before the Court, or a Judge thereof, at such time as may, upon the request of any party thereto who has given an address for service, be fixed by the Registrar; and notice of the time of such further hearing shall be given by that party as in the case of the time originally fixed for the hearing.

Dispensing with Particulars as to Means

50. Where, by reason of the nature or circumstances of any application for ancillary relief, it appears that any particulars of the property and income of the husband or wife need not be taken into consideration on the hearing of the application, the Court, or a Judge thereof, may, on application in that behalf either before or at the hearing, and upon such terms as to the filing of affidavits and otherwise as to the Court or Judge seems just, dispense with the requirement under Rule 43 or Rule 45, as the case may be, that such particulars be set out in the affidavit of that party.

Abridging Times

51. Notwithstanding the foregoing provisions as to the time for the filing of affidavits and the hearing of the application, the Court, or a Judge thereof, may, where the exigency of the case requires, fix such date for the hearing of the application and abridge the time or times for the filing of affidavits as may appear necessary in the interests of justice. Any application under this rule may be made on *ex parte* motion at any time after the filing of the application for ancillary relief. A copy of any order made thereon shall be served upon the party or parties affected by the application for ancillary relief at the same time as the service of that application as provided in Rule 44 or, if the order is made after such service, then within twenty-four hours after the making of the order. Any party who is entitled to be heard on the application for ancillary relief may move at any time upon notice for an order varying the times or dates so fixed by the Court.

Application by Person not a Party to Suit

52. Rules 41 to 51 shall, with any necessary modifications, apply to an application for ancillary relief by a person not a party to the suit, claiming to be entitled to apply for an order giving any such relief. It shall not be necessary for any such person to obtain leave to intervene in the suit for the purpose of so applying.

INTERVENTION

Intervention by Law Officer or other Person

53. (1) Where the Attorney-General or the Solicitor-General or any other person has by law a right to oppose a petition, or to show cause against making absolute a decree *nisi* and desires for that purpose to intervene in the suit, he shall (with the leave of the Court, or a Judge thereof, where leave is required under the provisions of the Act) file his plea setting forth the grounds upon which he opposes the petition or desires to show cause as aforesaid and, within twenty-four hours of having done so, shall deliver a copy thereof to the petitioner whose petition he opposes, or the person in whose favour the decree was pronounced, as the case may be, or to his or her solicitor.

(2) In the case of any such intervention by leave, the plea shall be filed within such time after leave is given as the Court or Judge, in the order giving leave, may direct.

(3) Unless the Court, or a Judge thereof, shall otherwise direct, the petitioner whose petition is opposed as aforesaid or, as the case may be, the person in whose favour the decree was pronounced may, within eight days after delivery of the plea, file affidavits in answer and, within that time, deliver copies thereof to the party filing such plea or his solicitor and, if any such affidavit is so filed and delivered, the party who filed such plea may, within eight days thereafter, file and, within that time, deliver affidavits in reply; but no affidavit may be filed in rejoinder thereto without leave.

(4) Except as the Court, or a Judge thereof, shall otherwise direct, these rules shall apply to all subsequent proceedings in respect of such plea as if the plea were an original petition.

Notice to, and Intervention by, Person named as Adulterer

54. (1) Unless the Court, or a Judge thereof, shall otherwise direct, where in a petition by a wife, or in an answer by a wife to her husband's petition, the husband is charged with adultery with a named person who is not made a respondent in the suit, or in a plea filed pursuant to the provisions of Rule 53, a husband or wife whose marriage is the subject of the suit is charged with adultery with a named person, a copy under the seal of the Court of the petition, answer, or plea containing such charge shall be personally served on such named person by the person filing the same, having annexed thereto, in lieu of the notice referred to in Rules 8 and 23, a copy, signed by the Registrar, of a notice in accordance with form No. 11 in the Schedule hereto. The time limited in the notice shall, unless otherwise directed, be the same time as is or would be allowed by or pursuant to Rule 19 for a respondent residing at the same place to file an answer to a petition. The original notice shall be filed in the registry.

(2) Application by any such named person for leave to intervene in the cause and for directions as to proceeding therein may be made to the Court or a Judge thereof.

(3) Unless the Court or Judge shall otherwise direct, the party intervening shall join in the proceedings at the stage the proceedings have reached at the time leave to intervene is given.

PROCEEDINGS BY POOR PERSONS

Application for Leave to proceed as Poor Person

55. (1) Any person may apply to the Court, or a Judge thereof, by motion for leave to commence and prosecute an intended matrimonial cause as a poor person; and any husband respondent, or the wife of any petitioner who has obtained such leave may so apply for leave to defend the cause as a poor person.

(2) Every person desiring to obtain leave to commence and prosecute a matrimonial cause as a poor person shall first lay a case before counsel and obtain his opinion that he or she has reasonable grounds for proceeding. The applicant, or his or her solicitor, shall make an affidavit deposing that, to the best of his or her knowledge and belief, the case contains a full and true statement of all the material facts; and such affidavit, with the case and opinion thereto annexed and therein referred to, shall be filed with the application for leave or produced at the hearing thereof. No person who has acted or is acting, or who intends to act, as solicitor for the person who desires to obtain such leave shall be competent to act as counsel to advise on such case for opinion.

(3) Every applicant for leave under this rule shall file with the application his or her affidavit setting out full particulars of his or her income and means of living and deposing also that he or she is not worth £50 after payment of his or her just debts, save and except wearing-apparel.

(4) Where the application is by a wife for leave to commence and prosecute a suit as a poor person, she shall also state in her affidavit to the best of her knowledge and belief full particulars of the income and means of living of her husband and that he is not worth £50 after payment of his just debts, save and except wearing-apparel.

(5) An application under this rule shall be upon notice if the order sought is for leave to defend as a poor person and may be either upon notice or *ex parte* if the order sought is for leave to commence and prosecute the cause as a poor person ; but, if moved *ex parte*, the Court or Judge may direct that notice thereof be given. If the order is made *ex parte*, a copy thereof shall be served by the petitioner on each respondent at the time of service of the petition.

(6) There shall be filed with every application for leave under this rule an undertaking signed by the solicitor who files the application that he has not accepted and will not accept any sum with respect to the cause, including the application for leave, in excess of £5 to cover his office and out-of-pocket expenses, and that he has so agreed with the applicant.

Further Provisions as to Poor Persons

56. (1) At any time before the final decree or order of the Court in any cause in which a party has been given leave, either *ex parte* or upon notice, to proceed as a poor person, any other party thereto may move to discharge the order giving leave upon the ground that the circumstances of the party to whom leave was given were not fully or correctly disclosed to the Court by such party, or upon the ground that, since leave was given, the circumstances of such party have materially changed.

(2) Where a husband who has obtained leave to commence and prosecute a cause as a poor person neglects to proceed therein, he may, notwithstanding that the order giving leave has not been discharged, be called upon to show cause why he should not pay costs and why all further proceedings should not be stayed until such costs are paid, and an order may be made to that effect.

(3) The Provisions of Rules 41 and 43 to 48 (inclusive) of the Rules of the Court of Appeal shall apply, *mutatis mutandis*, to proceedings by poor persons in matrimonial causes.

INFANTS AND PERSONS OF UNSOUND MIND

Original Service on Infants

57. Service on a parent or guardian lawfully entitled to the custody of any infant, or on a person entitled by statutory authority or the order of any competent Court to the custody, care, or control of any infant or, if there be no such person, then on the person with whom the infant resides or under whose care he or she is, shall, unless the Court, or a Judge thereof, otherwise orders, be deemed good service on the infant of any petition commencing a cause, or any answer served under Rule 23, or any petition, answer, or plea served under Rule 54, and of any document required to be served therewith :

Provided that the Court, or a Judge thereof, may order that any such service made or to be made on an infant personally shall be deemed good service.

Original Service on Persons of Unsound Mind

58. 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 thereof, otherwise orders, be deemed good service on the person of unsound mind of any petition commencing a cause, or any answer served under Rule 23, or any petition, answer, or plea served under Rule 54, and of any document required to be served therewith.

No Further Step until Guardian ad litem admitted

59. After the original service aforesaid on an infant or person of unsound mind, no further step shall be taken in the cause until a guardian *ad litem* to the person so served has been admitted.

Guardian ad litem necessary

60. No infant or person of unsound mind shall commence, prosecute, or defend, or intervene, or take any proceedings in a cause except by a guardian *ad litem*.

Admission of Guardian ad litem

61. (1) Where, in the case of an infant of or above the age of sixteen years, the person proposing to act as guardian *ad litem* is a parent or guardian lawfully entitled to the custody of the infant, or a person entitled by statutory authority or the order of any competent Court to the custody, care, or control of the infant, it shall not be necessary for such person to be appointed as guardian *ad litem* by the Court; but, if not so appointed, such person shall be deemed to be admitted as guardian *ad litem* upon filing his or her affidavit stating sufficient facts to satisfy the Registrar that he or she is such a person as aforesaid and that the infant is of or above the age of sixteen years, and bearing at the foot thereof a consent signed by the infant (whose signature shall be verified in such affidavit) in the following words, namely: "I [*Full name of infant*], hereby consent to the above-named [*Full name of guardian ad litem*] acting on my behalf as guardian *ad litem* in this matrimonial cause."

(2) In all other cases the guardian *ad litem* must be appointed by the Court, or a Judge thereof.

(3) The appointment by the Court, or a Judge thereof, of a guardian *ad litem* shall be on the application *ex parte* of the person proposing to be so appointed:

Provided that, where an infant or person of unsound mind has been served with a petition, answer, or plea and, at the expiration of five days after such service, no guardian *ad litem* to him or her has been admitted, application for the appointment by the Court, or a Judge thereof, of a guardian *ad litem* to such person may be made by the person by whom such petition, answer, or plea was filed, in which case the application shall be by notice of motion:

Provided further that the Court may of its own motion appoint a guardian *ad litem* to any infant or person of unsound mind who is a party to or intervener in a cause or desires to intervene therein.

(4) Every application for the appointment of a guardian *ad litem* by the Court, or a Judge thereof, shall be supported by an affidavit or affidavits filed therewith showing that the person with respect to whom the guardian *ad litem* is sought to be appointed is an infant, or deposing as to such person's mental condition (as the case may require), and further showing that the person whose appointment is applied for is a suitable person to be so appointed.

(5) Every person appointed by the Court, or a Judge thereof, or otherwise admitted as a guardian *ad litem* to an infant or person of unsound mind on whom a petition, answer, or plea has been served shall, within twenty-four hours after such appointment or other admission, serve notice thereof on the party who filed such petition, answer, or plea, unless he was so appointed on the application of such party.

(6) A person shall, for the purposes of the appointment of a guardian *ad litem* under this rule, be deemed to be a person of unsound mind who, in the opinion of the Court or Judge, is, by reason of mental defect, incapable or likely to be incapable of properly understanding any matters which, as a party to or intervener in a matrimonial cause, he or she may require to understand.

Further Provisions as to Guardians ad litem

62. (1) Where it is required by these rules that a document shall be signed or an affidavit made by a party personally, it shall, in the case of a party proceeding by a guardian *ad litem*, be signed or made respectively by the guardian *ad litem*, unless the Court or Judge shall otherwise direct.

(2) A guardian *ad litem* may be removed by the Court upon sufficient cause being shown.

(3) In case of the death, or retirement, or removal of a guardian *ad litem*, a fresh guardian shall be appointed in the same manner as an original guardian *ad litem* :

Provided that a guardian *ad litem* shall not be permitted to retire without leave of the Court.

(4) The guardian *ad litem* shall be liable for costs and shall not be allowed to retire without giving security for the costs already incurred, if such security is required by the opposite party :

Provided that a solicitor appointed guardian *ad litem* under the first or second proviso to clause (3) of Rule 61 shall not be so liable.

(5) A solicitor appointed under the first or second proviso to clause (3) of Rule 61 may, by leave of the Court, decline to continue the proceedings unless he is prepaid the amount of all necessary disbursements.

(6) Where an infant coming of age, or a person ceasing to be of unsound mind, elects to continue a cause to which he has been a party by his guardian *ad litem*, all subsequent proceedings shall be carried on in his own name and, in such case, he shall be liable to all the costs of the cause in the same manner as if he had become a party after coming of age or after ceasing to be of unsound mind respectively.

COSTS

Costs to be according to Act

63. The costs of all suits and proceedings shall be allowed in accordance with the Act.

Respondent heard as to Costs without filing Answer

64. A respondent, after giving an address for service, may, without filing an answer to the petition, be heard in respect of any question as to costs.

WIFE'S COSTS

Security for Wife's Costs

65. (1) When the pleadings are concluded, or the time for further pleading has expired, the Court, or a Judge thereof, may, on the application of a wife, who is a petitioner, or who has filed an answer to a petition, order the husband to pay into Court or give security for such sum as the Court or Judge may think sufficient, within the limits authorized by the Act, to cover her costs up to the time of such order being made and also her future costs, including the costs of and incidental to the trial of the cause.

(2) Where an order has been made under the last preceding clause, the Court, or a Judge thereof, may, on the further application of the wife, from time to time order the husband to pay into Court or secure such additional sum as the Court or Judge may think sufficient, within the limits authorized by the Act, to cover the costs of any part of the trial, or of any proceedings the cost of which have not previously been provided for.

(3) Where a bond has been given to secure the payment of a wife's costs of and incidental to the trial of a cause it shall be filed in the registry, and shall not be delivered out or sued upon without the order of the Court, or a Judge thereof.

MISCELLANEOUS PROVISIONS

Applications by Motion

66. Any application to the Court, or to a Judge thereof, whether in Court or Chambers, not required to be made by petition or by notice of application for ancillary relief, may be made by motion.

Raising Question as to Jurisdiction

67. A party may, before the expiration of the time allowed for filing an answer, by motion to the Court raise any question as to the jurisdiction, or apply to the Court, or a Judge thereof, for directions as to the determination of such question. Notwithstanding the expiration of the time allowed for filing an answer, or the taking of any step in the cause by the party applying, the Court or Judge shall have power to permit a party to raise a question of jurisdiction at any stage of the proceedings. Such permission, if given, shall be on such terms as to costs incurred by any other party subsequent to the earliest date on which such question could have been raised, as the Court or Judge may think fit.

Stay of Proceedings (Restitution of Conjugal Rights)

68. At any time after the commencement of proceedings for restitution of conjugal rights the respondent may apply to the Court, or a Judge thereof, or, in the absence of a Judge, to the Registrar, for an order to stay the proceedings in the cause by reason that he or she is willing to resume or to return to cohabitation with the petitioner.

Reversal of Decree of Judicial Separation

69. (1) A petition to the Court for the reversal of a decree of judicial separation shall be in accordance with form No. 12 in the Schedule hereto.

(2) A copy of such petition, under the seal of the Court, shall be delivered personally to the party in the cause in whose favour the decree has been made, who may, within fourteen days, file an answer thereto in the registry and, within that time, deliver a copy thereof to the other party in the cause, or to his or her solicitor.

(3) 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.

Issue of Writs of Attachment

70. Writs of attachment shall be issued by the Registrar only on the order of the Court, or a Judge thereof.

Discharge from Custody

71. A person in custody under a writ of attachment may for good cause shown be discharged from custody by the Court, or a Judge thereof, or, in the absence of the Judge, by a Registrar.

Change of Solicitor

72. Any party to a cause shall be at liberty to change his or her solicitor without any order for that purpose upon notice of such change containing an address for service within three miles of the registry being filed in such office; but until such notice, and proof by affidavit that a copy thereof has been served on the other parties in the cause have been filed, the former solicitor shall be considered the solicitor of the party.

Appeals from Registrar

73. A party may, within five days after the pronouncement of an order or decision of a Registrar, by motion appeal to a Judge in Chambers; but such appeal shall not, unless otherwise ordered by the Registrar, or by a Judge, act as a stay of the order or decision complained of.

. CODE OF CIVIL PROCEDURE

Provisions of Code of Civil Procedure incorporated

74. The undermentioned rules of the Code of Civil Procedure in the Supreme Court, including any amendments or additions thereto or rules made in substitution therefor from time to time, shall apply, *mutatis mutandis*, to all proceedings under the Act, that is to say,—

- (a) Interrogatories and discovery and inspection of documents (Rules 155 to 167A, except Rules 157 and 161A to 161D).
- (b) Witnesses (Rules 173 to 178).
- (c) Affidavits (Rules 185 to 209, except Rule 186).
- (d) Dismissal for want of prosecution (Rule 273).
- (e) Motions (Rules 395 to 413H).
- (f) Applications in Chambers (Rules 416, 417A, 418, 421, and 422).
- (g) Taxation of costs (Rules 569 to 574, and 576A).
- (h) Solicitor not to be surety (Rule 578).
- (j) Remission of fees (Rule 582).
- (k) Time (Rules 589 to 594).
- (l) Taking security (Rule 595).
- (m) Shape, writing, &c., of documents to be filed (Rules 597A, 597B, and 597C.)
- (n) Non-compliance (Rule 599).
- (o) Vacations and holidays (Rules 600 to 602A).
- (p) Cases not provided for (Rule 604).

APPEALS

Rules of Court of Appeal to apply

75. Subject to the provisions of section 58 of the Act, the rules contained in the Third Schedule to the Judicature Act, 1908, shall apply, *mutatis mutandis*, to all appeals to the Court of Appeal under that section.

FORMS

Forms to be followed

76. The forms in the Schedule hereto shall be followed as nearly as the circumstances of each case will allow.

FEEES

Fees payable to Registrars

77. Except as hereinafter provided, the Registrar shall receive and take in respect of all matters or proceedings under the Act or these rules the same fees as are for the time being receivable by him pursuant to Rule 581 of the Code of Civil Procedure in respect of the like matters or proceedings under the Judicature Act, 1908 :

Provided that the fee to be received and taken by the Registrar on the setting-down of a cause for trial or hearing in the first instance shall be the sum of £2, which fee shall be deemed to include fees respectively for that setting-down, for the trial or hearing of the cause, and for the certificates of the Registrar required in the cause pursuant to Rules 36 and 40, and shall be in lieu of any fees for the time being receivable in respect of those matters pursuant to the said Rule 581 :

Provided also that a decree of the Court shall, for the purposes of the application under this rule of any table of fees for the time being in force pursuant to the said Rule 581, be deemed to be an order not specially provided for in such table.

SCHEDULE

FORMS

- | | |
|---|--|
| <ul style="list-style-type: none"> 1. Petition for Dissolution of Marriage, Judicial Separation, or Restitution of Conjugal Rights. 2. Affidavit verifying Petition. 3. Notice to be annexed to Petition. 4. Affidavit of Service of Petition and Notice. 5. Answer. 6. Affidavit verifying Answer. | <ul style="list-style-type: none"> 7. Registrar's Certificate on Præcipe to set Cause down for Trial or Hearing. 8. Request to issue Decree Absolute. 9. Statement at Foot of Motion for Decree Absolute. 10. Notice of Application for Ancillary Relief. 11. Notice to Person entitled to intervene. 12. Petition for Reversal of Decree of Judicial Separation. |
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Form No. 1

PETITION FOR DISSOLUTION OF MARRIAGE, JUDICIAL SEPARATION, OR RESTITUTION OF CONJUGAL RIGHTS

In the Supreme Court of New Zealand, } In Divorce. No.
Wellington Registry.

The day of, 19..

THE petition of A.B., of the City of Wellington, merchant, showeth as follows :—

1. The petitioner was, on the day of, 19.., lawfully married to C. D., then a spinster, at Church, in the said City of Wellington, by the Rev. J. S.

2. After his said marriage the petitioner lived and cohabited with his wife in the said City of Wellington, and the petitioner and his said wife have had issue of their marriage three children, to wit [*Here state the names of the children of the marriage, and the dates on which they were born.*]

3. [Here state briefly and explicitly the allegations relied on as the grounds for relief.]

Examples :—

(a) *Dissolution of Marriage or Judicial Separation*

On the day of, 19.., and thereafter on other days between that date and the day of, 19.., the petitioner's said wife committed adultery with one G. H., of the said City of Wellington, merchant, at the Z. Hotel in the said City of Wellington.

Or, On or about the day of, 19.., the petitioner's said wife wilfully deserted the petitioner without just cause, and for years and upwards—namely, from that date down to the present time—has continued to desert the petitioner without just cause.

(b) *Restitution of Conjugal Rights*

On the day of, 19.., the petitioner's said wife withdrew from cohabitation with the petitioner, and ever since has kept away from him without just cause, and has refused and still refuses to render him conjugal rights.]

4. The petitioner was born in the City of Auckland, in New Zealand, and resides now in the said City of Wellington, and is now and has for the last two years past been domiciled in New Zealand. [In the case of a wife petitioner, where section 12 of the Act applies, substitute for "is now . . . in New Zealand" the words "is deemed to be and for the last two years past to have been domiciled in New Zealand." Where a wife petitioner relies only alternatively on section 12 of the Act, the last-mentioned words (preceded by "or") may be added after "is now . . . in New Zealand" instead of being substituted therefor.]

5. The petitioner's said wife [husband] was born in the said City of Wellington, and resides now in the City of Christchurch, in New Zealand.

6. The petitioner prays,—

- (a) That the said marriage of the petitioner with his said wife be dissolved ;
Or, That the petitioner be judicially separated from his said wife ;
Or, That a decree be made for restitution to the petitioner of conjugal rights.

Add, where applicable—

- (b) That the said G. H. be ordered to pay the sum of £..... as damages in respect of the aforesaid adultery ;
(c) That the petitioner have the custody of the children of the said marriage ;
(d) That the said G. H. be ordered to pay the costs of these proceedings.

[Petitioner's signature.]

(NOTE.—In the case of a petition for judicial separation or restitution of conjugal rights, paragraph 4 of the above form may be modified.)

Form No. 2

AFFIDAVIT VERIFYING PETITION

In the Supreme Court of New Zealand, } In Divorce. No.
Wellington Registry.

In the matter of the petition of A. B.
for dissolution of marriage.

I, A. B., of the City of Wellington, merchant, make oath and say as follows :—

1. I was on the day of, 19.., lawfully married to C. D., then a spinster, at Church, in the City of Wellington, by the Rev. J. S.

2. After my said marriage I lived and cohabited with my said wife in the said City of Wellington and we have had issue of our marriage three children, whose names and ages are set forth correctly in my said petition.

3. [Verify allegations of petition thus :—] I am informed and believe that on the day of, 19.., and thereafter on other days between that date and the day of, 19.., my said wife committed adultery with one G. H., of the said City of Wellington, merchant, at the Z. Hotel in the said City of Wellington [or as the case may be].

4. I am informed and believe that I was born in the City of Auckland in New Zealand. I reside now in the said City of Wellington. I verily believe that I am now and have for the last two years past been domiciled in New Zealand. [In the case of a wife petitioner, where section 12 of the Act applies, vary as indicated in paragraph 4 of form No. 1.]

5. I am informed and believe that my said wife [husband] was born in the said City of Wellington and resides now in the City of Christchurch in New Zealand.

6. No collusion [If adultery is alleged add, or connivance] exists between me and my said wife.

Sworn at, &c.

(NOTE.—The form given in R. 415 of the Code of Civil Procedure should not be used for verifying a petition in divorce proceedings.)

Form No. 3

NOTICE TO BE ANNEXED TO PETITION

In the Supreme Court of New Zealand, } In Divorce. No.

Wellington Registry.

In the matter of the petition of A. B.
for dissolution of marriage.

To C. B., of Christchurch (*respondent*).

[Or, G. H., of Christchurch, Merchant (*co-respondent*).]

TAKE NOTICE that unless within days after service hereof on you, exclusive of the day of service, you file in the registry of this Court at Wellington an answer to the petition, a copy of which, sealed with the seal of this Court, is annexed hereto, you will not be entitled to be heard on the petition except on questions of costs, custody of children, maintenance, or other ancillary relief; and the Court may proceed to hear the petition and pronounce judgment without your being heard:

AND FURTHER TAKE NOTICE that, until you have given an address for service in manner provided by the Rules of Court, you will not, except where personal service on you is expressly required by the said rules, be entitled to be served with notice of any proceeding or matter in connection with the said petition or arising in this cause, or with copies of any further affidavits or other documents filed herein, or to address the Court either in person or by counsel at any stage of the proceedings.

[Where dissolution of marriage is sought] AND FURTHER TAKE NOTICE that if the cause proceeds to trial and a decree for dissolution of marriage is made, such decree is a decree *nisi* in the first place, and unless and until upon further application the decree is made absolute the marriage is not dissolved. A decree *nisi* is not a defence to a charge of bigamy.

Dated at, the day of, 19..

., Registrar.

This petition and notice were filed by the petitioner in person [or by K. L., solicitor for the petitioner]. The petitioner's address for service is at [Here state address for service within three miles of the registry].

(NOTE.—A separate notice should be issued for each party to be cited.)

Form No. 4

AFFIDAVIT OF SERVICE OF PETITION AND NOTICE

In the Supreme Court of New Zealand, } In Divorce. No.

Wellington Registry.

Between A. B., petitioner;
C. B., respondent;
G. H., co-respondent.

I,, of, &c., make oath and say as follows:—

1. The petition filed in this cause, bearing date the day of, 19.., a true copy of which is hereunto annexed marked with the letter "A," was duly served by me on the respondent [co-respondent] the above-named, at [Place], in [Country], by delivering to him personally a copy thereof under seal of this Court on the day of, 19..

2. At the same time and place I served the said with the notice a true copy of which is hereunto annexed marked with the letter "B," by delivering to him personally a copy thereof, signed by the Registrar of this Court at and annexed to the sealed copy of petition referred to in paragraph 1 hereof.

3. The said is personally known to me by reason of the following facts—namely, [*State the facts establishing personal knowledge, such as: That I have been personally acquainted with him for a period of years (see Rule 15)*].

Or, The said is not personally known to me, but I believe the person served by me as aforesaid to be the above-named respondent [co-respondent] by reason of the following facts—namely [*State the facts on which the deponent relies (see Rule 15)*].

Sworn at, &c.

(NOTE.—*Insert proof of compliance with any special directions relative to service.*)

Form No. 5

ANSWER

In the Supreme Court of New Zealand, } In Divorce. No.
Wellington Registry.

Between A. B., petitioner;
C. B., respondent;
G. H., co-respondent.

The day of, 19..

THE respondent in answer to the petition herein says,—

1. She denies that she ever committed adultery with the said G. H.
2. The petitioner condoned the acts of adultery alleged in the said petition.
3. The petitioner connived at the acts of adultery alleged in the said petition.
4. The petitioner by his own habits and conduct has induced the adultery complained of [*Here set out particulars of the habits and conduct relied on*].

This answer was filed by the respondent in person [*or by L.M., solicitor for the respondent*]. The respondent's address for service is at [*Here state address for service within three miles of the registry*].

(NOTE.—*See Rule 22 as to concluding answer with a prayer for relief when respondent desires to obtain relief under section 20 of the Act. See also Rules 23 and 54 as to notice to accompany answer in certain cases.*)

Form No. 6

AFFIDAVIT VERIFYING ANSWER

In the Supreme Court of New Zealand, } In Divorce. No.
Wellington Registry.

Between A. B., petitioner;
C. B., respondent;
G. H., co-respondent.

I, C. B., of, &c., make oath and say as follows:—

1. The allegations contained in paragraphs 2, 3, and 4 of my answer herein are true.

2. No collusion [*if adultery is alleged add, or connivance*] exists between me and the petitioner.

Sworn at, &c.

(NOTES.—*Where respondent is not able to speak of her own knowledge as to any allegations in her answer, she may swear that she is informed and believes such allegations are true.*

Any allegation made in the answer as a ground for relief shall be verified in extenso as in the case of the verification of a petition.)

Form No. 7

REGISTRAR'S CERTIFICATE ON PRÆCIPE TO SET CAUSE DOWN FOR TRIAL OR HEARING

As at the time of the filing of this præcipe :—

1. The respondent has given an address for service and has [but has not] filed an answer to the petition.

Or, The respondent has not taken any step in this cause.

2. The time allowed for filing an answer by the respondent will expire [expired] on the day of, 19.. [*To be inserted only if an answer has not been filed*].

3. The co-respondent [*Repeat statements as above and, if there are more than one co-respondent, separately as to each, inserting the name of the co-respondent in each case*].

Dated this day of, 19..

.....
Petitioner
or Solicitor for Petitioner.

I certify that, as at the time of the filing of this præcipe, according to the records of the Court, the foregoing statement is correct.

Dated this day of, 19..

....., Registrar.

Form No. 8

REQUEST TO ISSUE DECREE ABSOLUTE

In the Supreme Court of New Zealand, } In Divorce. No.
Wellington Registry.

Between A. B., petitioner ;
C. B., respondent ;
G. H., co-respondent.

I,, the petitioner in the above cause, do hereby request you to issue a decree absolute herein on the following grounds :—

1. The time limited before making the decree absolute has expired.

2. Neither the Attorney-General nor the Solicitor-General nor any other person has intervened or obtained leave to intervene in the cause, and no matter in opposition to the final decree is now pending.

Dated this day of, 19..

.....
Petitioner
or Solicitor for Petitioner.

To the Registrar of the Supreme Court at

I certify that, as at the time of the filing of this request, according to the records of the Court, the foregoing statement is correct.

Dated this day of, 19..

....., Registrar.

Form No. 9

STATEMENT AT FOOT OF MOTION FOR DECREE ABSOLUTE

1. The time limited before making the decree absolute has expired.

2. Neither the Attorney-General nor the Solicitor-General nor any other person has intervened or obtained leave to intervene in the cause and no matter in opposition to the final decree is now pending.

Dated this day of, 19..

.....
Petitioner
or Solicitor for Petitioner.

I certify that, as at the time of the filing of this notice of motion, according to the records of the Court, the foregoing statement is correct.

Dated this day of, 19..

....., Registrar.

Form No. 10

NOTICE OF APPLICATION FOR ANCILLARY RELIEF

In the Supreme Court of New Zealand, } In Divorce. No.
Wellington Registry.

Between A. B., petitioner;
C. B., respondent;
G. H., co-respondent.

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*]:

AND FURTHER TAKE NOTICE that, unless you have already given an address for service in this cause, or within fourteen [*If the application is for alimony pending suit, eight*] days after service hereof on you, exclusive of the day of service, you give an address for service in manner provided by the Rules of Court, you will not be entitled to be served with notice of the hearing of this application, or of any proceeding or matter in connection therewith, or with copies of any further affidavits filed herein, or to address the Court either in person or by counsel at any stage of the proceeding:

AND FURTHER TAKE NOTICE that, if you desire to file any affidavit in answer to this application, the same must be filed in the above-mentioned registry of this Court within the said period of fourteen [eight] days: AND THAT, if you are the wife [husband] of the applicant, you will not be entitled to be heard on the hearing of the application, and the Court may pronounce judgment without your being heard, unless, within the said period of fourteen [eight] days, you file an affidavit made by yourself personally, setting out full particulars of your property and income, or unless you are excused by the Court from so doing.

Dated at, the day of, 19..

.....
Petitioner or Respondent.
or Solicitor for the Petitioner or Respondent.

This notice was filed by the petitioner [respondent] in person [*or by, solicitor for the petitioner [respondent]*]. The petitioner's [respondent's] address for service is at [*Here state address for service within three miles of the registry*].

(NOTE.—A separate notice should be issued for each party to be cited.)

Form No. 11

NOTICE TO PERSON ENTITLED TO INTERVENE

In the Supreme Court of New Zealand, } In Divorce. No.
Wellington Registry.

In the matter of the petition of A. B.
for dissolution of marriage [*Refer also to the answer, or to the plea of the Attorney-General or Solicitor-General, if the notice is annexed thereto*].

To, of

TAKE NOTICE that you are entitled within days after service hereof on you, exclusive of the day of such service, to apply to the Court for leave to intervene in this cause, should you think fit so to do, and thereafter to make answer to the charges in the above-mentioned petition [answer] [plea], a copy of which, sealed with the seal of this Court, is annexed hereto, and that, in default of your so doing, the Court may proceed to hear the said charges proved and pronounce judgment without your being heard.

Dated at, this day of, 19..

....., Registrar.

This notice was filed by the petitioner [respondent] in person [*or by, solicitor for the petitioner [respondent]*]. The petitioner's [respondent's] address for service is at [*Here state address for service within three miles of the registry*].

Form No. 12

PETITION FOR REVERSAL OF DECREE OF JUDICIAL SEPARATION

In the Supreme Court of New Zealand, } In Divorce. No.
 Wellington Registry. }

The day of, 19..

THE petition of, of, showeth as follows:—

1. The petitioner was on the day of, 19.., lawfully married to, at [*Here state where the marriage took place*].

2. On the day of, 19.., by a final decree pronounced in a cause then depending in this Court between, petitioner, and, respondent, it was decreed as follows [*Here set out the decree*].

3. The aforesaid decree was obtained in the absence of the 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 [her] said wife [husband] for that his [her] said wife [husband] [*Here state any legal grounds justifying the petitioner's separation*].

The petitioner therefore prays that the said decree may be reversed.

C. A. JEFFERY,
 Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.
 Date of notification in *Gazette* : 19th day of August, 1943.