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OAKLEY'S  
DIVORCE PRACTICE

BY

WILLIAM M. F. WATERTON

*(Clerk in the Divorce Registry)*

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW

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**SIXTH EDITION**

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JORDAN & SONS, LIMITED

116 AND 120 CHANCERY LANE, LONDON, W.C.

1905

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1903

TO

ROBERT ALBION PRITCHARD, Esq., D.C.L.

SENIOR REGISTRAR OF THE PRINCIPAL REGISTRY OF THE PROBATE, DIVORCE  
AND ADMIRALTY DIVISION OF THE HIGH COURT OF JUSTICE

THIS WORK IS WITH

KIND PERMISSION RESPECTFULLY DEDICATED

BY

THE EDITOR

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## PREFACE.

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A NEW EDITION of this book being required, the Publishers have requested me, owing to the recent death of the Author, to undertake the responsibility of Editorship.

I had assisted in the preparation of the Fifth Edition, and have now carefully revised and considerably amplified the text. The matter has also been re-arranged where it appeared desirable to do so with a view to making the volume more convenient for reference, and I believe that the book contains all necessary information for the Practitioner on every point ordinarily arising in connection with Matrimonial Causes.

No Statutes affecting the Law of Divorce have been passed since the publication of the previous Edition, but a considerable number of Cases have been decided, some of them dealing with points of much importance, and although this book is not intended as a Treatise on the Law of Divorce, but as a concise and practical Exposition of the ordinary course of procedure in conducting Causes in the

Registry, yet Case Law in connection with such matters is of so much importance that probably not the least useful portion of the work will be found to be the lengthy Table of Cases, where references to the Principal Reported Decisions are given under the special points dealt with in each Case.

The Contents of the volume may perhaps be summarised as including the Procedure in Divorce and Matrimonial Causes and Matters in the High Court of Justice, the Court of Appeal, and the House of Lords, with Forms and Directions as to drawing Petitions, Pleadings, Affidavits, &c.; the wording as required by Statute of every Citation; the authorised Forms; the full Text of the relevant Statutes; Tables of the Fees and Costs allowed; Table of Cases; and a very full and carefully compiled Index.

In conclusion I have to acknowledge the assistance kindly rendered me in the preparation of this Edition by various colleagues in the Divorce Registry.

W. M. F. WATERTON.

DIVORCE REGISTRY,

SOMERSET HOUSE,

*June, 1905.*

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# CONSTITUTION OF THE COURT.

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## *The Statutes governing the Jurisdiction of the Division of the High Court of Justice for Divorce and Matrimonial Causes.*

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**Matrimonial Causes Act, 1857.**

20 & 21 Vict. c. 85.

**Legitimacy Declaration Act, 1858.**

21 & 22 Vict. c. 93.

**Matrimonial Causes Amendment Act, 1858.**

21 & 22 Vict. c. 108.

**Matrimonial Causes Amendment Act, 1859.**

22 & 23 Vict. c. 61 (*Husband and Wife competent to give Evidence*).

**Matrimonial Causes Amendment Act, 1860.**

23 & 24 Vict. c. 144 (*Decree Nisi not Absolute till after three months*).

**Matrimonial Causes Perpetuating Act, 1862.**

25 & 26 Vict. c. 81.

**Matrimonial Causes Amendment Act, 1864.**

27 & 28 Vict. c. 44 (*As to Discharging Orders for Protection*).

**Matrimonial Causes Amendment Act, 1866.**

29 Vict. c. 32 (*Decree Nisi not Absolute till after six months*).

**Matrimonial Causes Amendment Act, 1868.**

31 & 32 Vict. c. 77 (*As to Appeals*).

**Matrimonial Causes Amendment (Evidence) Act, 1869.**

32 & 33 Vict. c. 68 (*Parties, their husbands and wives, may be Witnesses in Suits for Adultery*).

**Matrimonial Causes Amendment Act, 1873.**

36 Vict. c. 31 (*Extending Intervention of Queen's Proctor to Nullity Suits*).

**Matrimonial Causes Amendment Act, 1884.**

47 & 48 Vict. c. 68 (*As to Restitution Suits*).

**Greek Marriages Act, 1884.**

47 & 48 Vict. c. 20.

**Summary Jurisdiction (Married Women) Act, 1895.**

58 & 59 Vict. c. 39 (*Costs of Intervention: Magistrates may make Orders equivalent to a Judicial Separation on ground of Cruelty where Husband is convicted of Aggravated Assault*).

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**PETITIONS.**

The various Petitions for

1. Dissolution of Marriage
2. Judicial Separation
3. Nullity of Marriage
4. Restitution of Conjugal Rights
5. Jactitation of Marriage
6. Declaration of Legitimacy
7. Declaration of Validity of Marriage
8. Declaration of Validity of certain Greek Marriages

are presented to the Court by virtue of the provisions of the following Statutes :—

**Matrimonial Causes Act, 1857.**

20 & 21 Vict. c. 85.

Section 6.—Jurisdiction.

Section 16.—Judicial Separation.

Section 27.—Dissolution of Marriage.

**Matrimonial Causes Amendment Act, 1858.**

21 & 22 Vict. c. 108.

Section 1.—Declaration of Legitimacy.

**Matrimonial Causes Amendment Act, 1884.**

47 & 48 Vict. c. 68.

An Act to amend the Law as to the Restitution of Conjugal Rights in England.

## JURISDICTION.

(20 & 21 Vict. c. 85, Section 6.)

As soon as this Act shall come into operation, all jurisdiction now vested in or exercisable by any ecclesiastical court or person in *England* in respect of divorces *a mensa et thoro*, suits of nullity of marriage, suits for restitution of conjugal rights, or jactitation of marriage, and in all causes, suits, and matters matrimonial, except in respect of marriage licences, shall belong to and be vested in Her Majesty, and such jurisdiction, together with the jurisdiction conferred by this Act, shall be exercised in the name of Her Majesty in a Court of Record to be called "The Court for Divorce and Matrimonial Causes."<sup>1</sup>

## JUDICIAL SEPARATION.

(20 & 21 Vict. c. 85, Section 16.)

A sentence of judicial separation may be obtained, either by the husband or the wife, on the ground of adultery, or cruelty, or desertion without cause for two years and upwards.

## DISSOLUTION OF MARRIAGE.

(20 & 21 Vict. c. 85, Section 27.)

It shall be lawful for any husband to present a petition to the said court, praying that his marriage may be dissolved, on the ground that his wife has since the celebration thereof been guilty of adultery; and it shall be lawful for any wife to present a petition to the said court, praying that her marriage may be dissolved, on the ground that since the celebration thereof her husband has been guilty of incestuous adultery, or of bigamy with

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<sup>1</sup> Altered to present Title by Supreme Court of Judicature Act, 1873.



adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensa et thoro*, or of adultery coupled with desertion, without reasonable excuse, for two years or upwards: and every such petition shall state as distinctly as the nature of the case permits the facts on which the claim to have such marriage dissolved is founded: Provided that for the purposes of this Act incestuous adultery shall be taken to mean adultery committed by a husband with a woman with whom if his wife were dead he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity or affinity: and bigamy shall be taken to mean marriage of any person, being married, to any other person during the life of the former husband or wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere.

## DECLARATION OF LEGITIMACY.

(21 & 22 Vict. c. 93. Section 1.)

Any natural born subject of the Queen or any person whose right to be deemed a natural born subject depends wholly or in part on his legitimacy, or on the validity of a marriage being domiciled in England, or Ireland, or claiming any real or personal estate situate in England, may apply by petition to the Court for Divorce and Matrimonial Causes, praying the court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for decree declaring either of the matters aforesaid: and any such subject or person, being so domiciled or claiming as aforesaid, may in like manner apply to such court for a decree declaring that his marriage was or is a valid marriage, and such court shall have jurisdiction to hear and determine such application and to make such decree declaratory of the legitimacy or illegitimacy of such person, or of the validity or invalidity of such marriage, as to the court may seem just: and such decree, except as hereinafter mentioned, shall be binding to all intents and purposes on Her Majesty and on all persons whomsoever.

## RESTITUTION OF CONJUGAL RIGHTS.

(47 & 48 Vict. c. 68.)

WHEREAS it is expedient to amend the law as to the restitution of conjugal rights in England:

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "The Matrimonial Causes Act, 1884."

2. From and after the passing of this Act a decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is by the wife the court may, at the time of making such decree, or at any time afterwards, order that in the event of such decree not being complied with within any time in that behalf limited by the court, the respondent shall make to the petitioner such periodical payments as may be just, and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation. The court may, if it shall think fit, order that the husband shall, to the satisfaction of the court, secure to the wife such periodical payment, and for that purpose may refer it to any one of the conveyancing counsel of the court to settle and approve of a proper deed or instrument to be executed by all necessary parties.

3. Where the application for restitution of conjugal rights is by the husband, if it shall be made to appear to the court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the court may, if it shall think fit, order a settlement to be made to the satisfaction of the court of such property, or any part thereof, for the benefit of the petitioner and of the children of the marriage, or either or any of them, or may order such part as the court may think reasonable of such profits of trade or earnings to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either or any of them.

4. The court may from time to time vary or modify any order for the periodical payment of money, either by altering the

times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same order wholly or in part, as the court may think just.

5. If the respondent shall fail to comply with a decree of the court for restitution of conjugal rights such respondent shall *thereupon be deemed to have been guilty of desertion without reasonable cause, and a suit for judicial separation may be forthwith instituted, and a sentence of judicial separation may be pronounced although the period of two years may not have elapsed* since the failure to comply with the decree for restitution of conjugal rights; and when any husband who has been guilty of desertion by failure on his part to comply with a decree for *restitution of conjugal rights has also been guilty of adultery*, the wife may forthwith present a petition for dissolution of her marriage, and the *court may pronounce a decree nisi for the dissolution of the marriage on the grounds of adultery coupled with desertion*. Such *decree nisi* shall not be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the court shall fix a shorter time.

6. The court may, at any time before final decree on any application for restitution of conjugal rights, or after final decree if the respondent shall fail to comply therewith, upon application for that purpose, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of the children of the petitioner and respondent as might have been made by interim orders during the pendency of a trial for judicial separation between the same parties.

7. This Act shall not extend to Scotland or Ireland.

From the preceding sections of the Acts it will be seen that

**A HUSBAND can obtain**

A *Divorce* upon proof of  
Adultery of the Wife; or

A *Judicial Separation* on the ground of  
Adultery,  
Cruelty, or

Desertion, without cause, for two years and upwards.

**A WIFE can obtain**

A *Divorce* on the ground of her Husband having been guilty of  
 Incestuous adultery,  
 Bigamy with adultery,  
 Rape, sodomy, or bestiality,  
 Adultery, coupled with cruelty,  
 Adultery, coupled with desertion without reasonable  
 excuse for two years and upwards, *or*

A *Judicial Separation* on the ground of  
 Adultery,  
 Cruelty, *or*  
 Desertion, without cause, for two years and upwards.

**A HUSBAND or WIFE can obtain**

*Nullity of Marriage* by reason of  
 Impotency,  
 Malformation,  
 Bigamy,  
 Insanity at time of marriage,  
*And other grounds.*

**Jactitation of Marriage.**—One party boasting that he or she is married to the other; either party to the pretended or reputed marriage can Petition the Court to decree perpetual silence against the Jactitator. These suits, however, would seem to have fallen into disuse, only two such Petitions having been filed since 1862; but Form of Petition and Citation will be found under "CITATIONS."

**Declaration of Legitimacy** (Rule 174).—The Rules and Regulations, so far as the same may be applicable, shall extend to applications and proceedings under The Legitimacy Declaration Act, 1858.

**Restitution of Conjugal Rights.**—The mode of application—by Petition and Affidavit as to demand for Cohabitation—remains the same, though by the aforesaid Act (47 & 48 Viet. c. 68, Section 2) a decree for Restitution of Conjugal Rights shall not be enforced by Attachment, and by Section 6 non-compliance with such a decree shall be deemed to be desertion, and a sentence of Judicial Separation may be pronounced, although the period of two years (*the qualified time for such a decree on ground of desertion*) may not have expired.

## DIRECTIONS AS TO DRAWING PETITIONS AND OTHER PLEADINGS AND DOCUMENTS.

All documents should be drawn on good foolscap paper with a margin on the left hand side.

If written in a foreign language, a translation made by a Public Notary should accompany the document when filed.

Every document should be headed—

### In the High Court of Justice.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

(*Divorce.*)

and when filed should be folded lengthwise and endorsed with title of cause, description of document, and solicitor's name and address, or if party is acting without a solicitor, "In Person," with address, thus—

### In the High Court of Justice.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

(*Divorce.*)

OXFORD v. OXFORD

*James* and *Sarah*

and

CAMBRIDGE

*Lionel*

Affidavit of J. C. as to search for Appearance.

W. E.,

Bedford Row,

(Agent for C. D. & Co., of Cardiff),

*Solicitor of Petitioner.*

---

## ALTERATION AS TO FEE STAMPS.

The fees in the Contentions Department are to be paid by the stamp for the amount being AFFIXED *to the document to which it relates* when brought in, and cancelled by the Clerk with the special cancelling date stamp in the presence of the person handing it in.

BY ORDER.

March, 1896.

Stamps can be obtained at the Divorce Registry.

## PETITION (Rules 1-7).

All proceedings before the Court for Divorce and Matrimonial Causes commence by filing a Petition, which should be headed—

**In the High Court of Justice.**

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

(*Divorce.*)

To the Right Honourable the President of the said Division.

The            day of            , 190    .

The Petition of ALFRED TONGS, of            , sheweth—  
not—            TONGS *v.* TONGS.

[*The Petition must be signed by the Petitioner.*]

**Children.**—The names and ages of the children issue of the marriage must be stated, and the custody of the children under sixteen years of age, if desired, must form part of the Prayer.

**Damages.**—If damages are claimed the *amount* must be inserted.

The charges should be fully and clearly stated, thus:—

**ADULTERY.**—Name, time, and place; with whom, when, and where.

**CRUELTY.**—Describe the acts, *each in a separate paragraph*, and when and where committed.

**DESERTION.**—Must be for two years and upwards without reasonable excuse, or failing to comply with a Decree for Restitution of Conjugal Rights.

The dates and places of the charges should also be fully stated, as vague statements lead to applications for particulars, or for the amendment of the Petition by striking out the charges, *costs of which will not be allowed.*

**Accuracy as to Facts.**—It is a matter of necessity that the names of the parties, and date and place of marriage, should be accurately given. Errors in these respects are frequently discovered when the Pleadings are completed, rendering necessary an amendment and, generally, re-service of the Petition.

**Marriage Certificate.**—The Certificate of Marriage must be filed with the Petition, and care must be taken to see that the Petition *exactly* corresponds with the Certificate.

**Affidavit in Support** (p. 30).—With every Petition must be filed—not *serred*—an Affidavit made by the Petitioner, verifying the facts of which he or she has personal cognizance, and deposing as to belief in the truth of the other facts alleged, and that no collusion or connivance exists between the Petitioner and the Respondent. This need not depose to the various paragraphs *seriatim*; it is sufficient to identify the Petition and to depose that the statements contained in paragraphs (being those within the Petitioner's own knowledge) *are true*, and that the statements contained in paragraphs (when made from information) *I verily believe to be true*. Heading must be "IN THE MATTER OF THE PETITION OF A. B. *for &c.*,"<sup>1</sup>—not the title of the Cause. All other Pleadings and Affidavits are headed in the name of the *Cause*.

**Petitioner of Age.**—If the Petition is filed within six years of the date of marriage, a certificate that the Petitioner is of age is required, unless it is apparent by the Certificate of Marriage. This can be given by the solicitor. No filing fee is charged. The following is a form of the age certificate:—

CERTIFICATE—*B. v. B.*

We hereby certify that the above-named M. B. is of full age.

F. & F.,

1st January, 190 .

*Solicitors for the Petitioner.*

**Minor Petitioner.**—The Petition is presented by the person elected as Guardian, and the instrument of election must be filed before the Citation is extracted; or in the case of a *Minor*

<sup>1</sup> *Steed v. Steed*, 1 P. & M. 364.

*Respondent* before an Appearance can be entered, but it is not necessary for a Minor Co-respondent to have a Guardian for the purpose of conducting his defence.

**Guardian.**—The Guardian elected should be one of the next-of-kin; but if the next-of-kin renounces the guardianship, or the Minor elects some person other than the next-of-kin, application founded on affidavit is made to the Registrar to have such person assigned Guardian. (See "GUARDIAN.")

**Unknown Adulterers.**—(See "DISPENSING WITH CO-RESPONDENTS.")

**Address Unknown.**—(See "SUBSTITUTED SERVICE.")

**Filing Petition.**—The Petition, with the Affidavit and Citations and Praecipe for each Citation (see "CITATIONS"), is left at the Divorce Registry.

**Service.**—Copies of the Petition under seal are ordered for service. These can be made by the solicitor for the purpose of expedition, but the same fees are paid as if made in the Registry. Such copies are accepted only when they are to be sealed and certified; otherwise office copies are always made in the Registry. The Office Copies' Petition, with the Citations sealed—everything being found correct—are to be obtained in the Public Office the day after leaving them. No leave is required for service out of jurisdiction.

The Copy Petition under seal is served personally with the Copy Citation; *it must not be served by the Petitioner.*

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#### ADDITIONAL RULE, 1904.

**Previous Proceedings.**—In all proceedings before the Court for Divorce and Matrimonial Causes the Petition shall state whether or no there have been any, and if so what, proceedings previous thereto with reference to the marriage in the Divorce Division of the High Court by or on behalf of either of the parties to the marriage.



## FORM OF PETITION FOR DISSOLUTION OF MARRIAGE.

In the High Court of Justice.

(CHARGE.—ADULTERY.)

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

(*Divorce.*)

To the Right Honourable the President of the said Division.

Dated the            day of            , 190 .

The Petition of A. B., of            , showeth—

1. That your Petitioner was on the            day of            , 190 , lawfully married to C. B., then C. D. [Spinster or Widow], at [here state where the marriage took place].
2. That after his said marriage your Petitioner lived and cohabited with his said wife at            and at            , and that your Petitioner and his said wife have had issue of their said marriage            children, to wit: [Here state the names and ages of the children.]  
[Or have had no issue].
3. That on the            day of            , 190 , at            the said C. B. committed adultery with R. S.
4. That in and during the months of            and            , 190 , the said R. S. frequently visited the said C. B. at            , and on divers of such occasions committed adultery with the said C. B.
5. That no previous proceedings in reference to the said marriage have taken place in the Divorce Division of the High Court by or on behalf of either party to the said marriage.

Your Petitioner therefore humbly prays—

That your Lordship will be pleased to decree

[Here set out the relief sought, with Prayer for custody of children, and Damages if desired.]

And that your Petitioner may have such further and other relief in the premises as to your Lordship may seem meet.

[Petitioner's Signature.]

*If Damages are claimed—*

(20 &amp; 21 Vict. c. 85, Section 33.)

6. That your Petitioner claims from the said R. S., as damages in respect of such adultery, the sum of £     , or such sum as may be assessed by a Jury.<sup>1</sup>

Your Petitioner therefore humbly prays—

That your Lordship will be pleased to decree that the marriage of your Petitioner with the said C. B. be dissolved.

That your Petitioner have the custody of the children [*here put in their names*].

That your Lordship will be pleased to ascertain by the verdict of a jury the amount of damages to be paid by the Co-respondent and to direct how such damages shall be applied (20 & 21 Vict. c. 85, Section 33).

The jury, when trying the Cause, are not informed of the amount claimed, and sometimes assess a larger amount, and the Court will, if it thinks fit, allow the claim in the Petition then to be amended.

That the said Co-respondent may be condemned in the costs of these proceedings.

And that your Petitioner may have such further and other relief as to your Lordship may seem meet.

[*Petitioner's Signature.*]

#### OTHER CHARGES.—HUSBAND PETITIONER.

**Birth of a Child.**—That in the month of     , 190     , the said Respondent gave birth to a child of which your Petitioner is not the Father, but of which the said Co-respondent is the Father.

---

<sup>1</sup> The claim for damages must be inserted in the Petition and also in the Prayer. The amount claimed must be stated in the Petition (*Pegler v. Pegler*, 85 L. T. R. 649)

[If it is not intended to impute the Paternity of the child to the Co-respondent, the fact would necessitate application to the Court to dispense with the Co-respondent. The charge would run thus]—

That in the month of \_\_\_\_\_, 190\_\_\_\_, the said Respondent was delivered of a child of which your Petitioner was not the Father, but your Petitioner does not know and has been unable to ascertain who was the Father of the said child.

*Prayer.*—For the relief sought.

**Insane when Married.**—That a ceremony of marriage, according to the rites of the Church of England, was on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, performed at \_\_\_\_\_ by the Rev. W. S., Clerk, between your Petitioner and one L. E., Spinster.

That on the said \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, at the time of the performance of the said ceremony and prior thereto, the said L. E. was of unsound mind and incapable of contracting marriage.

*Or,*

That at the time of the said ceremony your Petitioner was of unsound mind and incapable of contracting marriage, he being at the time under the influence of drink, whereby he had lost his reason and was incapable of contracting marriage.

That your Petitioner was made drunk and incapable of contracting marriage to the knowledge and by the procurement of the Respondent and others acting with her.

**Duress.**—That your Petitioner was induced to be a party to the said pretended ceremony of marriage, not of her own free will, \*but through *fear, duress, and terror* of the Respondent.

*Or,*

**Fraud.**—\*But through *false representation, fraudulently made to her by the Respondent, which she believed to be true.*

That no previous proceedings &c.

Your Petitioner therefore prays that your Lordship will be pleased to declare that the said ceremony of marriage so celebrated as aforesaid between your Petitioner and the said L. E. is null and void, and that your Petitioner may have such further and other relief as to your Lordship may seem meet.

## OTHER CHARGES.—WIFE PETITIONER.

**Adultery.**—That on the        day of        , 190    , at        , the said C. B. committed adultery with R. S.

**Desertion.**—That on the        day of        , 190    , the said C. B. left your Petitioner, and has ever since lived separate and apart from her, and deserted her without reasonable excuse for two years and upwards.

**Undue Publication of Banns.**—That previous to the said ceremony of marriage banns were published in the said church, but there was no due publication of banns according to the Statute in such case made and provided previously to the said marriage by reason that &c.

**Cruelty.**—That on the        day of        , 190    , at        , the said C. B. violently assaulted your Petitioner by [*describe the act*].<sup>1</sup>

**Adultery and Cruelty.**—That since the celebration of the said marriage the said C. B. committed adultery with some woman unknown, and thereby contracted a venereal disease; and that in the month of        , 190    , the said C. B. wilfully and recklessly communicated such venereal disease to your Petitioner, and was thereby guilty of cruelty towards her.

**Bigamy with Adultery.**—That your Petitioner L. E. (then L. R., Spinster) was on the        day of        , 1896, lawfully married to T. E. at        ; that after her said marriage your Petitioner lived and cohabited with her said husband at        and at        , and that your Petitioner and her said husband have had issue of their said marriage children, to wit:

[*Here set out the names and ages of the children, if any.*]

[*Or have had no issue.*]

<sup>1</sup> *Definition of Cruelty.*—There must be danger to life, limb, or health—bodily or mental, or a reasonable apprehension of it—to constitute legal cruelty (Russell v. Russell (C. A.), L. R., P. D., 1895—Lopes, L. J., confirmed by H. L. (E.), 1897).

That on the            day of           , 190   , at           , a ceremony of marriage was performed between the said T. E. and one J. S., and that the said T. E. thereby committed Bigamy.

That on the said            day of           , 190   , and from that date to the present time, at            aforesaid, the said T. E. and J. S. have lived and cohabited together as husband and wife, and have on divers occasions committed Adultery with each other.

That no previous proceedings &c.

*Prayer.*—Your Petitioner therefore humbly prays that your Lordship will be pleased to decree that her marriage with the said T. E. be dissolved &c.

**Bigamy.**—That on the            day of           , 190   , at            a ceremony of marriage was performed between the Petitioner and W. M.

That on the            day of           , 190   , when the said ceremony of marriage was so performed, H. M., the lawful wife of the said W. M., was living, and her marriage with the Respondent had in no way been annulled or dissolved.

That no previous proceedings &c.

*Prayer.*—That your Lordship will be pleased to decree that the said marriage of your Petitioner with the said Respondent is null and void, and that your Petitioner may have such further and other relief as to your Lordship may seem meet.

[*Petitioner's Signature.*]

**Petitioner's First Husband being Alive.**—That your Petitioner L. A. (then L. D., spinster) was on the            day of           , 1894, lawfully married to G. A. at           .

That your Petitioner and her husband lived and cohabited together at various places, and there is no issue of the said marriage.

That on the            day of           , 1898, the said G. A. deserted your Petitioner thenceforward to the present time.

That on the            day of           , 190   , your Petitioner, believing the said G. A. to be dead, went through a ceremony of marriage with one H. B.            at           .

That at the time when the said ceremony was performed the said G. A. was still alive, and your Petitioner's said marriage with him had in nowise been annulled or dissolved by any competent Court.

That no previous proceedings &c.

Wherefore your Petitioner prays &c.

**Bigamy with Adultery.**—That your Petitioner (then M. C., Spinster) was on the \_\_\_\_\_, 1898, lawfully married to L. A. at \_\_\_\_\_.

That after the marriage your Petitioner and the Respondent lived and cohabited together at \_\_\_\_\_, and there is no issue of the said marriage.

That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 1903, the said Respondent contracted a bigamous marriage with one E. F. at \_\_\_\_\_.

That the said Respondent has since lived and habitually committed adultery with the said E. F.

That no previous proceedings &c.

Wherefore your Petitioner prays &c.

**FORM OF PETITION FOR DISSOLUTION AFTER A DECREE FOR JUDICIAL SEPARATION OR RESTITUTION OF CONJUGAL RIGHTS.**

*In the High Court of Justice.*

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

*(Divorce.)*

To the Right Honourable the President of the said Division.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

The Petition of E. D., of \_\_\_\_\_, showeth—

1. That your Petitioner (then E. C., Spinster) was on the \_\_\_\_\_ day of \_\_\_\_\_, 1895, lawfully married to \_\_\_\_\_ at \_\_\_\_\_.
2. That after her said marriage your Petitioner lived and cohabited with her said husband at \_\_\_\_\_, and there has been no issue of the said marriage.
3. That on the \_\_\_\_\_ day of \_\_\_\_\_, 1900, your Lordship was pleased to decree that your Petitioner should be judicially separated from the said P. D. by reason of his cruelty committed towards her [*or*, Decree for Restitution of Conjugal Rights not complied with].

4. That on the                    day of                   , 1900, your Petitioner presented a Petition to this Honourable Court praying for a Decree of Restitution of Conjugal Rights, and that on the                    day of                   , 1900, a Decree of Restitution of Conjugal Rights was pronounced by this Honourable Court.
5. That on the                    day of                   , 1900, the said Decree was personally served on P. D. at                   , and that the said P. D. has failed to comply with the said Decree, and that he has thereby been guilty of *Desertion* without reasonable cause.
6. That on the                    day of                   , 1903, the said P. D., at                   , committed adultery with A. S.

*[Insert a paragraph stating that there have been no previous proceedings except those mentioned in paragraphs 3 and 4.]*

Your Petitioner therefore humbly prays that her said marriage with the said P. D. may be dissolved, and that your Petitioner may have such further and other relief as to your Lordship may seem meet.

*[Petitioner's Signature.]*

### FORM OF PETITION FOR DAMAGES ONLY.

In the High Court of Justice.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

*(Divorce.)*

To the Right Honourable the President of the said Division.

Dated the                    day of                   , 190 .

The Petition of A. B., of                   , sheweth—

1. That your Petitioner was on the                    day of                   , 190 , lawfully married to C. B., then C. D. [Spinster or Widow], at [here state where the marriage took place].

2. That after his said marriage your Petitioner lived and cohabited with his said wife at \_\_\_\_\_ and at \_\_\_\_\_, and that your Petitioner and his said wife have had issue of their said marriage children, to wit:

[*Here state the names and ages of the children.*]

[*Or have had no issue*].

3. That on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, at \_\_\_\_\_, K. G. committed adultery with your Petitioner's wife, the said C. B.
4. That your Petitioner claims from the said K. G. the sum of \_\_\_\_\_ Pounds in respect of the adultery by him committed as aforesaid.
5. That there have been no previous proceedings.

Your Petitioner therefore humbly prays that your Lordship will be pleased to ascertain by the verdict of a jury the amount of damages which shall be paid to your Petitioner by the said K. G. in respect of the said adultery by him committed &c.

**Citation.**—(See p. 46 for Form.)

**Wife.**—Unless application is made to the Court for leave to proceed without service upon the wife before issuing a Citation against the Co-respondent, the wife is to be considered a Respondent and a party to the proceedings, and must be cited, and her name appear as such in the Title of the Cause.

### WIFE'S PETITION FOR NULLITY.

The humble Petition of S. J. (otherwise A. B.), of \_\_\_\_\_, sheweth—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, at \_\_\_\_\_, your Petitioner went through a form or ceremony of marriage with A. J.
2. That after the said ceremony of marriage your Petitioner lived and cohabited with the said A. J. at \_\_\_\_\_, and the said marriage has never been consummated.
3. That the said A. J. was at the time of the said marriage and has ever since been incapable of



consummating the same by reason of the frigidity or impotency or malformation of the parts of generation of the said A. J., and that such incapacity is incurable.

4. That no previous proceedings &c.

Wherefore your Petitioner prays that the said marriage may be declared null and void to all intents and purposes in the law whatsoever.

[*Petitioner's Signature.*]

**HUSBAND'S PETITION FOR NULLITY.**

The humble Petition of W. J., of \_\_\_\_\_, v. M. J. (otherwise M. B.), sheweth—

1. That on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, at \_\_\_\_\_, your Petitioner went through a form or ceremony of marriage with M. J. (otherwise M. B.).
2. That after the said ceremony of marriage your Petitioner lived and cohabited with the said M. J. (otherwise M. B.) at \_\_\_\_\_.
3. That the said marriage has never been consummated owing to the malformation of the parts of generation of the said M. J. (otherwise M. B.) [or *in cases of hysteria* owing to the incapacity of the said M. J. (otherwise M. B.) to consummate the said marriage.]
4. That no previous proceedings &c.

Wherefore your Petitioner humbly prays &c.

**AFFIDAVIT IN SUPPORT OF PETITION.**

**In the High Court of Justice.**

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

(*Divorce.*)

In the Matter of the Petition of J. L. for a Dissolution of Marriage.

I, J. L., of \_\_\_\_\_, Watchmaker, the Petitioner, make oath and say as follows:—

1. That the statements set forth in Paragraphs 1, 2, and 3 of the said Petition, dated the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, are true.

2. That the statements set forth in Paragraphs 4 and 5 are true to the best of my knowledge, information, and belief.
3. That there is not any collusion or connivance between me and my wife, M. L., in any way whatever.

Sworn &amp;c.

J. L.

*Or, if the fact be so:*

1. That the statements contained in my Petition dated the            day of            , 190    , are true.
2. That there is not any collusion or connivance between me and my wife, M. L., in any way whatever.

**Petition Dismissed.**—If the proceedings are not continued with due diligence, the Respondent or Co-respondent can apply by Summons to the Registrar for the Petition to be dismissed for want of prosecution, or if the Petitioner desires to abandon the proceeding the Petition can be dismissed on Summons; this can also, in either case, be done by consent to the Summons. The Petition and other Pleadings, nevertheless, remain filed—they are never given out.

**Petition and Affidavit made by Solicitor.**—In cases of emergency, and the Petitioner not being within reach, application to the Judge by Summons can be made that Petitioner's solicitor be allowed to sign Petition and make the necessary Affidavit. But in such cases the Petitioner would be required to sign the Petition and make the Affidavit as soon as possible.

## FEES.

	£	s.	d.
Filing Petition - - -	0	2	6
Affidavit - - -	0	2	6
Sealing—each Citation - -	0	5	0
Office Copy—Petition - -	0	2	6
(or 6d. a folio above five folios)			
Examining - - -	0	2	6
(or if above ten folios, then 3d. a folio more)			
Sealing same - - -	0	5	0

## COSTS ALLOWED ON TAXATION.

	£	s.	d.
Instructions for Petition - - -	0	6	8
Attending and retaining Mr. ——— -	0	6	8
Paid his Fee and Clerk - - -	1	3	6
Drawing and engrossing Petition (ten folios [seventy-two words a folio] or under, including copy to file) -	1	0	0
(Exceeding ten folios, for every additional folio, including copy to file, 1s. 4d.)			
Attending filing Petition and extracting Citation - - - - -	0	6	8
Paid Filing Fee - - - - -	0	2	6
Paid Office Copy under Seal - - -			—
Copy, five folios or under, 2s. 6d.; above five folios, 6d. a folio.			
Collating and Certifying first ten folios, 2s. 6d.; above ten folios, 3d. a folio.			
Sealing - - - - -	0	5	0
Attending for Copy - - - - -	0	6	8

*If settled by Counsel—*

Attending Counsel with Petition to Settle - - - - -	0	3	4
Paid his Fee and Clerk - - - - -	1	3	6

See also "AFFIDAVITS," p. 30, and "CITATIONS," p. 49.

## AMENDING PETITION AND OTHER DOCUMENTS

(Rule 187).

Errors in, omissions from, or additions to the Petition (or other Pleadings) are corrected or supplied by amendment. *No Amendment is allowed to be made without an Order.*

**Withdrawing Charges.**—It may be found that the evidence procurable against a Co-respondent is not sufficient to prove the charge, and if desired the Petition can be amended by striking it out. Should the Co-respondent have entered an Appearance he will probably ask for costs on the hearing of the Summons to amend, which would be served upon him.

**Adding Charges.**—If it is desired to add further charges committed *prior to the date of the Petition*, but only discovered since filing the same, the Petition can be amended on leave by Summons, supported by Affidavit of the Petitioner, verifying the facts, and stating when he or she became aware of them, *and denying the existence of "collusion or connivance,"* or amending Petition for J. S. by adding charges and altering prayer to Dissolution of Marriage.

**Name, Date, and Place of Marriage.**—Where the name (or names) of the Petitioner or Respondent, or the date or place of marriage, as given in the Petition, differs from that contained in the marriage certificate, a Registrar's Order for the necessary amendment of the Petition will be made upon an Affidavit by the Petitioner explaining how the error occurred, and deposing as to which is the correct name, date, or place.

### AFFIDAVIT IN SUPPORT,

*B. v. B.*

I, A. B., of \_\_\_\_\_, Draper, the Petitioner in this Cause, make oath and say as follows:—

1. That when instructing my solicitor I inadvertently gave the date of my marriage as the 15th day of September, 1904, instead of the exact date, the 13th day of September, 1904.
2. That the mistake arose from my omission to procure a copy of the marriage certificate and from no other reason.

Sworn &c.

A. B.

**Order to Amend.**—Take out a Summons if *Appearance has been entered* to show cause why the Petition should not be amended by adding further charges of Adultery, by striking out Paragraph 3, by withdrawing the claim for damages, or as the case may be. This Order need not be *serred*.

If *no Appearance has been entered*, and the Petitioner is proceeding in default—*i.e.* has filed an Affidavit of no Appearance under Rule 17—the Order to amend will be made *without Summons* on production to the Registrar of an Affidavit in support of the proposed amendment.

**When and How Amended.**—After the Order is made call at the Divorce Registry and make the amendment as directed by the Order. The amendment is made in red ink, and a marginal note

written also in red ink, in the following terms:—" Amended pursuant to Order of \_\_\_\_\_, 190 \_\_\_\_\_," which is initialed by an officer of the Department.

**Service of Amended Petition.**—An office copy of the Amended Petition under seal must be served personally, unless otherwise ordered, on the application being made, when the necessity of service should be a point of enquiry. Affidavit of this service is *always* required. If a charge in the Petition is struck out no re-service is necessary.

**When not Re-served.**—Mere clerical errors are usually allowed to be rectified by Order, without re-service.

**Whom to Serve.**—It is only necessary to re-serve the parties affected by the amendment; so where a Citation has been issued in a case of *Pitt v. Pitt and Impey*, and the Petition is amended by adding a charge of adultery against *Black*, it would not be necessary to re-serve *Impey*. A Citation and a copy of the Amended Petition under seal would be served upon *Black*, and a copy under seal of the Amended Petition would be served on the Respondent, *but without further Citation*. So if a further charge of adultery was afterwards made by amendment against *Impey*, no re-service on *Black* would be required. The Copy Petition so amended under seal would be re-served on the Respondent and on *Impey*.

**Other Documents.**—Other pleadings or documents are amended in the same way, but if re-service is necessary the Registrar should be asked, when making the Order, whether a plain copy will be sufficient.

**Allowed on Taxation.**—Costs of amending are not allowed on taxation even if it can be shown that the facts necessitating the amendment were not within the knowledge of the party at the time the pleading was filed, *except under very special circumstances*.

FEEs.

	s.	d.
Fee for amending - - - -	2	6
Office Copy - - - -	2	6
(Above five folios, 6d. a folio.)		
Collating and Certifying first ten folios -	2	6
(Above ten folios, 3d. a folio.)		
Sealing - - - -	5	0

## ANSWER TO AMENDED PETITION.

**Appearance.**—If an *Appearance* has been entered no further entry of Appearance is required. If an *Answer to the Petition* has been filed it can be amended, so far as replying to the amendments in the Petition is concerned, *within four days* from the service of the Amended Petition. If an *Appearance* has been entered but no *Answer* has been filed, an *Answer* to the Petition, as amended, can be filed *within twenty-one days* from the service of the Amended Petition.

If no *Appearance* has been entered and no step taken in default, an *Appearance* may be entered *within eight days* and *Answer* filed *within twenty-one days*; but if a step has been taken in default, leave to appear must be obtained by *Registrar's Summons*, and leave also must be obtained to file an *Answer* if the time for so doing has expired.

**Affidavit of Service of Amended Petition**, and of Search for *Appearance* if none entered, or if entered for *Answer* if none filed, will be required.

**Affidavit.**—No Affidavit is required unless counter-charges are made in this *Answer*; but when so required it must contain the non-collusion and connivance clause, even though this may have been deposed to in an Affidavit already filed (Rule 31).

**Service.**—Plain copy on Petitioner's solicitor; the Affidavit need not be served.

**Fees and Costs allowed on Taxation.**—See "ANSWER," p. 55.

## AFFIDAVIT OF SERVICE OF AMENDED PETITION.

*B. v. B.*

I, J. L., of \_\_\_\_\_, clerk to Messrs. G. & P., of the same address, Solicitors for the Petitioner, make oath and say as follows:—

I. That I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, serve H. B., the Respondent, at \_\_\_\_\_, with a certified copy under seal of the said Division of this Court of the Amended Petition filed in this Cause, by delivering to and leaving the same with the said H. B. personally.

Sworn &c.

J. L.

## SUPPLEMENTAL PETITION.

This only becomes necessary—indeed only allowed—when any charge proposed to be made is consequent upon an act committed subsequently to the date of the Petition. Charges of acts committed prior to the date of but ascertained after filing the Petition are made by Amending Petition.

**Leave to File.**—Application to file a Supplemental Petition is made by Summons—to be served on such of the parties affected by it as have appeared. If *no Appearance has been entered* leave can be obtained by Order, *without Summons*, upon production to the Registrar of an Affidavit *by the Petitioner* in support of the application; and in order to avoid the necessity of a further Affidavit the Petitioner should verify the additional charges proposed to be made in the Supplemental Petition, and *deny the existence of “collusion or connivance,”* and state that no Appearance has been entered.

**Supplemental Petition** must be signed by Petitioner.

**Affidavit.**—The Supplemental Petition must be verified by Affidavit, *as in case of the original Petition*, which must also contain a clause that “no collusion or connivance” exists between the Petitioner and Respondent.

## SUPPLEMENTAL PETITION,

In the High Court of Justice.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

(*Divorce.*)

To the Right Honourable the President of the said Division.

*H. v. H. and B.*

The day of , 190 .

The Supplemental Petition of A. H., of  
showeth—

1. That on the and days of , 190 ,  
at , C. H., the Respondent, committed adultery  
with G. B., the Co-respondent.

Your Petitioner therefore humbly prays (*as before*).

[*Petitioner's Signature.*]

## AFFIDAVIT VERIFYING SUPPLEMENTAL PETITION.

[Usual Heading.]

H. v. H. and B.

I. A. H., of \_\_\_\_\_, Tailor, the Petitioner, make oath and say as follows:—

I. That the statement contained in the Supplemental Petition dated the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, is true to the best of my knowledge, information, and belief.

That no collusion or connivance exists between me and my wife, C. H., in any way whatever.

Sworn &c. \_\_\_\_\_ [Petitioner's Signature.]

**Service.**—An office copy *under seal* of the Supplemental Petition must be served personally on the parties affected by it. If by the charges in the Supplemental Petition another Co-respondent is made in the Cause, a copy of such Supplemental Petition under seal with a Citation must be served on the additional Co-respondent. *The Order granting leave to file the Supplemental Petition is not served.*

**Service Abroad.**—If the Supplemental Petition be served abroad, *on the Respondent*, notice should be served with it to the effect that unless the Answer be filed within (such extended time as the Registrar may determine to be necessary) the Petitioner will proceed in *default*. If so served on an additional Co-respondent *the extended time for appearing* would be stated in the Citation.

**Affidavit of Service** of the Supplemental Petition will *in all cases* be required, notwithstanding that an Appearance has been entered and Answer filed.

**Affidavit of Service.**—Form similar to that of service of “Amended Petition,” altering the word “Amended” to “Supplemental” (see p. 26).

**Substituted Service.**—If it is impossible to serve *personally* the Supplemental Petition, application must be made to the Court *by Motion*, to substitute some other mode of service—see “SUBSTITUTED SERVICE”—*or if personal service of the original Petition has been*



*dispensed with*, and the facts of the case as to difficulty of service remain the same, a Summons may be taken out before the Judge to allow service similar to that ordered in respect to the original Petition.

**Abstract for Advertisement.**—To C. B., late of .  
 TAKE NOTICE that a Supplemental Petition praying for a dissolution of marriage was filed by S. B., of .  
 on the        day of        , 190 .

**Fees and Costs allowed** are similar to those of the original Petition (see "PETITION," p. 23, and "COSTS FOR SUMMONS," p. 103).

### ANSWER TO SUPPLEMENTAL PETITION.

**Appearance.**—The Appearance entered to the original Petition is sufficient for all proceedings throughout the suit. No further Appearance is required.

If *no Appearance has been entered*, and the Petitioner is proceeding in default—*i.e. has filed an Affidavit of Search and no Appearance*—application must be made by Summons for leave to appear and file Answer. *The mere service of a Supplemental Petition* does not entitle a Respondent to enter an Appearance without leave.

**Answer** need only answer the charges contained in the Supplemental Petition.

**Filed** within four days from the service thereof, unless it be served abroad, when the time would be extended.

**Service.**—Plain copy on solicitor of Petitioner. If an Answer has been filed to the original Petition only four days are allowed to file Answer to Supplemental Petition.<sup>1</sup>

### FORM OF ANSWER.

*H. v. H. and B.*

The Respondent, C. H., by E. F., her solicitor, in Answer to the Supplemental Petition filed in this Cause, says:—

1. That she denies that she committed any of the acts of adultery as set forth in the said Supplemental Petition.

Wherefore this Respondent humbly prays (*as before*).

<sup>1</sup>[1897] *Hess v. Hess and Tankard*, C. A.

**Affidavit.**—If the Answer contain counter-charges, an Affidavit in support will have to be filed, and *in case of Respondent* must contain the "no collusion or connivance clause," *notwithstanding that such may have been deposed to in a previous Affidavit.*

**Fees and Costs allowed.**—Same as the original Answer (see p. 55).

### AFFIDAVITS (Rules 138 to 146).

With every Petition must be filed an Affidavit made by the Petitioner, verifying the facts of which he or she has personal cognizance, and deposing as to belief in the truth of the other facts alleged in the Petition, and stating that no collusion or connivance exists between the parties as required by 20 & 21 Viet. c. 85, Section 41, which is as follows:—"Every person seeking a decree of nullity of marriage, or a decree of judicial separation, or a dissolution of marriage, or decree in a suit of jactitation of marriage, shall, together with the petition or other application for the same, file an affidavit verifying the same so far as he or she is able to do so, and stating that there is not any collusion or connivance between the deponent and the other party to the marriage."

**How drawn.**—Every Affidavit is to be drawn in the first person, and the addition of the true place of abode of every Deponent is to be inserted therein. No Affidavit will be accepted having any material part written on an erasure, or any interlineation not clearly marked by the initials of the authority before whom it was sworn.

**Affidavit with Petition-Heading.**—The Affidavit verifying the Petition must be headed—

In the Matter of the Petition of ALFRED BLUNT for a dissolution of marriage (see p. 11)<sup>1</sup>  
not *Blunt v. Blunt*, and must be made by the Petitioner. Need not be served. Other Affidavits should be headed in the name of the Cause.

<sup>1</sup> *Steed v. Steed*, 1 P. & M. 364.

**Affidavit with Answer.**—When an Answer to a Petition is more than a mere traverse, an Affidavit in support of any allegation must be filed with it, and *in Respondent's case* must contain the non-collusion and connivance clause.

**Service.**—Only *copies* of Affidavits used with Motions or Summonses, or directed to be served, need be served.

PERSONS BEFORE WHOM OATHS AND AFFIDAVITS CAN BE SWORN.

**In England.**—Before—

1. A Commissioner to administer Oaths in the Supreme Court of Judicature in England.
2. Registrars and District Registrars of this Division.
3. An authorised Officer of the Division.
4. A Surrogate of any Ecclesiastical Court acting as such on the 1st January, 1858 (see 20 & 21 Vict. c. 77, Section 27).

**In Scotland, Ireland, Isle of Man, Channel Islands, Colonies, and any place out of England under the Dominion of Her Majesty.** Before any Court, Judge, Notary Public, or any person lawfully authorised in such country to administer Oaths. And also in the Isle of Man and Channel Islands, before certain other authorised persons (see 21 & 22 Vict. c. 108, Section 21).

**In Foreign parts out of Her Majesty's Dominion.**—Before any British Ambassador, Envoy, Minister, Chargé d'Affaires, Secretary of Embassy or Legation, Consul, Vice-Consul, Acting Consul, Pro-Consul, and Consular Agent. Where there is no such person, before any Foreign Local Magistrate or other person having authority to administer an Oath there (see 21 & 22 Vict. c. 108, Section 20).

See Commissioner of Oaths Acts.

## FORMS OF JURAT.

### SWORN AT THE REGISTRY.

Sworn at the Divorce Registry the \_\_\_\_\_ day  
of \_\_\_\_\_, 190 \_\_\_\_\_.

Before me,

### CONSULATE OFFICE.

Sworn at the British Consulate at Paris, in the Republic of  
France, on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

Before me,

*British Vice-Consul at Paris.*

**Re-Swearing.**—Need not sign again nor strike out first Jurat; merely write another Jurat and be sworn.

Re-sworn at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

Before me,

*If one Deponent only—*

Sworn at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

Before me,

*If more than one Deponent, and both/or all sworn at the same time—*

Sworn by both (or all) the above-named Deponents (*otherwise the names of the Deponents must be inserted—see Rule 139*).

Before me,

*If the Deponent be a Marks-man or is blind or illiterate—*

Sworn by the said \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day  
of \_\_\_\_\_, 190 \_\_\_\_\_, this Affidavit having been first read  
over to him [*or her*], who seemed perfectly to under-  
stand the same, and made his [*or her*] mark thereto in  
my presence.

Before me,

John <sup>his</sup>X Scott.  
<sub>mark</sub>

*If the Deponent be deaf and dumb, but can read, write out the usual form of Oath for him to read, then administer the Oath by pointing to the words of the Form, and let him kiss the Book.*

### JURAT.

Sworn at \_\_\_\_\_, in the County of \_\_\_\_\_, this \_\_\_\_\_ day  
of \_\_\_\_\_, 190 \_\_\_\_\_.

Before me,

*If the Deponent be deaf and dumb, and unable to read, then the Oath should be interpreted by signs, and the form of swearing through an interpreter (altered as to signs), and that applicable to a Marks-man, adopted.*

*If the Deponent be unacquainted with the English language—*

#### OATH OF INTERPRETER.

You swear that you well understand the \_\_\_\_\_ and English languages, and that you have truly, distinctly, and audibly interpreted the contents of this Affidavit to the Deponent E. F., and that you will truly interpret the Oath to be administered to him. So help you God.

Sworn by the said \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, by interpretation into the \_\_\_\_\_ language by C. D., of \_\_\_\_\_, who had previously sworn that he was well acquainted with both languages and faithfully to interpret.

Before me,

The Interpreter should sign his name on the Affidavit for the purpose of identification.

### FORM OF OATH.

You do swear that that is your name and handwriting, and that the contents of this your Affidavit are true. So help you God.

#### Scotch Form.

If any person to whom an Oath is administered desires to swear with uplifted hand, as usual in Scotland, he shall be permitted to do so (Oaths Acts, 1888, Section 5).

I swear by Almighty God that the contents of this my Affidavit are true.

No book is used, the Deponent merely raising his right hand above his head while repeating the above words of the Oath. (See "Stringer's Oaths and Affirmations in England and Ireland.")

**AFFIRMATIONS AND ATTESTATIONS.**

*Affirmation by a Quaker (3 & 4 Will. IV. c. 49).*

AFFIRMATION.—Is that your name and handwriting? <sup>1</sup>

I, A. B., do solemnly, sincerely, and truly declare and affirm that the contents of this my Affirmation are true.

ATTESTATION.—Affirmed at                  this          day of                  , 190          ,  
Before me,

*Affirmation by a Separatist (3 & 4 Will. IV. c. 82).*

AFFIRMATION.—I, A. B., do in the presence of Almighty God solemnly, sincerely, and truly affirm and declare that I am a member of the religious sect called "Separatists," and that the taking of any oath is contrary to my religious belief as well as essentially opposed to the tenets of that sect. And I do also in the same solemn manner affirm and declare that the contents of this my Affirmation are true.

ATTESTATION.—Affirmed at                  in pursuance of the  
Act of 3 & 4 Will. IV. c. 82 this                  day of                  , 190          ,  
Before me,

*Affirmation by a person who is a Quaker or Moravian  
(1 & 2 Vict. c. 77).*

AFFIRMATION.—Is that your name and handwriting?

I, A. B., being one of the people called "Quakers" (or of the United Brethren called "Moravians"), and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm that the contents of this my Affirmation are true.

ATTESTATION.—Affirmed by the affirmant A. B., he being one of the people called "Quakers" (or of the United Brethren called "Moravians"), at                  this                  day of                  , 190          ,  
Before me,

---

<sup>1</sup> The affirmant repeats the Form of Affirmation after the Commissioner.

*Affirming under the Common Law Procedure Act  
(17 & 18 Vict. c. 125, Section 20).*

AFFIRMATION.—I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is according to my religious belief unlawful, and I do also solemnly, sincerely, and truly affirm and declare that the contents of this my Affirmation are true.

ATTESTATION.—Affirmed by A. B. at \_\_\_\_\_ this \_\_\_\_\_ day  
of \_\_\_\_\_, 190 \_\_\_\_\_,

Before me.

*Deponent on whose conscience an Oath has no binding effect may  
affirm (Oaths Act, 1888).*

Form.—Affirmed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, by A. B., who has objected to take an oath, stating as the ground of such objection that he [*or she*] has no religious belief [*or that the taking of an oath is contrary to his [*or her*] religious belief*],

Before me.

Exhibits.—Documents annexed to and documents referred to in the Affidavit:—

If as “hereunto annexed and marked by the letter A,” must be filed with the Affidavit.

If “produced and shown to me at the time of swearing this my Affidavit and marked with the letter A,” the document need not be filed, but in each case the document is signed by the Commissioner, and charged for accordingly (1s.).

Filing Fee: Affidavits, 2s. 6d.; Exhibits, *nil*.

ALLOWED ON TAXATION.

	s.	d.
Instructions - - - - -	6	8
Not allowed when made by the Solicitor in the Suit.		
Drawing Affidavit, per folio - - -	1	0
Engrossing Affidavit, per folio - - -	0	4
Copy for Service (when necessary), per folio - - -	0	4
Service of same - - - - -	2	6
Attending, or attending Deponent to be sworn	6	8
Paid Commissioner - - - - -	1	6
Attending Filing - - - - -	6	8
Filing Fee - - - - -	2	6

### CITATIONS (Rules 8 to 18).

**Citations.**—Should be written plainly on the form to be obtained at the Divorce Registry, or of law stationers, and contain the names and addresses of the parties; not “late of,” as that suggests a difficulty in serving; “*His*” or “*Her*” Petition, not “*a*” Petition.

**Year of Reign.**—The year of the Reign being sometimes incorrectly stated, it is well to remember that His present Majesty, King Edward VII., ascended the Throne on the 22nd January, 1901.

**Charges.**—All the charges contained in the Petition—“Cruelty,” “Adultery,” &c.—are to appear in the Citation, and in accordance with the words of the Statute applicable to the Petition.

**Damages.**—Claims for damages, or prayer for the custody of the children, are not to be inserted.

**Service Abroad.**—No leave is required for service out of jurisdiction (20 & 21 Viet. c. 85, Sections 42 and 49), but further time for appearing is given in the Citation: for instance—

France	-	-	-	-	-	14 days.
Malta	-	-	-	-	-	21 ..
America	-	-	-	-	-	30 ..
Cape, India, or Australia	-	-	-	-	-	2 months.

The time for entering an Appearance is usually the same as that given in the White Book for time to appear to a Writ of Summons after service out of jurisdiction.

**Name and address of Party extracting Citation.**—The name of the solicitor (or the party extracting), and address, within three miles of the General Post Office, must appear at the bottom of the Citation, which should be folded in four and endorsed in the Cause.

**Extracting.**—The Citation with a Præcipe is left at the Divorce Registry with the Petition and Affidavit, and will be obtained in the Public Office the following day, signed and sealed (when the copy Petition is called for).



## PRECIPE FOR CITATION.

[*Usual Heading.*]

Citation for A. B., of \_\_\_\_\_, against C. B., of \_\_\_\_\_,  
 to appear in a suit for \_\_\_\_\_ by reason of \_\_\_\_\_,  
 (Signed) C. D., Solicitor for the said A. B.

[*Here insert the address required within three miles of the General Post Office.*] This is endorsed in the Cause.

**Service** shall be effected by personally delivering a true copy of the Citation to the party cited, and producing the original, if required, together with a certified copy of the Petition, under seal of the Court. The Citation *must not be served by the Petitioner*. No time is limited for serving the Citation, nor does it require to be renewed or re-sealed.

**Acceptance of Service** by a solicitor will not suffice, even though it be followed by the entering of an Appearance. If Personal Service cannot be effected application must be made to the Court to substitute some other mode of service. (*See "SUBSTITUTED SERVICE."*)

**Duplicate Citations** may be had if considered necessary, one to be sent to America or elsewhere, the other for service here in the event of the party being on his way back.

**When filed.**—The Citation, with the Certificate of Service endorsed thereon, must be filed in the Registry prior to the application to set the Cause down being made. This can be done any time after the time fixed in the Citation for appearing has expired; but the *Certificate is required whether an Appearance be entered or not*, so should be endorsed on the Citation *immediately after service*.

## CERTIFICATE OF SERVICE (RULE 14.)

This Citation was duly served by the undersigned G. H. on the \_\_\_\_\_ within-named C. B., of \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_.

(Signed) \_\_\_\_\_ G. H.

**Filing, after appearance.**—If an Appearance is entered the Citation (*without an Affidavit of Service*) is filed.

**Affidavit of Service.**—If no Appearance is entered the Citation must be annexed to an Affidavit of Service, and marked by the Commissioner before whom the Affidavit is sworn. *No Form of Exhibit is required* to be written on the Citation; it is sufficient to mark it with the letter (“A” or “B”), as mentioned in the Affidavit, and for the Commissioner to sign his name opposite to such letter.

**Service Abroad.**—When a Citation is served abroad an Affidavit of Service should be returned with it, *in case no Appearance is entered*, and particular instructions should be given to mark the Citation with the *letter of identification* (as mentioned in the Affidavit), to get it *signed by the Commissioner* before whom the Affidavit is sworn, and to endorse on it the *Certificate of Service*.

The Affidavit of Service may include the *Search for Appearance* when made by the same party, or be a joint Affidavit where the service is by one and the search by another. When Citations are served on the Respondent and Co-respondent by the same party, one Affidavit of Service annexing the two—or more—Citations is sufficient.

### AFFIDAVIT OF SERVICE OF CITATION.

[Usual Heading.]

A. B. against C. B. and R. S.

I, C. D., of \_\_\_\_\_, make oath and say—

That the Citation, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, issued under seal of this Court against C. B., the Respondent [*or R. S., the Co-respondent*] in this Cause, and now herewith annexed, marked with the letter “A.” was duly served by me on the said C. B. [*or R. S.*] at \_\_\_\_\_, by showing to him the original under seal, and by leaving with him a true copy thereof on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

And I further make oath and say that I did at the same time and place deliver to the said C. B. [*or R. S.*] personally a certified copy, under seal of this Court, of the Petition filed in this Cause.

Sworn &c.

**Lost Citation.**—It being a direction of the Court that every Citation shall be returned and filed in the Registry, its loss incurs both expense and trouble, and sometimes even renders it necessary to begin *de novo*.

Application can be made to the Court on motion, if sufficient evidence of the service can be given, to dispense with further service, or if an examined copy of the Citation has been kept and can be annexed to an Affidavit of Service, the production of the original may be dispensed with; but when the time comes for setting down the Cause the Registrar will not give his certificate that the pleadings are in order until he is perfectly satisfied as to the service, or the Court has dispensed with further service and allowed the Cause to be set down without the return of the Citation.

### CITATION BY WIFE FOR JUDICIAL SEPARATION.

In the High Court of Justice.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

(*Divorce.*)

EDWARD VII., by the grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith.

To E. T., of

WHEREAS S. T., of \_\_\_\_\_, claiming to have been lawfully married to you, has filed her Petition against you in the Divorce Registry of Our said Court, praying for a judicial separation, wherein she alleges that you have been guilty of—

Adultery; *or*

Cruelty towards her; *or*

Adultery and cruelty towards her; *or*

Desertion of her without cause for two years and upwards;

*or*

Adultery and desertion of her without cause for two years and upwards; *or*

Cruelty towards her and desertion of her without cause for two years and upwards; *or*

Adultery and cruelty towards her and desertion of her  
without cause for two years and upwards; *or*

Praying for a judicial separation, you having failed to  
comply with a decree made by the Court in a suit,  
instituted by her, for Restitution of Conjugal Rights,  
and dated the            day of            , 190 :

NOW THIS IS TO COMMAND YOU that within eight days after  
service hereof on you, inclusive of the day of such service, you  
do appear in Our said Court then and there to make answer  
to the said Petition, a copy whereof, sealed with the Seal of  
Our said Court, is herewith served upon you.

AND TAKE NOTICE that in default of your so doing Our said  
Court will proceed to hear the said charge proved in due course  
of law, and to pronounce sentence therein, your absence notwith-  
standing.

AND TAKE FURTHER NOTICE that, for the purpose aforesaid, you  
are to attend in person, or by your solicitor, at the Divorce  
Registry of Our said Court, at Somerset House, Strand, in the  
County of Middlesex, and there to enter an Appearance in a book  
provided for that purpose, without which you will not be allowed  
to address the Court, either in person or by counsel, at any  
stage of the proceeding in the Cause.

Dated at London the            day of            , One Thousand  
Nine Hundred and            and in the            year of Our Reign.

Citation issued by A. B., of            , Solicitor  
for the Petitioner.

D. H. O., *Registrar.*

#### CITATION BY HUSBAND FOR JUDICIAL SEPARATION.

To C. B., of

WHEREAS A. B., of            , claiming to have been lawfully  
married to you, has filed his Petition against you in the Divorce  
Registry of Our said Court, praying for a judicial separation,  
wherein he alleges that you have been guilty of—

Adultery; *or*

Cruelty towards him; *or*

Desertion of him without cause for two years and upwards;  
*or*

Cruelty towards him and desertion of him without cause for  
two years and upwards; *or*

Praying for a judicial separation, you having failed to comply with a decree made by the Court in a suit, instituted by him, for Restitution of Conjugal Rights, and dated the                    day of                    , 190    :

NOW THIS IS TO COMMAND YOU &c.

### WIFE AGAINST HUSBAND FOR DISSOLUTION.

To P. D., of

WHEREAS E. D., of                    , claiming to have been lawfully married to you, has filed her Petition against you in the Divorce Registry of Our said Court, praying for a dissolution of marriage, wherein she alleges that you have been guilty of—

Adultery coupled with cruelty towards her; *or*

Adultery coupled with desertion of her for two years and upwards, without reasonable excuse; *or*

Adultery coupled with cruelty towards her and desertion of her for two years and upwards, without reasonable excuse; *or*

Adultery, and have failed to comply with a decree made by the Court in a suit, instituted by her, for Restitution of Conjugal Rights, and dated the                    day of                    , 190    ; *or*

Bigamy with adultery; *or*

Incestuous adultery; *or*

Rape; *or*

Sodomy; *or*

Bestiality:

NOW THIS IS TO COMMAND YOU &c.

### HUSBAND AGAINST WIFE AND CO-RESPONDENT FOR DISSOLUTION: CITATION AGAINST RESPONDENT.

To S. D., of

WHEREAS A. D., of                    , claiming to have been lawfully married to you, has filed his Petition against you in the Divorce Registry of Our said Court, praying for a Dissolution of Marriage, wherein he alleges that you have been guilty of adultery:

NOW THIS IS TO COMMAND YOU &c.

## CITATION AGAINST CO-RESPONDENT.

To G. A., of .

WHEREAS A. D., of , claiming to have been lawfully married to S. D., has filed his Petition against her in the Divorce Registry of Our said Court, praying for a Dissolution of Marriage, wherein he alleges that you have been guilty of adultery with her:

NOW THIS IS TO COMMAND YOU &c.

## CITATION BY RESPONDENT.

(29 Vict. c. 32, Section 2.)

In any suit instituted for *Dissolution of Marriage*, if the Respondent shall oppose the relief sought on the ground in case of such a suit instituted by a husband of his adultery, cruelty, or desertion, or in case of such a suit instituted by a wife on the ground of her adultery or cruelty, the Court may in such suit give to the Respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had filed a Petition seeking such relief. This, it will be seen, only applies to cases where the prayer of the Petition is for *Dissolution*. The Respondent may, in Answer to the Petition, set up grounds for a decree of nullity, and pray for such decree. When the Respondent in the Answer charges the Petitioner with adultery, *but does not ask for any relief*, the person so charged cannot be cited nor intervene (*Lowe v. Lowe*, [1899] C. A.).

In a suit for *Judicial Separation* the Respondent in his or her Answer cannot pray for a Dissolution of Marriage. This can only be done by petition in the usual way. In the case of the husband being Respondent, and in his Answer charging the Petitioner with adultery, the alleged adulterer must be made a Co-respondent, a Citation against him extracted, and a sealed copy of the Answer served with it. A copy of the Petition is not served on the Co-respondent, nor is any Citation served on the Petitioner. The style of the Cause is only altered by adding the name of the Co-respondent, thus:—

Rose v. Rose—Alfred Budd, cited.  
Amy John

A sealed copy of the Answer must be served on the Petitioner.

## CITATION BY RESPONDENT.

To A. B., of

WHEREAS E. R., of , claiming to have been lawfully married to J. R., of , has filed her Petition against him in the Divorce Registry of Our said Court, praying for a dissolution of marriage, wherein she alleges that he has been guilty of adultery coupled with cruelty towards her:

AND WHEREAS the said J. R. has filed in the said Registry his answer to the said Petition, wherein he alleges that you have been guilty of adultery with the said E. R. and prays for a dissolution of marriage:

NOW THIS IS TO COMMAND YOU that within eight days after service hereof on you, inclusive of the day of such service, you do appear in Our said Court, then and there to make reply<sup>1</sup> to the said Answer, a copy whereof, sealed with the Seal of Our said Court, is herewith served upon you.

AND TAKE NOTICE &c.

## NULLITY OF MARRIAGE.

DECREE NISI DISSOLVING PRIOR MARRIAGE NOT MADE  
ABSOLUTE.

To E. C. (otherwise E. E.), of

WHEREAS H. C., of , has filed his Petition against you in the Divorce Registry of Our said Court, praying that the ceremony of marriage had and solemnised at on the day of , 1900, between him and you, may be pronounced null and void to all intents and purposes in the law whatever, by reason that at the time of the celebration of such marriage the decree *nisi* pronounced on the day of , 189 , dissolving the marriage of you and P. E., had not been made absolute:

NOW THIS IS TO COMMAND YOU &c.

---

<sup>1</sup> The time for reply is twenty-one days after service of the Citation.

## BIGAMY.

To E. S. (otherwise E. T.), of

WHEREAS C. S., of , has filed his Petition against you in the Divorce Registry of Our said Court, praying that the ceremony of marriage had and solemnised at on the day of , 1900, between him and you may be pronounced null and void to all intents and purposes in the law whatever, by reason that J. T., your lawful husband by a former marriage, was living at the time the said form or ceremony of marriage was solemnised between you the said E. S. and the said C. S.:

NOW THIS IS TO COMMAND YOU &c.

BY WIFE WHOSE FIRST HUSBAND WAS ALIVE AT THE  
DATE OF HER SECOND MARRIAGE.

To J. B., of

WHEREAS K. B. (otherwise K. C.) has filed her Petition against you in the Divorce Registry of Our said Court, praying that the ceremony of marriage had and solemnised at on the day of . 190 . between her and you may be pronounced null and void to all intents and purposes in the law whatever, by reason that J. C., her lawful husband by a former marriage, was living at the time the said form or ceremony of marriage was solemnised between her and you:

NOW THIS IS TO COMMAND YOU &c.

BY GUARDIAN.—INSANE WHEN MARRIED.

To J. L., of

WHEREAS L. L. (otherwise L. B.), of , a minor (by J. B., her Guardian, duly elected), has filed her Petition against you in the Divorce Registry of Our said Court, praying that the ceremony of marriage had and solemnised at on the day of . 190 , between her and you may be pronounced null and void to all intents and purposes in the law whatever, by reason that at the time the said ceremony of marriage was solemnised you the said J. L. were of unsound mind and incapable of contracting marriage:

NOW THIS IS TO COMMAND YOU &c.



## DURESS OF FRAUD.

To J. F., of

WHEREAS E. F. (otherwise E. C.), of , has filed her Petition against you in the Divorce Registry of Our said Court, praying that the ceremony of marriage had and solemnised at on the day of , 190 , between her and you may be pronounced null and void to all intents and purposes in the law whatever, by reason that she was induced to be a party to the said ceremony of marriage, not of her own free will, but through fear, duress, and terror of you the said J. F.:

NOW THIS IS TO COMMAND YOU &c.

## UNDUE PUBLICATION OF BANNS.

To J. M., of

WHEREAS A. M. (otherwise A. C.), of , has filed her Petition against you in the Divorce Registry of Our said Court, praying that the ceremony of marriage had and solemnised at on the day of , 190 , between her and you may be pronounced null and void to all intents and purposes in the law whatever, by reason that it was celebrated illegally and without due publication of banns to the knowledge of you the said J. M.:

NOW THIS IS TO COMMAND YOU &c.

## IMPOTENCY OF HUSBAND.

To H. B., of

WHEREAS S. B. (otherwise S. L.), of , has filed her Petition against you in the Divorce Registry of Our said Court, praying that the ceremony of marriage had and solemnised at on the day of , 190 , between her and you may be pronounced null and void to all intents and purposes in the law whatever, by reason of the frigidity, impotency, and malformation<sup>1</sup> of the parts of generation of you the said H. B.:

NOW THIS IS TO COMMAND YOU &c.

<sup>1</sup> *Husband's Citation against Wife*.—It is sufficient to say "by reason of the malformation of the parts and organs of generation of you the said S. B." [*or Hysteria*]"—"by reason of the incapacity of the Respondent to consummate the said marriage."

*In the Answer* Respondent, denying the facts alleged in the Petition, can pray for *Restitution of Conjugal Rights*. No Citation is required to be issued. No demand for return is necessary to be made. If at the hearing the Court makes a Decree for Restitution of Conjugal Rights the subsequent proceedings will be in accordance with such Decree (see "RESTITUTION OF CONJUGAL RIGHTS").

Respondent can allege Impotence or Malformation of Petitioner, and ask for Decree of Nullity.

### CONSANGUINITY OF PARTIES.

To A. B. (otherwise A. T.), of . . . . .

WHEREAS C. B., of . . . . ., has filed his Petition against you in the Divorce Registry of Our said Court, praying that the ceremony of marriage had and solemnised at . . . . . on the . . . . . day of . . . . ., 190 . . . between him and you may be pronounced null and void to all intents and purposes in the law whatever, by reason that you are the lawful niece<sup>1</sup> of A. B., deceased, whilst living the lawful wife of him the said C. B.:

NOW THIS IS TO COMMAND YOU &c.

### HUSBAND AGAINST CO-RESPONDENT FOR DAMAGES.

(20 & 21 Vict. c. 85. Section 33.)

### CITATION AGAINST CO-RESPONDENT.

To G. A., of . . . . .

WHEREAS A. D., of . . . . ., claiming to have been lawfully married to S. D., has filed his Petition against you in the Divorce Registry of Our said Court, praying for damages from you, wherein he alleges that you have been guilty of adultery with his wife the said S. D.:

NOW THIS IS TO COMMAND YOU &c.

---

<sup>1</sup> *Deceased Wife's Sister*.—By reason that you are the natural and lawful sister of A. B., deceased, whilst living the lawful wife of him the said C. B.

## CITATION AGAINST WIFE AS RESPONDENT.

To S. D., of

WHEREAS A. D., of , claiming to have been lawfully married to you, has filed his Petition against G. A. of , in the Divorce Registry of Our said Court, praying for damages from him, wherein he alleges that you have been guilty of adultery with him the said G. A. :

NOW THIS IS TO COMMAND YOU &c.

PETITION (Form of), see p. 19.

## JACTITATION OF MARRIAGE.

To E. L. (otherwise E. T.), of

WHEREAS J. L., of , has filed his Petition against you in the Divorce Registry of Our said Court, praying that you be ordered to cease and desist from boasting and asserting that you are the wife of the said J. L., and that you be enjoined perpetual silence in the premises :

NOW THIS IS TO COMMAND YOU &c.

## FORM OF PETITION.

*In the High Court of Justice.*

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

*(Divorce.)*

To the Right Honourable the President of the said Division.

Dated

The Petition of J. L., of , showeth—

That E. T. (otherwise E. L.), of , did in and since the month of , 190 , at , and at divers other places, wilfully and without the authority of your Petitioner boast and assert that she was the wife of your Petitioner.

That the said E. T. is in nowise the wife of your Petitioner. nor was she at the time of such boasting.

That the said E. T. refuses to desist from boasting and asserting that she is the wife of your Petitioner.

Your Petitioner therefore humbly prays that your Lordship will be pleased to order that the said E. T. do cease and desist from boasting, and that she be enjoined perpetual silence in the premises, and that your Lordship will make such further and other orders in the premises as to your Lordship may seem meet.

J. L.

### DECLARATION OF LEGITIMACY.<sup>1</sup>

To A. B., of

WHEREAS C. B., of , claiming to be domiciled in England and one of Our natural born subjects, and to be the legitimate son of J. B. and A. B., has filed his Petition in the Divorce Registry of Our said Court, praying that the marriage between the said J. B. and A. B. be declared to be a valid marriage, and that he be declared to be the legitimate child and issue of the said marriage:

AND WHEREAS it was ordered by an Order of the Court, bearing date the day of , 190 , that you the said A. B., a natural and lawful brother of the said C. B., be cited to see the proceedings in this suit:

NOW THIS IS TO COMMAND YOU that within eight days of the service of this on you, inclusive of the day of such service, you do appear in Our said Court then and there to make answer to the said Petition, a copy whereof, sealed with the Seal of Our said Court, is herewith served upon you.

AND TAKE NOTICE that in default of your so doing Our said Court will proceed to hear the said Petition proved in due course of law, and to pronounce judgment therein, your absence notwithstanding &c.

Citation issued by

### RESTITUTION OF CONJUGAL RIGHTS.

To J. S., of

WHEREAS C. S., of , claiming to have been lawfully married to you, has filed his Petition against you in the Divorce Registry of Our said Court, praying for a Restitution of Conjugal Rights:

<sup>1</sup> See "ACT ON PETITION," p. 164.

NOW THIS IS TO COMMAND YOU &c.

AND TAKE NOTICE that in default of your so doing Our said Court will proceed to hear the said Petition proved in due course of law &c.

**DECREE FOR RESTITUTION NOT COMPLIED WITH.**

*For Forms of Citation see pp. 40 and 41, and the following:—*

WIFE AGAINST HUSBAND FOR DISSOLUTION.

*After a Decree for Judicial Separation.*

To P. D., of

WHEREAS E. D., of , claiming to have been lawfully married to you, has filed her Petition against you in the Divorce Registry of Our said Court praying for a *dissolution of marriage*, wherein she alleges that you have been guilty of —

Adultery coupled with cruelty towards her; *or*

Adultery coupled with desertion of her for two years and upwards, without reasonable excuse; *or*

Adultery coupled with cruelty towards her and desertion of her for two years and upwards, without reasonable excuse:

NOW THIS IS TO COMMAND YOU that within eight days after service hereof on you, inclusive of the day of such service, you do appear in Our said Court then and there to make answer to the said Petition &c.

The charge upon which the Decree of Judicial Separation was made does not require to be proved again: the Decree is evidence of the fact.

For service of a Citation on a Prisoner see p. 66.

FEEs.

	s.	d.
With the Praecipe - - -	5	0

COSTS ALLOWED ON TAXATION.

Instructions for Citation - - -	6	8
Citation and Parchment and Praecipe - - -	7	6
Attending getting Sealed - - -	6	8
Paid Stamp - - -	5	0
Copy for Service - - -	1	8
Service of Petition and Citation - - -	5	0

(or according to circumstances.)

	s.	d.
Certificate of Service - - -	2	6
Attending filing Citation - - -	6	8
Paid Stamp - - - - -	2	6
(If no appearance, then the Citation will be annexed to an Affidavit of Service, and further allowance.)		
Attending Searching for Appearance (none found) - - - - -	6	8
Drawing and Engrossing Affidavit of Service - - - - -	6	8
Marking Exhibit - - - - -	1	0
Attending Swearing - - - - -	6	8
Paid Oath and Exhibit - - - - -	2	6
Paid Filing - - - - -	2	6
Drawing and Engrossing Affidavit of Search - - - - -	6	8
Attending Swearing - - - - -	6	8
Paid Commissioner - - - - -	1	6
Paid Filing - - - - -	2	6
Paid Search—each Respondent - - -	1	0

### APPEARANCE (Rules 19 to 24).

**Entering.**—Before an Answer to any Petition can be filed an Appearance by or on behalf of the party must be entered at the Divorce Registry. *This can only be done by the party, in person, or by his or her solicitor.*

#### APPEARANCE TO CITATION.

An Appearance to the Citation is sufficient for all purposes; no second Appearance is required. Forms are supplied at the Registry.

Petitioner's name in full.

Respondent's and Co-respondent's names in full.

*A. B. against C. B. and D. E.*

F. G. and Co., of \_\_\_\_\_, solicitors, appear for the Respondent.

[*Name of Respondent or Co-respondent or Solicitor, and address within three miles of the General Post Office.*]

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

This form is adapted to all Appearances by simply altering the notification—"Appearance to Citation"—as required, thus:—

Appearance to Petition for Alimony <i>pendente lite</i> .	
"                    "                    Permanent Alimony.	
"                    "                    Variation of Settlements	by Intervener.

Appearance under Protest.

The husband, though not appearing to the Citation, may yet enter an Appearance to a Petition for Alimony and be heard thereon, but this will not entitle him to be heard on any other part of the case.

**Trustees.**—A solicitor acting for several trustees need not enter an Appearance for each, but may include them all in one Appearance.

**King's Proctor.**—A separate Appearance Book is kept for the King's Proctor, and parties intervening.

**Stamps and Indexing.**—The party entering the Appearance will affix the stamps on the form, and will also enter the name of the Cause in the Index.

**Notice** of appearing should be given to the other side.

**Time.**—An Appearance should be entered within the time specified in the Citation, which is—*unless served abroad and time extended*—eight days after service, *inclusive* of the day of service but *exclusive* of Sundays, Christmas Day, and Good Friday (Rule 123), but it may be entered any time before a proceeding has been taken in default (Rule 20), *i.e.* an Affidavit of No Appearance has been filed (Rule 17). The filing of the Citation and Affidavit of Service is not a step in default.

**Out of Time.**—Take out a Summons for further time, or for leave to appear and file an Answer, notwithstanding that the time for so doing has expired.

**Under Protest.**—A party cited wishing to raise any question as to the jurisdiction of the Court may so appear (Rule 22).

**Amending.**—Where this is necessary take out a Summons for leave to amend, and make the alteration with red ink. Mere clerical errors the Registrars will allow to be corrected without Summons.

**Lady Intervening.**—A person with whom the husband is alleged, in the Wife's Petition or Answer,<sup>1</sup> to have committed adultery may apply by Summons, *ex parte*, for leave to enter an Appearance as a *Respondent* (20 & 21 Viet. c. 85, Section 28), and leave being granted she would be entitled to file her Answer and proceed in the suit, the Title of the Cause being altered from "*B. v. B.*" to "*B. v. B., and G. intervening as a Respondent.*"

FEES.				s.	d.
Entering Appearance	-	-	-	2	0
Amending Appearance	-	-	-	2	6
Searching	-	-	-	1	0

#### COSTS ALLOWED ON TAXATION.

Attending Entering Appearance	-	-	-	6	8
Drawing and Service of Notice	-	-	-	4	0
Paid Fees	-	-	-	2	0

### ANSWER, REPLY, &c. (Rules 28 to 33).

**Filing Answer to Petition.**—An Appearance having been entered the Answer must be filed at the Divorce Registry within twenty-one days after service of the Citation, *exclusive* of Sundays and *exclusive* of the day of service, unless extension of time by Summons has been obtained (Rule 28).

**Citation served Abroad.**—Where the time stated in the Citation for entering an Appearance is more than eight days, the Answer may be filed within fourteen days after the expiration of such extended time, so if thirty-one days are given in the Citation for entering the Appearance the time within which the Answer may be filed will be forty-five days, *exclusive* of Sundays and *exclusive* of the day of service (Rule 186).

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<sup>1</sup> This only applies to suits for Dissolution. In a suit for Judicial Separation leave to intervene was refused (*Knowles v. Knowles*, Chambers, 1896).



## FORM OF ANSWER.

**In the High Court of Justice.**

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

*(Divorce.)*

The            day of            , 190    .

*A. B. v. C. B. and R. S.*

The Respondent, C. B. (by C. D., her solicitor) [*or in person*],  
in answer to the Petition filed in this Cause, saith—

1. That she never committed the acts of adultery, or any of them, alleged in the said Petition:
2. Respondent further saith that on the       day of       , 190    , the said A. B., at       , committed adultery with K. L.

*[In like manner Respondent is to state cruelty, connivance, condonation, or other matters relied on as a ground for dismissing the Petition.]*

Wherefore this Repondent humbly prays—

That your Lordship will be pleased to reject the prayer of the said Petition and Decree &c.

*[Need not be signed.]*

## AFFIDAVIT IN SUPPORT OF ANSWER.

*B. v. B. and S.*

I, C. B., of            , the Respondent, make oath and say as follows:—

1. That the statements set forth in Paragraphs       and       of my Answer dated the       day of       , 190    , are true.
2. That the statements set forth in Paragraphs       and       are true to the best of my knowledge, information, and belief.
3. That no collusion or connivance exists between me and the Petitioner in any way whatever.

Sworn &amp;c.

C. B.

**Affidavit.**—No Affidavit is necessary if the Answer either by Respondent or Co-respondent is a simple traverse of the charges contained in the Petition; but where counter-charges are made either by Respondent or Co-respondent—or where *Co-respondent alleges that he did not know that Respondent was a married woman*—they must be supported by Affidavit made by the party, and in Respondent's case such Affidavit must further state that "no collusion or connivance exists between me the Deponent and the Petitioner" (Rule 31). The Co-respondent is not required to depose as to "no collusion or connivance."

**Facts in Answer.**—Need not set out *seriatim* the charges in the Petition. Sufficient to say "the Respondent by his or her solicitor [or in person], in answer to the Petition filed in this Cause, denies the charges as set forth in the said Petition." *If no Answer*, an Affidavit of Search for Answer must be filed before applying for Registrar's Certificate.

**Service.**—A plain copy of the Answer is sufficient for service. Serve on solicitor of Petitioner, or if Petitioner is conducting the suit in person leave the copy at the address given in Petition. Copy Affidavit need not be served.

**Out of Time.**—Any pleading not filed within the time allowed cannot be filed without leave, to be obtained on Summons (Rule 37), and if filed, notwithstanding the time for so doing has elapsed, the error will be discovered when application is made for the Registrar's Certificate to set the Cause down, and leave will have to be obtained by Summons for the pleading to remain as filed.

**Reply.**—Within fourteen days from the delivery of the Answer the Petitioner may file a Reply. This is only necessary where counter-charges or allegations are made in the Answer, or Co-respondent alleges that he did not know Respondent was a married woman.

**When not required.**—A Reply is unnecessary where the Answer is a simple traverse or where mere justification is pleaded, as when "the Respondent denies that he has been guilty of cruelty as alleged, but, if so, the same was caused by provocation."

**Form.**—Similar to the Answer. The Reply to Answer given above would be—

The            day of                            , 190   .

*A. B. v. C. B. and R. S.*

The Petitioner A. B. (by C. S., his solicitor), in reply to the Respondent's Answer filed in this Cause, saith—

That he joins and takes issue respectively on the said Answer. Wherefore the Petitioner prays (*as before*).

**Service.**—Same as in the case of ANSWER.

**Rejoinder**, and all subsequent pleadings, are filed within fourteen days of the delivery of the pleading they answer, and plain copies delivered to the opposite parties.

Answer to AMENDED PETITION, see p. 26.

Answer to SUPPLEMENTAL PETITION, see p. 29.

Answer to PETITION FOR DISSOLUTION AND CITATION BY RESPONDENT, see pp. 42 and 43.

Answer to PETITION FOR NULLITY, see p. 46.

FEEs.

	£	s.	d.
Filing Answer, Reply, or any other pleading - - - - -	0	2	6

ALLOWED ON TAXATION.

Instructions to Defend - - - - -	0	6	8
Attending retaining Mr. ——— - - - - -	0	6	8
Paid his Fee and Clerk - - - - -	1	3	6
Perusing Petition - - - - -	0	6	8
Perusing Citation - - - - -	0	1	4
Attending entering Appearance - - - - -	0	6	8
Paid - - - - -	0	2	0
Notice of Appearance - - - - -	0	4	0
Instructions for Answer - - - - -	0	6	8
Drawing same and Copy - - - - -	1	0	0
Drawing Affidavit in support of Answer	0	13	4
Attending Respondent Swearing - - - - -	0	6	8
Paid Commissioner - - - - -	0	1	6
Attending filing Answer and Affidavit	0	6	8

	£	s.	d.
Paid - - - - -	0	5	0
Copy Answer for service—per folio -	0	0	4
Attending serving Petitioner's Solicitor	0	3	4
<i>If settled by Counsel—</i>			
Attending Counsel with Petition to Settle - - - - -	0	3	4
Copy for Counsel—per folio -	0	0	4
Paid his Fee and Clerk - - -	1	3	6

## REPLY.

Perusing Answer - - - - -	0	6	8
Instructions for Reply - - - - -	0	6	8
Drawing same (or 1s. per folio)	0	5	0
Attending filing - - - - -	0	6	8
Paid filing - - - - -	0	2	6
Copy for service—per folio -	0	0	4
Attending serving same - - -	0	3	4
Perusing Reply - - - - -	0	6	8

If settled by Counsel, same as above.

### CONSOLIDATING CAUSES.

When the pleadings are sufficiently advanced in Causes where there are Cross Petitions, a *Notice*, as follows, will be sent to the Parties (or their solicitors), and upon an Order being made the Suits will be amalgamated and carried on *under the Joint Titles set out in the Order*, the Cause in which the Petition was first filed taking precedence.

The *Minutes* will then be entered in the *combined* Action, and all papers filed afterwards should be endorsed with the Title named in the *Order of Consolidation*.

## NOTICE.

*B. v. B.—B. v. B. and K.*

It has been brought to the notice of the Registrars that the Petitioners and Respondents in the above Suits now in progress in this Division of the Court are the same persons.

I have therefore to request that you will attend before the Registrars on the instant, at o'clock, to show cause (if any) why such Suits should not be consolidated.

## ORDERS.

*B. v. B.*

Upon hearing the solicitors for both parties I do order that this Suit be consolidated with the Suit of *B. v. B.* and *K.*

*B. v. B. and K.*

Upon hearing the solicitors for all parties I do order that this Suit be consolidated with the Suit of *B. v. B.*, and be carried on in the Title of

*B. v. B. and K.*

and

*B. v. B.*

**Setting Cause down.**—The Registrar's Certificate in the *Consolidated Suit* is required.

Fees—each Order, 5s.

Costs—one bill sufficient—*i.e. the Wife's solicitor need not file one bill as "Petitioner" and another as "Respondent."*

When consolidated it is convenient to refer to the parties as "Husband" and "Wife" rather than Petitioner and Respondent.

Notices to consolidate the Causes are now sent out as soon as the Appearances have been entered in the respective Suits, and no Summons is needed.

**SETTING CAUSE DOWN FOR HEARING**

(Rules 205 and 206).

**How Applied for.**—It is not now necessary to move the Court for directions. The Pleadings being concluded, fill up the Form of Application for the Registrars' Certificate (to be obtained at the Divorce Registry) and leave it there.

**When Applied for.**—This application may be left as soon as time for entering an Appearance has expired, *on filing an Affidavit of Service of Citation, with Citation answered, and of Search for Appearance. If an Appearance has been entered,* then as soon as time for filing Answer has expired, on filing an Affidavit of Search for Answer. If an Answer is filed, being a simple denial of the charges, application can be made; but if the Answer

contains counter-charges, then as soon as the Pleadings are completed. If an Answer has been filed to the Petition for Alimony, but no Answer filed to the Petition itself, then the Affidavit of Search will state "No Answer excepting an Answer to the Petition for Alimony."

#### AFFIDAVIT OF SEARCH FOR APPEARANCE.<sup>1</sup>

[Usual Heading.]

*B. against B. and D.*

I, E. F., of \_\_\_\_\_, solicitor for the Petitioner, or clerk to Messrs. L. & M., of \_\_\_\_\_, solicitors for the Petitioner, make oath and say that I did on the \_\_\_\_\_ day of \_\_\_\_\_, One Thousand Nine Hundred and \_\_\_\_\_, search the book kept in the Divorce Registry of the High Court of Justice for entering Appearances by or on behalf of parties cited, to ascertain whether or not any Appearance has been entered by or on behalf of A. B., the Respondent, or C. D., the Co-respondent, in this Cause, and that I find no Appearance has been entered by or on behalf of the said A. B. or C. D., or by or on behalf of either of them.

Sworn at &c.

#### AFFIDAVIT OF SEARCH FOR ANSWER.<sup>2</sup>

[Usual Heading.]

*C. against C. and G.*

I, E. F., of \_\_\_\_\_, solicitor for the Petitioner, or clerk to Messrs. L. & M., of \_\_\_\_\_, solicitors for the Petitioner, make oath and say that I did on the \_\_\_\_\_ day

<sup>1</sup>*Time.*—Care should be taken not to search *too soon*, and that in the calculation of the days allowed for entering the Appearance (or filing Answer) *Sundays, Christmas Day, and Good Friday are excluded* (Rule 123).

<sup>2</sup>If Cause is set down by Respondent or Co-respondent, and an Affidavit of Search for *Reply* necessary, this form would be altered to—any *Reply* had been filed by Petitioner &c.

of \_\_\_\_\_, One Thousand Nine Hundred and \_\_\_\_\_, search the Court Minutes at the Divorce Registry of the High Court of Justice to ascertain whether or not any Answer had been filed by or on behalf of K. C., the Respondent, or T. G., the Co-respondent in this Cause, and that I find no Answer [“excepting an Answer to the Petition for Alimony herein,” *if such has been filed*] has been filed by them or on their behalf, or by or on behalf of either of them.

Sworn at &c.

FORM OF APPLICATION.<sup>1</sup>

[*Usual Heading.*]

*Frank* against *Frank*.

The Petitioner hereby applies for the Certificate of the Registrar that the proceedings in the Cause are correct and the pleadings in order.

The Cause is undefended.

The issues to be tried by a [ \_\_\_\_\_ ] Jury; the damages to be assessed by a [ \_\_\_\_\_ ] Jury.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

*Solicitor for the Petitioner.*

No fee is payable on leaving this Application: no allowance is made for drawing it.

This will be forwarded to the Registrar, and if the proceedings are found to be in order he will sign his Certificate, which will be obtained at the Registry three or four days afterwards, and the Cause can then be set down. The Certificate should not be taken out of the Registry.

**Respondent Setting Cause Down.**—If the Petitioner does not set the Cause down within a month from the date of the Certificate, either of the Respondents can do so (Rule 46).

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<sup>1</sup> These forms are obtained at the Registry free of charge.

## CAUSES BEFORE THE COURT ITSELF.

Fill up the following Præcipe, to be obtained at the Registry:—

## PRÆCIPE.

*Frank v. Frank, George, and Gibson.*

Petitioner hereby sets this Cause down for hearing before the Court itself

[ (un)defended ]

for Dissolution of Marriage (or otherwise).

Dated the                    day of                    , 190 .

*Solicitor for the Petitioner.*

And leave it at the Divorce Registry with the Fees—

	£	s.	d.
Setting Cause down - - -	2	0	0
Drawing Decree - - -	1	0	0
Filing Certificate - - -	0	2	6

*If Appearance entered,* then the same with the addition of the following Notice and fee for filing, 2s. 6d.

NOTICE.<sup>1</sup>

*Frank v. Frank, George, and Gibson.*

TAKE NOTICE that this Cause has been set down for hearing before the Court itself.

Dated the                    day of                    , 190 .

*Petitioner's Solicitor.*

To Messrs. L. & M., solicitors for the Respondent and Co-respondent.

**Pleadings Amended.**—In all cases where the Pleadings have been amended subsequent to the date of the Certificate, it should be again submitted to the Registrar for approval.

<sup>1</sup> Any Notice in writing is sufficient ([1897] *Fluister v. Fluister and Hutton*, C. A., P. 22).



**JURY CAUSES.**

**Damages.**—If damages are claimed the Cause will be heard before a Court with a Common Jury, and the questions for the Jury, *in draft*, must be brought in to be settled by one of the Registrars, *unless it be an undefended Cause, in which case no questions are required*, there being no issues of fact for the Jury to try—only damages to be assessed. If a *Special Jury* is desired application is made by Summons.

**No Damages.**—Either party to the Cause desiring a Jury must apply by Summons for the Cause to be so tried, and though the order for a Jury be obtained by a Respondent, the questions are brought in by the Petitioner.

DAMAGES CLAIMED.

*Cause Undefended.*

**No Appearance.**—Fill up the application for the Registrar's Certificate, and when that is obtained fill up and leave with it a Præcipe and the following Fees:—

	£	s.	d.
Setting Cause down - - -	2	0	0
Drawing Decree - - -	1	0	0
Filing Registrar's Certificate - -	0	2	6

**Appearance.**—Though the Cause be undefended an Appearance may have been entered, in which case notice of setting down must be delivered, and a copy filed with further fee.

Filing notice, 2s. 6d.

*Defended Cause.*

**The Questions for the Jury to be Settled.**—With the application for the Registrar's Certificate the questions for the Jury, *in draft*, must be left at the Divorce Registry, to be settled by the Registrar. Fee for settling, 10s. These may be called for two or three days afterwards, and, if settled, a plain copy should be served on the solicitors of the other parties. If no objections be raised by the opposite party, the questions should, after eight days from service,

be engrossed on paper, and, *with the draft*, be left at the Divorce Registry—and the Cause set down. If any objections be raised, then obtain an appointment before the Registrar to have them considered and settled (Rule 44). The Juries are obtained by the Court; no panel is now necessary.

**Re-settling.**—If through any subsequent alteration in the Pleadings *the Questions have to be re-settled*, a further fee of 10s. is charged.

FEES.		£	s.	d.
Filing Draft Questions	-	0	2	6
.. Questions on Parchment	-	0	2	6
Setting Cause down	-	2	0	0
Drawing Decree	-	1	0	0
Filing Notice	-	0	2	6
.. Certificate	-	0	2	6
		£3 10 0		

### QUESTIONS FOR THE JURY (Rules 41 and 42).

*Frank v. Frank, George, and Gibson,  
Thomas, Kate, Alexander, Samuel.*

If the Respondent and Co-respondent A. G. have not answered—but *the Co-respondent S. G. has denied in Answer*—the only question for the Jury would be—

1. Whether the Co-respondent S. G. has committed adultery with K. F., the Respondent.

If damages are claimed *from both Co-respondents*, then add—

2. What amount of damages should be paid by A. G., the Co-respondent, in respect to the adultery (if any) committed by him with K. F., the Respondent.
3. What amount of damages should be paid by the Co-respondent S. G. in respect of the adultery (if any) by him committed with K. F., the Respondent.

## ANSWER—SIMPLY DENYING.

If each of the parties has filed an Answer simply denying, the questions would be—

1. Whether K. F., the Respondent, has committed adultery with A. G., the Co-respondent.
2. Whether the Co-respondent A. G. has committed adultery with the Respondent, K. F.
3. Whether K. F., the Respondent, has committed adultery with S. G., the Co-respondent.
4. Whether the Co-respondent S. G. has committed adultery with the Respondent, K. F.
5. What amount of damages should be paid by A. G., the Co-respondent, in respect of the adultery (if any) by him committed with the Respondent K. F.
6. What amount of damages should be paid by S. G., the Co-respondent, in respect of the adultery (if any) by him committed with the Respondent K. F.

## ANSWER WITH CHARGES.

If each has filed an Answer, and the *Respondent* has charged the *Petitioner* with adultery and cruelty, and the *Co-respondents* have charged condonation and connivance and collusion, then the additional questions would be—

7. Whether T. F., the *Petitioner*, has committed adultery.
8. Whether T. F., the *Petitioner*, has been guilty of cruelty towards K. F., the *Respondent*.
9. Whether T. F., the *Petitioner*, has condoned the adultery (if any) committed by the said K. F. with the *Co-respondent* A. G.
10. Whether T. F., the *Petitioner*, has connived at the adultery (if any) committed by K. F., the *Respondent*, with the *Co-respondent* A. G.
11. Whether T. F., the *Petitioner*, has condoned the adultery (if any) committed by K. F., the *Respondent*, with the *Co-respondent* S. G.

12. Whether T. F., the Petitioner, has connived at the adultery (if any) committed by K. F., the Respondent, with the Co-respondent S. G.

13. Whether T. F. and K. F. are acting in collusion.

If charges of adultery are made against the Respondent with persons other than those made Co-respondents, the question would be—

Whether K. F., the Respondent, has committed adultery with persons other than A. G. and S. G., the Co-respondents.

The List is closed ten days before the next Sittings.

ALLOWED ON TAXATION.

	£	s.	d.
Attending at Somerset House, searching for, and bespeaking copy of Certificate of Marriage - -	0	6	8
Paid Search, and for Certificate - -	0	3	7
Attending bespeaking Registrar's Certificate of Pleadings being in order -	0	6	8
Drawing application for such Certificate	—		
Attending for Certificate and setting Cause down - - -	0	6	8
Drawing Præcipe for same - - -	—		
Notice thereof, copy and service -	0	4	0
<i>(Not necessary where Appearance has not been entered.)</i>			
Notice, Copy to file - - -	0	1	0
Paid - - - - -	—		

*Questions for Jury.*

Drawing Questions and Copy for Registrar to settle - -	0	10	0
Attending leaving same for settlement - - - -	0	6	8
Paid Fee - - - - -	0	10	0
Attending obtaining Questions settled -	0	6	8
Copy and service on Respondent's Solicitor - - - - -	0	6	8

	£	s.	d.
Engrossing Questions - - -	-	-	-
Attending getting consent of the other side - - - -	-	-	-
Attending and filing same - -	-	-	-
Paid filing same, with draft Questions -	0	5	0

*Other Side.*

Perusing Questions - - -	0	1	0
Approving and returning same -	0	6	8

*Notice to Produce and Admit.*

Drawing same, 1s. per folio.			
Copy and service - - -	0	4	6

*Other Side.*

Perusing Notice - - -	0	6	8
Perusing Notice to Inspect - -	0	6	8
Attending signing Admissions -	0	6	8

*Jury, Common.*

Paid Jurymen, 1s. each - - -	0	12	0
Sheriff's Fee - - - -	0	10	6

*Jury, Special.*

Paid Jurymen, £1 1s. each - -	12	12	0
Sheriff's Fee - - - -	1	1	0

*Jury discharged without giving a Verdict, no allowance, except by consent of Parties.*

**SUBPŒNAS (Rules 109 and 180).**

May be extracted any time after the Citation has issued.

**Number of Witnesses.**—Each Subpœna may contain three names.

**Service.**—Need only be served once. Plain copy of Subpœna sufficient, afterwards give the witnesses notice when they are required to attend.

**Renewal.**—Need not be renewed each sittings (Rule 180).

**Service in Ireland.**—Special leave to issue a Subpœna to be served in Ireland is not required. *The Court may issue Writs of Subpœna, and such Writs may be served in any part of Great Britain or Ireland, and every person served with such Writs shall be bound to attend &c.* (20 & 21 Vict. c. 85, s. 49).

**Alimony.**—Subpœnas can be issued in Alimony enquiries by direction of the Registrar.

**Sealing.**—Take a Subpœna filled up (except as to names of witnesses, which may be afterwards added), with a Præcipe, to the Divorce Registry. The Subpœna is then sealed and issued; the Præcipe is left with a five shilling stamp. If two or more Subpœnas are issued one Præcipe for all is sufficient with the additional Fees. Forms may be obtained at the Registry.

#### PARTY A PRISONER.

**How served.**—To serve a Citation on a prisoner application must be made by letter to the Director of Convict Prisons, Home Office, Whitehall, for leave to do so. The application is submitted to the Board, and in due course the solicitor will receive permission to serve the documents in accordance with instructions sent to the Governor of the Prison where the party is confined.

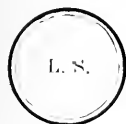
**Witness or Party a Prisoner.**—His attendance in Court on the hearing of the case is obtained by application for a Judge's Order upon an Affidavit, *without Summons*, showing that the party is a prisoner confined in a certain Prison, and that his evidence is necessary. This application is made at Court shortly before the Cause is likely to be in the paper. So also when a Party, a prisoner, is to be examined before a Registrar as to his means, no Summons is required.

#### ORDER FOR ATTENDANCE OF PRISONER AT COURT.

*O. v. O. and J.*

Upon reading the Affidavit of G. B., of \_\_\_\_\_, solicitor for the Petitioner, W. M., sworn \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, I do ORDER that the Keeper of His Majesty's Prison at \_\_\_\_\_ shall have before me, \_\_\_\_\_, President of the Divorce Court, Royal Courts of Justice, Strand, on the \_\_\_\_\_ day

of \_\_\_\_\_, 190\_\_\_\_, at the hour of half-past ten in the forenoon, the body of K. M., a prisoner in his custody (as it is said), then and there to testify the truth and to give evidence on behalf of the Petitioner in this Cause. And so from day to day, until the said K. M. shall have so given her evidence as aforesaid, and when she shall have given her evidence that she be taken back without delay to the Prison from which she shall have been brought.



Dated \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_.

(Signed)

GORRELL BARNES.

ORDER FOR ATTENDANCE OF PRISONER AT REGISTRY.

*H. v. H. and C.*

Upon reading the Affidavit of \_\_\_\_\_, sworn \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, I DO ORDER that the Keeper of His Majesty's Prison at \_\_\_\_\_ shall have before \_\_\_\_\_, one of the Registrars of this Division, at the Divorce Registry, Somerset House, Strand, London, on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, at twelve of the clock noon, the body of \_\_\_\_\_ &c.

**Foreign Country.**—In a recent case service was effected in *Belgium* by leaving a copy of the Subpœna at the Foreign Office, which was passed on to the Legation here, and thence sent to Belgium for service by the authorities there.<sup>1</sup>

ALLOWED ON TAXATION.

	s.	d.
Drawing with Præcipe and attending		
getting same sealed - - - -	6	8
Paid - - - - -	5	0
Service - - - - -	5	0

Mileage (if more than two miles), 1s. a mile one way.

NOTICE TO WITNESSES.

	s.	d.
Notice and Letter allowed - - -	3	6
Copy of such for each allowable Witness	1	6

Telegrams (if calculated to effect a saving in cost) are allowed: Attending, 3s. 4d. to 13s. 4d. and cost of telegram.

<sup>1</sup> Cox v. Cox.

## CAUSE LIST.

**Searching List.**—When the class of Causes to which his case belongs is being heard, the solicitor should vigilantly watch the List and be prepared for hearing. This is particularly necessary when undefended Causes are being taken, as two Courts are frequently sitting. No notice of the case being in the Paper is sent, and the Daily List is not made out before the afternoon of the previous day, and as to which information can only be obtained at the Court.

**Struck out.**—The case being called, and no one appearing, the following order is made:—

On the Cause being called, and neither the Petitioner nor any person on his behalf appearing, it is ordered that the Cause be struck out of the List of Causes for hearing.

**To Reinstate.**—Application must be made to the Court by Counsel, supported by Affidavit, explaining why parties were not prepared when the case was called on, and, if satisfied, the Court will direct it to be restored to the List.

**Transferred from Undefended to Defended List,** or for trial by a Jury, application must be made by Summons to the Judge.

From Defended to Undefended List application is made by Summons for leave to *withdraw Answer*, and for the Cause to be transferred to the *Undefended List*.

**Postponing the Hearing.**—Application must be made to the Court by Summons or Motion, but the Cause can be marked *postponed until the next Sittings* by notice, with consent of all parties endorsed on it, being left with Clerk of the Rules at the Court. *No alteration of the List can be made by application at the Registry.* The Registrars will not make an Order to stay proceedings if the case is in the List and likely to be soon reached. Application must be made to the Court.

**Part-heard Cases: Further Hearing.**—Notice must be given by the solicitor to the Clerk of the Rules when the parties are ready to proceed. The case will then be placed in the List for hearing whenever the Court is taking similar cases.



**Reserved List: How placed in.** Application for Cause to be placed in the Reserved List is made by Summons or Motion.

**How Removed.**—To be replaced in the List of Causes for hearing the Petitioner's solicitor must give ten days' notice in writing to the other parties, and file a copy of such notice in the Registry.

FORM OF NOTICE.

*B. v. B. and C.*

TAKE NOTICE that I have this day removed the above Cause from the List of Causes standing over, and have placed it in the List of Causes for hearing.

, 190 .

C. D.

Filing fee, 2s. 6d.

**Causes standing in this List for twelve months** are called out in Court some Motion day during the Michaelmas Sittings. If no one appears to make any application with regard to them, they are struck out.

The following notice is sent to the Petitioner's solicitor:—

Causes in the Reserved and Part-heard Lists which have been standing over beyond a year will be called over on the            day of            , 190 . &c.

**Stay—Costs.**—The Cause being in the List, and stay of proceedings desired, application must be made to the Court by Summons. On Order being made, such Cause is at once transferred to the List of Causes Standing Over.

**Stay removed.**—When the stay is removed—either by Bond being filed or sum paid as directed—notice should be given by the solicitor to the Clerk of the Rules and also to the Registry.

**Re-transferred to Active List.**—The Cause would take its place at the end, unless otherwise ordered.

**Commission.**—The issue of a Commission will not stay the hearing unless it is so ordered when applied for, and then the stay is removed on its return. No notice of this return required to be given.

## WIFE'S FUTURE COSTS OF HEARING (Rule 158).

**Estimated by Registrar.**—The Pleadings being completed and the Registrar's Certificate given, the wife's solicitor can apply to the Registrar to ascertain what is a sufficient sum *to be paid into Court or secured* by the husband to cover the costs of the wife incidental to the hearing.

**When.**—This should be done when the wife's costs up to setting down are taxed.

The Registrars are directed to allow on party and party taxations in Divorce Causes such reasonable costs of preliminary proceedings as may be thought proper, including opinion of counsel and charges of detective when necessary; but such costs are not to be dealt with on taxation of the wife's costs up to setting down.

On application under Rule 158 for an Order for payment of costs up to setting down and for security for costs of hearing, on behalf of wife whose defence is a simple denial (should the husband require it), she shall be liable to be called upon to furnish an Affidavit by herself and her solicitor showing that she has good grounds of defence on the merits of the case. In any case the Registrar may, if he think fit, order security for the taxed costs as well as for the costs of hearing.

**Husband Objecting.**—The husband may by reason of his wife having separate property dispute her right to recover any costs pending suit against him, *and the Registrar may suspend* his Order to pay the wife's taxed costs, or to pay or secure the sum estimated to cover her costs of the hearing, for such time as he shall deem necessary to enable the husband to obtain the decision of the Court as to his liability (Rule 158).

**How Estimated.**—The items of such future costs (*if more than £20 or £30 asked for*) to be submitted to the Registrar for his consideration—*verbally, not by way of a separate bill*—are:—

Number of Witnesses, their trade or profession, and where they come from.

Length of Brief.

Counsel's Fees.

Subpoenas.

Solicitor's Charges.

**Order.**—The Order directs that the husband do within seven days lodge in Court the estimated sum, or give bond under his hand and seal and of two sufficient sureties for double the amount, forty-eight hours' notice of proposed sureties being given to wife's solicitor. *Further Order may be obtained if proceedings sufficiently altered by subsequent pleadings.*

If the trial lasts longer than has been estimated for by the Registrar, application can be made to the Judge at the hearing for further security, and the Registrar at Court will fix the amount. Fee, 15s.

**Service.**—The copy served must be endorsed as follows:—

If you, the within named A. B., neglect to obey this Order by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same Order.<sup>1</sup>

**Enforcing Order.**—If the Order for security or payment of wife's future costs of hearing is not complied with as directed, application by Motion for attachment can be made, or if payment of costs up to setting down is combined in the Order a Writ of *F. Fa.* can be issued for these costs. (See "WRITS.")

**Stay of Proceedings.**—This Order, *where the wife is Respondent*, operates as a stay of proceedings *from the day it is made until it is complied with*, and if the Cause is in the List for hearing it is marked "Stayed—Security." If the Order is not complied with in the time given the Cause will not be heard until after ten days have elapsed from notice of compliance being given.

Where the wife is Petitioner a similar Order is made, omitting the direction "that all further proceedings be stayed &c." She, having the conduct of the Cause as Petitioner, can elect whether the Cause should be marked "Stayed," and, if so desired, such direction should form part of the Order and notice given, if Cause in List, to have it so marked. If not asked for when Order made, but afterwards required, application must be made to the Court on Summons.

<sup>1</sup> Pace v. Pace, 67 L. T. 383.

**Stay removed.**—When the Order is complied with and the stay removed, notice with the date of such compliance should be given at Court to the Clerk of the Rules by the solicitor, so that the Cause may come on in its turn.

**Paying in.**—If it is elected to pay the estimated amount into Court, fill up an Order for Lodgment in duplicate, and proceed as stated under "PAYING IN AND OUT." (See p. 78.)

**Bond, how Prepared.**—If it is preferred to give security the husband's solicitor will prepare the Bond in draft, and submit it to the wife's solicitor for his approval to be endorsed on it, and if he has no objection to raise he will return the same so approved within two days, when the Bond can be engrossed on ordinary foolscap (not parchment) and executed, and the approval of the other side endorsed on it, and the Registrar's Minute for filing same drawn up by the solicitor filing it.

**Filing.**—The Bond and Minute are then filed at the Divorce Registry. (See Forms, pp. 73 and 74.)

**Notice.**—He should then give notice to the wife's solicitor that he has done so.

#### FEES.

		s.	d.
Registrar's Minute - - -	-	3	0
Filing Bond - - -	-	2	6

#### FORM.—BOND FOR SECURING WIFE'S COSTS.

[Impressed Stamp.] (See p. 78.)

*Ad valorem.*

KNOW ALL MEN BY THESE PRESENTS that We, A. B., of &c., G. H., of &c., and K. L., of &c., are held and firmly bound unto X. Y., the solicitor for C. B., of \_\_\_\_\_, in the penal sum of \_\_\_\_\_ pounds of good and lawful money of Great Britain, to be paid to the said X. Y., and for which payment to be well and truly made we bind ourselves and each of us for the whole, our heirs, executors, or administrators, firmly by these presents.

Sealed with our seals.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord, One thousand nine hundred and \_\_\_\_\_.

WHEREAS a certain Cause is now depending in the Probate, Divorce, and Admiralty Division of the High Court of Justice between the said A. B., Petitioner, of the one part, and C. B., Respondent, and E. F., Co-respondent, of the other part:

AND WHEREAS by an Order made in the said Cause it was ordered that the said A. B., Petitioner [*or* Respondent], should within \_\_\_\_\_ days from the service thereof lodge in Court the sum of \_\_\_\_\_ pounds to cover the costs of the said Respondent [*or* Petitioner] of and incidental to the hearing of the said Cause, or file in the said Registry a Bond under the hand and seal of the said A. B., and of two sufficient sureties in the penal sum of \_\_\_\_\_ pounds, conditioned for the payment of such costs of the said C. B. as shall be certified to be due and payable by the said A. B., not exceeding the sum of \_\_\_\_\_ pounds, as security for the costs aforesaid:

NOW THE CONDITION OF THIS OBLIGATION is such that if the above-bounden A. B., his heirs, executors, or administrators, shall well and truly pay or cause to be paid to the above-named X. Y., his heirs, executors, administrators, or assigns, the full sum of \_\_\_\_\_ pounds of good and lawful money of Great Britain, or the lawful costs of the said C. B., the Respondent [*or* Petitioner] of and incidental to the hearing and trial of this Cause, to the extent of \_\_\_\_\_ pounds, then this Obligation is to be void and of none effect, otherwise to remain in full force and virtue.

Sealed and delivered by the said A. B., G. H., and K. L. in the presence of

F. W., of	{	A. B.	(L.S.)
	-	G. H.	(L.S.)
	{	K. L.	(L.S.)

*One attesting Witness.*

We approve of this Bond.

X. Y., *Respondent's Solicitor.*

#### FORM.—REGISTRAR'S MINUTE DEPOSITING BOND.

*A. B. v. C. B. and E. F.*

Messrs. W. & H., of \_\_\_\_\_, the solicitors for the Petitioner in this Cause, referring to the Order of \_\_\_\_\_, Esquire, one of the Registrars of the Probate, Divorce, and Admiralty Division of the High Court of Justice, made in this Cause and bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, whereby

it was ordered that the Petitioner do lodge in Court the sum of \_\_\_\_\_ as sufficient to cover the costs and expenses of the Respondent of and incidental to the trial of the Cause, or do give security for the said costs in the penal sum of \_\_\_\_\_ brought into and deposited in the said Registry a Bond under the hands and seals of the said Petitioner and of two Sureties in the penal sum of \_\_\_\_\_ :

Mr. X. Y., the solicitor for the Respondent, having under his hands approved the said Bond, the undersigned Registrar of the said Division ordered the said Bond to be filed.

Dated \_\_\_\_\_, 190 \_\_\_\_\_.

*Registrar.*

**Neither Approving nor Disapproving.**—The wife's solicitor returning the Draft Bond without approving the same, or neglecting to return it within the time (*two days after delivery*) allowed for his objecting, the husband's solicitor on filing his certificate of delivery of the Draft may bring in the Bond and Minute and proceed, as before, to file the same.

**Bond not Approved.**—The wife's solicitor refusing to approve the Bond, the difficulty may be surmounted by the Sureties justifying.

**Sureties Justifying.**—The solicitor should file at the Divorce Registry an Affidavit by the Sureties to the following effect, which, with the Bond and Minute, would then be forwarded to the Registrar. The Registrar having signed the Minute, the Bond and Affidavit would be filed with it. Bond for £60. Penalty £120.

#### FORM.—AFFIDAVIT JUSTIFYING.

[*Usual heading.*]

*R.* against *R.*

WE, C. L., of \_\_\_\_\_, confectioner, and D. C., of \_\_\_\_\_, draper, the proposed Sureties for D. R., the Petitioner in this Cause, severally make Oath and say as follows:—

I, C. L., for myself, say that I am worth more than the sum of £60 after payment of all my debts, and I, D. C., for myself, say that I am worth more than the sum of £60 after the payment of all my debts.

Sworn by the said C. L. and D. C. at &c.

C. L.

D. C.

**Objecting to Justification.**—The wife's solicitor further objecting would take out a Summons to show cause why the Sureties should not be examined before the Registrar as to their means. An appointment would, on the Order being made, have to be obtained, and the Sureties would be examined on oath, and if still dissatisfied the solicitor could appeal from the Registrar's decision to the Judge in Chambers.

**Ask for Costs at Hearing.**—As the estimated amount of costs for the hearing fixed by the Registrar is really for the security of the solicitor, it is incumbent on him to see that his Counsel at the end of the trial asks for the wife's costs, for by Rule 159 no costs of the wife of and incidental to the hearing—*the decision being against her*—shall be allowed as against the husband except such as shall be applied for and allowed by the Judge at the time of hearing. Application on behalf of the wife, *after decree nisi made against her*, for an increase of the sum directed to be secured, dismissed.<sup>1</sup>

**Usual Order—Wife Unsuccessful.**—The Order forms part of the decree *nisi*, and where the wife is unsuccessful in the Cause, is to the effect that she be paid her taxed costs, not exceeding the sum paid into Court or secured to cover the same, or as the Court may direct.<sup>2</sup> *There is, however, no appeal from the refusal of the Court to order the wife's costs to be paid.*<sup>3</sup>

**Jury discharged without giving a verdict, or Petition on the hearing dismissed.**—Wife is entitled to full costs unless otherwise ordered.<sup>4</sup>

**Taxing.**—If the husband's solicitor consents to the costs as estimated the bill need not be taxed, and an Order will be made for payment, otherwise the bill must be taxed.

**Payment.**—On taxation the certificate may be for less than the estimated sum; in such case the payment may be arranged between the solicitors. The husband's solicitor may pay the taxed costs

<sup>1</sup> *Mitchinson v. Mitchinson and Edmonds*—Chambers.

<sup>2</sup> *Smith v. Smith*, 7 P. D. 84.

<sup>3</sup> *Butler v. Butler*, C. A. 15 P. D. 126.

<sup>4</sup> *Hurley v. Hurley and Menzies*; [1891] *Wellborne v. Wellborne and Evered*, P. 367.

and take out a Summons to show cause why the amount paid into Court to secure the same should not be paid out to him, he having paid the costs; or he may consent to the amount being paid out to the wife's solicitor *without taxation of the bill*: or, the bill being taxed, the wife's solicitor can obtain the usual "*Authority for Payment*" on the Registrar's Certificate. Should the taxed costs amount to, say, £20, and a sum of £25 paid into Court to secure the same, the husband's solicitor will be entitled to the balance after decree absolute, or by consent of Respondent after decree *nisi*. (See "PAYING OUT," p. 78.)

**Wife Succeeding.**—The husband would by the decree simply be condemned in the costs, and her bill being taxed the Order for payment would direct the amount of the costs so taxed (or if he had already paid in or secured a sum estimated by the Registrar for her costs, and the costs as taxed exceeded that amount, the Order would be for the balance) to be *paid into Court*, there to remain (with the sum so already paid in or secured) until the decree absolute has been obtained. (Rule 20L.)

**Enforcing Bond.**—Wife's solicitor will take out a Summons to show cause why the Bond should not be given out to him for the purpose of the same being sued upon. The Order being made, he will apply at the Divorce Registry for the Bond, and give his receipt.

**Cancelling Bond.**—The costs being paid, the husband's solicitor can take out a Summons to show cause why the Bond should not be cancelled and given out. This may be done by consent to the Summons.

**Service.** This Summons would, of course, be served on the husband's solicitor, but not upon the Smeties.

**Receipt in either case** would be given for the Bond—  
Fee 2s. 6d.

**Security for Costs of Co-respondent.**—Petitioner abroad, damages claimed, application can be made by Summons for security.<sup>1</sup>

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<sup>1</sup> *Campbell v. Campbell and Acland—Chambers.*



## ALLOWED ON TAXATION.

*Wife's Solicitor.*

	s.	d.
Perusing Draft Bond - - - -	6	8
Making Copy to keep - - - -	3	4
Attending making enquiry as to sufficiency of Sureties - - - -	13	4
Attending Petitioner's Solicitor with Draft, and endorsing consent thereon - - -	6	8
Attending ascertaining Bond filed - - -	6	8

*Husband's Solicitor.*

Instructions for Bond - - - -	6	8
Drawing Bond, 8 folios, 1s. per folio - - -	8	0
Attending Respondent's Solicitor with Draft -	3	4
Engrossing Bond for Execution, 4d. per folio -	2	8
Attending Execution of Bond - - - -	6	8
Attending Stamp Office to get same Stamped Paid Stamp ( <i>see</i> "SCALE") - - - -	6	8
Drawing and Engrossing Registrar's Minute to file Bond - - - -	3	4
Attending Registry filing Bond and Minute -	6	8
Paid Fees - - - -	5	6
Notice to Respondent's Solicitor of filing -	4	0
Sureties Justifying: the additional Allowance for an Affidavit and Filing Fee of - - -	2	6

*If Money Paid into Court.*

Attending at Registry with Lodgment Order for Registrar's Signature - - - -	6	8
Drawing same in duplicate - - - -	-	-
Attending at Paymaster-General's, Royal Courts, and Depositing Money - - - -	6	8
Notice of Paying in to other Side - - - -	4	0

## SCALE OF FEES IN BOND.

(33 &amp; 34 Vict. c. 97.)

	s.	d.
Twenty-five Pounds - - -	0	8
Fifty Pounds - - -	1	3
One Hundred Pounds - - -	2	6
Two Hundred Pounds - - -	5	0
Two Hundred and Fifty Pounds - -	6	3
Three Hundred Pounds - - -	7	6
For every additional Hundred Pounds -	2	6

**PAYING MONEY INTO COURT AND PAYMENT OUT.**

**Paying In.**—An Order having been made for the payment into Court of any sum of money, the solicitor will fill up, *in duplicate*, the "Lodgment" Form to be obtained at the Registry.

**Signed by the Registrar.**—He will then take both Forms to the Registrar, one of which, signed by the Registrar, is returned to the solicitor, the other is retained in the Registry.

**Lodging the Money.**—The solicitor who is served with the Order will leave the Form so signed with the money at the Bank of England, Law Courts Branch. *Cheques are accepted* as payment, but the receipt is not given until the same are cleared. Country cheques about four days afterwards.

**Money Paid into Bank.**—On receipt of the money with the Lodgment Form the Bank Certificate, No. 3, duly signed, is sent to the King's Bench Division, Pay Office (No. 65 Room, Royal Courts of Justice), and the particulars of lodgment entered in the Fund Ledger kept in that Department.

**Notification of Lodgment** is then forwarded by the Pay Office to the Registrar of the Divorce Registry who signed the Lodgment Order, when the duplicate Form of Lodgment left, in the first instance, is placed with the Cause papers and an entry made in the Cause Minutes of the sum paid in.

Notice of having paid the money in should be served on the opposite party, and if the Cause is in the List for hearing *and stayed* until such payment is made, notice should at once be given at the Court to the Clerk of the Rules that the Order for payment into Court has been (*and when*) complied with.

## FORMS.

The following are the Forms referred to:—

**In the High Court of Justice.**

## PROBATE AND DIVORCE DIVISION.

I. *Request for Authority for Lodgment.*

Title of                    )  
Cause or Matter.        )                    *T. v. T.*

To the Registrar.

I request authority for the lodgment of £                    at the Bank of England; such lodgment being for [*state here such particulars as may be required*] the costs and expenses of the Respondent of the hearing or trial of the Cause.

(*Signature*)            R. S.

II. *Authority for Lodgment.*

To the Agent of the Bank of England (Law Courts Branch).

Please receive the above-stated sum, and place it to the account of the Paymaster-General for the time being, for and on behalf of the Supreme Court of Judicature.

Dated                    , 190 .

(*Signature*)            D. H. O., Registrar.

III. *Bank Certificate of Receipt.*

To the Assistant Paymaster-General.

Bank of England,                    , 190 .

The above sum has been this day received.

(Entd. No.            ).                    (*Signature*)            G. L.

If the money is not paid in under an Order the solicitor must get this Lodgment Form stamped at No. 6 Room with a shilling impressed stamp before leaving it at the Bank.

## PROBATE AND DIVORCE DIVISION.

Bank of England (Law Courts Branch),  
 , 190 .

RECEIVED of R. S., for the credit of the Paymaster-General, for and on behalf of the Supreme Court of Judicature, the sum of Pounds.

Direction No. . For the Governor and Company  
 of the Bank of England,  
 £ . G. L.

If paid by cheque this Receipt must be called for after the cheque is cleared.

*Notification of Lodgment.*

To the Registrar, Divorce Registry,

Pay Office, Royal Courts of Justice,  
 , 190 .

IT IS HEREBY NOTIFIED that on the day of , 190 , the sum of £ was lodged by R. S. to the account of the Paymaster-General for and on behalf of the Supreme Court of Judicature for the ledger credit hereunder mentioned, being for *T. v. T.* (ledger credit).

(Signature) W. A.

No Fees are charged.

**Search.**—The notification of lodgment is placed in a book kept by the Registrars, and can be searched, but as this search is only of value when the notification has been received the better plan is to search at the Pay Office. For this a Search Form must be obtained from the Form Room, No. 6, Royal Courts, which bears a shilling impressed stamp. This is taken to the Pay Office, Room 65, and the search is made. The Form is retained at the Pay Office, but a Certificate is given to the solicitor, "Money not in Court" or "Money paid in," and is stamped by the official stamp of the Department.

*Affidavit of Search.*

*B.* against *B. and C.*

I, E. F., of , solicitor for the above-named Respondent, make oath and say—

1. That I did on the day of , 190 , search the Court Minutes at the Divorce Registry of the High Court of Justice to ascertain whether or not any

Bond under his hand and seal with sufficient sureties had been filed by T. B., the Petitioner in this Cause, pursuant to Order dated \_\_\_\_\_, and that I find no Bond has been filed by him.

2. That I did on the same day search at the proper office of the Paymaster, Royal Courts of Justice, Strand, Middlesex, to see if the said Petitioner had paid into Court the sum of £ \_\_\_\_\_ in pursuance of such Order, and I found that he had not done so. I therefore obtained the Certificate now produced and shown to me marked "A."

Sworn &c.

E. F.

COSTS ALLOWED ON TAXATION.

Attending Registry with Request for	s.	d.
Lodgment - - - - -	6	8
Attending Paymaster-General for Lodging		
Money - - - - -	6	8
Notice of same to other side - - -	4	0

PAYING OUT.

**How Applied for.**—The Registrar, before he signs the authority for the payment of any sum, must be satisfied that—whether by consent, decree, certificate, or otherwise—the party applying is entitled to the money.

**Authority for Payment.**—Upon this being done, fill up the following Form in duplicate, and take them to the Registrar for his signature. One copy is retained in the Registry, the other is sent to the Postmaster at the Law Courts (Room 65, Royal Courts of Justice).

**Cheque.**—A cheque for the amount will be ready one clear day after the Authority for payment is so lodged.

**Identification of Party.**—The party to receive the money being properly identified.

ORDER FOR PAYMENT (RULE 28).

In the High Court of Justice.

PROBATE AND DIVORCE DIVISION.

Title of \_\_\_\_\_ )  
 Cause or Matter. ) *T. v. T.*  
 Dated \_\_\_\_\_, 190 .

The Paymaster-General is hereby directed to make the payments specified below out of the money standing in his books to the credit of the above Cause.

Name of person to whom, and also of the person (if any) upon whose authority, payment is to be made.		When lodged.	Amount to be paid.		
Person to be paid.	Person (if any) to give authority for payment.		£	s.	d.
<i>[Christian name to precede surname.]</i>	<i>[This column only to be filled up when damages are to be paid out.]</i>		30	0	0

Total amount in words—Thirty Pounds.

(Signature) D. H. O., Registrar.

In the case of a person being authorised by the party to receive the money, the following "Authority" must be left with this.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

T. v. T.

I authorise my solicitor, Mr. R. S., to receive out of Court the sum of £30 paid in herein on the            day of           , 190 .

E. T., the above-named Petitioner.

Witness

Address

Occupation

To the

No Fees are charged.

COSTS ALLOWED ON TAXATION.

	s.	d.
Attending Registry with Authority for Payment, and getting same signed -	6	8
Attending at Paymaster-General's, and lodging same - - - -	6	8
Attending do. for Cheque - - - -	6	8

## DECREE NISI.

The Decree *Nisi* is drawn by the Registrar and signed by him.

**Office Copy.**—Can be ordered any time after it is pronounced. *Need not be served.* Cost of Copy not allowed on Taxation.

**When Served.**—Sometimes the Decree contains other Orders requiring to be served, such as *Damages to be paid into Court*, or, *As to custody of children*, or *other direction*, and a copy of such portion of the Decree, *under the Judge's hand—not sealed*—can be ordered for service: *Fee, 5s.* A *plain copy* of this should be served. This applies also to a Decree for Judicial Separation, *where custody is given and the children have not been surrendered*: not necessary to serve the Order when the children have been given up.

**Damages paid out.**—The Court exercises its discretion as to how the damages shall be paid or applied, and if not determined at the time of pronouncing the Decree *Nisi* application must be made to the Court by Summons for an Order as to their disposal (20 & 21 Vict. c. 85, Section 33).

**Documents handed in at the Hearing** are retained in the Registry until the Decree is made absolute.

**In Undefended Cases** they are given out after the pronouncing of such Decree upon a receipt being given, *and copies being left as the Registrar may determine.*

**In Defended Cases** a letter of consent from the other side is required, or if documents were handed in by different parties *they or their solicitors* must attend at the Registry when the papers are given out.

### ALLOWED ON TAXATION.

(*Obtaining Documents.*)

			s.	d.
Notice to the other side	-	-	3	6
Attending to obtain documents	-	-	6	8

## JURY DISCHARGED WITHOUT GIVING A VERDICT.

Re-hearing.—The Cause can be placed in the Jury List<sup>1</sup> again for hearing without further directions, or without further Fees, notice being given to the other side. If amendment of any of the Pleadings is desired such must be made in the usual way—by Summons. If, however, the Jury has found a verdict (for or against) in respect of one or more of the issues, and was unable to agree as to the others, *only those issues upon which they could not agree would be tried again*, unless by application on Motion leave is obtained for a re-hearing of the others.

No time limited for replacing Cause in List for Hearing—treated as a part-heard Cause; but if the Petitioner neglects to do so within reasonable time, the Cause can be placed in the list by the Respondent or Co-respondent.

## FORMS OF DECREES.

## JUDICIAL SEPARATION.

*This is a Final Decree.*

[*Usual Heading.*]

On the                day of                , 190 .  
W. against W.

The Judge having taken the oral evidence of the Petitioner and of the Witnesses produced on her behalf in support of the Petition filed in this Cause, and the oral evidence of the Respondent and of the Witnesses on his behalf, and having heard Counsel thereon on behalf of the *Petitioner and Respondent*, by his Final Decree pronounced and decreed a Judicial Separation between L. W., the said Petitioner, and H. W., the said Respondent, by reason *of the cruelty to the Petitioner* committed by the said Respondent, and condemned the said Respondent in the costs incurred and to be incurred on behalf of the said Petitioner in this Cause, *except such costs incurred by reason of the charges of adultery which are not to be taxed against the Respondent.*<sup>2</sup>

<sup>1</sup> Special or Common (*as before*).

<sup>2</sup> These are the costs of an unsuccessful issue, which, *at the hearing*, Counsel for the Respondent asked the Court to direct should not be taxed against him.



## DECREE OF RESTITUTION OF CONJUGAL RIGHTS.

*This is a Final Decree.*

[Usual Heading.]

On the                    day of                    , 190 .

*D. against D.*

The Judge having taken the oral evidence of the Petitioner and of the Witnesses produced on her behalf in support of the Petition filed in this Cause, and having heard Counsel thereon, by his Final Decree pronounced that the Petitioner had sufficiently proved the contents of the said Petition, and that J. D., the Petitioner, and C. D., the Respondent, were and are lawful husband and wife, and ordered that the said C. D. do, within fourteen days from the service of this Order on him, return home to the Petitioner and render to her conjugal rights, and within a like time file in the Divorce Registry a Certificate that he has so done, and condemned the said Respondent in the costs incurred and to be incurred on behalf of the said Petitioner in this Cause.

**Decree in the Alternative.**—Counsel for the husband withdrew his defence and the Court granted a Decree as above, and further ordered that in the event of the Respondent's non-compliance with the said Order it be referred to one of the conveyancing Counsel of the Court to settle a proper deed for the purpose of securing to the said Petitioner the sum of One Hundred Pounds per annum, and further condemned the said Respondent in the costs incurred and to be incurred on behalf of the said Petitioner in this Cause.

## DECREE NISI FOR NULLITY OF MARRIAGE.

[Usual Heading.]

On the            day of            , 190 .

*L. (otherwise M.) against L.*

The Judge having taken the oral evidence of the Petitioner and of the Witnesses produced on her behalf in support of the Petition filed in this Cause, and having heard Counsel thereon, the Respondent appearing but not defending the suit, decreed that the Marriage in fact had and solemnised on the            day of            , 190 .

at \_\_\_\_\_, in the County of \_\_\_\_\_, between J. L. (otherwise M.), the Petitioner, and A. L., the Respondent, be pronounced and declared to have been and to be absolutely null and void to all intents and purposes in the law whatsoever by reason of the frigidity and impotency of the parts of generation of the Respondent, and the said J. L. (otherwise M.) be pronounced to have been and to be free from all bond of marriage with the said A. L., unless sufficient cause be shown to the Court why this Decree should not be made absolute within six months from this date, and condemned the said Respondent in the costs incurred and to be incurred on behalf of the said Petitioner in this Cause.

#### DECREE NISI FOR DISSOLUTION OF MARRIAGE.

On the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

*B.* against *B.* and *C.*

The Judge having taken the oral evidence of the Petitioner and of the Witnesses produced on his behalf in support of the Petition filed in this Cause, and having heard Counsel thereon, the Respondent and Co-respondent not appearing and defending the suit, pronounced that the Petitioner had sufficiently proved the contents of the said Petition, and decreed that the Marriage, had and solemnised on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, at \_\_\_\_\_, in the County of \_\_\_\_\_, between C. B., the Petitioner, and J. B., the Respondent, be dissolved by reason that since the celebration thereof the said Respondent has been guilty of adultery with G. C., the Co-respondent, unless sufficient cause be shown to the Court why this Decree should not be made absolute within six months from the making thereof, and condemned the said G. C., the Co-respondent, in the costs incurred and to be incurred on behalf of the said Petitioner in this Cause.

And on the application of Counsel for the Petitioner it is ordered that K. B. and G. B., the children, issue of the marriage between the Petitioner and the Respondent, do remain in custody of the Petitioner until further order of the Court, but it is directed that such children be not removed out of the jurisdiction of the Court without its sanction; and it is further ordered that the Petitioner pay the Respondent's taxed costs up to the sum ordered to be secured to cover the wife's costs of the hearing.

## FEES.

<i>Office Copy under Seal.</i>					
					s. d.
Copy	-	-	-	-	2 6
Certifying same	-	-	-	-	2 6
Sealing	-	-	-	-	5 0
<i>Under Judge's Hand.</i>					
Not Sealed	-	-	-	-	5 0

**KING'S PROCTOR AND INTERVENERS**(Rule 70 *et seq.*).

Under the provisions of 23 & 24 Vict. c. 144, Section 7, and 36 Vict. c. 31, Section 1, any person (not being a party to the Suit)<sup>1</sup> shall be at liberty to show cause why a decree *nisi* for Dissolution, or for Nullity of Marriage, should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not brought before the Court, and at any time during the progress of the Cause, or before the decree is made absolute, any person may give information to His Majesty's Proctor of any matter material to the due decision of the case, who may thereupon take such steps as the Attorney-General may deem necessary or expedient.

**King's Proctor.**—The necessity for the King's Proctor to obtain leave to intervene before entering an Appearance, as required by Rule 68, is, by Rule 202, dispensed with.

**Intervening.**—His Majesty's Proctor, or any person intervening, enters an Appearance in a book kept for that purpose at the Divorce Registry, and within fourteen days from the date of such Appearance files his Plea and delivers a copy thereof to the Petitioner or to the person in whose favour the decree *nisi* has been pronounced, or to his or her solicitor, and all subsequent pleadings and proceedings are carried on in like manner as those under the original Petitions. Time for answer, twenty-one days.

<sup>1</sup> *Stoate v. Stoate*, 2 Sw. & Tr. 384.

## APPEARANCE OF THE KING'S PROCTOR.

*B. v. B. and C.*

E. F., of The Treasury Chambers, Whitehall, in the City of Westminster, King's Proctor, appears to show cause against the decree *nisi* being made absolute.

Entered this        day of        , 190 .

## PLEA.

**In the High Court of Justice.**

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

(*Divorce.*)

*C. v. C.*

*The King's Proctor shewing Cause.*

His Majesty's Procurator-General shewing cause why the decree *nisi* pronounced in the above suit on the        day of        , 190 . should not be made absolute, saith—

1. That the said decree *nisi* was obtained contrary to the justice of the case by the withholding from the knowledge of the Court divers material facts.
2. That the said decree *nisi* was obtained by collusion between the Petitioner and Respondent.

His Majesty's Procurator-General prays that the Court will rescind the decree *nisi* made herein, and will order that the Petition be dismissed, and that the Petitioner be condemned in the costs of the King's Proctor, and will make such further Order as the Court may think fit.

Dated this        day of        , 190 .

E. F.,

*King's Proctor.*

*Other Charges:—*

3. That the Petitioner has been guilty of undue delay in presenting and prosecuting his Petition.
4. That on the        day of        , 190 ., the Petitioner committed adultery with one G. F., at        , in the County of        .

*C. v. C.*

*Answer.*

The Petitioner, by his solicitor, L. D., in answer to the Plea of Intervention of the King's Proctor filed in this Cause, saith— That he denies each and every one of the allegations contained in the said Plea.

**Cause Set Down.**—The King's Proctor, on obtaining the Registrar's Certificate that the Pleadings are complete, sets the Cause down. If a jury is required an Order on Summons is necessary.

**No Answer.**—The King's Proctor, upon Affidavit of Search and no Answer, applies to the Court on Motion to dismiss the Petition.

ORDER RESCINDING DECREE.

*C. v. C.*

*King's Proctor showing Cause.*

On reading the statement filed on behalf of the King's Proctor, and Affidavit of A. L., sworn \_\_\_\_\_, 190\_\_\_\_, and on hearing counsel on his behalf thereon, it is ordered that the decree *nisi* in this Cause dated \_\_\_\_\_, 190\_\_\_\_, be rescinded, the Petition dismissed, and the Petitioner condemned in the costs of the King's Proctor.

J. C. H.,

*Registrar.*

**Particulars and Discovery.**<sup>1</sup>—Application can be made on Summons for an Order against the King's Proctor.

**Security for Costs.**—Though the King's Proctor, if he fails in his intervention, may be condemned in costs, he is never directed to give security for such pending the inquiry, but an Order for Security may be applied for against any other person intervening (41 Viet. c. 19, Section 2).

Fees the same as in original Petitions.

Co-respondent not liable for costs of intervention.<sup>2</sup>

The party against whom the King's Proctor alleges adultery is not allowed to intervene.<sup>3</sup>

<sup>1</sup> *Hawtrey v. Hawtrey*—Queen's Proctor showing Cause: Chambers.

<sup>2</sup> *Blackhall v. Blackhall and Clark*, 13 P. D. 94.

<sup>3</sup> *Grieve v. Grieve*, [1893] P. 288.

## DECREE ABSOLUTE (Rule 207).

(29 Vict. c. 32, Section 3.)

**When Applied for.**—After the expiration of six calendar months from the date of the decree *nisi*, application can be made to make it absolute. If the judgment of the decree *nisi* has been reserved, the time for applying for decree absolute will run from the date of the hearing of the Cause, or from the last day if more than one. Application should be made to the Judge for leave for time to run from the date of hearing at the time of judgment.<sup>1</sup>

**When not Applied for: Respondent's Application.**<sup>2</sup>—The Petitioner neglecting, delaying, or not proceeding to apply (after the time for so doing has expired) for the decree *nisi* to be made absolute, the Respondent may move the Court to dismiss the Petition for want of prosecution; but the Court will not make a decree absolute on Respondent's application.

**How applied for.**—Until recently it was necessary to apply to the Court by Motion. This is not now required (Rule 207). It is sufficient to leave at the Divorce Registry, on Tuesday or Wednesday during the Sittings, before two o'clock (the Motion day being Monday) an Affidavit of Search and a Notice (Forms below).

**Time of Search.**—The Search must be made within six days of the Motion day (Rule 194).

Every Motion day the Registrar reads a list of Causes in which applications have been made for decrees absolute, and the Court, satisfied that the six months have expired and no intervention exists, pronounces the decree.

**Affidavit of Delay.**—If, however, the application be not made within twelve months from the date of the decree *nisi*, an Affidavit in explanation of the delay must also be filed; and if want of funds is the reason assigned, then it must be further stated whether that is the only reason.

<sup>1</sup> Houghton v. Houghton, [1903] P. 150; 72 L. J. P. 31; 89 L. T. 76.

<sup>2</sup> Onsey v. Onsey and Atkinson, 1 P. D. 56.

<sup>3</sup> This Affidavit should be made by the Petitioner if possible.

**Errors.**—Attention should be given to the date mentioned in the Affidavit, errors being frequently made in referring to the day of the Search and the date of the decree, necessitating the amending and re-swearing of the Affidavit and delaying the pronouncing of the decree.

**Time.**—Errors also occur sometimes in making the search *a day too soon*. The decree not being pronounced on the 1st day of February, the Search and Affidavit cannot be made before the 2nd day of August following.

AFFIDAVIT OF SEARCH IN SUBJECT OF A DECREE FOR  
DECREE ABSOLUTE.

In this Affidavit it is necessary to account for any and every Appearance entered after the date of the decree, so that if an Appearance has been entered since that date to a Petition for Alimony, or Maintenance, or Variation of Settlement, it must be referred to in the Affidavit. So also with regard to any Intervention it must be stated upon whose behalf the Intervention was made and with what result (Rule 124).

The simplest way of doing this is by inserting in the applicable place in the Affidavit indicated in the following Form by \* the words "other than as mentioned below," and at the end of the Affidavit adding the character of the proceeding and what followed: *viz.* "An appearance was entered by the Respondent on the day of to the Petition for Maintenance which is now pending," or "excepting the intervention of which was by Order or Decree dated dismissed."

(Affidavit.)

A. B. against C. B. and E. F.

I, C. D. of &c., solicitor [or clerk to solicitor or the Petitioner] for A. B., the Petitioner in this Cause, make oath and say that on the day of, 190 , I carefully searched the books kept in the Registry of this Court for the purpose of entering Appearances, from and including the day of, 190 , the day of the date of the decree not made in this Cause, to the day of, 190 , and that during such period no Appearance has been entered in the said books by His Majesty's

Procurator-General, or by or on behalf of any other person or persons whomsoever.\* And I further make oath and say that I have also carefully searched the books kept in the said Registry for entering the Minutes of Proceedings had in this Cause from and including the said day of , 190 , to the day of , 190 , and that no leave has been obtained by His Majesty's Procurator-General or by any other person or persons whomsoever to intervene in this Cause, and that no Affidavit or affidavits, instruments, or other documents whatsoever have been filed in this Cause by His Majesty's Procurator-General or any other persons whomsoever during such period, or at any other period during the dependence of this Cause, in opposition to the said decree *nisi* being made absolute.

Sworn at &c.

#### FORM OF NOTICE.

*A. B. v. C. B. and E. F.*

NOTICE IS HEREBY GIVEN of application on behalf of Petitioner that the decree *nisi* for the Dissolution of the Marriage of the Petitioner and Respondent pronounced in this Cause on the day of , 190 , be made absolute, the usual Affidavit in support of the application having been filed on the day of , 190 .

*J. G., Solicitor for the Petitioner.*

Forms can be obtained at the Registry.

**Placed in List.**—These are forwarded to the Court Registrar, and if by him found correct are placed in the Printed List for the following Motion day, when the decree is made as before stated.

**Service.**—No service of the Affidavit or Notice is necessary, nor is it necessary for the solicitor to attend at Court. He can ascertain at the Registry if the decree is made.

An office copy of the decree absolute under seal can be obtained if desired. With the decree absolute the Cause terminates, but no person save the parties or their solicitors are permitted to inspect the proceedings, other than the decree, except by special leave. Fee for inspection, 2s. 6d.



## APPEAL.

*Section 9.*—All appeals which, under Section Fifty-five of the Act of the twentieth and twenty-first years of Her present Majesty, chapter eighty-five, or under any other Act, might be brought to the full court established by the said first-mentioned Act, shall henceforth be brought to Her Majesty's Court of Appeal and not the said full court. The decision of the Court of Appeal on any question arising under the Acts relating to divorce and matrimonial causes, or to the declaration of legitimacy, shall be final, except where the decision is either upon the grant or refusal of a decree on a petition for dissolution or nullity of marriage, or for a declaration of legitimacy, or is upon a question of law on which the Court of Appeal give leave to appeal; and, save as aforesaid, no appeal shall lie to the House of Lords under the said Acts. Subject to any order made by the House of Lords, in accordance with The Appellate Jurisdiction Act, 1876, every appeal to the House of Lords against any such decision shall be brought within one month after the decision appealed against is pronounced by the Court of Appeal if the House of Lords is then sitting, or, if not, within fourteen days after the House of Lords next sits. This section, so far as is consistent with the tenor thereof, shall be construed as one with the said Acts. (44 & 45 Viet. c. 68.)

*Section 10.*—No appeal from an order absolute for dissolution or nullity of marriage shall henceforth lie in favour of any party who, having had time and opportunity to appeal from the decree *nisi* on which such order may be founded, shall not have appealed therefrom. (44 & 45 Viet. c. 68.)

**Time.**—No appeal to the Court of Appeal from any Interlocutory Order, or from any Order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Court of Appeal, be brought after the expiration of fourteen days, and no other appeal shall, except by such leave, be brought after the expiration of three months. The said respective periods shall be calculated, in the case of an appeal from an Order in Chambers, from the time when such Order was pronounced, or when the appellant first had notice thereof, and in all other cases from the time at which the Judgment or Order is signed, entered, or otherwise perfected, or in the case of the refusal of an application from the date of such refusal. (Rule 15, Order LVIII., S. C. R.)

The result of these enactments seems to be that appeal from decree absolute lies to the Court of Appeal within three months from the date of pronouncing, and that appeal will not lie except when an attempt has previously been made to revise the decree *nisi*.<sup>1</sup>

**How made.**—File at the Divorce Registry two forms of Notice and a certified copy of the decree absolute. Fee, £3 2s. 6d.

#### MARRYING AGAIN.

Section 4 of 31 & 32 Vict. c. 77, and Section 57 of 21 Vict. c. 85, shall be read and construed with reference to the time for appealing as varied by this Act; and in cases where, under this Act, there shall be no right of appeal, the parties respectively shall be at liberty to marry again at any time after the pronouncing the decree absolute. (See 44 & 45 Vict. c. 68.)

**Superintendent Registrar's Regulations.**—One of the Regulations is that “*Notice of the marriage of a divorced person cannot be given until his or her previous marriage has been fully dissolved by a Decree Absolute of the Probate, Divorce, and Admiralty Division of the High Court of Justice, nor, if the divorce suit was defended, until the expiration of the time limited for appeal against the Decree Absolute.*” Proof of this is a copy of the Decree Absolute under seal.

#### FEEs.

		s.	d.
Searching Appearance Book	-	-	1 0
Searching Minutes	-	-	2 6
Filing Affidavit of Search	-	-	2 6
Filing Notice	-	-	2 6

If the date of the decree *nisi* is prior to the 25th day of January, 1884, a further fee of 10s. is payable for drawing the decree.

#### COSTS ALLOWED TO SOLICITORS.

Separate bills of costs for decrees absolute are not received, a fixed sum being allowed in respect of such applications.

If the decree *nisi* was pronounced before 25th day of January, 1884, the sum allowed to the solicitor is £2 13s. 10d. If the

<sup>1</sup> Drummond v. Drummond—Fox Cited.

decree *nisi* was pronounced after the 25th day of January, 1884, as 10s. less would be paid on the application for the decree absolute, the allowance to the solicitor is £2 3s. 10d.; and if the costs of the Cause have been taxed, an Order (if required) for payment of such sum will issue at once.

	£	s.	d.
Drawing Affidavit and Notice	-	0	7 2
Attending Swearing	-	0	6 8
Paid Commissioner	-	0	1 6
Attending Searching	-	0	6 8
Paid Searching Appearance Book	-	0	1 0
.. Searching Minutes	-	0	2 6
.. Filing Affidavit	-	0	2 6
.. Notice	-	0	2 6
Attending Court (though attendance unnecessary)	-	0	13 4
		£2	3 10

**Term Fee.**—Application to make decree absolute does not carry a Term Fee.

FEEs.

*Office Copy under Seal.*

	s.	d.
Copy	-	2 6
Certifying same	-	2 6
Sealing	-	5 0

*Obtaining Documents handed in at the Hearing.*

Notice to other side	-	3 6
Attending obtaining them	-	6 8

FORMS OF DECREES ABSOLUTE.

*Decree Absolute for Dissolution of Marriage.*

On the 8th day of May, 1896.

*B. against B. and C.*

Referring to the Decree made in this Cause on the 8th day of May, 1896, whereby it was decreed that the Marriage had and

solemnised on the 1st day of May, 1895, at the Parish Church of Kensington, in the County of Middlesex, between Charles B., the Petitioner, and Jane B., the Respondent, be dissolved by reason that since the celebration thereof the said Respondent had been guilty of adultery with George C., the Co-respondent, unless sufficient cause be shown to the Court why the said Decree should not be made absolute within six months from the making thereof; and no such cause having been shown, the Judge, on application of the said Petitioner, by his final Decree pronounced and declared the said Marriage to be dissolved.

*Decree Absolute for Nullity of Marriage.*

On the 1st day of June, 1896.

*L. (otherwise M.) against L.*

Referring to the Decree made in this Cause on the 1st day of June, 1896, whereby it was ordered that the Marriage in fact had and solemnised on the 3rd day of June, 1895, at St. George's Church, Hanover Square, in the County of Middlesex, between Jane L. (otherwise M.), the Petitioner, and Arthur L., the Respondent, be pronounced and declared to have been and to be absolutely null and void to all intents and purposes in the law whatsoever by reason of the frigidity and impotency of the parts of generation of the Respondent, and the said Jane L. (otherwise M.) be pronounced to have been and to be free from all Bond of Marriage with the said Arthur L. unless sufficient cause be shown to the Court why the said Decree should not be made absolute within six months from the date of the said Decree; and no such cause having been shown, the Judge, on application of the said Petitioner, by his final Decree, pronounced and declared the said Marriage to be and to have been absolutely null and void, and that the said Jane L. (otherwise M.) was and is free from all Bond of Marriage with the said Arthur L.

**MOTIONS (Rules 147 to 150).**

Many applications heretofore made to the Court by Motion can now be made by Summons, and the following would seem to be about the only cases in which it is necessary to move the Court:—

Substituted Service of Petitions, Citations, or Orders requiring personal service *ex parte*.

Dispensing with making the alleged adulterers Co-respondents *ex parte*.

Maintenance. Attachment.

Injunction to restrain Respondent from visiting or annoying Petitioner, or from selling property &c.

Confirming Registrar's Report as to Variation of Settlement. Maintenance, &c.

New Trial.

To discharge Protection Order.

Appeal from Magistrate's Order for Judicial Separation.

**When Heard.**—During the Sittings Motions are usually heard by the Court every Monday, and in Vacation by the Registrars every other Wednesday. Notice is given in the Term Cards and Vacation Notice.

**Case.**—The case should briefly set forth the proceedings:—

Petition filed the            day of            , 190 .

Appearance.

Answer.

And the present application, as—

“ Counsel will move on            that &c.”

**Notice.**—TAKE NOTICE that this Honourable Court will, on            , the            day of            , 190 , be moved by Counsel on behalf of the [Petitioner or Respondent] to [confirm the Registrar's Report, or whatever the application may be for].

Dated the            day of            , 190 .

To A. B., Respondent's Solicitor.

**Filing.**—The Case and other documents to be used at the hearing should be left at the Divorce Registry not later than Two o'clock on the Wednesday preceding the Monday upon which it is intended to move the Court, except that with regard to the first Motion day in each sitting papers should be left on the preceding Tuesday; indeed, they can always be left on the Tuesday.

**Affidavits and Notice.**—Notice, with Copy Affidavits (if any), should be delivered to the other side, if necessary, four clear days previously to the hearing. If no Appearance has been entered no Notice need be filed or delivered. All the Papers filed in the Cause are sent with the Motion Papers to the Court Registrar (Rule 115).

**Counter Affidavits.**—These should be handed in at the hearing with the filing fee pinned on. They are then referred to in the Order drawn by the Registrar and sent with the other papers to the Registry, when they are filed. If not so handed in they will not be accepted at the Registry for filing without leave of the Registrar. Copies should be served on the other side as soon as possible, or the motion will be liable to be adjourned in order that Affidavits in answer may be filed.

**Order.**—The Order is entered by the Registrar in the Motion Book for the day, and an office copy, if required, can be ordered on the Wednesday or Thursday following the hearing. Counsel's briefs are not required to be left.

**Service.**—A plain copy sufficient for service if personal service not required.

**Adjourned.**—If adjourned, a Notice of Renewal is filed at the Registry. Form to be obtained at the Registry. Filing fee, 2s. 6d.

#### ADJOURNED MOTIONS.

**Affidavits.**—With this must be filed any Affidavit or document to be used, and copies delivered, with Notice, to the other side, as in the first instance.

**Counter Affidavits.**—As before.

The original Case, with all the Cause Papers filed, are, with the Notice, forwarded to the Court Registrar.

**Appeal.**—Time, fourteen days from the date of the Order, unless extended by special leave of the Court of Appeal (S. C. R., Order LVIII., Rule 15).

## FEES.

	£	s.	d.
Filing Case (including the Order) -	0	10	0
Filing Notice, if necessary -	0	2	6
Filing Affidavits, each -	0	2	6

## ALLOWED ON TAXATION.

Instructions for Case -	-	-	-	—	
Drawing Case and Copy -	-	-	0	10	0
Drawing Notice of motion, Copy and Service -	-	-	0	4	0
Copy to file -	-	-	0	1	0
Attending filing Case and Notice -	-	-	0	6	8
Paid for Order and filing Case -	-	-	0	10	0
Paid for filing Notice -	-	-	0	2	6
Brief Copy Case and Notice -	-	-	0	4	4
Attending Counsel with Case and Papers -	-	-	0	3	4
<sup>1</sup> Paid his Fee and Clerk -	-	-	1	3	4
Brief, drawing (Case and Affidavits constituting the Brief) -	-	-	-	-	-
Attending Court when Order made -	-	-	0	13	4
Attending Registry, bespeaking Office Copy -	-	-	0	6	8
Paid for same, and collating Copy of same, and Service -	-	-	0	6	0
Each Affidavit—					
Instructions for Affidavit -	-	-	0	6	8
Drawing same -	-	per folio	0	1	0
Engrossing same -	-	„	0	0	4
Copy for Service -	-	„	0	0	4
Brief Copy for Counsel -	-	„	0	0	4
Attending Deponent to be sworn -	-	-	0	6	8
Paid Commissioner -	-	-	0	1	6
Paid Filing -	-	-	0	2	6

<sup>1</sup> If with Affidavits, £2 4s. 6d.; attending, 6s. 8d.

## SUMMONS (Rules 160 to 168 and 181 to 184).

A Summons may be taken out by any person in any matter or suit depending in the Court, unless by rule or practice a different mode of proceeding is required.

**Drawing.**—The Summons should be drawn in duplicate, and the day and hour when returnable inserted; one copy folded lengthwise and endorsed, and at the right-hand bottom corner of the other copy the Fee stamps (8s.) should be affixed. Take both copies to the Divorce Registry. The endorsed copy is stamped with the Judge's signature and returned to the solicitor; the other copy is retained in the Registry.

### FORM OF SUMMONS.

Let the Petitioner or his solicitor attend one of the Registrars [*or* one of the Judges of this Division at his Chambers at the Royal Courts of Justice on Saturday, the      day of      , 190    , at half-past ten] at the Divorce Registry of the High Court of Justice at Somerset House, Strand, in the County of Middlesex, on Tuesday next, the      day of      , 190    , at half-past eleven of the clock in the forenoon, to show cause why the Respondent should not have fourteen days' further time to file his Answer herein.

Dated the      day of      , 190    .

Issued by E. F., of      .

F. H. J.

*Solicitor for the Respondent.*

[Stamps, 8s.]

**Service.**—A copy of the signed Summons, with copies of Affidavits or other documents to be used at the hearing, must be served on the party summoned one clear day at least before it is returnable, and before seven o'clock p.m.; on Saturdays, before two o'clock.

**Counsel.**—If the Summons is to be attended by counsel it should be *marked so when served*. The other side, intending to appear by counsel, and the Summons not being so marked, *should give notice of their intention so to appear*, so that either party may have the opportunity of being similarly represented if desired. Summonses before the Registrar attended by counsel are taken at half-past eleven, others at twelve o'clock.



**Certificate for Counsel.**—This should be asked for, if desired, at the *hearing of the Summons*, as no costs are allowed for such attendance, *either between party and party or solicitor and client*, unless the Registrar at the hearing certifies it to be a proper case for counsel to attend.<sup>1</sup>

Costs of counsel on Summones before the Judge are always allowed.

**Affidavits** used on the hearing should, with the Fee Stamp (2s. 6d.) pinned on, be left with the Registrar, so that they can be referred to in the Order and filed.

**Consent.**—If a Consent is obtained, the signed Summons endorsed with the Consent should be left with the Registrar's messengers. The Order will be drawn in due course, and can be obtained at the Divorce Registry a day or two afterwards. *Consent* does not avoid taking out the Summons.

**When Heard.**—During the Sittings Summonses are heard by a Registrar at Somerset House every Tuesday and Friday at half-past eleven o'clock, and by the Judge in his Chambers every Saturday at half-past ten; during Vacation by a Registrar every day, at half-past eleven, at Somerset House.

**How Heard.**—All Summonses can be heard by a Registrar, who will make such Order as he may think fit, or refer the matter to the Judge; but any party objecting to the Order of the Registrar may appeal to the Judge within four days, by Summons, to rescind or vary the same. The signed Summons should always be produced at the Hearing.

**Adjourned Summonses.**—When the Registrar adjourns a Summons to the Judge it is heard by him in his Chambers the first day he is hearing Summonses; but to ensure this the solicitor should at once give notice of the adjournment to the Divorce Registry, so that the Summons shall be placed in the Adjourned Summons Book, and all necessary papers sent to the Court.

**Appeal from Judge's Summons.**—Appeals from Orders made in Chambers are subject to the same rules as in Chancery, and will not be entertained unless the Judge gives leave to appeal direct, or certifies that he does not require to hear further argument in open Court.

<sup>1</sup> *Chapman*, L. R. 9 Q. B. D. 254; L. R. 10 Q. B. D. 51.

**Time.**<sup>1</sup>—Fourteen days (Order LVIII., Rule 15., S. C. R.)

**Dismissed with Costs.**—The Costs may form part of the Order *if fixed at the hearing*, or application may be made to the Registrar for an appointment to settle the amount. Notice of the appointment would be served on the other side.

**Non-attendance.**—If the party summoned does not attend at the time fixed for the hearing, the party issuing the Summons must wait half an hour from the appointed time, and then ask the Registrar to make an Order on an Affidavit of Service and Non-attendance: after which fill up the following Affidavit (Forms may be obtained at the Divorce Registry), see that the Summons annexed to it is marked by the Commissioner, and take it to the Divorce Registry, and have the Summons, with Registrar's note upon it, looked up. The Order may be applied for at the Divorce Registry a day or two afterwards.

I, G. T., of \_\_\_\_\_, Solicitor for the Petitioner in this Cause, make oath and say—

1. That I did on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_ of our Lord One thousand nine hundred and \_\_\_\_\_, before the hour of \_\_\_\_\_ of the clock in the evening, serve \_\_\_\_\_, in this \_\_\_\_\_, with a true copy of the Summons hereunto annexed (marked "\_\_\_\_\_"), by leaving the same at the \_\_\_\_\_ of the said \_\_\_\_\_, situate \_\_\_\_\_ with \_\_\_\_\_ there.
2. And I further say that I did attend the said Summons at the return thereof: that is to say, on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, at \_\_\_\_\_, from the hour of \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon until half an hour after the said hour of \_\_\_\_\_ of the clock on that day, but that the said \_\_\_\_\_ did not, nor did any person on his behalf, attend to oppose an Order being made on the said Summons to my knowledge or belief.

Sworn at &c.

The solicitor on the other side attending can, after waiting half an hour, and no one appearing to support the Summons, ask the Registrar to mark his attendance on the Summons with his costs (6s. 8d.).

<sup>1</sup> *Rigg v. Hughes*, 9 P. D. 68.

**Withdrawn.**—The fee for the Order is returned.

**Order made.**—The Order is drawn and signed by the Registrar, and entered on the Minutes in the Cause, and can be obtained at the Divorce Registry the day after hearing.

**Service.**—A plain copy is sufficient for service.

COSTS ALLOWED TO SOLICITOR.

	£	s.	d.
Drawing Summons, with Copy for Court - - -	0	5	0
Attending Issuing - - -	0	6	8
		s.	d.
Paid Fees—Summons - - -		3	0
„ Order - - -		5	0
	0	8	0
Copy and Service - - -	0	3	6
Attending Hearing - - -	0	6	8
„ for Order - - -	0	6	8
Copy and Service of Order - - -	0	3	6
	2	0	0
If with Affidavit—			
Instructions for Affidavit - - -	0	6	8
(Not allowed when made by the Solicitor.)			
Drawing Affidavit - per folio	0	1	0
Engrossing Affidavit - „	0	0	4
Copy for Service - „	0	0	4
Service of same - - -	0	2	6
Attending Swearing - - -	0	6	8
Paid Commissioner - - -	0	1	6
Filing - - -	0	2	6
Attended by Counsel (if certified for)—			
Instructions to Counsel - - -	0	6	8
Brief Copy Affidavit - per folio	0	0	4
Attending Counsel - - -	0	3	4
His Fee and Clerk - - -	1	3	6
If with Affidavits - - -	2	4	6
(Then the Attendance would be 6s. 8d.)			

CONSENT.

Perusing Summons - - -	—		
Attending signing Consent - - -	0	6	8

## VACATION

*(13th August until 23rd October).*

**Taxation of Costs.**—The Registrars will not tax any Bill of Costs, or proceed upon any Petition for Alimony, except under special circumstances to be stated in a written application addressed to them.

**Summonses** are heard by one of the Registrars at the Principal Probate Registry, Somerset House, at half-past eleven o'clock every day.

**Motions** are heard every other Wednesday at half-past twelve o'clock. Must be attended by counsel.

All Papers for Divorce Motions are to be left with the Chief Clerk of the Divorce Registry before two o'clock on the preceding Saturday.

**Time** runs during the Vacation, and Pleadings can be filed, and almost all proceedings in Divorce Causes taken.

**Attachment.**—Application can be made to the Vacation Judge.

**Office Hours.**—From 13th August until 23rd October inclusive the Offices of the Probate and Divorce Registries are open to the public on Saturdays at ten o'clock a.m., and closed at two o'clock p.m.; and on every other day of the week these Offices are opened at eleven o'clock a.m., and closed at three o'clock p.m.

**N.B.**—Regulations are printed as to the general conduct of business during Vacation and when decrees absolute may be applied for, which can be seen at the Registry. Practitioners should apply to one of the Registrars before making any application to the Vacation Judge.

## COMMISSION OR REQUISITION (Rules 132 to 137 and 188).

*(20 & 21 Vict. c. 85, Section 47.)*

### EXAMINATION OF WITNESSES OUT OF JURISDICTION.

**How Obtained.**—An Order for a Commission to examine Witnesses out of the jurisdiction of the Court is made by the Registrar (no Appearance being entered) on an Affidavit showing that the party

to be examined is a material Witness. This Affidavit should depose to the service of the Citation and to search for Appearance.

By the consent of all parties an Order may be made appointing an Examiner to take the evidence of a Witness in our Colonies and in certain Foreign Countries, instead of issuing a Commission or Requisition. It is in the discretion of the Court to grant or refuse a Commission.<sup>1</sup>

If the examination of one of the parties to the suit is required, the application must be made *to the Judge*.

**When Issued.**—A Commission can issue immediately an Appearance to the Citation has been entered. It cannot be issued, except by leave of the Court, before an Appearance has been entered or the time for so doing has expired.<sup>2</sup>

**Summons For.**—If an Appearance has been entered a Summons must be taken out to show cause why a Commission should not be issued, and the hearing of the Cause be stayed until its return.

**Consent.**—If a Consent to the Summons is obtained, an Affidavit will still be necessary. If no Appearance has been entered, it would be issued on an Affidavit without a Summons. The following is the usual form of Affidavit:—

AFFIDAVIT IN SUPPORT OF APPLICATION FOR COMMISSION TO EXAMINE  
WITNESSES ABROAD.

[*Usual Heading.*]

*B. v. B.*

I, J. T., of \_\_\_\_\_, solicitor, make oath and say as follows:—

1. I am the solicitor for the Petitioner in this Cause.
2. The following Witnesses, to wit [*here set forth their names*], reside at Paris in France, and are, as I am advised and believe, material and necessary Witnesses to prove the contents of the Petition filed in this Cause, and the Petitioner cannot, in my judgment and belief, safely proceed to the trial of this Cause without the evidence of such Witnesses.

<sup>1</sup> Douglas-Pennant *v.* Douglas-Pennant and Fielden, [1903] C. A.

<sup>2</sup> Valentine *v.* Valentine, [1901] P. 283.

3. The taking of the evidence of such Witnesses by Commission, instead of bringing them to this country to be examined at the trial of this Cause, would be a great saving of expense.

Sworn &c.

J. T.

**Wife's Costs.**—Application can be made, *without Summons*, to the Registrar who settles the draft Commission to ascertain what is a sufficient sum to cover her expenses in issuing or joining in or attending a commission, and an Order will be made upon the husband to pay or secure the same within a fixed time, as determined by the Registrar when making the Order.

**Commission in Draft for Settlement.**—Upon the Order being made the solicitor will prepare the Commission in draft to be settled by the Registrar.

**Witnesses.**—The name of one of the Witnesses must be given.

**Commissioner.**—The name of the party proposed as Commissioner is also submitted for the Registrar's approval. The Commission may be addressed to one or two parties, or to one person and his nominee. Thus:—

To our Vice-Consul at New York, in the United States of America, or such person as he shall appoint to act in his stead under this Commission, Greeting.

**Nominee of Commissioner.**—In the event of his appointing anyone, the appointment, as follows, should accompany the Commission and be returned with it:—

*B. v. B.*

Whereas a Commission for the examination of Witnesses in this Cause having been issued out of this Honourable Court to me or to such person as I shall appoint to act in my stead, now I hereby appoint E. F., of \_\_\_\_\_, to take such Commission in my stead, as aforesaid.

G. L.,

*British Vice-Consul, New York.*

**Foreign Office.**—In case of the appointment of a Consul or Vice-Consul, application must be made to the Foreign Office here before the Commission issues to ascertain whether the Consular Officer would be willing to act.

**Copy Petition.**—An office copy of the Petition under seal, and sometimes copies of the Pleadings, accompanies the Commission, and should be ordered when the Draft Commission is left at the Divorce Registry. As in other instances, for expedition and convenience of the solicitor, a copy made by the solicitor is accepted, the same fees, however, being charged.

**Draft Commission Delivered.**—The Draft may be applied for at the Divorce Registry a day or two after it is left there, and, if settled, a copy should be delivered to the other side.

**Signed, Sealed, and Issued.**—If no objection is raised within two clear days, the Commission is engrossed on parchment and left at the Divorce Registry, with the Draft and a Præcipe, and a fee stamp of One Pound. The Commission and Draft are then forwarded to the Registrar who settled the same for his signature. The Commission, when signed by the Registrar, is, with the Draft, sent to be sealed, and both can be obtained the following day on applying at the office of the Sealer.

#### COMMISSION OR REQUISITION FOR EXAMINATION OF WITNESSES.

##### In the High Court of Justice.

##### PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

##### (Divorce.)

EDWARD VII., by the grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, to [*here set forth the name and proper description of the Commissioner*], Greeting.

WHEREAS a certain Cause is now depending in the Probate, Divorce, and Admiralty Division of Our High Court of Justice between A. B., Petitioner, and C. B., Respondent, and R. S., Co-respondent, wherein the said A. B. has filed his Petition praying for a dissolution of his marriage with the said C. B. [*or otherwise, as in the Prayer of the Petition*]:

AND WHEREAS by an Order made in the said Cause on the day of , 190 , on the application of the said A. B.

it was ordered that a Commission [*or Requisition*] should issue under Seal of Our said Court for the examination of [*here insert name and address of one of the persons to be examined*] and others as Witnesses to be produced on the part of the said A. B., the Petitioner, in support of his said Petition, saving all just exceptions:

Now KNOW YE that We do, by virtue of this Commission [*or Requisition*] to you directed, authorise [*or request*] you within thirty days after the receipt of this Commission [*or Requisition*] at a certain time and place to be by you appointed for that purpose, with power of adjournment to such other time and place as to you shall seem convenient, to cause the said Witnesses to come before you and to administer to the said Witnesses respectively an oath<sup>1</sup> truly to answer such questions as shall be put to them touching the matters set forth in the said Petition, a true and authentic copy whereof, sealed with the Seal of Our said Court, is hereunto annexed, and such Oath being administered, We do hereby authorise [*or request*] and empower you to take the examination of the said Witnesses touching the matters set forth in the said Petition, and to reduce the said examination<sup>or</sup> cause the same to be reduced into writing. And that for the purpose aforesaid you do assume to yourself some notary public or other lawful scribe as and for your attorney in that behalf if to you it should seem meet and convenient so to do. And the said examination being so taken and reduced into writing as aforesaid, and subscribed by you, We do require [*or request*] you forthwith to transmit the said examination, closely sealed up, to the Divorce Registry of Our said Court at Somerset House, Strand, in the County of Middlesex, England, together with these presents.

And We do hereby give you full power and authority to do all such acts, matters, and things as may be necessary, lawful, and expedient for the due execution of this Our Commission [*or Requisition*].

Dated at London the            day of            , in the year of Our Lord One thousand nine hundred and            , and in the year of Our reign.

[*Solicitor's name and address*].

(Signed) X. Y., Registrar.

<sup>1</sup> Form of Oath to be administered by the Commissioner.



**Sent out by Solicitor.**—The solicitor will forward the Commission to his agent, or to some local solicitor, or to the Commissioner, with all instructions he may deem requisite.

**Evidence: How taken, and Commission returned.**—The examination is taken down in writing by the Commissioner or his appointed scribe in narrative form—not question and answer. If any objections are taken, then the question and answer and objections are to be stated *verbatim*. All documents produced at the examination, with the Commissioner's certificate and the Commission, are returned to the Divorce Registry (*per post*) by the Commissioner.

#### APPOINTMENT OF SCRIBE.

*B. v. B.*

I do hereby appoint A. B., of \_\_\_\_\_, as and for my actuary, for the purpose of reducing to writing the examination of the Witnesses to be taken by me, pursuant to the Commission herein bearing date \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

Dated \_\_\_\_\_

L. M., *Commissioner*.

This is returned with the Commission.

**Minute.**—A Minute directing the filing of all the documents returned by the Commissioner is, on their receipt, drawn by an official of the Divorce Registry, and signed by the Registrar who opened the envelope containing the said documents. The Commission, the depositions, and all documents forwarded by the Commissioner are then annexed to the Registrar's Minute.

**Filing the Commission &c.**—The party issuing the Commission should apply at the Divorce Registry to ascertain when the Commission is returned (no notice of such being given), and when returned should file the same.

**Office Copies.**—When this is done, *and not before*, either party can see the documents and order office copies of them.

**Cause in List.**—Whether the Cause is marked "stayed" or not in the list, the Commission and all documents accompanying it are sent to the Court immediately they are received at the Registry; so no notice is required to be given of its return.

## REQUISITION.

The Form of Commission can be adapted as suggested, or the Form in Appendix K. 37 B, Supreme Court Rules, used. Requisitions are to be signed by the President, and, when sealed, are to be left at the Registry with all necessary papers, and will be sent by the Senior Registrar to the Secretary of State for Foreign Affairs instead of being given out to the solicitors.

**Undertaking as to Costs.**—Before sealing any requisition the solicitor must file at the Registry the following undertaking:—

A. v. A.

I [*or We*] hereby undertake to be responsible for all expenses incurred by His Majesty's Principal Secretary of State for Foreign Affairs in respect of the execution of the Requisition issued herein on the      day of      , 190      , and on receiving due notification of the amount of such expenses I [*or we*] undertake to pay the same to the Senior Registrar.

Filing fee, 2s. 6d.

In all other respects the Rules regulating Commission apply.

## FEES.

	£	s.	d.
Summons and Order - - -	0	8	9
Filing Affidavit (if any) - - -	0	2	6
Issuing Commission - - -	1	0	0
Filing Registrar's Minute - - -	0	3	0
Filing Deposition &c. annexed thereto	0	2	6

## COSTS ALLOWED ON TAXATION.

Summons - - - - -	2	0	0
Summons, if with Affidavit - - -	0	19	0
Drawing Commission in Draft and Copy, according to length - - -		—	
Attending Registry with same, to be settled by Registrar - - -	0	6	8
Attending Ordering Copy of Petition under Seal - - - - -	0	6	8
Paid for same by length, but not less than - - - - -	0	10	0

	£	s.	d.
Attending getting Commission Signed and Sealed, and for Copy of Petition - - - -	0	6	8
Engrossing same, according to length	—		
Paid Parchment - - - -	0	2	6
Paid Issuing Commission - - - -	1	0	0
Drawing Precipe - - - -	—		
Sending out Commission with full Instructions—or more, according to circumstances - - - -	0	6	8
Paid Postage - - - -	—		
Paid Commissioner (not exceeding the sum paid) - - - -	—		
Paid other Expenses - - - -	—		
Paid Filing Minute and Depositions -	0	5	6
Attending Ordering Copy Depositions	0	6	8
Attending for same when made -	0	6	8
Paid, according to length - - - -	—		

## COMMISSION.

Wife's Costs attending.—Estimated according to the number of Witnesses to be examined &c. (see p. 106).

## EXAMINING A WITNESS WITHIN JURISDICTION.<sup>1</sup>

**Affidavit.**—For the examination of a Witness within the jurisdiction (no Appearance being entered in the Cause) an Order will be made by the Registrar on an Affidavit showing that the party to be examined is a material Witness and unable (through illness or infirmity or leaving the country) to attend at the hearing.

If an Order for Examination of one of the parties to the suit is required, the application must be made to the Judge by summons.

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<sup>1</sup> Scotland and Ireland considered to be out of the jurisdiction, and commission must issue (*Durham v. Durham; Snelling v. Snelling and Clark*) - Chambers.

**Summons.**—If an Appearance has been entered a Summons must be issued to show cause why the Witness should not be examined *videlicet* before some Examiner to be appointed by the Registrar.

**Consent to Summons.**—If a Consent is obtained an Affidavit is still necessary.

AFFIDAVIT AS TO NECESSITY OF EVIDENCE.

*B. v. B.*

I, A. J., of \_\_\_\_\_, solicitor, make oath and say as follows:—

1. I am the solicitor for W. B., the Petitioner in this Cause.
2. I am advised and believe that R. B., now of \_\_\_\_\_, in the County of \_\_\_\_\_, merchant, is a material and necessary Witness to prove the contents of the Petition filed on behalf of the said W. B. in this Cause, and the said W. B. could not, in my judgment and belief, safely proceed to the trial or hearing of this Cause without the testimony of the said R. B.
3. I have been informed and verily believe that the said R. B. is now about to leave this country.

Sworn &c.

A. J.

ORDER OF APPOINTMENT FOR EXAMINATION OF WITNESS WITHIN THE JURISDICTION.

*B. against B.*

On reading the Affidavit of \_\_\_\_\_, sworn the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, and on hearing the solicitor for the \_\_\_\_\_ Witness \_\_\_\_\_ [if without Affidavit by consent], I do order that \_\_\_\_\_, on behalf of the said \_\_\_\_\_, and now within the jurisdiction of this Court, may be examined *videlicet* before \_\_\_\_\_ as Examiner at such time and place as the said Examiner shall think fit, and cause to be notified to the parties four days at least before the time so

appointed by him; and that the \_\_\_\_\_ shall be at liberty to cross-examine the said Witness \_\_\_\_\_, and that the said Witness \_\_\_\_\_ be further examined before the said Examiner, if he shall think fit:

And I further Order that it shall and may be lawful for the said Examiner, and he is hereby required to make, if need be, a special report touching the said examination hereby directed, and that the said examination and other proceedings had before him shall be returned to the Divorce Registry of this Court, at Somerset House, Strand, certified under his hand and seal, on or before the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_:

And I further Order that either party may be at liberty to take office copies of the said examination, and that the same may be read in evidence at the trial of this Cause, saving all just exceptions.<sup>1</sup>

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

R. A. P., Registrar.

**How Taken and Returned.**—The examination is taken down in writing by the Examiner in narrative form—not question and answer. If any objections are taken, then the question and answer, with objections, are stated *verbatim*. The examination, with all documents produced, accompanied by his certificate *and the Order of Appointment*, is returned to the Registry by the Examiner.

**Minute.**—A Minute directing the filing of the documents is then drawn by an official of the Divorce Registry, which is signed by the Registrar who opened the envelope containing the examination. The Order, the Depositions, and all other documents forwarded by the Examiner are then annexed to the Registrar's Minute.

**Filing the Examination.**—The party issuing the Order should apply at the Divorce Registry to ascertain when the examination is returned (no notice of such being given), and when returned should file the same.

<sup>1</sup> *Subpoenas* may be issued if deemed necessary.

**Office Copies.**—When this is done, and not before, either party can see the documents and order office copies.

## FEES.

	£	s.	d.
Summons and Order - - -	0	8	0
Filing Affidavit - - -	0	2	6
.. Registrar's Minute - - -	0	3	0
.. Depositions &c. annexed thereto	0	2	6

## COSTS ALLOWED.

Same as Commission, so far as they apply.

**NULLITY CAUSES—MEDICAL EXAMINATION.**

**Impotency or Malformation.**—In cases of Petition for nullity of marriage by reason of the alleged impotency or malformation of the Respondent, evidence of the condition of both parties by two medical men has to be obtained.

**Summons.**—Upon the Answer being filed, or the time for so doing having expired, or no Appearance having been entered, take out a Summons as follows:—

*J. G.* (otherwise *B.*) against *T. G.*

Let the Respondent's solicitor, \_\_\_\_\_, attend one of the Registrars at the Divorce Registry, Somerset House, Strand, in the County of Middlesex, on \_\_\_\_\_ next, the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, at \_\_\_\_\_ in the \_\_\_\_\_ noon, to show cause why Medical Inspectors should not be appointed by the Registrar to examine and report upon the parts and organs of generation of *J. G.* (otherwise *B.*), the Petitioner, and *T. G.*, the Respondent, in this Cause. And also to show cause why this Cause should not be heard *in camera*.

Dated \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_.

This Summons issued by \_\_\_\_\_, the Solicitor for \_\_\_\_\_.

**Service.**—If an Appearance has been entered it is sufficient to serve this Summons on the Respondent's solicitor, or at the address given in the Appearance if entered in person. If an Appearance has not been entered no service of the Summons is required, but the Order and the notice of appointment at the Registry for the examination made upon it must be served on

the Respondent personally, and if that cannot be done application must be made to the Court, in these cases on Summons, for substituted service. This will be supported by an Affidavit explaining the necessity of the application.

The Respondent declining or failing to attend to be examined will not prevent the Petitioner from proceeding to trial.

**Order: Medical Inspectors.**—The inspectors are invariably selected by the Registrar, and the Order of Appointment is made in terms of the Summons.

**Medical Fees.**—The Petitioner's solicitor will arrange with the inspectors as to their fees, generally from five to ten guineas each, with an additional fee to the one attending on the hearing of the Cause.

**Meeting at the Registry.**—He will also fix the day for their appearing before the Registrar to be sworn, and for the Petitioner and Respondent to be identified in their presence. Notice of such appointment should be given at the Divorce Registry.

**Oath and Minute.**—The Petitioner's solicitor then prepares the Oath for the Medical Inspectors and Minute of Identification of the parties, forms of which can be obtained at the Divorce Registry.

OATH TO MEDICAL INSPECTORS APPOINTED TO EXAMINE PETITIONER  
AND RESPONDENT.

*J. G.* (otherwise *B.*) against *T. G.*

H. S., of \_\_\_\_\_, in the County of Middlesex, M.R.C.S.,  
and J. B., of \_\_\_\_\_, in the said County, M.D., you are  
produced as inspectors in a Cause depending in the Probate,  
Divorce, and Admiralty Division of the High Court of Justice,  
entitled *J. G.* (otherwise *B.*) against *T. G.*, to examine the parts  
and organs of generation of *J. G.* (otherwise *B.*), the Petitioner  
in this Cause, and also of *T. G.*, the Respondent in this Cause:

You respectively swear that you will faithfully and to the  
best of your skill inspect the parts and organs of generation of the  
said *J. G.* (otherwise *B.*) and *T. G.*, and make a just and true  
report in writing whether the said *J. G.* (otherwise *B.*), the  
Petitioner, is or is not a virgin; and whether she hath or hath  
not any impediment on her part to prevent the consummation of

marriage; and whether such impediment (if any) can be relieved or removed by art or skill. And also whether the said T. G., the Respondent, is capable of performing the act of generation, and, if incapable, whether such his incapacity can be relieved or removed by art or skill; and that one of you shall deliver such report under your hands, closely sealed up, to one of the Registrars of the said Division.

[*Not required to be signed by the Inspectors.*]

Sworn at the Divorce Registry, Somerset House, Strand, in the County of Middlesex, the            day of            , 190    .

D. H. O., Registrar.

MINUTE OF MEDICAL INSPECTORS BEING SWORN, AND OF IDENTIFICATION.

*J. G. (otherwise B.) against T. G.*

On the            day of            , 190    , before the undersigned Registrar of this Division of the Court:

Personally appeared H. S., of            , in the County of Middlesex, M.R.C.S., and J. B., of            , in the said County, M.D., who were respectively appointed by Order herein, dated the            day of            , 190    , as inspectors to examine the parts and organs of generation of J. G. (otherwise B.), the Petitioner in this Cause, and also of T. G., the Respondent in this Cause, and to report in writing whether the said J. G. (otherwise B.), the Petitioner, is or is not a virgin; and whether she hath or hath not any impediment on her part to prevent the consummation of marriage; and whether such impediment (if any) can or cannot be relieved or removed by art or skill. And also whether the said T. G., the Respondent, is capable of performing the act of generation, and, if incapable, whether such incapacity can or cannot be relieved or removed by art or skill. Who were respectively duly sworn to inspect and report accordingly.

Then appeared personally the said J. G. (otherwise B.), the Petitioner, who, in the presence of the said inspectors and of the said Registrar, and of the solicitor for the Respondent, acknowledged herself to be the Petitioner or Party proceeding in this Cause.

Then appeared personally also the said T. G., the Respondent, who, in the presence of the said inspector, and of the said



Registrar, and of the solicitor for the Petitioner, acknowledged himself to be the Respondent or Party proceeded against in this Cause.

J. C. H., *Registrar*.

**Attending at the Registry.**—The respective solicitors with their parties and the inspectors will attend before the Registrar on the day fixed.

**Identification.**—Each Party is identified separately so as to avoid a meeting. Indeed, it is not necessary that they should both attend at the same time, though of course it is more convenient and saves a second attendance of the inspectors and solicitors.

**Oath and Examination.**—The Registrar reads the oath to the inspectors; they do not sign it; and each party is then identified by the solicitors in the presence of the Registrar and the inspectors, and it only remains to arrange for the necessary examination. This can take place at the Registry, or at the house of one of the inspectors, or at some hotel in the neighbourhood.

**Report.**—After the examination the inspectors make their Report, which is left by one of them with the Registrar. The Registrar on opening the Report signs a Minute drawn in the Registry, the Report is then filed, and either party can see it and order an office copy.

**Setting down Cause.**—The Order for medical inspection must be granted before application for the Registrar's Certificate is made.

**Out of London.**—Should the parties reside in the country, and it be more convenient for the examination to take place there, local inspectors will be selected by the Registrar, and the Oath and Minute will be prepared by the solicitor and sent to the nearest District Probate Registry, when the same formula will be observed, the Report of course being returned by post to the Divorce Registry by the District Registrar.

**Abroad.**<sup>1</sup>—In a case where the husband was in Kimberley, Cape of Good Hope, and the wife in England, an appointment of two medical inspectors was made for the examination of the wife here, and an appointment of two medical inspectors at Kimberley

<sup>1</sup>Dawson otherwise *Colls v. Dawson—Chambers*.

for the examination of the husband there, which was sent out to the Registrar of the High Court to make the necessary arrangements for the identification and examination of the husband.

## FEES.

	£	s.	d.
Filing Oath - - - -	0	2	6
.. Minute of Identification - - - -	0	3	0
.. Report - - - -	0	2	6
Minute of Registrar - - - -	0	3	0

## COSTS ALLOWED ON TAXATION.

Drawing Summons for appointment of Medical Inspectors, with copy for Registry - - - -	0	5	0
Attending issuing - - - -	0	6	8
Paid Fees—Summons, 3s.; Order, 5s. -	0	8	0
Copy and service - - - -	0	3	6
Attending Summons; Order made -	0	6	8
Attending J. A., obtaining his consent to act - - - -	0	6	8
Attending D. B., do. - - - -	0	6	8
Writing Petitioner, do. - - - -	0	3	6
Drawing and engrossing Oath for Inspectors - - - -	0	6	8
Filing - - - -	0	2	6
Drawing and engrossing Registrar's Minute of Identification - - - -	0	6	8
Filing - - - -	0	3	0
Attending Registry, obtaining appoint- ment for Inspectors to attend -	0	6	8
Notice thereof to Inspectors, 3s. 6d. each	0	7	0
Attending meeting of Parties and Inspectors - - - -	0	13	4
Attending filing Report and ordering Copy - - - -	0	6	8
Paid for Copy - - - -	0	2	6
Paid Filing Report and Minute -	0	5	6
Paid Inspectors' Fees - - - -	—		

## EXAMINATION IN THE COUNTRY.

Fee allowed to Commissioner acting for the Registrar - - - -	3	3	0
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**SUBSTITUTED SERVICE (Rules 13 and 15).***(20 & 21 Vict. c. 85, Section 42.)*

**When and how Applied for.**—When it is impossible to serve personally any Petition, Citation, Pleading, or Order necessary to be served, as where the names are given, but the addresses of the parties cannot be ascertained, application by Motion must be made to the Court to substitute some other mode of service; in Vacation to the Registrars. This need not delay the issuing of the Citation against the Respondent or other known Co-respondents.

**Application, when made.**—The case and Affidavits can be left when the Petition is filed, or any time afterwards before the Cause is set down. These are *ex parte* applications, and do not require to be served.

**Affidavit.**—In these applications the Affidavit of the Petitioner alone should not be relied upon, it should be corroborated. The case should be supported by Affidavit showing the efforts which may have been made to effect personal service, and, if possible, the Court should be informed of the name and address of any relative or friend with whom it might be likely that the absent party would communicate, and through whom a knowledge of the Petition, Citation, Pleading, or Order might be transmitted.

**Notice.**—This is an *ex parte* application, and no notice is required to be served on any party who may have appeared.

**Order.**—The usual Order is as follows:—

*[Service of this Order is not necessary unless required by the Party served.]*

## ORDER FOR SUBSTITUTED SERVICE OF CITATION.

Before Sir John Gorell Barnes, the President, sitting at the Royal Courts of Justice, Strand, in the County of Middlesex.

On the            day of            , 190 .

*B. against B.*

On reading the Statement filed on behalf of the Petitioner and Affidavit of the Petitioner and J. B., sworn the            day of            . 190 , and hearing counsel thereon, it is ordered that personal service on the Respondent of the Citation issued against her in this Cause be dispensed with, and that the said Citation, together

with a sealed copy of the Petition filed in this Cause, be personally served on Mrs. F., of \_\_\_\_\_, a sister of the Respondent, and that the said Citation, or an abstract thereof, to be settled by one of the Registrars of this Division of the Court, be advertised twice, at an interval of a week, in such newspapers as the said Registrar may direct.

An abstract of the Citation to be settled by the Registrar for advertisement is then left with the Citation, and a fee of ten shillings, at the Divorce Registry.

The usual Form of Abstract is as follows:—

ABSTRACT CITATION.

To J. B., late of \_\_\_\_\_, in the County of \_\_\_\_\_.

TAKE NOTICE that a Citation has been issued in this Division citing you to appear and answer the Petition of M. B., of \_\_\_\_\_, in the County of \_\_\_\_\_, praying for a dissolution of marriage. In default of your so appearing you will not be allowed to address the Court, and the Court will proceed to hear the said Petition proved and pronounce sentence in respect thereto.

AND TAKE FURTHER NOTICE that for the purpose aforesaid you are, within \_\_\_\_\_ days after the date of this publication, to attend in person or by your solicitor at the Divorce Registry, Somerset House, Strand, London, and there enter an Appearance in a book provided for that purpose.

D. H. O., *Registrar.*

[*Solicitor's Name and Address.*]

To be advertised *twice* in each of the following newspapers at intervals of a week: *Daily Telegraph* and *Standard*.

Forms obtained at the Registry.

**Joint Abstract.**—If the Order is for substituted service on the Respondent and Co-respondent, it must be in separate advertisements.

ABSTRACT OF CITATION.—RESPONDENT AND CO-RESPONDENT.<sup>1</sup>

To C. G., late of \_\_\_\_\_, in the County of \_\_\_\_\_.

TAKE NOTICE that a Citation has been issued in this Division citing you to appear and answer the Petition of H. G., of \_\_\_\_\_, in the County of \_\_\_\_\_, praying for a dissolution of marriage.

<sup>1</sup> Must be in separate Citations.

In default of your so appearing you will not be allowed to address the Court, and the Court will proceed to hear the said Petition proved and pronounce sentence in respect thereto.

AND TAKE FURTHER NOTICE that for the purpose aforesaid you are, within \_\_\_\_\_ days after the date of this publication, to attend in person or by your solicitor at the Divorce Registry, Somerset House, Strand, London, and there enter an Appearance in a book provided for that purpose.

[Solicitors.]

D. H. O., Registrar.

The Abstract settled may be obtained two or three days after it has been left. This should be taken care of, as it has ultimately to be filed with copies of the newspapers.

A copy of the Abstract should be left at the office of the papers in which the Registrar has directed it to be advertised, and the original produced if required.

**Advertisements to be Filed.**—After the time for Appearance has expired, and no Appearance entered, the advertisements, with the abstract and the Citations, must be filed.

In filing the newspapers it is only necessary to bring in the sheet upon which the advertisement appears, of course leaving the name of the paper and date appearing. The advertisement should be lined round with ink to render it easily observable.

**No Affidavit of Service required.**—When the Order for Substituted Service merely directs the Citation to be advertised, an Affidavit of Service is not required to be filed, nor is any endorsement of Service on the Citation necessary; but if personal service on anybody had formed part of the Order for Substituted Service, it should be set out in an Affidavit of Service. The endorsement on the Citation in the latter case should show fully how served.

**Appearance Entered.**—The Citation alone need be filed, and if the Appearance is entered before any advertisement, or after, say, one advertisement has appeared, the Order need not be further carried out.

#### AFFIDAVIT OF SERVICE OF CITATION.

*C.* against *C.*

I, A. B., of \_\_\_\_\_, in the County of \_\_\_\_\_, solicitor's clerk, make oath and say that the Citation bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, issued under Seal of

the said Division of this Court against D. C., the Respondent in this Cause, and now hereunto annexed marked with the letter "A," was duly served by me on E. F. at \_\_\_\_\_, in the County of \_\_\_\_\_, by showing to him the original Citation under Seal, and by leaving with him a true copy thereof on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_\_ (pursuant to the Order for Substituted Service made herein dated the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_\_), and I further make oath and say that I did at the same time and place deliver to the said E. F. personally a certified copy under Seal of the said Division of this Court of the Petition filed in this Cause.

## FEES.

Case on Motion (*as before*).

	s.	d.
Abstract to settle - - -	10	0
.. and Advertisements Filed -	2	6
Affidavit and Citation Filed - -	5	0

## COSTS ALLOWED.

Case on Motion &c. (*as before*).

	s.	d.
Drawing Abstract Advertisement to settle	5	0
Attending getting same settled -	6	8
Paid settling - - - -	10	0
Making Copies Advertisements for Papers, each - - - -	1	4
Attending ordering Advertisements -	6	8
Paid for same - - - -	-	-
Attending filing Advertisements and Abstract - - - -	6	8
Paid - - - -	2	6

If personal service on any one ordered, same as "SERVICE OF CITATION," which see (p. 49).

**DISPENSING WITH CO-RESPONDENTS (Rules 4 to 6).**

(20 & 21 Vict. c. 85, Section 28.)

**Co-respondents.**—Everyone charged with adultery in *husband's* Petition must be made a Co-respondent, unless otherwise directed by the Court.

**Unknown Adulterers.**—When it is impossible to ascertain the names of parties with whom adultery is charged, as, for instance, that in the month of . . . at . . . , the said A. B. committed adultery with divers men unknown to your Petitioner, or that on the . . . day of . . . the said A. B. was delivered of a child of which your Petitioner is not the father, or that the parties are dead, application must be made to the Court<sup>1</sup> on Motion for Leave to Proceed without making them Co-respondents<sup>2</sup>; and such application should be supported by Affidavit showing what efforts have been made to discover the parties so charged, and the application must not depend on the Affidavit of the Petitioner only.<sup>3</sup> This Order, when made, is not required to be served on anybody.

If a Co-respondent has died before the institution of proceedings, a Motion to Dispense must be made, even though adultery be charged against another person.<sup>4</sup>

**Name becoming known.**—Application must be made by Summons to the Registrar for leave to amend the Petition by inserting such name therein.

**Fees and Costs.**—Similar to those of "SUBSTITUTED SERVICE" (p. 122).

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<sup>1</sup> In Vacation, to the Registrar.

<sup>2</sup> *Plenty v. Plenty*, 7 P. D. 19.

<sup>3</sup> *Barber v. Barber*, 65 L. J. P. 58; [1896] P. 73.

<sup>4</sup> *Slyator v. Slyator*, [1897] P. 85; 66 L. J. P. 97.

## SUITS IN FORMÂ PAUPERIS (Rules 25 to 27, and 208 to 211).

(20 & 21 Vict. c. 85, Section 54.)

**How Commenced.**—Before the Petition can be filed leave must be obtained to so prosecute the Suit.

**How Obtained.**—This is only to be obtained by application to the Registrar, supported by opinion of Counsel as to the grounds of proceeding being reasonable.

**Case for Counsel.**—Draw up a full statement of the facts and submit it to Counsel, who will endorse his opinion upon it. The Case is then left, with the necessary Affidavits in support, at the Divorce Registry for the approval and Order of the Registrar.

**Affidavit in Support.**—The Applicant must make an Affidavit, annexing the Case submitted to counsel, stating fully his or her income or means of living, and that he or she is not worth twenty-five pounds after payment of his or her just debts, save and except his or her wearing apparel; and in the case of the wife being the Applicant she must further depose as to the income or means of living of the husband, and if she has no knowledge of his whereabouts or mode of life she must state so. The Case is marked by the Commissioner before whom the Affidavit is sworn.

**Approval.**—The Case and Affidavit left at the Divorce Registry may be called for two days afterwards, and if approved of by the Registrar the Order for leave to prosecute the Suit *in formâ pauperis* can be obtained and the Petition may be filed and Citation extracted.

### CASE AND OPINION OF COUNSEL.

Application of S. K. (wife of W. K.), of \_\_\_\_\_, to be allowed to prosecute a Suit for a Dissolution of Marriage *in formâ pauperis*.

Case for Counsel to advise as to whether the Applicant has sufficient grounds for prosecuting a Suit for a Dissolution of Marriage.

The Applicant, S. K. (then S. G., spinster), was on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, lawfully married to W. K. at \_\_\_\_\_, and there has been issue of the said marriage two children.



Since the marriage the said W. K. has habitually been guilty of cruelty towards the Applicant by kicking her, knocking her about with his fists, and giving her black eyes.

The said W. K. left the Applicant on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, and has since lived and cohabited and has habitually committed adultery with S. R. at \_\_\_\_\_.

Counsel will be pleased to advise whether the Applicant has reasonable grounds for prosecuting a Suit for Dissolution of Marriage.

S. K.

I have perused the Case stated within, and am of opinion that Mrs. S. K. has ample grounds for applying to the Court for a dissolution of her marriage with W. K.

L. D.

Temple,  
\_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_.

AFFIDAVIT.

[Usual Heading.]

In the matter of the application of S. K. (wife of W. K.) to be allowed to prosecute a Suit for Dissolution of Marriage *in formâ pauperis*.

I, S. K. (wife of W. K.), of \_\_\_\_\_, the above-named Applicant, make oath and say—

1. That I am the Applicant.
2. That the Case hereto annexed marked "A" contains a full and true statement of all the material facts upon which I rely to obtain a Dissolution of Marriage.
3. That I have no means of support save and except the proceeds derived from [*set out business*], which produces me an income of \_\_\_\_\_ per week.
4. That otherwise I am entirely without means, and am not worth twenty-five pounds after payment of all my just debts, save and except my wearing apparel.
5. That I know of my own knowledge that the said W. K. has no property or means whatever, and I am informed and believe that he is now out of employment.

Sworn &c.

S. K.

**Husband Petitioner.**—The proceedings are analogous, only that he is not called upon to depose as to the means or income of the wife.

**Order when obtained** applies only to the Petitioner. The Respondent or Co-respondent desiring to defend *in formâ pauperis* must apply in the same way.

#### RESPONDENT.

**A Wife** whose husband is suing *in formâ pauperis* may apply by Summons for leave to proceed with her defence in like manner on production of an Affidavit that she has no separate property exceeding twenty-five pounds in value after payment of her just debts.

**A Husband** whose wife is suing *in formâ pauperis* may apply by Summons for leave to proceed with his defence in like manner on production of an Affidavit as to his income or means of living, and showing that, besides his wearing apparel, he is not worth twenty-five pounds after payment of his just debts.

**Application during the Proceedings.**—Husband, whether Petitioner or Respondent, desiring to continue the proceedings *in formâ pauperis* must apply by Summons for leave to do so. This Summons must be served on all parties who have appeared (or if the wife is the Petitioner then upon her or her solicitor), as for the purposes of costs they might desire to oppose the application.<sup>1</sup>

**Alimony** can be applied for and obtained in the same way as in Matrimonial Suits not prosecuted *in formâ pauperis*.

**Counsel and Solicitor.**—Neither Counsel nor Solicitor is assigned.

**Costs.**—A party suing or defending *in formâ pauperis*, who has obtained judgment with costs, is not entitled to be allowed, on taxation of costs between party and party, either counsel's fees or solicitor's costs, other than costs out of pocket.<sup>2</sup>

**Fees.**—No Fees are charged on these applications, nor upon any subsequent proceedings in the matter.

In *Richardson v. Richardson and Ploeman* solicitor's costs out of pocket, with allowance for office expenses and counsel's fee, were allowed by the President and affirmed by the Court of Appeal (64 L. J. R., 93; [1894] P. D. C. A. 346).

<sup>1</sup> *Davies v. Davies and Ellard*—Chambers.

<sup>2</sup> *Carson v. Pickersgill*, 14 Q. B. D. 85; 954 L. J. Q. B. 312.

## ALIMONY PENDENTE LITE<sup>1</sup> (Rules 81 to 94 and 189 to 192).

(20 & 21 Vict. c. 85, Section 32.)

**When to Apply.**—The wife, if Petitioner, can file her Petition for Alimony any time after the Citation has been served on the husband. If Respondent she can file her Petition any time after having entered an Appearance. The Petition should be confined to a statement of the husband's means, and filed at the Divorce Registry; it need not be signed. No Affidavit in support is required.

### FORM OF PETITION FOR ALIMONY.

To the Right Honourable the President of the Probate, Divorce,  
and Admiralty Division of the High Court of Justice.

*A. B.* against *C. B.* and *E. F.*

The             day of                             , 190 .

The Petition of *C. B.*, the lawful wife of *A. B.*, showeth—

1. That the said *A. B.* does now carry on the business of  
a             at                             , and derives therefrom  
the net annual income of £             .
2. That the said *A. B.* is now or lately was possessed  
of             shares of the             Railway Company  
amounting in value to £             , and yielding a clear  
annual dividend of £             .
3. That the said *A. B.* is possessed of certain stock-in-trade  
in his said business of the value of £             .

[*And particulars of any other property he may possess.*]

Your Petitioner therefore humbly prays that your Lordship will be pleased to decree her such sum or sums of money by way of Alimony *pendente lite* [*or permanent Alimony*] as to your Lordship shall seem meet.

**Service.**—A plain copy is sufficient, and may be served on the solicitor of the husband, or at the address given for service if

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<sup>1</sup> This application is quite independent of the other proceedings in the Cause, and can be made even after decree *nisi* has been granted.

he is acting in person. On the other hand, if he has not appeared to the Citation, he must be served personally with the Petition for Alimony, it frequently occurring that the husband having no defence to the charges in the main Petition may yet like to have a voice in the investigation of his income; and if such service cannot be effected, application must be made to the Court, on Motion for Substituted Service, which see (p. 119).

**Appearance.**—If the husband is Respondent, and has not already appeared, he must enter an Appearance (within eight days from service of the Alimony Petition) before he can file an Answer to this Petition. If such is entered as “Appearance to Petition for Alimony” he will not be entitled thereby to deal with any other question in the Cause; but if he desires to do so, he can take out a Summons for leave to appear to the Citation, notwithstanding that the time for so doing has expired.

**Filing Answer.**—The Answer must be made on oath by the husband, and filed within eight days after delivery of the Petition.

#### ANSWER.

I, A. B., of \_\_\_\_\_, in the County of \_\_\_\_\_, baker, the Respondent, make oath and say as follows:—

1. I have read the copy of Petition for Alimony *Pendente Lite*, and in answer thereto say—
2. I admit that I carry on the business of a baker at \_\_\_\_\_, but deny that I derive therefrom any such income as £ \_\_\_\_\_.
3. I admit that I do possess certain shares in the \_\_\_\_\_ Railway Company, but such shares are not of the value stated in the said Petition.
4. My stock-in-trade is only of the value of £ \_\_\_\_\_.
5. My wife is, I verily believe, keeping a day school at \_\_\_\_\_, and derives therefrom an income of £ \_\_\_\_\_ a year or more.

A. B.

Sworn &c.

**Service.**—Plain copy served on solicitor for wife.

**Reply.**—No reply is necessary unless the husband alleges that the wife is possessed of separate estate, in which case the Reply must be on oath and confined to a statement of her means, and filed within eight days of the service of the Answer. Plain copy served. Where it is asserted in the Answer that the wife is being supported by the Co-respondent, it is treated as an allegation of being possessed of separate estate, and must be denied by her Reply before Alimony is allotted.

REPLY.

I. J. B., of \_\_\_\_\_, in the County of \_\_\_\_\_, the Petitioner, in reply to the Answer of the Respondent to the Petition for Alimony, make oath and say—

1. It is true that I am keeping a day school at \_\_\_\_\_, but owing to the expenses connected therewith my net income hardly realises £ \_\_\_\_\_ per annum.

J. B.

Sworn &c.

**Rejoinder.**—No Rejoinder by the husband, without leave, is allowed.

**Appointment before Registrar.**—As soon as an Answer is filed, or the time for answering (eight days) has expired, or if Reply is necessary as soon as that is filed, or if no Appearance is entered as soon as the time for so doing (eight days) has expired, the wife's solicitor will proceed to obtain an appointment before one of the Registrars by filling up the following form (Fee Sheet):—

*B. v. B.*

Application for appointment as to Alimony, 10s. deposit.

[*Solicitor's Name and Address.*]

In due course the following appointment will be sent:—

Mr. Registrar \_\_\_\_\_ has appointed the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, at \_\_\_\_\_ o'clock, to hear the solicitors as to Alimony.

The party obtaining the appointment is to give the other parties to be heard at least one clear day's notice of the appointment.

**Service.**—Notice of this appointment is served on the husband's solicitor, or upon the husband if he is acting "in person."

**No Appearance.**—**Allotment, how made.**—If the husband has not appeared in the Suit, and has been duly served with the Petition for Alimony, or service dispensed with, and has not entered an Appearance in respect thereto, the wife's solicitor will have to support her Petition with some tangible evidence of the alleged income of the husband, and should be prepared with this when he applies for an appointment. The Registrar will not make an Order for payment on the mere *ipse dixit* of the wife as to the husband's income. Some means must be proved to his satisfaction: if salary, evidence from the employer; if business, as to its profit; if property, as to its value &c. This is usually done by Affidavit.

**Husband Appearing and Filing Answer.**—On this appointment the solicitors of the parties will alone attend, and the Registrar is frequently able to make an allotment of alimony on the Petition and Answer; if not, he will either make an Order for further Answer or for the attendance of the husband to be examined, or that his books of account be investigated, and, if necessary, can issue subpoenas.<sup>1</sup> If the Registrar's decision be objected to, application can be made to the Court by Summons to rescind or vary the same &c.

**Affidavit of Service.**—If the husband is Respondent and has not appeared, or has not filed an Answer, an Affidavit of Service of the Petition for Alimony and of the Notice of the Appointment is generally required.

**Amount.**—As a rule the sum allotted is one fifth of the husband's ascertained or acknowledged income, and payable from the date of the service of the Citation.

**Consent.**—The parties may even agree to an amount, and so obviate the Petition entirely, in which case a Summons is taken out by the wife's solicitor to show cause why the husband should not pay her so much per week, or per month, or per quarter, as alimony *pendente lite*, commencing from the service of the Citation. A Consent is endorsed by the husband's solicitor, and

<sup>1</sup>Anderson v. Anderson, 1 P. & M. 512.

the Registrar will make the Order in the terms of the Summons. This can also be done in an undefended suit: the wife's solicitor can take out a Summons in similar terms, but the husband must attend at the hearing of the Summons and consent to the Order being made.

**Income Tax.**—The amount allotted should be paid in full, unless the Order otherwise directs.

**Appealing from the Order.**—Take out a Summons, before the Judge, to show cause why the Order should not be varied.

**Trustee.**—Payment is only ordered to be made to a Trustee on the authority of the wife, in writing, being filed. The Trustee should not be the solicitor of the party.

In all cases in which the Court shall make any Decree or Order for Alimony it may direct the same to be paid either to the wife herself or to any Trustee on her behalf, to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new Trustee, if for any reason it shall appear to the Court expedient so to do.<sup>1</sup>

**Authority.**—If the wife desires the alimony to be paid to a Trustee, an authority, as follows, must be filed, and a further Order obtained directing the alimony payable to the wife to be in future paid to the Trustee:—

*B. v. B.*

I hereby authorise and request that Mr. E. G., of \_\_\_\_\_, be appointed to receive from the Respondent in this Cause such alimony *pendente lite* as may be allotted me by this Court, and I desire that the Respondent be ordered to pay such alimony to him as a Trustee on my behalf.

Dated \_\_\_\_\_ .

Witness—

A. M. B., *Petitioner.*

Filing fee, 2s. 6d.

<sup>1</sup> 20 & 21 Vict. c. 85, Section 24.

**Action.**—It would seem that no action can be brought for the payment of alimony.<sup>1</sup>

**When Filed.**—This can be filed before the Order is made; but if any time afterwards the wife desires the alimony to be so paid, the authority can be filed, and notice of the alteration should be given to the other side.

**Service.**—A plain copy of the Order on the husband's solicitor is sufficient.

**Enforcing Payment.**—Where necessary to enforce payment, a Writ of *Fi. Fa.*, or Sequestration, or *Elegit*, will be issued on application at the Divorce Registry, or Charging Order, or injunction to restrain from receiving pay, legacy, &c., or Garnishee Order, on Summons, upon an Affidavit of Service of the Order, and Affidavit of Nonpayment made by the party to whom the money was directed to be paid; but if any portion of the alimony has been paid, then the Affidavit as to service of the Order is unnecessary.

**Reduction or Increase.**—If the husband's income increases the wife can ask, by Petition, for an increase of the alimony allotted; and so, on the other hand, the husband can petition for a diminution of the amount by reason of his income having become smaller. Either application is subject to the same rules—as to Answer, Reply, Investigation, and Service—as the Petition for Alimony.

**When Payment Ceases.**—In cases of dissolution, and the wife succeeding in the Cause, alimony *pendente lite* is payable from the service of the Citation until the decree is made absolute.<sup>2</sup> Where the decree is pronounced on the ground of the wife's adultery payment ceases at the date of the decree *nisi*, subject to this—that if the Judge thinks it reasonable to do so he can continue it pending appeal.

“To hold that alimony continues, as a matter of right, till an application for a new trial is disposed of would encourage frivolous applications for new trials.”<sup>3</sup>

<sup>1</sup> *Bailey v. Bailey*, 13 Q. B. D. 855; *re Henderson*, 20 Q. B. D. 509.

<sup>2</sup> *Ellis v. Ellis*, 8 P. & D. 188.

<sup>3</sup> *Dunn v. Dunn and Wall*, 13 P. D. 91, C. A.



**In Suits for Nullity.**—Alimony *pendente lite* continues payable until the decree is made absolute. S. falsely called B. v. B. (9 P. & D. 80). Where the decree is against the wife it may depend upon the nature of the suit whether the alimony does not cease at the date of the decree *nisi*.

**In Suits for Judicial Separation.**—Alimony *pendente lite* is payable until the date of the decree.

## AFFIDAVIT OF SERVICE OF PETITION FOR ALIMONY.

[Usual Heading.]

K. v. K.

I, P. H., of \_\_\_\_\_, messenger, make oath and say as follows:—

That the Petition for Alimony *pendente lite*, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, and filed in this Cause on behalf of the Respondent [*or as the case may be*], was duly served by me on the Respondent [*if acting in person, or on the solicitor, as the case may be*], by leaving with him a true copy thereof on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, at \_\_\_\_\_.

Sworn &amp;c.

P. H.

## ORDER—ALIMONY PENDING SUIT.

Upon hearing the agents for both parties I do order that J. K., the Respondent, do pay or cause to be paid to E. K., the Petitioner, Alimony pending Suit at and after the rate of £ \_\_\_\_\_ per annum, to commence from the date of the service of the Citation issued in this Cause, to wit, the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, and to be payable weekly.

## FEES.

	£	s.	d.
Filing Petition - - - -	0	2	6
„ Answer - - - -	0	2	6
„ Replies, each - - - -	0	2	6
Reference to Registrar, per hour - - - -	0	10	0
Order - - - -	0	5	0

## WIFE'S COSTS ALLOWED ON TAXATION.

	£	s.	d.
Instructions for Petition for Alimony	0	6	8
Drawing same - - - -	1	0	0
Fair Copy - - - -	0	3	4
Attending Counsel to settle same	0	3	4
Paid his Fee and Clerk - -	1	3	6
Attending Filing - - - -	0	6	8
Paid - - - - - - - -	0	2	6
Fair Copy for Service - - -	0	3	4
Attending Serving - - - -	0	3	4
Perusing Answer - - - -	0	6	8
Attending Registry, entering Application for Appointment - - -	0	6	8
Fair Copy Appointment and Service -	0	4	0
Attending Registrar, Order made -	0	13	4
Paid, Reference to Registrar - - -	0	10	0
.. his Order - - - - - -	0	5	0
Attending Registry for Order - - -	0	6	8
Fair Copy and Service - - - -	0	3	6

## HUSBAND'S.

Perusing Petition for Alimony - -	0	6	8
Instructions for Answer - - - -	0	6	8
Drawing same - - - - - -	1	0	0
Fair Copy - - - - - - - -	0	3	4
Attending Counsel to settle same -	0	3	4
Paid his Fee and Clerk - - - -	1	3	6
Attending filing - - - - - -	0	6	8
Paid - - - - - - - - - -	0	2	6
Fair Copy for Service - - - -	0	3	4
Attending Serving - - - - - -	0	3	4
Attending Registrar, Order made -	0	13	4
Perusing Order, per folio - - - -	0	0	4
Attending Swearing - - - - - -	0	1	6
Paid Commissioner - - - - - -	0	6	8

**PERMANENT ALIMONY**

(Rules—see “Alimony Pendente Lite”).

(20 &amp; 21 Vict. c. 85. Section 45.)

This applies only to Suits for Judicial Separation.

*Pendent petition* }  
**How applied for.**—After the decree has been obtained a Petition for Permanent Alimony can be filed. For Form &c. see “ALIMONY PENDENTE LITE.” Should Alimony *pendente lite* have been allotted, and the solicitor is proceeding on the same income, he will only have to enter the application on the Form for Appointments kept in the Registry, and leave a deposit fee stamp for ten shillings. The Appointment is sent in due course, and the remaining proceedings are similar to those attending the Application for Alimony *pendente lite* (see p. 127).

**Notice.**—Eight days’ notice of this Appointment is to be given to the husband’s solicitor.

If Alimony *pendente lite* has not been allotted, or, if allotted, the husband’s income is not the same, then the Petition should be filed and proceeded with in the same way as for Alimony *pendente lite*. Service, Answer, and Investigation—same as in Application for Alimony *pendente lite*, which see (p. 127).

Petition need not be signed.

**Service.**—Plain copy on husband, if acting in person, or on his solicitor.

**Amount.**—The amount allotted is generally one third of the husband’s ascertained or admitted income.

**Payable.**—From the date of the decree. In these cases there is no decree *nisi*; the decree made on the hearing is the final decree.

**Consent.**—As in the case of alimony *pendente lite* so with this. An amount may be agreed upon between the parties and a summons issued to show cause why the husband should not pay to the wife permanent alimony at and after the rate of

£            per annum, to commence from the date of the final decree, and to be payable weekly, monthly, or quarterly. The order would be drawn in such terms.

**Defended Cause.**—In a defended Cause the order for payment of permanent alimony would not be made until the time for appealing against the final decree (three months) had expired.

**Undefended Cause.**—The order for payment is made at once.

**Increase or Reduction.**—Application can be made by either party, by Petition, according to the fluctuation of the husband's income. Either application is subject to the same rules—as to Service, Answer, Reply, and Investigation—as the Petition for Alimony.

**Enforcing Payment.**—Same as in the case of "ALIMONY PENDENTE LITE," which see (p. 132).

#### FORM OF ORDER.

##### *Permanent Alimony.*

I DO ORDER that J. H., the Respondent, do, out of his present income, and until further order of this Court, pay or cause to be paid to C. H., the Petitioner, permanent alimony at and after the rate of            per annum, to commence from the date of the final decree in this Cause, and to be payable quarterly.

**Fees and Costs allowed.**—Same as in the case of "ALIMONY PENDENTE LITE" (see p. 133).

#### APPLICATION BY HUSBAND.

*Section 45.*—In any case in which the Court shall pronounce a sentence of divorce or judicial separation for adultery of the wife, if it shall be made appear to the Court that the wife is entitled to any property either in possession or reversion, it shall be lawful for the Court, if it shall think proper, to order such settlement as it shall think reasonable to be made of such property, or any part thereof, for the benefit of the innocent party and of the children of the marriage, or either or any of them (20 & 21 Vict. c. 85.)

**MAINTENANCE (Rules 95 to 103, 195, 204, 214, and 215).**

(22 § 23 *Vict. c. 61, Section 4; 29 Vict. c. 32;*

*47 § 48 Vict. c. 68, Sections 2, 3, and 6.)*

This differs from Permanent Alimony, as it applies only to suits for dissolution of marriage.

*Section 32.*—The Court may, if it shall think fit, on any such decree [for dissolution of marriage], order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it shall deem reasonable, &c. (20 & 21 *Vict. c. 82.*)

*Section 45.*—In any case in which the Court shall pronounce a sentence of divorce or judicial separation for adultery of the wife, if it shall be made appear to the Court that the wife is entitled to any property either in possession or reversion, it shall be lawful for the Court, if it shall think proper, to order such settlement as it shall think reasonable to be made of such property, or any part thereof, for the benefit of the innocent party and of the children of the marriage, or either or any of them (20 & 21 *Vict. c. 85.*)

(*Preamble*).—And whereas it sometimes happens that a decree for a dissolution of marriage is obtained against a husband who has no property on which the payment of any gross or annual sum can be secured, but nevertheless he would be able to make a monthly or weekly payment during their joint lives: Be it therefore enacted &c.<sup>1</sup>

*Section 1.*—In every such case [dissolution of marriage] it shall be lawful for the Court to make an order on the husband for payment to the wife during their joint lives of such monthly or weekly sums for her maintenance and support as the Court may think reasonable &c.<sup>1</sup> (29 & 30 *Vict. c. 32.*)

**How Applied for.**—The wife obtaining a decree *nisi* may file her Petition for Maintenance any time after such decree has been

<sup>1</sup> *Jardine v. Jardine*, 6 P. D. 213.

pronounced. The Petition may even be filed on the decree being made absolute or within a month therefrom, and the time may be still further extended by leave of the Registrar, to be obtained by summons.

PETITION FOR MAINTENANCE.

[*Usual Heading.*]

*B v. B.*

To the Right Honourable the President of the said Division.

The Petition of S. B., the lawful wife of J. B., sheweth—

1. That on the        day of        , 190    , this Honourable Court pronounced a decree *nisi* for the dissolution of the marriage of your Petitioner with the said J. B.
2. That the said J. B. is a        , and from such business derives an income of £        a year and upwards.
3. That the said J. B. has freehold property situate in        , in the City [*or County*] of        , which yields him an income of £        a year and upwards.
4. That his stock-in-trade is worth £        .

Your Petitioner therefore humbly prays—

That your Lordship will be pleased to order that the said J. B. shall, to the satisfaction of the Court, secure to your Petitioner such gross sum of money or such annual sum of money, during the term of her life, as to your Lordship may seem meet.

S. B.

Signed.—The Petition must be signed by the Applicant.

No Affidavit in support of Petition required.

**Service.**—A certified copy of the Petition, under seal, must be *personally served* on the husband. If this cannot be effected application may be made to the Court by motion for *substituted service*.

**Abroad.**—When served abroad notice should be given that unless the Answer be filed within a certain time, sufficient to admit of such being done, the Petition will be proceeded with.

**Affidavit of Service** is generally required when the husband has not appeared or has not answered.

**Appearance.**—If the husband has not appeared in the Cause, he can enter an Appearance to this Petition, and answer.

**Answer, on Oath,** may be filed within fourteen days from service of the Petition, and copy delivered to wife's solicitor.

**Appointment before Registrar.**—When the Pleadings are completed the wife's solicitor will enter his application for an appointment on a form kept at the Registry, and leave a deposit fee of 10s. Notice of this appointment is served on the husband or his solicitor.

**Subpœnas** can be issued by leave of the Registrar.

**Report and Amount.**—The Registrar, on this appointment, investigates the averments in the Pleadings in a similar manner as in proceedings for permanent alimony, and makes his Report.

**Filing Report.**—This is then filed by the Applicant's solicitor, and notice thereof given to the other side. Filing fee, 2s. 6d.

**Title of Cause.**—If Petitioner has married again the Title of the Cause would only be varied by stating the fact—B. (now the wife of E. F.) *v.* B.

**Confirming or Objecting** to the Report. Within fourteen days from the service of Notice of the Report having been filed application can be made to the Court on motion to confirm or vary such Report.

Notice of either application is served on husband's solicitor if he has appeared. Any objections to the Report to be made by the other side are generally raised at the hearing of the motion to confirm.

#### CASE ON MOTION TO CONFIRM REPORT.

*B. v. B.*

This is a Suit for Dissolution of Marriage.

1st December, 1903—Decree *Nisi* pronounced.

6th June, 1904—Decree made Absolute.

21st June, 1904—Petition for Maintenance filed.

1st July, 1904—Answer filed.

5th July, 1904—Mr. Registrar                      made his Report.

6th July, 1904—Mr. Registrar                      Report was filed and  
notice thereof given to Respondent's solicitor.

Counsel on behalf of the Petitioner will move the Court on Tuesday, the 12th day of July, for an Order to confirm the said Report, and to carry out the Prayer of the said Petition.

Notice of motion has been served on Respondent's solicitor.

NOTICE.

*B. v. B.*

TAKE NOTICE that on Tuesday, the 12th day of July, 1904, Counsel will move the Court on behalf of the Petitioner to confirm Mr. Registrar Report as to Maintenance.

Dated

To E. F., *Solicitor for Respondent.*

Order.—This is frequently made in the following terms:—

“Upon hearing Counsel &c., It is ORDERED that the Report be confirmed, and that it be referred to one of the Conveyancing Counsel of the Court of Chancery to settle a proper Deed to be executed by all necessary parties to secure to the Petitioner the annual payment of £ during the term of her life upon certain property belonging to the Respondent as set forth in the said Report.”

**Consent.**—If the parties can agree as to the amount, an Order would be made upon Summons by a Registrar without a Petition being filed. The Summons should contain the exact terms in which it is desired that the Order should be drawn.

**Order.**—The Order for Maintenance cannot be made until the decree absolute has been pronounced. But the Registrar can hear the Petition before the decree absolute.<sup>1</sup>

**Where the Decree is against the Wife.**—It sometimes occurs that the Court will direct, on pronouncing the decree *nisi* (or afterwards, on application being made by the wife on motion), that the husband do secure to the wife some allowance, and refer it to the Registrar to fix the amount, deferring the decree absolute till such Order is complied with.

<sup>1</sup> *Waterhouse v. Waterhouse*, [1893] C. A. 284.



**Reduction of Amount.**—The husband being unable to make such payments as may have been directed may petition the Court to discharge or modify the Order. The practice is the same as in filing the original Petition for Maintenance.

**Increase of Amount.**—No application can be made by the wife to increase the amount (29 Viet. c. 32, Section 1).

**Enforcing Payment.**—Same as “ALIMONY” (see p. 132).

FEEs.

	£	s.	d.
Filing Petition - - - - -	0	2	6
Reference to Registrar, including his Report, per hour - - - - -	0	10	0
Filing Report - - - - -	0	2	6

ALLOWED ON TAXATION.

Similar to Alimony *pendente lite* as far as applicable, with additional cost of Motion to Confirm Report.

**VARIATION OF SETTLEMENTS**

(Rules 95 to 103, 204, 214, and 215).

(22 & 23 Viet. c. 61, Section 5.)

*Section 5.*—The Court, after a final decree of nullity<sup>1</sup> or dissolution of marriage, may inquire into the existence of settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage or of their respective parents as to the Court shall seem fit.

**If there are no Children.**—The Court may exercise this power for the benefit of either of the parties (41 Viet. c. 19, Section 3.)

**How Made.**—Applications to vary settlements must be made by Petition (Rule 95).

<sup>1</sup> Dormer, otherwise Ward v. Ward, 69 L. J. 144; [1901] C. A. 20.

**When.**—The Petition can be filed and served at any time after the decree *nisi* has been pronounced, or within one month from the date of the final decree, and if extension of time is desired application may be made by Summons. The Registrar, however, will not proceed with the investigation, except by consent of all parties before the decree has been made absolute.

**A Petition** is filed setting out shortly the conditions of the settlement and how it is desired that they should be varied. (Rule 95.)

**Signed.**—Should be signed by the Applicant; but in the event of the Applicant being abroad the solicitor can apply to the Judge by Summons for leave to sign instead.<sup>1</sup>

**Affidavit and Deed.**—No Affidavit in support is required, nor is the Deed referred to filed.

**Service.**—A certified copy of the Petition under seal is to be *personally* served on the husband or wife, as the case may be, and also on the trustees and any person or persons who may have any legal or beneficial interest in the property respecting which the application is made (Rule 97).

**Substituted Service.**—If personal service cannot be effected, application must be made to the Court by motion to dispense with or direct some other mode of service.

**Abstract for Advertisement :**

To J. E., late of

TAKE NOTICE that a Petition for Variation of Settlement, bearing date the      day of      , 190      , has been filed in the Divorce Registry by the Petitioner.

R. A. P., Registrar.

**Advertisements.**—Those annexed to the Abstract are filed.

**Affidavit of Service** of this Petition is required when the Respondent has not entered an Appearance or has not filed an Answer to it.

<sup>1</sup> Ross v. Ross, 7 P. & D. 20.

## AFFIDAVIT OF SERVICE OF PETITION TO VARY SETTLEMENT.

*T. v. T.*

I, J. A., of \_\_\_\_\_, messenger, make oath and say as follows:—

I, I did on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, serve K. T., the Respondent, at \_\_\_\_\_, with a certified copy, under Seal of this Court, of the Petition to Vary the Marriage Settlement of the Petitioner and Respondent filed in this Cause, by delivering and leaving the same with the said K. T. personally.

Sworn &amp;c.

J. A.

**Trustees.**—The Trustees or other person served, not being a party in the Suit, must enter an Appearance before filing an Answer. Need not be a separate Appearance for each Trustee; all may be included if represented by the same solicitor.

**Out of Time.**—Trustees or other parties, not of the Suit, can appear and answer at any time without leave. They are not heard at the investigation before the Registrar—they are only present to hear what is proposed to be done.

**Answer.**—The parties served may, within fourteen days from date of service, file an Answer on oath, a copy of which is to be delivered to the opposite party.

**Reply.**—This may be filed within fourteen days from the filing of the Answer, and the same time is allowed for filing any further Pleading (Rule 100).

**Appointment for Hearing.**—When the Pleadings are completed, the solicitor filing the Petition will enter his application for appointment on a form kept in the Registry, with a deposit fee of 10s. (as in "Alimony" cases), and in due course an appointment will be sent, of which he must forward a copy to any person entitled to be present at the hearing.

**Affidavit of Service** is required if the appointment is not attended by or on behalf of the parties served.

**Attending Registrar.**—The solicitors of all parties interested who have appeared will be heard on the first appointment, and if an adjournment is necessary the Registrar will direct what further evidence shall be given.

**His Report.**—The Registrar sets forth in a Report the result of his investigation, and how he considers the settlement should be varied.

**Filing Report.**—This Report is filed by the Applicant, and notice thereof given to the other parties heard by the Registrar, and either of the parties can order an office copy of it.

**Confirming Report.**—Within fourteen days from the service of Notice of the Report having been filed the Applicant can apply to the Court on motion to confirm the Report or to refer it back to the Registrar for further investigation, and any of the parties can be heard on the application.<sup>1</sup>

**Case and Notice.**—Notice of the application, with a short Statement, will be filed at the Divorce Registry on the Wednesday preceding the Motion day, and served on the other parties.

Forms (*Case and Notice*) *vide* "Maintenance" (see pp. 139 and 140).

**Deeds.**—If it is necessary for the Deed or Deeds to be brought into the Registry the originals should not be left, copies being sufficient; and these should not be filed, but simply left for the assistance of the Court.

**Final Order.**—When the Report is confirmed by the Court it is referred back to the Registrar, who will make an Order carrying out the terms of the Report or as may be directed by the Court.

**Service.**—A certified office copy of this Order is generally sufficient to be served on the Trustees and parties affected by it.

**Costs.**—These are costs in the Cause, and a Co-respondent condemned in costs is liable for them.<sup>2</sup>

#### FEEs.

	£	s.	d.
Filing Petition... ..	0	2	6
Reference to Registrar, including his Report, per hour ... ..	0	10	0
Filing Report ... ..	0	2	6

#### COSTS ALLOWED ON TAXATION.

Similar to ALIMONY PENDENTE LITE as far as applicable (see p. 134)

<sup>1</sup> *Corrance v. Corrance*, 1 L. R. P. & D. 495.

<sup>2</sup> *Smith v. Smith*, 1 P. & D. 587.

## CUSTODY OF CHILDREN AND ACCESS

(Rules 104 and 212).

### POWER OF COURT TO MAKE ORDERS AS TO CUSTODY OF CHILDREN.

*Section 35.*—In any suit or other proceeding for obtaining a judicial separation or a decree of nullity of marriage, and on any petition for dissolving a marriage, the Court may from time to time, before making its final decree, make such interim orders, and may make such provision in the final decree as it may deem just and proper with respect to the custody, maintenance, and education of the children the marriage of whose parents is the subject of such suit or other proceeding, and may, if it shall think fit, direct proper proceedings to be taken for placing such children under the protection of the Court of Chancery (20 & 21 Vict. c. 85).

Extended to "After a Decree" by 22 & 23 Vict. c. 61. Section 4.—The Court, after a final decree of judicial separation, nullity of marriage, or dissolution of marriage, may, upon application (by Petition) for this purpose, make from time to time all such orders and provision with respect to the custody, maintenance, and education of the children as might have been made by such final decree or by interim orders in case the proceedings for obtaining such decree were still pending.

Extended to Suits for Restitution of Conjugal Rights by 47 & 48 Vict. c. 68, Section 6.

**Part of Decree.**—When the Court is to be asked at the hearing of a Suit to order that the Petitioner have the custody of the children of the marriage, the custody should be prayed for in the Petition or Answer, as the case may be.<sup>1</sup>

**Petition.**—If no prayer for the custody of the children has been made in the Petition, a separate Petition for such custody may have to be filed and served.

**Summons.**—The husband or the wife can at any time after the Citation has been served or Appearance entered, as the case may be, apply to the Court, by Summons, for the safe custody of the

<sup>1</sup> *Boddy v. Boddy and Grover*, 30 L. J. P. M. & A. 163.

children. This application is supported by Affidavit, and notice &c. given to the other side, as in other cases where the Court is moved.

**Order.**—The Order, when made, will direct that the children be not removed out of the jurisdiction of the Court. A copy of this, under the Judge's hand, is served when the children are not in the possession of the party to whom the custody has been given.

**Removing Children out of the Jurisdiction of the Court.**—Application for leave to do so may be made to the Judge by Summons, which is served on the other parent or his or her solicitor.

**Age.**—The Court has power to make orders respecting the custody, maintenance, and education of children during the whole period of their infancy: that is, till they attain the age of twenty-one years.<sup>1</sup>

**Access.**—Application for access is made upon Summons to the Registrar, who will make such order as he thinks fit, unless the parties can agree as to the time and place where and under what conditions the children are to be visited, and either party dissatisfied with such order can appeal to the Court on Summons (Rule 212).

Fees and costs allowed (see p. 103).

#### GUARDIANSHIP OF INFANTS ACT, 1886.

**Parent deprived of Custody of Children.**—By Section 7 of this Act the Court, on pronouncing a decree for judicial separation, or a decree either *nisi* or absolute for divorce, may thereby declare the parent by reason of whose misconduct such decree is made to be a person unfit to have the custody of the children. The operation of this order does not arise until after the Petitioner's death.<sup>2</sup>

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<sup>1</sup> *Thomasset v. Thomasset*, [1894] P. D., C. A.

<sup>2</sup> *Skinner v. Skinner*, 13 P. D. 90.

**GUARDIANS (Rules 105 to 108 and 196).****MINORS OR INFANTS—LUNATICS—INVALIDS.**

**Petitioner, Respondent, or Intervener.** being a minor, may elect one of his or her next-of-kin to act for him or her, and in the event of the next-of-kin renouncing the guardianship, or the minor electing some person other than the next-of-kin, application is made in case of the Petitioner upon Affidavit by the proposed Guardian (without summons) to the Registrar, who, if satisfied with the Affidavit, will make an order assigning the Guardian. In the latter case notice of the application is served on the next-of-kin.

**Election.**—This must be filed at the Registry before the Guardian can extract a Citation (if Petitioner), or enter an Appearance (if Respondent or Intervener). A Co-respondent, being a minor, is not required to have a Guardian to conduct his defence.

**Petition.**—This is signed by the Petitioner and by the Guardian, and the Affidavit is made by the (minor) Petitioner.

**Title of Cause.**—A. B. (by his Guardian C. D.) *v.* G. B., or G. B. *v.* A. B. by his Guardian C. D.

**Respondent or Intervener.**—A Summons should be taken out to show cause why C. D. should not be appointed Guardian.

**FORM OF ELECTION OF A GUARDIAN.****BY A PETITIONER.**

WHEREAS a Suit is about to be instituted in the Probate, Divorce, and Admiralty Division of our High Court of Justice on behalf of A. B. against C. B., the wife of the said A. B., and E. F.:

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. H., my natural and lawful father and next-of-kin, to be my curator or guardian for the purpose of instituting the said Suit, and 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 Divorce Registry of the said Division.

In witness whereof I have herewith set my hand and seal this        day of        in the year 190    .

A. B.        (L.S.)

Signed, sealed, and delivered by the within-named A. B. in the presence of [*one attesting Witness*].

BY A RESPONDENT.

WHEREAS a Citation bearing date the        day of        , 190    , has issued under seal of the High Court of Justice (Probate, Divorce, and Admiralty Division), 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 Divorce Registry of the said Court:

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 natural and lawful father and next-of-kin, to be my curator or 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.

A. B.        (L.S.)

[*One Witness.*]

**Attaining Twenty-one Years.**—A Summons should be served on the other side, supported by the Affidavit of the party stating that he has attained twenty-one years, to show cause why the guardian should not be dispensed with.

**Lunatic.**<sup>1</sup>—A committee duly appointed may act; but if no committee has been appointed, application, supported by Affidavit

<sup>1</sup> See *Giles v. Giles*, [1900] 69 L. J. P. 26.



as to the condition of the party, is made to the Registrar to assign a guardian, notice by Summons being given to the opposite party if before the Court when the Application is made (Rule 196).

**Guardian Dying during the Action.**—A similar Summons, supported by Affidavit, showing that the party is still a lunatic or still a minor, is issued, upon applying, for another person to be appointed.

**Invalid.**—Application is by Summons with Affidavit showing the necessity for the appointment of a guardian.

**Service**—On a minor, is a sufficient service; on a lunatic, must be upon the lunatic in the presence of the doctor of the establishment where he may be confined, or in the presence of the nurse or custodian if not under confinement; or if a committee has been appointed, service on the committee alone is sufficient.

**Renunciation of Guardianship.**—Whereas I, the undersigned, am the natural and lawful and only next-of-kin of E. F., the Petitioner [*or* Respondent], who is now a minor [*or* of unsound mind], now I do hereby renounce all my right and title in and to the curation or guardianship of the said E. F.

[*Witness.*]

S. F.

**Order Appointing Guardian.**—Upon hearing the solicitor for S. T. and for the Petitioner *or* [Respondent] and reading the Affidavit of the said S. T. (the proposed guardian) and the Renunciation of S. F., I do order that the said S. T. be appointed guardian of the said Petitioner [*or* Respondent] for the purpose of prosecuting [*or* defending] the Suit on behalf of the said Petitioner [*or* Respondent].

FEEs.

			s.	d.
Filing Election of Guardian	-	-	2	6
„ Affidavit (if any)	-	-	2	6
„ Renunciation (if any)	-	-	2	6

COSTS ALLOWED ON TAXATION.

Instructions for Election	-	-	6	8
Drawing same and Copy	-	-	6	8
Attending Execution	-	-	6	8
Obtaining Consent of Party elected	-	-	—	
Attending Registry, filing Election	-	-	6	8

If with Summons or Affidavit then additional accordingly (see p. 103).

**PROTECTION ORDER (Rules 124, 125, and 197).***(21 & 22 Vict. c. 108, Section 6; 27 & 28 Vict. c. 44, Section 1.)*

**How Obtained.**—The Application for a Protection Order, with the Affidavit of the wife, is left at the Divorce Registry for the approval of a Registrar, and on being approved by him the Order is drawn in a book kept at the Divorce Registry, of which the Applicant can have an office copy.

**APPLICATION.**

To the Right Honourable the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice.

Dated \_\_\_\_\_

The Application of A. K., of \_\_\_\_\_, in the County of Middlesex, wife of C. K., sheweth—

That on the 2nd day of May, 1890, she was lawfully married to the said C. K. at the Parish Church, Manchester.

That she lived and cohabited with the said C. K. at Manchester and other places, and had two children issue of the said marriage.

That on the 21st of May, 1896, the said C. K., with the stated intention of going after a situation, left his home and hath ever since remained separate and apart from Applicant, and has without any reasonable cause deserted her.

That since the desertion of her by her said husband the Applicant hath maintained herself by her own industry, and hath thereby acquired certain property, consisting of the stock-in-trade of a grocer and money deposited in the Savings Bank.

Wherefore the said A. K. prays an Order for the protection of her earnings and property acquired since the said 21st day of May, 1896, from the said C. K. and from all creditors and persons claiming under him.

A. K.

**Affidavit in support.**—This is drawn much in the same form as the Application; but it must contain a statement of her knowledge as to the husband's present address, because if he is residing within the jurisdiction of the Court he must be served personally with a Summons to show cause why such Order should not be made.

If communication by letter has taken place since the desertion, such letters, or copies of them, should be brought into the Registry.

**Discharging Order.**—See Rule 125, and 27 & 28 Viet. c. 44.

FEES.				s.	d.
Filing Application	-	-	-	2	6
„ Affidavit	-	-	-	2	6
Entering Order	-	-	-	5	0
Copy Order, under Seal	-	-	-	10	0

## CHANGE OF SOLICITOR.

### FORMS OF NOTICE.

File at the Divorce Registry the following Notice, and deliver copy thereof to the outgoing solicitor and to the solicitor on the other side.

*B. v. B.*

TAKE NOTICE that I [*or we*], of \_\_\_\_\_, have been appointed to act as the solicitor [*or solicitors*] of the above-named \_\_\_\_\_ in place of \_\_\_\_\_.

Dated \_\_\_\_\_, 190 \_\_\_\_\_.

To F. E., Solicitor for \_\_\_\_\_, G. & Co., Strand.

**Costs.**—The outgoing solicitor can file his bill of costs without Order.

**Delivery of Papers.**—Application to be made by Summons if necessary.

**How Taxed: Wife's Costs.**—The costs are taxed as between party and party and also as between solicitor and client, the

certificate being given for the total amount allowed to the solicitor. If an Order for payment is required the extra amount allowed as between solicitor and client is deducted from the amount in the Certificate and Order given for the balance.

FEES.				s.	d.
Filing Notice	-	-	-	2	6

COSTS ALLOWED ON TAXATION.

*Outgoing Solicitor.*

Perusing Notice	-	-	-	1	0
Attending delivering Papers	-	-	-	6	8
Drawing Receipt for same	-	-	-	2	6

*Incoming Solicitor.*

Drawing Notice	-	-	-	3	8
Attending Filing	-	-	-	6	8
Paid Fee	-	-	-	2	6
Copy and Service	-	-	-	3	6
Attending Receiving Papers	-	-	-	6	8
„ Signing Receipt	-	-	-	3	6

No costs allowed between party and party.

In the following cases it is sufficient to file a Notice as suggested. It is not necessary to enter another Appearance.

Filing fee, 2s. 6d.

NEW SOLICITOR REPRESENTING RESPONDENT OR PETITIONER.

*C. v. C.*

No. . .

TAKE NOTICE that since the filing of the Petition herein, L. K., who acted as solicitor for the Respondent, has ceased so to act, and has filed his Notice herein to that effect, and that I am now acting as solicitor for the said Respondent.

T. B.,

Cheapside, E.C.,

To the Registrars of the Divorce Registry.

*Solicitor.*

## SOLICITOR DISCONTINUING BUSINESS.

S. v. S.

TAKE NOTICE that since the entering of Appearance to the Citation in this Suit by the firm of E. & H., the solicitors for the Respondent, such firm has ceased, and their business has been transferred to the undersigned, who now acts as the solicitor for the said Respondent.

A. B. C.,  
Gray's Inn Square,  
*Solicitor.*

Dated                   , 190 .

To the Registrars of the Divorce Registry.

## SOLICITOR DYING DURING THE ACTION.

TAKE NOTICE that I am now concerned as solicitor in this Cause for the Petitioner in the place and stead of Mr. S. D., now deceased.

J. E.,  
King Street, E.C.,  
*Solicitor.*

Dated                   , 190 .

To the Registrars of the Divorce Registry.

## SOLICITOR IN PLACE OF PARTY IN PERSON.

Respondent or Co-respondent having entered an Appearance *in person* desires to be represented by a solicitor. No further Appearance is necessary.

TAKE NOTICE that I am now concerned as solicitor in this Cause for the Respondent.

S. T.,  
Tudor Street, E.C.,  
*Solicitor.*

To the Registrars of the Divorce Registry.

## PARTY IN PERSON IN PLACE OF SOLICITOR.

TAKE NOTICE that I, G. T., the above-named Petitioner [*or* Respondent], intend to act in person in this Cause in the place of G. H., solicitor, and that my address for service is                   , in the City [*or* County] of                   .

G. T.

To the Registrars of the Divorce Registry.

## ABATEMENT OF CAUSE.

## DEATH OF PETITIONER OR RESPONDENT.

WE HEREBY GIVE YOU NOTICE that W. M., the Petitioner herein, died on the \_\_\_\_\_ day of \_\_\_\_\_ instant, whereby this Cause has abated.

W. T. & Co.,  
Old Jewry, E.C.,  
*Solicitors for Petitioner.*

Dated \_\_\_\_\_, 190 .

To the Registrars of the Divorce Registry.

## DEATH OF CO-RESPONDENT.

A Co-respondent dying pending Suit, application should be made, by motion, to strike his name out of the Cause.<sup>1</sup>

**PARTICULARS.—DISCOVERY.—INTERROGATORIES.**

(Rule 38.)

Application in each instance is by Summons.

**Particulars.**—An Order will be made for Particulars where the charges set forth in the Petition or Answer are not sufficiently specific to enable the party accused to meet or reply to them.

**When to be applied for.**—If the charges are in the Petition, then before filing the Answer; if in the Answer, then before filing the Reply, but Particulars can be applied for afterwards.

**Order.**—If made, directs that the \_\_\_\_\_ within seven days do furnish to the \_\_\_\_\_ further and better Particulars of the times and places when and where the acts of \_\_\_\_\_ mentioned in the \_\_\_\_\_ Paragraph of \_\_\_\_\_ were committed, and that the said \_\_\_\_\_ within the same time do file an Affidavit, and furnish to the \_\_\_\_\_ a copy thereof, that no further or better Particulars can be given from the facts now within knowledge: And that if at any time between the date of the Particulars (if any) being given by the \_\_\_\_\_ under this Order and the hearing of this Cause, the \_\_\_\_\_ shall obtain such

<sup>1</sup> Sutton v. Sutton & Peacock, 32 L., J. P. M. & A. 156.

further information as will enable h            to give Particulars of the matters in respect of which h            may have previously made Affidavit that h            had then no knowledge, h            shall forthwith give Particulars thereof to the            by way of additional Particulars, and if it shall appear at the hearing that the            shall have been materially prejudiced thereby, then that the case shall be dealt with by rejection of the evidence, or by adjournment of the trial, or otherwise as to the Court shall seem just: And that if any such further Particulars be delivered at any time less than ten clear days before the hearing of this Cause, the            may apply by Summons for the postponement of the hearing of the Cause: And that the            have            days' further time to file            after the filing and delivery of the said Particulars and Affidavit.

## PARTICULARS.

The following are further and better Particulars of the acts of adultery referred to in the            Paragraph of the Petition, furnished pursuant to an Order herein dated the            day of            , 190            .

- I. That in the months of            and            , 190            , at            , in the City [*or* County] of            , the said L. D. committed adultery with a woman named S. H.

## AFFIDAVIT WITH PARTICULARS.

I, S. D., of            , the Petitioner, make oath and say as follows:—

1. I can give no further or better Particulars in reference to the            Paragraph of my Petition filed herein than the Particulars furnished herewith.

Sworn &c.

[*Or if no Particulars can be given—*]

1. I am unable to set forth further than is contained in the            Paragraph of my Petition filed herein the times and places of the adultery charged in the said            Paragraph.

**Further Particulars.**—Application for is made by Summons, but the Court will not make an Order for further Particulars except

under very special circumstances, the Affidavit filed stating that no better Particulars can be given; but the Court may direct an explanatory Affidavit (why better Particulars cannot be given) to be filed. Leave may be obtained (if considered necessary) to interrogate.

**Order not complied with.**—A Summons may be taken out to show cause why the paragraph or charge should not be struck out.

#### FEEs.

	s.	d.
Affidavit and Particulars in one Document -	2	6
If separate Documents, each - - -	2	6

#### COSTS ALLOWED ON TAXATION.

Unless under special circumstances no costs are allowed to the party ordered to give Particulars.

#### *To Party obtaining Particulars.*

	s.	d.
Drawing Summons for Particulars - - -	5	0
Attending issuing - - - - -	6	8
Paid - - - - -	8	0
Copy and Service - - - - -	3	6
Attending Summons—Order made - - -	6	8
Attending for Order - - - - -	6	8
Copy and Service - - - - -	3	6
Perusing Particulars and Affidavit - -	5	0

#### DISCOVERY AND INSPECTION.

**Application by Summons.**—The Order directs that within days after service the Petitioner do file a full and sufficient Affidavit, stating whether he has or has had in his possession or power (and, if any, what) documents relating to the matters in question in the Cause, and within days after filing such Affidavit produce to the Respondent or his solicitor such documents as are in his possession; and that the Respondent or his solicitor may be at liberty to inspect and peruse the documents, and take copies of them. No Affidavit in support of Summons is necessary, nor is any deposit money required to be lodged.



**When applied for.**—The Summons may be issued *though the Answer has not been filed*; but, as a general rule, the Order will not be made until after the Answer is filed.

**Affidavit and Documents** may be in one document, or the Affidavit may be separate from the Schedule.

Fees, if in one document, 2s. 6d.; if in separate documents, 2s. 6d. each.

### FORM OF AFFIDAVIT AS TO DOCUMENTS.

[*Usual Heading.*]

*B. v. B.*

I, A. B., of \_\_\_\_\_, surgeon, the Petitioner [*or Respondent or Co-respondent, as the case may be*], make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this Cause set forth in the First and Second Parts of the Schedule herein.
2. I object to produce the said documents set forth in the Second Part of the said Schedule.
3. I object to produce the said documents on the ground that they consist of communications between myself and my solicitor made since the commencement of this Cause; also of communications between my said solicitor and other persons who are or may be proposed Witnesses in this Cause; and also of the papers and documents relating to the proceedings in this Cause, and that all such communications, papers, and documents are privileged [*or such grounds as may be advised*].
4. I have had, but have not now in my possession or power, the documents relating to the matters in question in this Suit set forth in the Third Schedule hereto.
5. The last-mentioned documents were last in my possession or power [*state when, and what has since become of them, and in whose possession they now are*].
6. To the best of my knowledge, information, and belief I have not now, and never had, in my possession, custody, or power, or in the possession, custody, or

power of my solicitors or agents, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this Suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said Schedule.

THE SCHEDULE ABOVE REFERRED TO,

PART I.—*Originals.*

- |    |               |    |                   |
|----|---------------|----|-------------------|
| 1. | Letter from   | to | 1 December, 190 . |
| 2. | Telegram from | to | 5 „ 190 .         |

*Copies.*

- |    |             |    |                    |
|----|-------------|----|--------------------|
| 3. | Letter from | to | 1 September, 190 . |
|----|-------------|----|--------------------|

PART II.—*Originals.*

- |    |                 |    |                    |
|----|-----------------|----|--------------------|
| 1. | Letter from     | to | 10 December, 190 . |
|    | With enclosure. |    |                    |

*Copies.*

- |    |             |    |                  |
|----|-------------|----|------------------|
| 2. | Letter from | to | Undated.         |
| 3. | The like    | to | Monday, undated. |

Sworn at &c.

A. B.

**Dispute as to Documents Privileged.**—Where it becomes a question of dispute as to certain documents being privileged, the Court may be asked to look at them and determine: and where the Order is not complied with, application can be made to the Court for further direction, or for Attachment for Contempt.

FILING FEES.

	s.	d.
Allidavit and Documents - - -	2	6
If separate Documents, each - - -	2	6

## COSTS ALLOWED ON TAXATION.

Similar to those for "AFFIDAVIT" (see p. 35).

INTERROGATORIES.<sup>1</sup>

Leave to deliver Interrogatories is obtained by Summons.

**Form of.**—1. Did not, &c. 2. Has not, &c., and should be confined to matters in question in the Cause.

The proposed Interrogatories should be brought in draft for the Registrar's approval at the hearing of the Summons.

Answer is on oath.

## FILING FEES.

	s.	d.
Each set of Interrogatories - - -	2	6

## COSTS ALLOWED.

Summons (see p. 103).

Drawing same - - - - -	per folio	1	0
Copy thereof to be delivered and filed .. ..		0	4

*Answer to.*

Instructions for Answer - - - - -		6	8
Perusing Interrogatories - - - - -	per folio	0	4
Drawing Answer, including copy to file .. ..		1	4
Copy and Service - - - - -		3	6

<sup>1</sup> Harvey v. Lovekin, 10 P. D. 122.

## DAMAGES (Rule 205).

(20 & 21 Vict. c. 85, Section 33.)

**Amount Claimed** must be stated in the Petition (see p. 14).

**Jury.**—Must in all cases be ascertained by the verdict of a jury, although the Respondents or either of them may not appear (Section 33).

**Agreeing the Amount.**—The Petitioner and Co-respondent may, nevertheless, agree the amount, and an Order may be obtained directing the same to be lodged in Court. This is generally done immediately before the hearing by counsel stating the terms of arrangement and asking the Court to sanction them.

**Pay into Court.**—The Order directs the amount of damages to be paid into Court within                      days.

**Pay to Petitioner.**—Sometimes where there are not any children of the marriage the Court will direct payment to the Petitioner.

**Disposition.**—The Court shall have power to direct in what manner such damages shall be paid or applied, and to direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife (Section 33).

**Application: How Made.**—Take out a Summons before the Judge, stating in what way it is proposed to deal with the damages—that they should be paid out to the Petitioner for his own use or that part should be allowed towards his costs and the balance invested (*always stating the Fund proposed*) for the benefit of the children.

**Enforcing Payment.**—No application can be made to the Court for Attachment; but if it is desired to sue upon the Order application must be made to the Court, by Summons, to vary the Order by directing payment to the Petitioner, he undertaking to pay the damages into Court as and when recovered; or it may be asked by counsel at the time the decree is pronounced that the Order should be so drawn.

## RESTITUTION OF CONJUGAL RIGHTS (Rules 175 and 176).

(47 & 48 Vict. c. 68.)

In these cases before the Petition can be filed or the Citation issue a written demand<sup>1</sup> must be made by the Petitioner or his or her solicitor for return to cohabitation within a reasonable time; and the Affidavit to be filed with the Petition should furnish the proof of this having been done, and set out the Answer (if any) which has been returned. This Affidavit must be submitted to the Registrar for his approval (Rule 175).

**Husband Petitioner** should in his demand state when and to what place of residence his wife is to return.

**Wife Petitioner** should request her husband to "receive her home," or "return home to her," as the case may require.

**How made and served.**—The best way of doing this is by *letter from the Petitioner*. This can be served *personally* by some person to whom the Respondent is known (not by Petitioner or his or her solicitor), or sent *registered* through the post; but if posted, the Affidavit should show that the Respondent resided at the place to which it was addressed, or give reasonable proof that it had reached the Respondent.<sup>2</sup>

**Substituted Service.**—Where it is impossible to serve the Respondent with the demand, application can be made to the Court to substitute some other mode of service.<sup>3</sup>

**Affidavit Approved.**—The Registrar, on being satisfied with the Affidavit, will mark his approval thereon, and the Petition and Affidavit can thereupon be filed and the Citation issued.

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<sup>1</sup> The written demand should be of a conciliatory nature (*Field v. Field*, 14 P. 526, C. A.; *Smith v. Smith*, 15 P. D. 47; see also *Elliott v. Elliott*, 85 L. T. 648). If possible, the original Answer should be annexed to the Affidavit.

<sup>2</sup> *Field v. Field*, 59 L. T. R. 560.

<sup>3</sup> *Sheehy*, 1 P. D. 423.

**Collusion.**—It is not necessary in the Affidavit to lead this Petition to depose to “no collusion or connivance.”

**Service Abroad.**<sup>1</sup>—The Citation and Petition in these cases can be served abroad when the Respondent has an English domicile by leave of the Judge on filing an Affidavit of Domicile.

**Subsequent Proceedings** are similar to those in other Matrimonial Suits.

**Answer.**—The Respondent can allege cruelty, and ask for a judicial separation without filing a cross Petition.

**Stay of Proceedings.**—The Respondent can at any time during the Suit apply by Summons to the Registrar for an Order to stay the proceedings on the ground that *he* [or *she*] *is willing to resume cohabitation* with the Petitioner (Rule 176).

**Alimony pendente lite and Costs.**—The rules and mode of procedure in other Causes apply.

**Decree.**<sup>2</sup>—The Petitioner succeeding, the form of Decree will be that the Respondent, *if wife*, do return to cohabitation within [*such time as the Court may think fit to name*], and render to him conjugal rights. *If husband*, that he do take back or return home to the Petitioner &c. within a fixed time, and, further, that he do file in the Registry a Certificate to the effect that he has done so.

#### CERTIFICATE.

THIS IS TO CERTIFY that I have, in pursuance of an Order of this Honourable Court in this Suit served upon me on . . . the day of . . . , 190 . . . , provided a home for myself and wife at . . . , in the County of . . . , where I am now residing, and that I have given notice thereof to my said wife, and have requested her to join me there in obedience to the above-mentioned Order as soon as she pleases.

Dated . . . , 190 . . .

T. C.

Filing Fee, 2s. 6d.

<sup>1</sup> *Bateman v. Bateman*, 70 L. J. P. 29; [1901] P. 136.

<sup>2</sup> The Decree can be served on a Respondent who has an English domicile who is out of the jurisdiction (*Dicks v. Dicks*, 68 L. J. P. 118; [1899] P. 275).

**Service.**—A copy of the Decree under seal of the Court should be personally served upon the Respondent; but when this cannot be done, application can be made to the Court for substituted service.

## AFFIDAVIT OF SERVICE OF DECREE.

I, E. F., clerk to Messrs. L. and L., of \_\_\_\_\_, in the County of \_\_\_\_\_, solicitors, make oath and say as follows:—

1. That I did on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, serve T. C., the Respondent, at \_\_\_\_\_, in the County of \_\_\_\_\_, with a certified copy under seal of this Court of the Decree pronounced herein on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, by delivering to and leaving the same with the said T. C. personally.

Sworn &amp;c.

E. F.

## SUBSTITUTED SERVICE OF DECREE: ABSTRACT ADVERTISEMENT.

To A. G., late of \_\_\_\_\_, in the City [or County] of \_\_\_\_\_, stationer.

TAKE NOTICE that a Decree for Restitution of Conjugal Rights, dated the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, has been made against you in a Suit, wherein J. G. was Petitioner and you the said A. G. were Respondent, requiring you within fourteen days from service to return home to the Petitioner; and further take notice that by an Order made on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, personal service on you of the said Decree was dispensed with and service by advertisement and otherwise directed.

D. H. O., Registrar.

**Respondent Abroad.**—In case of the Respondent being abroad *when the Decree is pronounced*, the Decree can be served even although out of the jurisdiction. The time for return is then enlarged.

**Respondent in England but avoiding Service.**—The Court ordered a Writ of Sequestration to issue, *without personal service of the Decree*.<sup>1</sup>

**Decree not complied with.**—Where the wife is the Petitioner she can file a Petition for Permanent Alimony, as in a Suit for

<sup>1</sup> Allen v. Allen, 10 P. D. 187.

Judicial Separation (see "PERMANENT ALIMONY," p. 135). Where the husband is the Petitioner and the wife is possessed of property or income he may apply for a settlement of part thereof for the benefit of himself and children (if any).

**Judicial Separation.**—On failure of compliance with a Decree for Restitution of Conjugal Rights the Petitioner may, on the expiration of the time for compliance, apply to the Court for a Decree of Judicial Separation *on the ground of desertion without reasonable cause.*

**Dissolution.**—Where the husband is Respondent, *and has been guilty of adultery*, the wife may present her Petition for a Dissolution of Marriage (47 & 48 Viet. c. 68, Section 5).

**How to Proceed.**—By Petition, Affidavit, and Citation, as in ordinary Suits for Judicial Separation or Dissolution of Marriage.

**Petition and Citation.**—For Forms see pp. 48 and 49 and 40 and 41.

**Decrees.**—For Forms see p. 85.

**For Alimony pending Suit or Permanent Alimony, Custody, and Maintenance of Children.**—Application is to be made as in other Suits for Judicial Separation (47 & 48 Viet. c. 68, Section 6).

## ACT ON PETITION (Rules 56 to 61).

Any party cited in a Matrimonial Cause denying the jurisdiction of the Court should enter an Appearance to the Citation *under protest*, and *within eight days therefrom* file his or her Act on Petition, and on the same day deliver a copy thereof to the Petitioner or his or her solicitor.

The Act is signed by the party or his or her solicitor.

Answer must be filed within eight days from day of delivery of the Act, and other pleadings within similar time from service of the last pleading.

**Setting down.**—When the pleadings are completed the Act must be set down for hearing, in like manner as a Cause, to be heard before the Court itself (Rules 56 *et seq.*). The evidence will be taken on Affidavit.



**Collateral Questions.**—Any party to a Cause who has entered an Appearance *not under protest* desiring to raise any question collateral to the principal issues in the Suit may apply on Summons to the Registrar for leave to be heard on his Petition.

**Order Made.**—The party obtaining such leave shall *within eight days from the date of the Order* file his Act on Petition, and on the same day deliver a copy thereof to such parties in the Cause as are required to answer thereto.

**Answer** to be filed and delivered within eight days after service of the Act on Petition, and the same course pursued with respect to *Reply, Rejoinder, &c.*, until the Act on Petition is concluded.

**Affidavits.**—Each party shall within eight days after the pleadings are concluded file such Affidavits and other proofs as may be necessary in support of their several averments.

## FORMS.

### ACT ON PETITION.

A. B. against C. B. and R. S.

On the            day of            , 190 .

A. B., the Petitioner [*or C. D., the solicitor of A. B., the Petitioner*], alleged that [*here state briefly the facts and circumstances upon which the Petition is founded*].

Wherefore the said A. B. [*or C. D.*], referring to the Affidavits and proofs to be by him exhibited in verification of what he so alleged, prayed that [*here set forth the prayer of the Petitioner*].

(Signed) A. B. [*or C. D.*].

### ANSWER.

A. B. against C. B. and R. S.

On the            day of            , 190 .

C. B., the Respondent [*or G. H., the solicitor of C. B., the Respondent*], in answer to the allegations in the Act on Petition, bearing date the            day of            , 190 , of A. B., admitted [*or denied*] that [*here set forth any allegations admitted or denied.*]

And he alleged that [*here state any facts or circumstances in explanation or in answer*].

Wherefore the said C. B. [*or G. H.*], referring to the Affidavits and proofs to be by her exhibited in verification of what she so alleged, prayed [*here set forth the prayer of Respondent*].

(Signed) C. B. [*or G. H.*].

#### CONCLUSION.

A. B. against C. B. and R. S.

On the            day of            , 190 .

A. B., the Petitioner [*or C. D.*, the solicitor for A. B., the Petitioner], in reply to the allegations of C. B. [*or G. H.*] in her Answer, bearing date            , denied the same in great part to be true or relevant.

Wherefore he alleged and prayed [*as before*].

(Signed) A. B. [*or C. D.*].

**Setting down.**—After the time for filing such Affidavits and proofs has expired the party filing the Act on Petition can set the same down for hearing *in like manner as a Cause*, and failing to do so *within one month* any party who has filed an *Answer* thereto may set the same down for hearing.

**How heard.**—Usually before the Court itself without a jury.<sup>1</sup>

**Fees and Costs allowed.**—Same as in a Cause.

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<sup>1</sup> The right of parties to demand a jury was upheld by the Court of Appeal in *Lowenfeld v. Lowenfeld*, 72 L. J. P. 57; [1903] P. 177, C. A.

**LEGITIMACY DECLARATION (Rule 174).***(21 & 22 Vict. c. 93.)***ATTORNEY - GENERAL.**

In proceedings under the Legitimacy Declaration Act and the Greek Marriages Act it is directed that the Attorney-General shall be made a Respondent.

**Petition.**—*Section 6.*—A copy of the Petition, with copy of the Affidavit verifying the same and deposing to the absence of collusion (see Section 3), is served on the Attorney-General at his Chambers. The Petition and Affidavit may, of course, be drawn in duplicate.

## TITLE OF CAUSE.

*G. v. The Attorney-General. (A. and B. cited.)*

**Filed at the Registry.**—At the expiration of one month (without hearing from the Attorney-General) the Petition and Affidavit can be filed at the Registry. These are not served again on the Attorney-General, nor need any notice be given to him of the filing, inasmuch as the solicitor for the Attorney-General informs himself of the fact by searching at the Registry, but it would be convenient to give his solicitors notice, and so save their continually searching. On ascertaining that it is filed he enters an Appearance within eight days, and within twenty-one days from the filing of the Petition files his Answer, which is usually a traverse of the allegations in the Petition.

**Citing other Persons.**—The Petition being filed, application to the Registrar, by Summons, is made on behalf of the Petitioner for leave to cite such parties (if any) as may be deemed to be necessary, and they may appear within eight days and answer within twenty-one days after service of the Citation. Pleadings being carried on as in other Causes. For form of Citation see p. 48. The Summons is to be served on the Attorney-General.

**Service on Attorney-General.**—The Attorney-General is not served with any Citation or Pleading between the Petitioner and the other parties, but all Notices and Summonses affecting his interest should be served upon him.

**How heard.**—The Pleadings being completed, application is made for the Registrar's Certificate, and the Cause set down—usually to be heard by the Court itself.

It is difficult, owing to the varying incidents of these applications, to give anything beyond a mere outline of the Petition &c., but the following may be of assistance.

### FORM OF PETITION.

The Petition of A. B., a natural born subject of His Majesty, being domiciled in England, sheweth:—

That on the            day of            , 190    , at            ,  
T. B. was lawfully married to E. B. (then E. J.),  
spinster.

That after the said marriage the said T. B. and the said  
E. B. lived and cohabited at            as man and wife.

That on the            day of            , 190    , the said T. B.  
and E. B. had issue of their said marriage a son, born  
at            .

That the said A. B. was and is the son so born as aforesaid.

That the said A. B. is a natural born subject of His Majesty,  
and is the legitimate son of the said T. B. and E. B.

Your Petitioner therefore prays that your Lordship will be pleased to decree that the said A. B. is the legitimate child of his parents, and that the marriage of his father and mother was a valid marriage, and that your Petitioner may have such further and other relief in the premises as to your Lordship may seem meet.

A. B.

## AFFIDAVIT IN SUPPORT OF PETITION.

In the matter of the Petition of

I, A. G., of \_\_\_\_\_, tailor, the above-named Petitioner, make oath and say as follows:—

1. That the statements contained in the said Petition, dated the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, are true, to the best of my knowledge, information, and belief.
2. That there is not any collusion between myself and any other person in respect of the matters alleged in the said Petition.

Sworn &c.

A. G.

Answer of the Attorney-General is generally a traverse of the Petition.

Citation (see p. 48).

Fees and Costs Allowed.—Same as in a Cause.

The Marriage Certificate of the father and mother and the Birth Certificate of Applicant should be filed.

## GARNISHEE ORDER.

**Order Nisi.**—Application for a Garnishee Order *Nisi* is to be made *ex parte* upon production of an Affidavit of Service of the original Order for Payment and an Affidavit by the party to whom the payment has been ordered to be made, showing that the Order is still unsatisfied and to what amount, and that some person is indebted to the party against whom such Order has been made, and is within the jurisdiction of the Court.

**How made.**—Take the necessary Affidavits, *with Order Nisi filled up in duplicate* (Forms obtained at Registry), to the Registrar, who will, if satisfied with them, grant the Order *Nisi* attaching the debt, and will at the same time fix the date for the attendance of the Garnishee. But before obtaining a Garnishee Order for costs, application for their payment should be made.<sup>1</sup>

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<sup>1</sup> *Nott v. Sands*, W. N. 83, 76.

**Order entered.**—The Order will be taken to the Divorce Registry, and after being entered on the Minutes delivered to the Practitioner, who will then pay the Fees.

**Fees.**—5s. for the Order *Nisi*, and a deposit of 5s. for the Order Absolute.

**Service.**—A plain copy of the Order *Nisi* should be forthwith served *personally* on the Garnishee. It is advisable to serve the Garnishee *as soon as possible*, in order to avoid an adjournment should he not attend at the hearing, and the Registrar be of opinion that he had not received sufficient notice. No service is necessary on the judgment debtor.

**Order Absolute.**—On the day appointed by the Registrar the Garnishee and the party making the application, or his solicitor, will attend *as directed by the Order Nisi*, when the Registrar, no sufficient cause being shown to the contrary, will make the Order *Absolute*.

**Non-attendance of Garnishee.**—If the Garnishee fails to attend before the Registrar at the time appointed in the Order *Nisi*, an Affidavit of Service will be required (see Form on p. 171).

**Security for Wife's Future Costs.**—Application for Garnishee Order to lodge the estimated amount in Court refused, not being an actual debt.<sup>1</sup>

AFFIDAVIT IN SUPPORT OF APPLICATION FOR GARNISHEE ORDER *NISI*.  
AS TO ALIMONY.

[*Usual Heading.*]

Between M. C., Judgment Creditor,  
and  
W. C., Judgment Debtor.

I, M. C., of \_\_\_\_\_, in the County of \_\_\_\_\_, wife of W. C., the above-named Judgment Creditor, make oath and say as follows:—

1. By an Order of this Court made in this Suit and dated the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, it was ordered that W. C., the above-named Judgment Debtor, should pay to me the sum of £ \_\_\_\_\_ alimony pending Suit, payable weekly from the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_.

<sup>1</sup> Adams v. Adams—Chambers, 1892.

2. The said Order still remains unsatisfied to the extent of £ .

3. J. T., of , in the City of , hosier, is indebted to the said Judgment Debtor in the sum of £ or thereabouts.

4. The said J. T. is within the jurisdiction of this Court.

Sworn at &c.

M. C.

The solicitor may make the Affidavit and the Order be made to lodge the sum in Court.

AS TO COSTS.

Between M. C., Judgment Creditor,

and

W. C., Judgment Debtor.

I, M. C., of , wife of W. C. [*or—if the Order is payable to the solicitor—E. F., a member of the firm of F. & G., solicitors for M. C.*], of , in the County of , the above-named Judgment Creditor, make oath and say as follows:—

1. By an Order of this Court made in this Suit and dated the day of , 190 , it was ordered that W. C., the above-named Judgment Debtor, should pay to me [*or lodge in Court*] the sum of £ for costs of Suit.

2. The said Order still remains *wholly unsatisfied* [*or unsatisfied to the extent of £* ].

3. J. T., of , in the City of , hosier, is indebted to the said Judgment Debtor in the sum of £ or thereabouts.

4. The said J. T. is within the jurisdiction of this Court.

Sworn at &c.

M. C.

AFFIDAVIT OF SERVICE OF ORDER NISI ON GARNISHEE.

*C. v. C. and T.*

I, A. B., of , messenger, make oath and say that the annexed Order (marked "A") was duly served by me on J. T. at by exhibiting the original and delivering a true copy thereof to the said J. T. personally on the day of , 190 .

A. B.

Sworn &c.

## GARNISHEE ORDER NISI (ATTACHING DEBT).

Upon hearing \_\_\_\_\_ and upon reading the Affidavit  
of \_\_\_\_\_, filed the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_ :

IT IS ORDERED that all debts owing or accruing due from the above-named Garnishee to the above-named Judgment Debtor be attached to satisfy the amount due from the said Judgment Debtor to the above-named Judgment Creditor under a Judgment dated the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, for the sum of £ \_\_\_\_\_, on which Judgment the sum of £ \_\_\_\_\_ remains due and unpaid.

AND IT IS FURTHER ORDERED that the said Garnishee attend one of the Registrars of the Principal Probate Registry, Somerset House, Strand, London, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on an application by the said Judgment Creditor that the said Garnishee pay the debt due from him to the said Judgment Debtor, or so much thereof as may be sufficient to satisfy the amount due under the said Judgment.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

## GARNISHEE ORDER ABSOLUTE.

Upon hearing \_\_\_\_\_ and upon reading the Affidavit of \_\_\_\_\_, filed the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, and referring to the Order dated \_\_\_\_\_, 190 \_\_\_\_\_, whereby it was ordered that all debts owing or accruing due from the above-named Garnishee to the above-named Judgment Debtor should be attached, to satisfy the amount due from the said Judgment Debtor to the above-named Judgment Creditor, under a Judgment dated the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, for the sum of £ \_\_\_\_\_, on which Judgment the \_\_\_\_\_ sum of £ \_\_\_\_\_ remained due and unpaid :

IT IS ORDERED that the said Garnishee do forthwith pay the said Judgment Creditor the debt due from him to the said Judgment Debtor [*or lodge in Court if so directed by the original Order*<sup>1</sup> *or so much thereof as may be sufficient to satisfy the Judgment Debt*], and that in default thereof execution may issue for the same.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_ . G. B.

<sup>1</sup> Read v. Read and Kennills—Butt, J., Chambers, November, 1888.



## AFFIDAVIT OF GARNISHEE DENYING DEBT.

I, J. T., of \_\_\_\_\_, hosier, make oath and say that I am the above-named Garnishee, and that I am not indebted to the above-named Judgment Debtor in the sum mentioned in the Garnishee Order *Nisi* herein dated the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, or in any sum whatsoever; nor is there any debt or debts accruing due from me to him.

J. T.

Sworn &c.

Subsequent proceedings are governed by Order XLV., Rule 4; Jud. Rules, Rule 4:—"If the Garnishee disputes his liability, the Court or Judge, instead of making an Order that execution shall issue, may order that any issue or questions necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined."<sup>1</sup>

## FEES.

			£	s.	d.
Filing each Affidavit	-	-	-	2	6
Order <i>Nisi</i> -	-	-	-	5	0
„ Absolute	-	-	-	5	0

## COSTS ALLOWED.

*To be added to the amount of the Order Absolute.*

Drawing Affidavit of service of original	£	s.	d.
Order for payment	-	-	0 5 0
Engrossing	-	-	0 1 8
Attending to be sworn	-	-	0 6 8
Paid Oath and marking Exhibit	-	0	2 6
Paid Filing	-	-	0 2 6
Drawing Affidavit of Nonpayment	-	0	6 8
Paid Oath	-	-	0 1 6
Paid Filing	-	-	0 2 6
Attending Order <i>Nisi</i> made	-	-	0 6 8
Paid	-	-	0 5 0

<sup>1</sup> Erwin v. Erwin and Potter—Butt, J., Chambers, December, 1888.

COSTS ALLOWED—*continued.*

	£	s.	d.
Attending for Order - - -	0	6	8
Service - - - - -	0	5	0
Attending hearing return of Order - - -	0	6	8
Paid Order Absolute - - - - -	0	5	0
Attending for Order - - - - -	0	6	8
Service - - - - -	0	5	0
	<hr/>		
	£3	15	8

If the *Garnishee* does not attend at the hearing the further costs would be allowed—

	s.	d.
Drawing and Engrossing Affidavit of Service - - - - -	6	8
Attending Swearing - - - - -	6	8
Paid Oath and Exhibit - - - - -	2	6
Paid Filing - - - - -	2	6
	<hr/>	
	18	4

**CHARGING ORDER.**

Application for a *Charging Order Nisi* will be made in the same manner as an application for a *Garnishee Order Nisi*.

The *Order Absolute* must be made by a Judge before whom cause (if any) will be shown on the day named in the *Order Nisi*.

Application is made by Summons.

## AFFIDAVIT IN SUPPORT OF ORDER NISI.

*D. v. D.*

I, A. B., clerk to Messrs. L. & M., of \_\_\_\_\_, solicitors for the Petitioner, make oath and say as follows:—

I am informed and believe that the above-named Respondent is entitled in his own right to certain Bank Stock [*or other securities*], and that the said Stock is standing in his name.

Sworn &c.

A. B.

## ORDER NISI.

*D. v. D.*

Upon hearing the solicitor for the Petitioner, and upon reading the Affidavit of A. B., filed herein, whereby it appears that by an Order made on the            day of           , 190   , it was ordered that the Respondent do pay to the said Petitioner the sum of £           , and that the said Respondent is still indebted to the said Petitioner to the amount of £           , and that there is standing in [*here state security*]:

IT IS ORDERED that unless sufficient cause be shown to the contrary before one of the Judges of this Division at his Chambers at the Royal Courts of Justice, Strand, London, on            day, the            day of           , 190   , at            of the clock in the            noon, the Respondent's interest in the [*Stock*] so standing as aforesaid shall, and that it in the meantime do, stand charged with the payment of the above-mentioned amount due under the said Order.

Dated the            day of           , 190   .

D. H. O., *Registrar.*

**Service.**—The Order *Nisi* is served on the Bank of England (or the company in whose books the Stock stands) and also on the Judgment Debtor.

**Effect of Order.**—A Charging Order, when made Absolute, takes effect from the date of the Order *Nisi*.

## ORDER ABSOLUTE.

*D. against D.*

Upon hearing the solicitors for the Petitioner, for the Respondent, and for the           , and upon reading the Affidavit of            filed and the Order *Nisi* made herein, dated the            day of           , 190   , reciting the Affidavits of           , whereby it appeared that by an Order made on the            day of           , 190   , it was ordered that            do pay to the said            the sum of £           , and that the said            is still indebted to the said            to the amount of £           , and that there is standing in           :

IT IS ORDERED that the                      interest in the                      so standing as aforesaid stand charged with the payment of the above-mentioned amount due under the said Order.

Dated the              day of              , 190      ,                      G. B.

**Affidavit of Service** will be required should the parties served with the Order *Nisi* not attend at the time fixed in such Order for the further hearing of the application. For Form see p. 171.

#### DISCHARGING ORDER: ON SUMMONS.

Upon hearing the solicitors for the Petitioner and for the Respondent, and the solicitors for the Respondent having paid to the solicitors for the Petitioner the sum of £              (the amount named in the Order Absolute with the costs):

I do order that the Charging Order *Nisi*, dated the              day of              , 190      , and the Order Absolute, dated the              day of              , 190      , together with any notice thereunder, be discharged.                      G. B.

**Service.**—A sealed copy of the Order should be served on the solicitors of the Bank or Society in which the fund stands.

**Fees and Costs.**—Same as for “Garnishee.”

**Costs.**—The *ordinary* costs of obtaining an Order Absolute, amounting to £3 19s. 2d. if the parties to whom notice has been given attend, or £4 17s. 6d. if an Affidavit of Service of the Order *Nisi* is required, will be inserted in the Order Absolute.

### SUMMONS UNDER BANKERS' ACT.

For Order to Inspect the Banking Account of a Party take out a *Summons* to show cause why an Order should not be made that the solicitor of the (Petitioner or Respondent, as the case may be) be at liberty to inspect and take copies of any entries in the books of the Bank of England (or whatever Bank the party has an account with) relating to the account of the (Petitioner or Respondent) for the purposes of these proceedings, pursuant to Section 7 of The Bankers' Evidence Act, 1879, which is as follows:—

*Section 7.*—“On the application of any party to a legal proceeding a Court or Judge may order that such party be at liberty

to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the Court or Judge otherwise directs."

**Service.**—This Summons should be served on the party or his solicitor, but not on the Bank.

**Order Made.**—Served on the Bank, and appointment arranged for inspection as directed.

## RECEIVER.

**Application: How made.**—By Summons before a Judge, supported by Affidavit of Service of the Order for Payment, the amount of debt due, and of the nature of the property in respect of which the Receiver is to be appointed.

**Service.**<sup>1</sup>—The Summons should be served on the solicitor of the other party, unless sufficient reason for dispensing with such service can be given to the Court.

*Ex parte* applications are heard and injunctions granted restraining the property in question from being dealt with, and the Summons for Receiver adjourned.

**Just and Convenient.**—"In every case in which an application is made for the appointment of a Receiver by way of equitable execution, the Court or a Judge, in determining whether it is just or convenient that such appointment should be made, shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the Receiver, and to the probable costs of his appointment, and may, if they or he shall so think fit, direct any inquiries on these or other matters before making the appointment" (S. C. R., L. R. 15A). Future earnings not subject to this process.

<sup>1</sup> Service of Summons dispensed with: substituted service of the Order of Appointment (by service on solicitor and advertisement) may be directed (*Roake v. Roake*—Butt, J., Chambers, January, 1889); or with leave, by registered letter (*Strong v. Strong and Banwell*—Jenne, President, Chambers, July, 1895).

**Service.**—Order restraining and Notice of Renewal of the Application for the Appointment of a Receiver *served personally*.

**Appointment of Receiver.**—The Order being made it directs that “L. M. be appointed Receiver upon first giving security (by Bond) to the satisfaction of one of the Registrars, unless otherwise directed by the Court.”<sup>1</sup>

**Bond.**<sup>2</sup>—This is drawn up (on the Form to be obtained at the Law Courts Form Room) by the solicitor obtaining the Order, and taken by him to the Registrar, who, if satisfied with it, will *sign his name in the margin thereof*. The Bond can then be executed and stamped, and, on being filed in the Registry, the Order of Appointment issued.

**Security.**—The Bond is given to the solicitor of the party whose property is affected by the Order, or to the party himself *if acting in person*.

**Objections to Sureties &c.**—Proceedings similar to Wife’s Bond (see p. 72). If the Bond is not approved, an appointment should be taken before one of the Registrars to settle the security, and notice of such appointment given to the person not approving the draft Bond.

**Accounts of Receiver.**—These are brought into the Registry by the Receiver, as directed by the Order; an appointment is obtained from the Registrar to investigate them, and notice of the appointment is given to the other side.

**Discharging Receiver.**—Application is made by Summons, which should be served on the other party.

FEES.

		<i>s. d.</i>
Summons - - - -	-	8 0
Filing Bond - - - -	-	2 6

**Costs.**—Similar to “Garnishee” (p. 173), with additional for Bond, as at p. 77.

<sup>1</sup> Strong *v.* Strong and Banwell, p. 177.

<sup>2</sup> It has been found better to draw the Bond in draft, get it approved by the other side, and (if approved) executed, and then left (with the draft approved) at the Registry, for the Registrar’s signature.

## ORDER APPOINTING RECEIVER.

B. against B.

Upon hearing                    for the                   , and upon reading the Affidavit of                   :

IT IS ORDERED that K. P., of                   , be appointed Receiver upon first giving security by Bond to the satisfaction of one of the Registrars of the Principal Probate Registry of the High Court of Justice to receive the rents, profits, and moneys receivable in respect of the following property (to wit): [*Here set out various items*].

But this appointment is to be without prejudice to the rights of any prior incumbrancers upon the said premises who may think proper to take possession of or receive the same by virtue of their respective securities, or, if any prior incumbrancer is in possession, then without prejudice to such possession.

And that the tenants of the said premises do attorn and pay their rents in arrear and growing rents to such Receiver. And that such Receiver have liberty, if he shall think proper (but not otherwise), out of the rents, profits, and moneys to be received by him, to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments (if any) in passing his accounts; and that such Receiver shall, at such time or times as may be ordered by one of the said Registrars, file and pass his accounts, and shall from time to time, as may be hereafter ordered by the Registrar, pay the balance or balances appearing due on the accounts, or such part thereof as shall be certified as proper to be so paid, in or towards satisfaction of what shall for the time being be due in respect of the Order or Decree made on the                    day of                    for the sum of £                   , and £                    for costs, making together the sum of £                   . And that the costs of this Order, and of carrying the same into effect, and of obtaining the discharge of the Receiver, shall be primarily payable out of the sums received by the Receiver; but if there shall be no sums received or the amount shall be insufficient, then upon the Certificate of one of the said Registrars being given stating the amount of the deficiency, the amount of the deficiency so certified shall be paid by the Judgment Debtor to the Judgment Creditor:

IT IS FURTHER ORDERED that the balance (if any) remaining in the hands of the Receiver, after making the several payments aforesaid, shall forthwith be paid by the Receiver into Court to the credit of this Suit, subject to further order. And any of the parties are to be at liberty to apply to one of the Registrars in Chambers as there may be occasion.

Dated this        day of        , 190 .

#### BOND OF RECEIVER.

[Usual Heading.]

KNOW ALL MEN by these Presents that I, K. P., of        , and we, H. C., of        , and G. T., of        , are jointly and severally held and firmly bound unto S. D., of        , and to his executors, administrators, and assigns in the sum of £        sterling, to be paid unto the said S. D., his executors, administrators, or assigns, for which payment well and truly to be made by the said K. P., for myself, my heirs, executors, and administrators, and we, the said H. C. and G. T., and each of us, for our and each of our heirs, executors, and administrators, do bind and oblige ourselves jointly and severally for the whole firmly by these presents.

Stamp and valorem.
--------------------------

Scaled with our seals on the        day of        , 190 .

WHEREAS by an Order of the High Court of Justice, Probate, Divorce, and Admiralty Division, made on the        day of        , 190 , by        , in a Suit in which A. B. is the Petitioner and L. B. the Respondent:

IT WAS ORDERED that the above bounden K. P. be appointed Receiver upon first giving security by Bond to the satisfaction of one of the Registrars of the Principal Probate Registry of the High Court of Justice to receive the rents, profits, and moneys receivable in respect of the following property (that is to say): [*Here set out as before*].

But the said appointment was to be without prejudice to the rights of any prior incumbrancers upon the said premises who might think proper to take possession of or receive the same by virtue of their respective securities, or if any prior incumbrancers should be in possession then without prejudice to such possession:



AND IT WAS ORDERED that the tenants of the said premises should attorn and pay their rents in arrear and growing rents to such Receiver. And that such Receiver should have liberty if he should think proper (but not otherwise) out of the rents, profits, and moneys to be received by him to keep down the interest upon the prior incumbrances according to their priorities, and be allowed such payments (if any) in passing his accounts. And that such Receiver should, at such time or times as might be ordered by one of the said Registrars, file and pass his accounts, and should from time to time, as might be thereafter ordered by one of the said Registrars, pay the balance or balances appearing due on the accounts, or such part thereof as should be certified as proper to be so paid, in or towards satisfaction of what should for the time being be due in respect of the Order or Decree made on the      day of      , 190      , for the sum of £      and £      for costs, making together the sum of £      :

AND IT WAS ORDERED that the costs of the said Order and of carrying the same into effect, and of obtaining the discharge of the Receiver (such costs to be ascertained by one of the said Registrars), should be primarily payable out of the sums received by the Receiver; but that if there should be no sums received, or the amount should be insufficient, then upon the Certificate of one of the said Registrars being given stating the amount of the deficiency (such Certificate to be given after passing the final account) the amount of the deficiency so certified should be paid by the Judgment Debtor to the Judgment Creditor as therein mentioned.

AND IT WAS FURTHER ORDERED that the balance (if any) remaining in the hands of the Receiver after making the several payments aforesaid should forthwith be paid by the Receiver into Court to the credit of this Suit, subject to further order.

AND WHEREAS one of the Registrars of the Principal Probate Registry of the High Court of Justice has approved of and is satisfied with the above-written Bond or Obligation, with the condition thereunder written, as a proper security to be given in pursuance of the hereinbefore recited Order, and in testimony thereof hath signed his name in the margin hereof:

Now the condition of the above-written Bond or Obligation is such that if the above bounden K. P., his executors or administrators,

do and shall duly account to one of the said Registrars for what the said K. P. shall receive or shall become liable to pay, as such Receiver as aforesaid at the period and in the manner directed by the said Order as hereafter to be directed, and pass his accounts before such Registrar at the times directed by the said Order or hereafter to be appointed, and shall pay the balance or balances certified thereby in the manner directed by the said Order or to be hereafter directed, then the above-written Bond or Obligation shall be void and of no effect; otherwise the same shall be and remain in full force and virtue.

PROVIDED ALWAYS, and it is agreed between the said K. P. and the said H. C. and G. T., that the said K. P., on being discharged from his office of or ceasing to act as such Receiver as aforesaid, shall forthwith give notice thereof in writing to the said H. C. and G. T., and furnish to them free of charge an office copy of the Order of the Court or Judge discharging him from the office.

AND, further, that the said K. P., his heirs, executors, or administrators, shall and will from time to time and at all times save, defend, and keep harmless the said H. C. and G. T., their heirs, executors, and administrators, from and against all loss and damage, costs, and expenses which he or they shall or may at any time sustain or be put unto by reason or in consequence of the said K. P. having entered into the above-written Bond or Obligation.

(Signed)

(Signed)

## COMMITTAL ORDER.

### COURT OF BANKRUPTCY.

For Nonpayment of Costs or Alimony &c. as ordered.—Application may be made by Summons to the Court of Bankruptcy (or if the party does not reside within the jurisdiction of the Court of Bankruptcy then, if preferred, to the County Court of the district wherein he does reside) for a Committal Order, supported by an Affidavit of Service (which must be *personal*) and *proof of means*. The application is in the first instance upon a Judgment Summons.

**How Applied for.**—At the Stamp and Form Department, Royal Courts, can be obtained the requisite Forms.

**Forms.**—These are: Application for Judgment Summons or Request (A 1) for the first Summons, and three Forms of Summons (A 4). The Application for Leave to issue the Summons is left with the Clerk of the Court, and when leave is obtained the appointment is given by him and endorsed on the Application, and the three Forms of Summons taken to the Clerk attending the Registrar.

**Application refused.**—The Creditor can apply to the Court.

**How Filed.**—The original Summons, with an adhesive stamp of 3s. stuck on to it, is, with the Request, filed there. The other two, also signed and sealed, are taken away.

**Service.**—One of these is *personally* served on the Defendant: the other (should the Defendant not appear at the hearing) is annexed to an Affidavit of Service and marked by the Commissioner.

**Time of Issuing and Service.**—The Summons must be *issued* ten clear days and *served* five clear days before the day upon which it is made returnable.

**How heard.**—This Summons is heard by the Judge.

**Means.**—The Summons must be supported by an Affidavit as to the means of the Defendant (oral evidence is sometimes allowed), proving to the satisfaction of the Judge that he is able to discharge the debt by instalments or otherwise. The Creditor is not bound to prove that the Debtor is able to pay £5 a month. The Court will make an Order according to the evidence.

**Non-attendance.**—The Defendant failing to attend at the hearing, the Judge, on being satisfied as to his means, will make an Order that the Defendant do pay by instalments at so much per week or per month, or in such other manner as may be justified by the evidence produced, upon an Affidavit of Service (*personally*) of the Summons, which is annexed to the Affidavit and marked by the Commissioner, being filed. Filing fee. 2s. 6d.

**Party attending** can be examined on oath, as to his means, before the Judge, who will then make such Order as to payment, by instalments or otherwise, as he may see fit. If sufficient means be not proved no Order is made.

**Service of Order.**—If an Order is made it is drawn up by the Plaintiff and served upon the Defendant *personally* if it was made in his absence, or if he was present or represented by his solicitor service by post will do.

**Failing to pay the Instalments.**—In the event of the Judge making an Order that the Debtor do pay by instalments, or otherwise, and he fails to comply with the Order, application will be made by Request, as before, for a “Judgment Summons, Non-payment by Instalments.”

**How obtained.**—The Request and three Forms of Summons will be obtained from the Stamp and Form Department, as before, and the proceedings, as to the issuing and service of the Summons and fees, is exactly similar.

**Order of Committal.**—If upon the hearing the Judge makes an Order the Defendant is usually committed to prison for six weeks.

**Commitment.**—The solicitor will then obtain, from the Stamp and Form Department, two Forms of Order of Commitment (A 5). These, when filled up, are signed by the Registrar and sealed—one copy, with a Fee Stamp of 5s. affixed to it, is filed; the other is returned to the solicitor, who will place it in the hands of a *Tipstaff of the High Court* to execute. The Order remains in force one year from the date thereof.

Section 5 of The Debtors’ Act, 1869, under which these Judgments are made, does not authorise imprisonment for any longer period than six weeks, but this imprisonment does not cancel the debt.

FEES.

	£	s.	d.
Issuing Summons - - -	0	3	0
Affidavit of Service, if required - - -	0	2	6

## COSTS ALLOWED.

	£	s.	d.
On Issue of Summons - -	1	1	0
Hearing before the Judge - -	0	10	6
On drawing up Order Stamp - -	0	5	0
Affidavit of Service, if required, on Order of Committal - -	0	5	0
Before the Judge—according to circumstances.			

**Jurisdiction.**—The London Court of Bankruptcy has jurisdiction *all over the country in respect of High Court Judgments and Orders*; but if a Summons is issued in London against a Defendant residing outside the bankruptcy district, the Plaintiff has to pay the Defendant's expenses to London (as an ordinary Witness attending a trial), and such payment may not be allowed in the costs, as the Plaintiff may issue his Summons in the County Court where the Defendant resides. The London Court does not issue Summonses on Judgments of County Courts within the London Bankruptcy District except under very special circumstances, but County Courts can issue Summonses on High Court Judgments or Orders.

**BANKRUPTCY ACT.**

(46 & 47 Vict. c. 52, Section 96.)

The London Bankruptcy District shall, for the purposes of this Act, comprise the city of London, and the liberties thereof, and all such parts of the metropolis and other places as are situated within the district of any county court described as a metropolitan county court, in the list contained in the Third Schedule.

## THIRD SCHEDULE.

The following County Courts of Middlesex:—Bloomsbury, Bow, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, and Whitechapel.

## ATTACHMENT (Rules 110 to 112).

**Attachment.**—Application can be made to the Court (of this Division) by motion (in Vacation to the Vacation Judge) for an Attachment for Contempt of Court in not obeying any direct Order of the Court, such as not finding security as directed or for non-compliance with or disobedience of any Order of the Court, *other than orders for payment of costs to party or solicitor, or alimony.*<sup>1</sup>

**Personal Service of Order: Affidavit.**—In this case the application is supported by an Affidavit of Service of the Order (which must have been *personal*, unless good reason be shown for not having so served it).

Endorsement to be made on all Orders where execution may follow:—

If you, the within-named A. B., neglect to obey this Judgment [*or Order*] by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same Judgment [*or Order*].

And the Affidavit of Service must show that the Order served was so endorsed.

**Search.**—An Affidavit of Search showing that the Order has not been complied with must also be filed.

**Notice.**—Notice of the application must also be served upon the party, and an Affidavit of Service of such Notice filed.

**Means.**—If the application is with regard to *not finding security or paying into Court*, means for complying must be shown.

**Order made.**—If the application is granted, it is invariably directed that the Writ do not issue for a week or a fortnight, so as to enable the offending party to purge his contempt by complying with the Order, and, further, that the Writ be not then delivered out unless an Affidavit be filed showing that the party had not complied with the Order.

**Writ issued.**—On the Registrar being satisfied that the Order of the Court for the Attachment has not been complied with, the Writ in the following form is drawn in the Registry and issued.

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<sup>1</sup> *Lynch v. Lynch*, 10 P. D. 183.

A *Præcipe*, with a Fee Stamp of 5s., is filed.

In the High Court of Justice.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

(*Divorce.*)

*E. G. v. F. G.*

EDWARD VII., by the grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, To the Sheriff of \_\_\_\_\_, Greeting.

WE command you to attach \_\_\_\_\_ so as to have him before Us in this Division of Our High Court of Justice, there to answer to Us as well touching a contempt which he, it is alleged, hath committed against Us, as also such other matters as shall be then and there laid to his charge, and, further, to perform and abide such Order as Our said Court shall make in this behalf, and hereof fail not, and bring this Writ with you.

Witness, The Honourable Sir Gorell Barnes, at Our High Court of Justice, the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

L.S.

A. M., *Registrar.*

This Writ was issued by \_\_\_\_\_, of \_\_\_\_\_, agent for \_\_\_\_\_, of \_\_\_\_\_, solicitor for the \_\_\_\_\_, who reside at \_\_\_\_\_.

The Respondent is a \_\_\_\_\_, and resides at \_\_\_\_\_, in your bailiwick.

This Writ is issued by Order of Court dated \_\_\_\_\_ August, 190 \_\_\_\_\_, whereby the said F. G. was pronounced by the Court to be contumacious and in contempt, for non-compliance with an Order made in this Cause on the \_\_\_\_\_ July, 190 \_\_\_\_\_, whereby the said F. G. was ordered &c.

**Discharging Order.**—Application on Motion to Court, with Affidavits showing grounds for the same.

**Order of Discharge.**—When obtained it is taken to the office of the Sheriff for Middlesex, Red Lion Square, for his Certificate that there are not any other Judgments against the Prisoner. The Order, *with such Certificate*, is then taken to the Governor of the prison where the party is confined.

Sheriff's Fee for Certificate, 2s. 6d.

No Fees at prison.

## WRITS.

## FI. FA., SEQUESTRATION, ELEGIT (Rules 110 to 112, 179, and 203).

In default of payment of any sum of money (for Costs or Alimony or Damages) ordered by the Court to be paid to party or solicitor, a Writ of Fi. Fa., Sequestration, or Elegit may be issued (Rule 203).

**How Obtained.**—Upon the solicitor filing at the Divorce Registry an Affidavit of Service of the Order on *solicitor*, or on *party if acting in person*, with the Order exhibited and marked by the Commissioner, and an Affidavit of Nonpayment *made by the party to whom the money was directed to be paid*, either Writ will be issued.

**Writ.**—The solicitor fills up the Form of Writ, which may be obtained at the Divorce Registry or of any Law Stationer.

**Costs Allowed.**—The solicitor will add to the amount of debt in the Writ the costs according to the following scale, as far as they are applicable to the case.

**Præcipe.**—A Præcipe, with a Fee Stamp of 5s., is left when the Writ is sealed and issued.

FEES.				s.	d.
Affidavits, each	-	-	-	2	6
Issuing Writ	-	-	-	5	0

## COSTS ALLOWED.

*To be added to the amount of the Writ.*

	s.	d.	s.	d.
Service of Order <sup>1</sup>	-	-	2	6
(If served at a distance of more than two miles from the office of the solicitor serving same—for each mile beyond the first two, 1s.)				
Where served through Country Agent	-	-	7	0

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<sup>1</sup> Not to be charged if already allowed in the Bill.



COSTS ALLOWED— <i>continued</i> ,		s.	d.	s.	d.
Affidavit of Service of Order—					
Drawing, if five folios or under	-	6	8		
(Above five folios, 1s. 4d. per folio.)					
Attending Swearing	-	6	8		
Paid Oath and Marking Exhibit	-	2	6		
Preparing Exhibit	-	1	0		
Paid Filing	-	2	6		
				19	4
Affidavit of Nonpayment—					
Drawing, if five folios or under	-	6	8		
(Above five folios, 1s. 4d. per folio.)					
Attending Swearing	-	6	8		
Paid Oath	-	1	6		
Paid Filing	-	2	6		
				17	4
Writ—					
Solicitor's Fee	-	7	0		
(If more than four folios, for each folio 1s. 4d.)					
Sealing	-	5	0		
				12	0
Attending for Warrant	-	3	4		
Paid	-	2s. 6d	to	7	0
Attending Instructing Officer	-	3	4		
				13	8

## WRIT OF FI. FA.

## In the High Court of Justice.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

*(Divorce.)*

Between A. K., Petitioner, and J. K., Respondent.

EDWARD VII., by the grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, To the Sheriff of \_\_\_\_\_, Greeting.

WE command you, that of the goods and chattels of J. K., of \_\_\_\_\_, in your bailiwick, you cause to be made the sum of \_\_\_\_\_ pounds \_\_\_\_\_ shillings and \_\_\_\_\_ pence for certain arrears of alimony *pendente lite*, in which the said J. K. was lately before Us in Our High Court of Justice, in a certain Cause there depending, wherein the said A. K. is the Petitioner and the said J. K. is the Respondent, and by an Order of Our

said Court, bearing date the            day of            , 190    , ordered to be paid by the said J. K. to the said A. K., *and which costs have been taxed and allowed by one of the Registrars of the Registry of Our said Court at the said sum of            as appears by the Certificate of the said Registrar, dated the            day of            , 190    .*<sup>1</sup>

And that of the goods and chattels of the said            in your bailiwick you further cause to be made            interest on the said sum of £            , at the rate of Four pounds per centum per annum, from the            day of            , 190    , and that you have that money and interest before Us in Our said Court immediately after the execution hereof to be paid to the said A. K.<sup>2</sup> in pursuance of the said Order:

And in what manner you shall have executed this Our Writ make appear to Us in Our said Court, immediately after the execution thereof:

And have there then this Writ.

Witness, The Honourable Sir Gorell Barnes, at Our High Court of Justice, the            day of            , in the year of our Lord One thousand nine hundred and            .

L.S.

J. C. H., Registrar.

Levy            and £            for costs of execution: and also interest on £            at £4 per centum per annum, from the            day of            , 190    , until payment, besides Sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This Writ was issued by C. J., of            , in the County of            , solicitor, agent for L. F., of            , solicitor for the Petitioner, who resides at            .

The Respondent is a cabinet maker, and resides at            , in your bailiwick.

*Endorsement by the Sheriff.*

The within-named Respondent hath not any goods or chattels in my bailiwick whereof I can cause to be made the sums of money hereon endorsed to be levied or any part thereof.

S. B., Sheriff.

<sup>1</sup> These words in italics are struck through when the Order is for *Alimony*, and in like manner the words as to *Alimony* when the Order is for *Costs*.

<sup>2</sup> Or to be lodged in Court as the Order may direct.

## WRIT—ELEGIT.

## In the High Court of Justice.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

*(Divorce.)*

Between H. W., Petitioner, and J. W., Respondent.

EDWARD VII., by the grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, To the Sheriff of \_\_\_\_\_, Greeting.

WHEREAS lately in our High Court of Justice in a certain Cause there depending, wherein H. W. is Petitioner and J. W. is Respondent, by an Order of Our said Court, made in the said Cause, and bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, it was ordered that J. W. should pay unto H. W. the sum of £66 13s. 4d. per annum, from the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, to be payable monthly; and whereas there is now due and payable to the said H. W., under the said Order, the sum of £72 4s. 5d.

And afterwards the said H. W. came into Our said Court and, according to the Statutes in such case made and provided, chose to be delivered to her all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick as the said J. W. or any one in trust for him, was seised or possessed of on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord 190\_\_\_\_, or at any time afterwards or over which the said J. W. on the said \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, or at any time afterwards had any disposing power which he might without the assent of any other person exercise for his own benefit to hold to her the said goods and chattels as her proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof to her and to her assigns until the said sum of £72 4s. 5d. shall have been levied:

Therefore We command you that without delay you cause to be delivered to the said H. W. by a reasonable price and extent all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick as the said J. W. or any person or persons

in trust for him was or were seised or possessed of on the said day of \_\_\_\_\_, 190\_\_\_\_, or at any time afterwards or over which the said J. W. on the said day of \_\_\_\_\_, 190\_\_\_\_, or at any time afterwards had any disposing power which he might without the assent of any other person exercise for his own benefit to hold to the said H. W. the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof to her and to her assigns until the said sum of £72 4s. 5d. shall have been levied.

And in what manner you shall have executed this Our Writ make appear to Us in Our Court aforesaid, immediately after the execution thereof, under your seals and the seals of those by whose oath you shall make the said extent and appraisement.

And have there then this Writ.

Witness, the Honourable Sir Gorell Barnes, at Our High Court of Justice, Great Britain, the day of \_\_\_\_\_, 190\_\_\_\_.

L.S.

R. A. P., Registrar.

Levy £72 4s. 5d. and £\_\_\_\_\_ for costs of execution, besides Sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This Writ was issued by T. S., of \_\_\_\_\_, in the County of \_\_\_\_\_, agent for I. B., of \_\_\_\_\_, solicitor for the Petitioner, who resides at \_\_\_\_\_.

The Respondent is a \_\_\_\_\_, and resides at \_\_\_\_\_, in your bailiwick.

### WRIT OF SEQUESTRATION.

Between B. and B.

EDWARD VII., by the grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, to R. A., of \_\_\_\_\_, widow; T. A., of \_\_\_\_\_; A. B., of \_\_\_\_\_; and J. S., of \_\_\_\_\_, Greeting.

WHEREAS lately in the Divorce Division of Our High Court of Justice, in a certain action wherein A. B. is Petitioner and T. B. is Respondent, by an Order of Our said Court made in

the said action and bearing date the            day of            , 190    ,<sup>1</sup>  
it was ordered that the said T. B. should pay to the solicitor  
of the Petitioner the sum of £23 7s. 5d.:

Know ye, therefore, that We, in confidence of your prudence  
and fidelity, have given and by these presents do give to you, or  
any three or two of you, full power and authority to enter upon  
all the messuages, lands, tenements, and real estate whatsoever  
of the said T. B., and to collect, receive, and sequester into your  
hands not only all the rents and profits of his said messuages,  
lands, tenements, and real estate, but also all his goods, chattels,  
and personal estates whatsoever; And therefore We command you,  
any three or two of you, that you do, at certain proper and  
convenient days and hours, go to and enter upon all the messuages,  
lands, tenements, and real estates of the said T. B., and that you  
do collect, take, and get into your hands not only the rents and  
profits of his said real estate, but also all his goods, chattels, and  
personal estate, and detain and keep the same under sequestration  
in your hands until the said T. B. shall clear his contempt, and  
Our said Court make other order to the contrary.

Witness, The Honourable Sir Gorell Barnes, at Our High  
Court of Justice, the            day of            , 190    .

L.S.

D. H. O., *Registrar*.

Levy £23 7s. 5d. and £            for costs of execution and  
sequestration; also interest on £23 7s. 5d. at £4 per centum per  
annum from the            day of            , 190    , until payment, besides  
Sheriff's poundage, officers' fees, costs of levying, and all other  
legal incidental expenses.

This Writ was issued by C. W., of            , solicitor for  
the Petitioner.

The Respondent is a            , and resides at            in  
your bailiwick.

<sup>1</sup> If Writ be issued by reason of an act of contempt, the Order pro-  
nouncing the contempt should be referred to.

## DIVISIONAL COURT (Rule 62.)

(58 & 59 Vict. c. 39 : 2 Edu. VII. c. 28. Section 5.)

### ORDER LIX., RULE 4a, S. C. R.

Appeals from Orders made under Section 4 of The Matrimonial Causes Act, 1878, shall be heard by a Divisional Court of the Probate, Divorce, and Admiralty Division. Rules 7, 8, 10, 11, 12, and 16 of this Order shall apply to such appeals, the words "Divorce Registry" being deemed to be substituted in Rule 11 for the words "Crown Office Department of the Central Office."

Motions to Divisional Court apply to rehearing of Suits and to appeals from the magistrates under The Summary Jurisdiction Act, 1895. A Motion for the rehearing of a Divorce Cause, which has been tried by a Judge without a jury, must be made to the Divisional Court and not to the Appeal Court.<sup>1</sup>

**Time.**—For Motion for a rehearing eight days from the hearing of the Cause.

### RULES.

(*Summary Jurisdiction Act, 1895.*)

*Section 7.*—On any motion by way of appeal from an inferior court, the court to which any such appeal may be brought shall have power to draw all inferences of fact which might have been drawn in the court below, and to give any judgment and make any order which ought to have been made. No such motion shall succeed on the ground merely of misdirection or improper reception or rejection of evidence, unless, in the opinion of the court, substantial wrong or miscarriage has been thereby occasioned in the court below.

*Section 8.*—On any motion by way of appeal from an inferior court, the court to which any such appeal may be brought shall have power, if the notes of the judge of such inferior court are

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<sup>1</sup>Smith v. Smith, [1897] 66 L. J. P. 151, p. 293, C. A.; and Watson v. Watson, 19 T. R. 567; 89 L. J. P. 78.

not produced, to hear and determine such appeal upon any other evidence or statement of what occurred before such judge which the court may deem sufficient.

*Section 10.*—Every such appeal shall be by notice of motion, and no rule *nisi* or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an eight days' notice, and shall be served on every party directly affected by the appeal entered.

*Section 11.*—Every appeal shall be entered at the Divorce Registry, and the entry shall be made by lodging a copy of the notice.

*Section 12.*—The notice of motion shall be served and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of: such period shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time of which the finding or any refusal is made or given.

*Section 16.*—The High Court shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order, on such terms as the court shall think just, to ensure the determination on the merits of the real questions in controversy between the parties.

**How applied for.**—The Appellant's solicitor should file a Notice, setting out fully the facts and grounds of appeal, as in ordinary applications by Motion, with Affidavits in support (if any). At the same time, a duplicate copy of the Notice and two copies of the Order appealed against, and Notes of Evidence (if any), should be left for the use of the Court

**Time.**—Twenty-one days from the date of the Order.

**Service.**—Notice setting out the grounds of appeal must be given to the opposite party eight days before the appeal and a copy filed in the Registry at least four days before the day fixed for hearing Appeals—usually the first Tuesday in every month.

## NOTICE OF APPEAL.

*J. v. J.*

An appeal from an Order made by E. L. and F. K., esquires, two of His Majesty's Justices for the City and County of Bristol.

TAKE NOTICE that the Divisional Court will on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, at 10.30 o'clock in the forenoon, or so soon thereafter as Counsel can be heard, be moved by counsel on behalf of the above-named C. J., by way of appeal from an Order made by the above-named Justices, on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, whereby the said C. J. had been convicted of [*state the offence*] upon the said A. J., and fined the sum of £ \_\_\_\_\_ and costs, an Order for Judicial Separation between the said parties was made, and the said C. J. was ordered to pay £ \_\_\_\_\_ weekly towards the maintenance of the said A. J., and the grounds of this appeal are the following:—

1. That the Order was bad on the face of it.
2. That there was no evidence of aggravated assault.
3. That the amount of maintenance is excessive, and against the weight of evidence as tendered.

Dated \_\_\_\_\_, 190\_\_\_\_.

**Order of Justices.**—A certified copy of the Order should accompany the application.

**Divisional Court, Sitting of.**—Notice is given during each sitting when it is proposed to hold a Divisional Court.

## FEES.

	s.	d.
Notice - - - - -	2	6
Affidavits, each - - - - -	2	6
Order - - - - -	10	0

## \* APPEALS.

Before the Judicature Acts of 1873 and 1875 came into operation all decisions of the Judge Ordinary were subject to appeal to the *Full Court* of the Court for Divorce and Matrimonial Causes, with the exception of Appeals from Decrees refusing or granting Dissolutions or Nullity of Marriage or Declarations of Legitimacy, which lay to the House of Lords. The



reason of this distinction was that from the establishment of the Divorce Court until the year 1860 *Decrees of the latter character were only made by the Full Court.* In this year an Act of Parliament (23 & 24 Vict. c. 144) was passed which gave the Judge Ordinary, *sitting alone*, the power to exercise *the same jurisdiction* in these cases as had hitherto only belonged to the *Full Court.* It was also provided that the Appeal from the Judge Ordinary, when exercising the new powers under this Act, should lie to *the same tribunal as Appeals from the Full Court had hitherto done* in reference to Dissolutions and Nullity of Marriage—namely, *the House of Lords.*

**The Full Court** continued to exist until 1881, when it was virtually abolished by 44 & 45 Vict. c. 68. Section 9 of that Act provides that all Appeals which might be brought to the *Full Court* shall henceforth be brought to the *Court of Appeal.*

As regards Appeals from Decrees granting or refusing Dissolutions or Nullity of Marriage or Declarations of Legitimacy, they now lie, in the first instance, to the Court of Appeal and thence to the House of Lords.<sup>1</sup> It may be useful here to show the way by which this has come to pass.

By Section 19 of The Supreme Court of Judicature Act, 1873, Appeals from any Judgments of the High Court, with certain exceptions not necessary to mention here, lay to the Court of Appeal, and by Section 20<sup>2</sup> it was provided that *no Appeal* should be brought from any *Judgment or Order either of the Court of Appeal or the High Court* to the *House of Lords.* In the year 1876, however, the Appellate Jurisdiction Act (39 & 40 Vict. c. 59) was passed, which restored, to a limited extent, the appellate jurisdiction which the Act before recited had taken away *from the House of Lords.* Under this Act a right was given to appeal to the House of Lords from any Order or Judgment of the Court of Appeal. This general right of Appeal was subsequently curtailed, as far as it related to Divorce and Matrimonial Causes, by Section 9 of 44 & 45 Vict. c. 68 (1881), which enacts that the decisions of the Court of Appeal shall be *final, except* where the decision is upon the grant or refusal of

<sup>1</sup> *Cleaver v. Cleaver*, 9 L. R. App. Cas.

<sup>2</sup> The operation of this Section was afterwards postponed until November, 1876.

a Decree for Dissolution or Nullity of Marriage or Declaration of Legitimacy, or is upon a question of law on which the Court of Appeal *gives leave to appeal*.

Before passing from this Act it may be well to point out another important provision made by Section 10, which is that no appeal from "*an Order Absolute*" shall lie in favour of a party who, having had the time and opportunity for so doing, has not appealed from the decree *nisi*.

Until the judgment of the House of Lords in the case of *Cleaver v. Cleaver (ante)*, it seems doubtful whether any Appeal lay from a decree absolute to the Court of Appeal in a case where one had already been brought from the decree *nisi* to that Court: but in the case referred to it was decided that, having appealed from the decree *nisi*, the Appellant was entitled to appeal from the decree absolute.

**Time: Court of Appeal.**—The procedure and practice in proceedings for Divorce or other Matrimonial Causes are expressly excepted from the Rules of the Supreme Court (Order LXVIII., Rule 1); while the present Divorce Rules contain no directions which apply to the Court of Appeal. It is therefore difficult to indicate the Rules which govern the question of time as to Appeals.

### NEW TRIALS.

(*44 & 45 Vict. c. 68.*)

All Motions for a New Trial (*i. e.* from the verdict of a jury) are made to the Court of Appeal. Motions for a rehearing (*i. e.* from the judgment of the Court itself) are made to the Divisional Court.<sup>1</sup>

The Motions will be subject to Order XXXIX., Rule 4, Supreme Court Rules, and will be brought before the Court of Appeal in like manner as an Appeal.

**Time.**—The Notice of Motion shall be fourteen days' notice, and served within eight days after the trial.

Held by the Court of Appeal, in *Wilkins v. Wilkins* ([1896] P. 108), that under The Supreme Court of Jurisdiction Act, 1890, the practice as to Motions for New Trials in the Probate, Divorce, and Admiralty

<sup>1</sup> *Smith v. Smith, Nowers intervening*, [1897] P. 293, C. A.

Division is regulated by the practice of the Court of Appeal. Therefore, the Court of Appeal has power to enlarge the time for Appeal, and impose such terms as it may think fit.<sup>1</sup>

Time for Appeal from other final Orders (except Motions) would appear to be within three months (Order LVIII., Rule 15, S. C. R.).

**New Trial: Decree Nisi.**—Where the Court of Appeal, on the hearing of a Motion for a New Trial on Appeal from an Order *Nisi* dissolving a marriage, orders a new trial, there is an Appeal to the House of Lords without leave.<sup>2</sup>

**Application to Court of Appeal.**—Leave at the Divorce Registry three office copies of the Order appealed from, with three Notices of Appeal.

#### FORM OF NOTICE.

TAKE NOTICE that the \_\_\_\_\_ appeals from the Order made in this Cause on the \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_.  
Dated the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

D. C., *Solicitor for the*

**Application Granted.**—If the Court of Appeal should grant the application the Cause would be remitted to the Divorce Division for new trial.

**Entry of Appeal.**—A book is kept at the Divorce Registry, in which every Appeal is entered, and a copy of such entry is forwarded to the Cause Clerk of the High Court of Justice having charge of the Lists of Appeal.

**Extensions of Time and Security for Costs** must be obtained by application to the Court of Appeal.

#### FEEs.

	£	s.	d.
Entering the Appeal - - -	2	0	0
For the Judgment - - -	1	0	0
Filing Notice - - -	0	2	6

No Fee is charged for the duplicate Notice.

#### COSTS ALLOWED.

Similar to those on applications by Motion as far as applicable.

<sup>1</sup> *Ahier v. Ahier*, 10 P. D. 110, overruled.

<sup>2</sup> *Butchart v. Butchart*, [1901] P. 286, C. A.

## NOTICE OF APPEAL. ROYAL COURTS.

The *Notice of Appeal* sent to the Clerk of the Lists of Appeal, Royal Courts, is filed by him and entered in books called "Appeal Books" kept by him.

**Appeal from Interlocutory Order.**—If the Appeal is from an Interlocutory Order, it is entered in a separate Chancery List (a different part of the same book), and heard in its turn according to the date of entry. These cases are taken by the Court of Appeal (No. 2) every Wednesday.

**Appeal from Final Decree.**—If the Appeal is from a Final Decree it is entered in the "Chancery General Appeal List" (the same book, but different part), and heard in its turn according to date.

**Copies of Pleadings for the Court.**—The solicitor supplies the Court with Notice of the Application, and copy of Order or Decree appealed from; also the Pleadings, when necessary, in *triplicate*.<sup>1</sup>

**Search.**—The books containing the entries of the various Appeals are open to public inspection at Room 136, Royal Courts, and parties can search them at all times, and so ascertain, by comparison with the Daily List and the Cases entered before them, or by direct enquiry, when their Case is likely to be heard.

No Fee for searching.

No notice sent of Case being in Paper.

**Decision.**—If the Registrar of the Division from which the Appeal emanates does not attend at the hearing, the Chancery Registrar takes a note of the decision and sends it to such Division.

## HOUSE OF LORDS.

No appeal can be made except as directed by the aforesaid Section 9, without special leave from the Court of Appeal, and then within one month if the House is then sitting—or within fourteen days after the House next sits.

**Application to the House of Lords: By Petition.**—The mode of proceeding is governed by the Standing Orders of the House of Lords, to be ascertained at Parliament Office, House of Lords.

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<sup>1</sup> These are left with the Clerks of the Lords Justices, Royal Courts.

## RULES AND REGULATIONS

*Made under the Provisions of 20 & 21 Vict. c. 85; 23 & 24 Vict. c. 144; 32 & 33 Vict. c. 62; 38 & 39 Vict. c. 77.*

### RULES AND REGULATIONS, 26TH DECEMBER, 1865.

All Rules and Regulations heretofore made and issued for Her Majesty's Court for Divorce and Matrimonial Causes shall be revoked on and after the 11th day of January, 1866, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following RULES and REGULATIONS shall take effect in Her Majesty's Court for Divorce and Matrimonial Causes on and after the 11th day of January, 1866:—

#### *Petition.*

1. Proceedings before the Court for Divorce and Matrimonial Causes shall be commenced by filing a petition.

2. Every petition shall be accompanied by an affidavit made by the Petitioner, verifying the facts of which he or she has personal cognizance, and deposing as to belief in the truth of the other facts alleged in the petition, and such affidavits shall be filed with the petition. See also Rule 175.

3. In cases where the Petitioner is seeking a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the Petitioner's affidavit, filed with his or her petition, shall further state that no collusion or connivance exists between the Petitioner and the other party to the marriage or alleged marriage.

#### *Co-respondents.*

4. Upon a husband filing a petition for dissolution of marriage on the ground of adultery the alleged adulterers shall be made Co-respondents in the cause, unless the Judge Ordinary shall otherwise direct.

5. Application for such direction is to be made to the Judge Ordinary on motion founded on affidavit.

6. If the names of the alleged adulterers or either of them should be unknown to the Petitioner at the time of filing his petition, the same must be supplied as soon as known, and application must be made forthwith to one of the Registrars to amend the petition by inserting such name therein, and the Registrar to whom the application is made shall give his directions as to such amendment, and such further directions as he may think fit as to service of the amended petition.

7. The term "Respondent" where the same is hereinafter used shall include all Co-respondents so far as the same is applicable to them.

#### *Citation.*

8. Every Petitioner who files a petition and affidavit shall forthwith extract a citation, under seal of the Court, for service on each Respondent in the cause.

9. Every citation shall be written or printed on parchment, and the party extracting the same, or his or her proctor, solicitor, or attorney, shall take it, together with a præcipe, to the Registry, and there deposit the præcipe and get the citation signed and sealed. The address given in the præcipe must be within three miles of the General Post Office.

#### *Service.*

10. Citations are to be served personally when that can be done

11. Service of a citation shall be effected by personally delivering a true copy of the citation to the party cited, and producing the original if required.

12. To every person served with a citation shall be delivered, together with the copy of the citation, a certified copy of the petition under seal of the Court.

13. In cases where personal service cannot be effected application may be made by motion to the Judge Ordinary, or to the Registrars in his absence, to substitute some other mode of service.

**14.** After service has been effected the citation, with a certificate of service endorsed thereon, shall be forthwith returned into and filed in the Registry.

**15.** When it is ordered that a citation shall be advertised the newspapers containing the advertisements are to be filed in the Registry with the citation.

**16.** The above Rules, so far as they relate to the service of citations, are to apply to the service of all other instruments requiring personal service.

**17.** Before a Petitioner can proceed, after having extracted a citation, an appearance must have been entered by or on behalf of the Respondents, or it must be shown by affidavit, filed in the Registry, that they have been duly cited and have not appeared.

**18.** An affidavit of service of a citation must be substantially in the form given (p. 38), and the citation referred to in the affidavit must be annexed to such affidavit, and marked by the person before whom the same is sworn.

#### *Appearance.*

**19.** All appearances to citations are to be entered in the Registry in a book provided for that purpose.

**20.** An appearance may be entered at any time before a proceeding has been taken in default, or afterwards as hereinafter directed, or by leave of the Judge Ordinary, or of the Registrars in his absence, to be applied for by motion founded on affidavit. See also Rule 185.

**21.** Every entry of an appearance shall be accompanied by an address within three miles of the General Post Office.

**22.** If a party cited wishes to raise any question as to the jurisdiction of the Court he or she must enter an appearance under protest, and within eight days file in the Registry his or her act on petition in extension of such protest, and on the same day deliver a copy thereof to the Petitioner. After the entry of an absolute appearance to the citation a party cited cannot raise any objection as to jurisdiction. See Rules from 56 to 61 as to proceedings on Act on Petition.

*Interveners.*

23. Application for leave to intervene in any cause must be made to the Judge Ordinary by motion, supported by affidavit.

24. Every party intervening must join in the proceedings at the stage in which he finds them, unless it is otherwise ordered by the Judge Ordinary.

*Suits in formâ pauperis.*

25. Any person desirous of prosecuting a suit *in formâ pauperis* is to lay a case before counsel, and obtain an opinion that he or she has reasonable grounds for proceeding.

26. No person shall be admitted to prosecute a suit *in formâ pauperis* without the order of the Judge Ordinary; and to obtain such order the case laid before counsel and his opinion thereon, with an affidavit of the party or of his or her proctor, solicitor, or attorney, that the said case contains a full and true statement of all the material facts, to the best of his or her knowledge and belief, and an affidavit of the party applying as to his or her income or means of living, and that he or she is not worth £25, after payment of his or her just debts, save and except his or her wearing apparel, shall be produced at the time such application is made. See also Rules 208 to 211.

27. Where a husband admitted to sue as a pauper neglects to proceed in a cause, he may be called upon by summons to show cause why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs be paid.

*Answer.*

28. Each Respondent who has entered an appearance may within twenty-one days after service of citation on him or her file in the Registry an answer to the petition. See also Rule 186.

29. Each Respondent shall, on the day he or she files an answer, deliver a copy thereof to the Petitioner or to his or her proctor, solicitor, or attorney.

30. 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 or additional 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 or additional matter, and such affidavit shall be filed with the answer.

**31.** In cases involving a decree of nullity of marriage or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the Respondent who is husband or wife of the Petitioner shall, in the affidavit filed with the answer, further state that there is not any collusion or connivance between the Deponent and the Petitioner.

*Further Pleadings.*

**32.** Within fourteen days from the filing and delivery of the answer the Petitioner may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder, or any subsequent pleading.

**33.** A copy of every reply and subsequent pleading shall on the day the same is filed be delivered to the opposite parties, or to their proctor, solicitor, or attorney.

*General Rules as to Pleadings.*

**34.** Either party desiring to alter or amend any pleading must apply by motion to the Court for permission to do so, unless the alteration or amendment be merely verbal, or in the nature of a clerical error, in which case it may be made by order of the Judge Ordinary, or of one of the Registrars in his absence, obtained on summons. See also Rules 181 to 184 and Rule 187.

**35.** When a petition, answer, or other pleading has been ordered to be altered or amended, the time for filing and delivering a copy of the next pleading shall be reckoned from the time of the order having been complied with.

**36.** A copy of every pleading showing the alterations and amendments made therein shall be delivered to the opposite parties on the day 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, or such further time as may be allowed for the purpose.

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

**38.** Applications for further particulars of matters pleaded are to be made to the Judge Ordinary, or to one of the Registrars in his absence, by summons, and not by motion. See also Rules 181 to 184.

#### *Service of Pleadings &c.*

**39.** It shall be sufficient to leave all pleadings and other instruments, personal service of which is not expressly required by these Rules and Regulations, at the respective addresses furnished by or on behalf of the several parties to the cause. See also Rule 114.

#### *Mode of Trial.*

**40.** When the pleadings on being concluded have raised any questions of fact, the Petitioner, within fourteen days from the filing of the last pleading, or at the expiration of that time, on the next day appointed for hearing motions in this Court, or in case the Petitioner should fail to do so at such time, either of the Respondents on whose behalf such questions have been raised, may apply to the Judge Ordinary by motion to direct the truth of such questions of fact to be tried by a special or common jury. See also Rule 205.

*Questions of Fact for the Jury.*

**41.** Whenever the Judge Ordinary directs the issues of fact in a cause to be tried by a jury, the questions of fact raised by the pleadings are to be briefly stated in writing by the Petitioner, and settled by one of the Registrars.

**42.** Should the Petitioner fail to prepare and deposit the questions for settlement in the Registry within fourteen days after the Judge Ordinary has directed the mode of trial, either of the Respondents on whose behalf such questions have been raised shall be at liberty to do so.

**43.** After the questions have been settled by the Registrar, the party who has deposited the same shall deliver a copy thereof as settled to each of the other parties to be heard on the trial of the cause, and either of such parties shall be at liberty to apply to the Judge Ordinary, by summons within eight days, or at the expiration of that time on the next day appointed for hearing summonses in this Court, to alter or amend the same, and his decision shall be final.

*Setting down the Cause for Trial or Hearing.*

**44.** In cases to be tried by a jury, the Petitioner, after the expiration of eight days from the delivery of copies of the questions for the jury to the opposite parties, or from alteration or amendment of the same, in pursuance of the order of the Judge Ordinary, shall file such questions as finally settled in the Registry, and at the same time set down the cause as ready for trial, and on the same day give notice of his having done so to each party for whom an appearance has been entered. See also Rule 206.

**45.** In cases to be heard without a jury, the Petitioner shall, after obtaining directions as to the mode of hearing, set the cause down for hearing, and on the same day give notice of his having done so to each party in the cause for whom an appearance has been entered. See also Rules 205 and 206.

**46.** If the Petitioner fail to file the questions for the jury, or to set down the cause for trial or hearing, or to give due notice thereof, for the space of one month, after directions have been

given as to the mode in which the cause shall be tried or heard, either of the Respondents entitled to be heard at such trial or hearing may file the questions for the jury, and set the cause down for trial or hearing, and shall on the same day give notice of his having done so to the Petitioner, and to each of the other parties to the cause for whom an appearance has been entered.

47. A copy of every notice of the cause being set down for trial or hearing shall be filed in the Registry, and the cause shall come on in its turn, unless the Judge Ordinary shall otherwise direct.

#### *Trial or Hearing.*

48. No cause shall be called on for trial or hearing until after the expiration of ten days from the day when the same has been set down for trial or hearing, and notice thereof has been given, save with the consent of all parties to the suit.

49. The Registrar shall enter in the Court Book the finding of the jury and the decree of the Court, and shall sign the same.

50. Either of the Respondents in the cause, after entering an appearance, without filing an answer to the petition in the principal cause, may be heard in respect of any question as to costs, and a Respondent, who is husband or wife of the Petitioner, may be heard also in respect to any question as to custody of children, but a Respondent who may be so heard is not at liberty to bring in affidavits touching matters in issue in the principal cause, and no such affidavits can be read or made use of as evidence in the cause.

#### *Evidence taken by Affidavit.*

51. When the Judge Ordinary has directed that all or any of the facts set forth in the pleadings be proved by affidavits, such affidavits shall be filed in the Registry within eight days from the time when such direction was given, unless the Judge Ordinary shall otherwise direct. See also Rule 188.

52. Counter-affidavits as to any facts to be proved by affidavit may be filed within eight days from the filing of the affidavits which they are intended to answer.

**53.** Copies of all such affidavits and counter-affidavits shall on the day the same are filed be delivered to the other parties to be heard on the trial or hearing of the cause, or to their proctors, solicitors, or attorneys.

**54.** Affidavits in reply to such counter-affidavits cannot be filed without permission of the Judge Ordinary or of the Registrars in his absence.

**55.** Application for an order for the attendance of a Deponent for the purpose of being cross-examined in open Court shall be made to the Judge Ordinary, on summons.

*Proceedings by Petition.*

**56.** Any party to a cause who has entered an appearance may apply on summons to the Judge Ordinary, or in his absence to the Registrars, to be heard on his petition touching any collateral question which may arise in a suit.

**57.** The party to whom leave has been given to be heard on his petition shall within eight days file his act on petition in the Registry, and on the same day deliver a copy thereof to such parties in the cause as are required to answer thereto.

**58.** Each party to whom a copy of an act on petition is delivered shall within eight days after receiving same file his or her answer, and on the same day deliver a copy to the opposite party, and the same course shall be pursued with respect to reply, rejoinder, &c., until the act is concluded.

**59.** For Form of Act, Answer, and Conclusion see pp. 165 and 166.

**60.** Each party to the act on petition shall within eight days from that on which the last statement in answer is filed, file in the Registry such affidavits and other proofs as may be necessary in support of their several averments.

**61.** After time for filing affidavits and proofs has expired, the party filing the act is to set down the petition for hearing in the same way as a cause; and failing to do so within a month any party who has filed an answer may set the same down for hearing, and the petition will be heard in its turn with other causes to be heard by the Judge Ordinary without a jury.

*New Trial and Hearing.*

**62.** An application for a new trial of the issues of fact tried by a jury or for a re-hearing of a cause shall be made to a Divisional Court of the Probate, Divorce, and Admiralty Division, and shall be by notice of motion filed in the Registry, stating the grounds of the application, and whether all or part only of the verdict, or findings, or decree is complained of, and such notice of motion shall be filed and served upon the other parties in the cause, or their solicitors, within eight days after the trial or hearing, and the motion shall be made eight days after service of the notice of motion, if a Divisional Court shall be then sitting, or otherwise on the first day appointed for a sitting of the Divisional Court after the expiration of the eight days, and the time of the vacations shall not be reckoned in the computation of time for serving such notice of motion.<sup>1</sup>

**62a.** The notice of motion may be amended at any time by leave of the Court or a Judge on such terms as the Court or Judge may think fit.

*Petition for Reversal of Decree of Judicial Separation.*

**63.** A petition to the Court for the reversal of a decree of judicial separation must set out the grounds on which the Petitioner relies.

**64.** 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.

**65.** A certified copy of such a petition, under 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 shall on the day on which the answer is filed deliver a copy thereof to the other party in the cause, or to his or her proctor, solicitor, or attorney.

**66.** All subsequent pleadings and proceedings arising from such petition and answer shall be filed and carried on in the

<sup>1</sup> See *ante*, p. 194.

same manner as before directed in respect of an original petition for judicial separation, and answer thereto, so far as such directions are applicable.

*Demurrer.*

**67.** All demurrers are to be set down for hearing in the same manner as causes, and will come on in their turn with other causes to be heard by the Judge Ordinary without a jury, unless the Judge Ordinary shall direct otherwise.

*Intervention of the Queen's Proctor.*

**68.** The Queen's Proctor shall, within fourteen days after he has obtained leave to intervene in any cause, enter an appearance and plead to the petition; and on the day he files his plea in the Registry shall deliver a copy thereof to the Petitioner, or to his proctor, solicitor, or attorney.

**69.** All subsequent pleadings and proceedings in respect to the Queen's Proctor's intervention 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. See also Rule 202.

*Showing Cause against a Decree.*

**70.** Any person wishing to show cause against making absolute a decree *nisi* for dissolution of a marriage shall enter an appearance in the cause in which such decree *nisi* has been pronounced.

**71.** Every such person shall at the time of entering an appearance, or within four days thereafter, file affidavits setting forth the facts upon which he relies.

**72.** Upon the same day on which such person files his affidavits he shall deliver a copy of the same to the party in the cause in whose favour the decree *nisi* has been pronounced.

**73.** The party in the cause in whose favour the decree *nisi* has been pronounced may, within eight days after delivery of the affidavits, file affidavits in answer, and shall, upon the day such affidavits are filed, deliver a copy thereof to the person showing cause against the decree being made absolute.

74. The person showing cause against the decree *nisi* being made absolute may within eight days file affidavits in reply, and shall upon the same day deliver copies thereof to the party supporting the decree *nisi*.

75. No affidavits are to be filed in rejoinder to the affidavits in reply without permission of the Judge Ordinary or of one of the Registrars in his absence.

76. The questions raised on such affidavits shall be argued in such manner and at such time as the Judge Ordinary may on application by motion direct; and if he thinks fit to direct any controverted questions of fact to be tried by a jury, the same shall be settled and tried in the same manner and subject to the same rules as any other issue tried in this Court.

Rules 70 to 76 not applicable to the King's Proctor. See Rule 202.

77. An appeal to the full Court from a decision of the Judge Ordinary must be asserted in writing, and the instrument of appeal filed in the Registry within the time allowed by law for appealing from such decision; and on the same day on which the appeal is filed, notice thereof, and a copy of the appeal, shall be delivered to each Respondent in the appeal, or to his or her proctor, solicitor, or attorney.

78. The Appellant within ten days after filing his instrument of appeal, or within such further time as may be allowed by the Judge Ordinary, or by the Registrars in his absence, shall file in the Registry his case in support of the appeal in triplicate, and on the same day deliver a copy thereof to each Respondent in the appeal, or to his proctor, solicitor, or attorney, who, within ten days from the time of such filing and delivery or from such further time as may be allowed for the purpose by the Judge Ordinary, or the Registrars in his absence, shall be at liberty to file in the Registry a case against the appeal, also in triplicate, and the Respondent shall on the same day deliver a copy thereof to the Appellant, or to his proctor, solicitor, or attorney.

79. After the expiration of ten days from the time when the Respondent has filed his case, or, if he has filed none, from the time allowed him for the purpose, the appeal shall stand for hearing at the next sittings of the full Court, and will be called on in its turn, unless otherwise directed.



*Decree absolute.*

**80.** All applications to make absolute a decree *nisi* for dissolution of a marriage must be made to the Court by motion. In support of such applications it must be shown by affidavit filed with the case for motion that search has been made in the proper books at the Registry up to within two days of the affidavit being filed, and that at such time no person had obtained leave to intervene in the cause, and that no appearance had been entered nor any affidavits filed on behalf of any person wishing to show cause against the decree *nisi* being made absolute; and in case leave to intervene had been obtained, or appearance entered, or affidavits filed on behalf of any such person, it must be shown by affidavit what proceedings, if any, had been taken thereon, but it shall not be necessary to file a copy of the decree *nisi*. See also Rules 194 and 207.

*Alimony.*

**81.** The wife, being the Petitioner in a cause, may file her petition for alimony pending suit at any time after the citation has been duly served on the husband, or after order made by the Judge Ordinary to dispense with such service, provided the factum of marriage between the parties is established by affidavit previously filed.

**82.** The wife, being the Respondent in a cause, after having entered an appearance, may also file her petition for alimony pending suit.

**83.** A Form of Petition for Alimony is given (*ante*, p. 127).

**84.** The husband shall, within eight days after the filing and delivery of a petition for alimony, file his answer thereto upon oath.

**85.** The husband, being Respondent in the cause, must enter an appearance before he can file an answer to a petition for alimony.

**86.** The wife, if not satisfied with the husband's answer, may object to the same as insufficient, and apply to the Judge Ordinary on motion to order him to give a further and fuller answer, or to order his attendance on the hearing of the petition for the purpose of being examined thereon. See also Rule 189. [This Rule is not followed now: See pp. 129 and 130.]

**87.** In case the answer of the husband alleges that the wife has property of her own, she may (within eight days) file a reply on oath to that allegation; but the husband is not at liberty to file a rejoinder to such reply without permission of the Judge Ordinary, or of one of the Registrars in his absence.

**88.** A copy of every petition for alimony, answer, and reply must be delivered to the opposite party, or to his or her proctor, solicitor, or attorney, on the day the same is filed.

**89.** After the husband has filed his answer to the petition for alimony (subject to any order as to costs), or, if no answer is filed, at the expiration of the time allowed for filing an answer, the wife may proceed to examine witnesses in support of her petition, and apply by motion for an allotment of alimony pending suit, notice of the motion, and of the intention to examine witnesses, being given to the husband, or to his proctor, solicitor, or attorney, four days previously to the motion being heard and the witnesses examined, unless the Judge Ordinary shall dispense with such notice. See also Rules 191 and 192.

**90.** No affidavits can be read or made use of as evidence in support of or in opposition to the averments contained in a petition for alimony, or in an answer to such a petition, or in a reply, except such as may be required by the Judge Ordinary or by one of the Registrars.

**91.** A wife who has obtained a final decree of judicial separation in her favour, and has previously thereto filed her petition for alimony pending suit, on such decree being affirmed on appeal to the full Court, or after the expiration of the time (three months—see 20 & 21 Vict. c. 85, Section 55) for appealing against the decree, if no appeal be then pending, may apply to the Judge Ordinary by motion for an allotment of permanent alimony: provided that she shall, eight days at least before making such application, give notice thereof to the husband, or to his proctor, solicitor, or attorney. See also Rule 190.

**92.** A wife may at any time after alimony has been allotted to her, whether alimony pending suit or permanent alimony, file her petition for an increase of the alimony allotted by reason of the increased faculties of the husband, or the husband may file a petition for a diminution of the alimony allotted by reason

of reduced faculties; and the course of proceeding in such cases shall be the same as required by these Rules and Regulations in respect of the original petition for alimony, and the allotment thereof, so far as the same are applicable.

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

**94.** Alimony, pending suit, and also permanent alimony, shall be paid to the wife, or to some person or persons to be nominated in writing by her, and approved of by the Court, as trustee or trustees on her behalf.

#### *Maintenance and Settlements.*

**95.** Applications to the Court to exercise the authority given by Sections 32 and 45 of 20 & 21 Vict. c. 85, and by Section 5 of the 22 & 23 Vict. c. 61, are to be made in a separate petition, which must, unless by leave of the Judge, be filed as soon as by the said Statutes such applications can be made, or within one month thereafter.

**96.** In cases of application for maintenance under Section 32 of the 20 & 21 Vict. c. 85, such petition may be filed as soon as a decree *nisi* has been pronounced, but not before.

**97.** A certified copy of such petition, under seal of the Court, 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 Ordinary on motion shall direct any other mode of service, or dispense with service of the same on them or either of them.

**98.** The husband or wife (as the case may be), and the other person or persons (if any) who are served with such petition within fourteen days after service, may file his, her, or their answer on oath to the said petition, and shall on the same day deliver a copy thereof to the opposite party, or to his proctor, solicitor, or attorney.

**99.** Any person served with the petition, not being a party to the principal cause, must enter an appearance before he or she can file an answer thereto.

**100.** Within fourteen days from the filing the answer, the opposite party may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder.

**101.** Such pleadings, when completed, shall in the first instance be referred to one of the Registrars, who shall investigate the averments therein contained, in the presence of the parties, their proctors, solicitors, or attorneys, and who for that purpose shall be at liberty to require the production of any documents referred to in such pleadings, or to call for any affidavits, and shall report in writing to the Court the result of his investigation, and any special circumstances to be taken into consideration with reference to the prayer of the petition. See also Rule 204.

**102.** The report of the Registrar shall be filed in the Registry by the husband or wife on whose behalf the petition has been filed, who shall give notice thereof to the other parties heard by the Registrar; and either of the parties, within fourteen days after such notice has been given, if the Judge Ordinary be then sitting to hear motions, otherwise on the first day appointed for motions after the expiration of fourteen days, may be heard by the Judge Ordinary on motion in objection to the Registrar's report, or may apply on motion for a decree or order to confirm the same, and to carry out the prayer of the petition.

**103.** The costs of a wife of and arising from the said petition or answer shall not be allowed on taxation of costs against the husband before the final decree in the principal cause, without direction of the Judge Ordinary.

#### *Custody of and Access to Children.*

**104.** Before the trial or hearing of a cause a husband or wife who are parties to it may apply for an order with respect to the custody, maintenance, or education of, or for access to children, issue of their marriage, to the Judge Ordinary by motion founded on affidavit. See also Rule 212.

*Guardians to Minors.*

**105.** A minor above the age of seven years may elect any one or more of his or her next-of-kin, or next friends, as guardian, for the purpose of proceeding on his or her behalf as Petitioner, Respondent, or Intervener in a cause.

**106.** The necessary instrument of election must be filed in the Registry before the guardian elected can be permitted to extract a citation or to enter an appearance on behalf of the minor.

**107.** When a minor shall elect some person or persons other than his or her next-of-kin, as guardian for the purposes of a suit, or when an infant (under the age of seven years) becomes a party to a suit, application, founded on affidavit, is to be made to one of the Registrars, who will assign a guardian to the minor or infant for such suit.

**108.** It shall not be necessary for a minor who, as an alleged adulterer, is made a Co-respondent in a suit, to elect a guardian or to have a guardian assigned to him for the purpose of conducting his defence.

*Subpœnas.*

**109.** Every subpœna shall be written or printed on parchment, and may include the names of any number of witnesses. The party issuing the same, or his or her proctor, solicitor, or attorney, shall take it, together with a præcipe, to the Registry, and there get it signed and sealed, and there deposit the præcipe. See also Rule 180.

*Writs of Attachment and other Writs.*

**110.** Applications for writs of attachment, and also for writs of *per vi facias* and of sequestration, must be made to the Judge Ordinary by motion in Court. See also Rules 179 and 203.

**111.** Such writs, when ordered to issue, are to be prepared by the party at whose instance the order has been obtained, and taken to the Registry, with an office copy of the order, and, when approved and signed by one of the Registrars, shall be sealed with the seal of the Court, and it shall not be necessary for the Judge Ordinary or for other Judges of the Court to sign such writs.

**112.** Any person in custody under a writ of attachment may apply for his or her discharge to the Judge Ordinary if the Court be then sitting; if not, then to one of the Registrars, who for good cause shown shall have power to order such discharge.

*Notices.*

**113.** All notices required by these Rules and Regulations, or by the practice of the Court, shall be in writing, and signed by the party, or by his or her proctor, solicitor, or attorney.

*Service of Notices &c.*

**114.** It shall be sufficient to leave all notices and copies of pleadings and other instruments which by these Rules and Regulations are required to be given or delivered to the opposite parties in the cause, or to their proctors, solicitors, or attorneys, and personal service of which is not expressly required at the address furnished aforesaid by the Petitioner and Respondent respectively. See also Rule 39.

**115.** When it is necessary to give notice of any motion to be made to the Court, such notice shall be served on the opposite parties who have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the Registry with the case for motion, but no proof of the service of the notice will be required, unless by direction of the Judge Ordinary.

**116.** If an order be obtained on motion without due notice to the opposite parties, such order will be rescinded on the application of the parties upon whom the notice should have been served; and the expense of and arising from the rescinding of such order shall fall on the party who obtained it, unless the Judge Ordinary shall otherwise direct.

**117.** 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 the Seal of the Court, must be produced to the party served, and annexed to the affidavit of service marked as an exhibit by the Commissioner or other person before whom the affidavit is sworn.

*Office Copies, Extracts, &c.*

**118.** The Registrars of the Principal Registry of the Court of Probate are to have the custody of all pleadings and other documents now or hereafter to be brought in or filed, and of all entries of orders and decrees made in any matter or suit depending in the Court for Divorce and Matrimonial Causes; and all rules and orders, and fees payable in respect of searches for and inspection or copies of and extracts from and attendance with books and documents in the Registry of the Court of Probate, shall extend to such pleadings and other documents brought in or filed, and all entries of orders and decrees made in the Court for Divorce and Matrimonial Causes, save that the length of copies and extracts shall in all cases be computed at the rate of seventy-two words per folio.

**119.** Office copies or extracts furnished from the Registry of the Court of Probate will not be collated with the originals from which the same are copied, unless specially required. Every copy so required to be examined shall be certified under the hand of one of the Principal Registrars of the Court of Probate to be an "examined copy."

**120.** The seal of the Court will not be affixed to any copy which is not certified to be an "examined copy."

*Time fixed by these Rules.*

**121.** The Judge Ordinary shall in every case in which a time is fixed by these Rules and Regulations for the performance of any act, or for any proceeding in default, have power to extend the same to such time and with such qualifications and restrictions and on such terms as to him may seem fit.

**122.** To prevent the time limited for the performance of any act, or for any proceeding in default, from expiring before application can be made to the Judge Ordinary for an extension thereof, any one of the Registrars may, upon reasonable cause being shown, extend the time, provided that such time shall in no case be extended beyond the day upon which the Judge Ordinary shall next sit in Chambers. See also Rules 181 to 184.

**123.** The time fixed by these Rules and Regulations for the performance of any act, or for any proceeding in a cause, shall in all cases be exclusive of Sundays, Christmas Day, and Good Friday.

*Protection Orders.*

**124.** Applications on the part of a wife deserted by her husband for an order to protect her earnings and property, acquired since the commencement of such desertion, shall be made in writing to the Judge Ordinary in Chambers, and supported by affidavit. See also Rule 197.

**125.** Applications for the discharge of any order made to protect the earnings and property of a wife are to be made to the Judge Ordinary by motion, and supported by affidavit. Notice of such motion, and copies of any affidavit or other document to be read or used in support thereof, must be personally served on the wife eight clear days before the motion is heard.

*Bond not required.*

**126.** On a decree of judicial separation being pronounced, it shall not be necessary for either party to enter into a bond conditioned against marrying again.

*Change of Solicitor.*

**127** and **128.** Any party to a cause shall be at liberty to change his or her solicitor without an order for that purpose upon notice of such change, containing an address for service of pleadings and other instruments within three miles of the General Post Office, being filed in the Registry [filing fee, 2s. 6d.], but until such notice is filed and a copy thereof served on the other parties in the cause the former solicitor shall be considered the solicitor of the party. [The practice as to costs remains the same (*ante*, p. 152). Any application necessary for delivery of papers must be made by summons.]

*Order for the immediate Examination of a Witness.*

**129.** Application for an order for the immediate examination of a witness who is within the jurisdiction of the Court is to be made to the Judge Ordinary, or to the Registrars in his absence,



by summons, or if on behalf of a Petitioner proceeding in default of appearance of the parties cited in the cause without summons before one of the Registrars, who will direct the order to issue, or refer the application to the Judge Ordinary, as he may think fit. See also Rules 181 to 184.

**130.** Such witness shall be examined *voir dire*, unless otherwise directed, before a person to be agreed upon by the parties in the cause, or to be nominated by the Judge Ordinary or by the Registrars to whom the application for the order is made.

**131.** The parties entitled to cross-examine the witness to be examined under such an order shall have four clear days' notice of the time and place appointed for the examination, unless the Judge Ordinary or the Registrars to whom the application is made for the order shall direct a shorter notice to be given.

*Commissions and Requisitions for Examination of Witnesses.*

**132.** Application for a commission or requisition to examine witnesses who are out of the jurisdiction of the Court is to be made by summons, or if on behalf of a Petitioner proceeding in default of appearance without summons, before one of the Registrars, who will order such commission or requisition to issue, or refer the application to the Judge Ordinary, as he may think fit.

**133.** A commission or requisition for examination of witnesses may be addressed to any person to be nominated and agreed upon by the parties in the cause, and approved of by the Registrar, or for want of agreement to be nominated by the Registrar to whom the application is made.

**134.** The commission or requisition is to be drawn up and prepared by the party applying for the same, and a copy thereof shall be delivered to the parties entitled to cross-examine the witnesses to be examined thereunder two clear days before such commission or requisition shall issue, under seal of the Court, and they or either of them may apply to one of the Registrars by summons to alter or amend the commission or requisition, or to insert any special provision therein, and the Registrar shall make an order on such application, or refer the matter to the Judge Ordinary.

**135.** Any of the parties to the cause may apply to one of the Registrars by summons for leave to join in a commission or requisition, and to examine witnesses thereunder; and the Registrar to whom the application is made may direct the necessary alterations to be made in the commission or requisition for that purpose, and settle the same, or refer the application to the Judge Ordinary.

**136.** After the issuing of a summons to show cause why a party to the cause should not have leave to join in a commission or requisition, such commission or requisition shall not issue under seal without the direction of one of the Registrars.

**137.** In case a husband or wife shall apply for and obtain an order or a commission or requisition for the examination of witnesses, the wife shall be at liberty, without any special order for that purpose, to apply by summons to one of the Registrars to ascertain and report to the Court what is a sufficient sum of money to be paid or secured to the wife to cover her expenses in attending at the examination of such witnesses in pursuance of such order, or in virtue of such commission or requisition, and such sum of money shall be paid or secured before such order or such commission or requisition shall issue from the Registry, unless the Judge Ordinary, or one of the Registrars in his absence, shall otherwise direct. See also Rule 198.

#### *Affidavits.*

**138.** Every affidavit is to be drawn in the first person, and the addition and true place of abode of every Deponent is to be inserted therein.

**139.** In every affidavit made by two or more Deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the Deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the above-named Deponents.

**140.** No affidavit having, in the jurat or body thereof, any interlineation, alteration, or erasure shall, without leave of the Court or of one of the Registrars, be filed or made use of in any matrimonial cause or matter unless the interlineation or alteration

(other than by erasure) is authenticated by the initials of the officer taking the affidavit, nor, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialed in the margin of the affidavit by the officer taking it.

**141.** Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the Registrar, Commissioner, or other authority before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature thereto, in the presence of the Registrar, Commissioner, or other authority before whom the affidavit was made.

**142.** No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his or her proctor, solicitor, or attorney, or before a partner or clerk of his or her proctor, solicitor, or attorney.

**143.** Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the Rules and Regulations in respect of taking affidavits which are applicable to those in whose stead they are acting.

**144.** No affidavit can be read or used unless the proper stamps to denote the fees payable on filing the same are delivered with such affidavit.

**145.** Where a special time is fixed for filing affidavits, no affidavit filed after that time shall be used unless by leave of the Judge Ordinary.

**146.** The above Rules and Regulations in respect to affidavits shall, so far as the same are applicable, be observed in respect to affirmations and declarations to be read or used in the Court for Divorce and Matrimonial Causes.

#### *Cases for Motion.*

**147.** Cases for motion are to set forth the style and object of, and the names and descriptions of the parties to, the cause or proceeding before the Court; the proceedings already had in the

cause, and the dates of the same: the prayer of the party on whose behalf the motion is made, and, briefly, the circumstances on which it is founded.

**148.** If the cases tendered are deficient in any of the above particulars, the same shall not be received in the Registry without permission of one of the Registrars.

**149.** On depositing the case in the Registry, and giving notice of the motion, the affidavits in support of the motion and all original documents referred to in such affidavits, or to be referred to by counsel on the hearing of the motion, must be also left in the Registry; or in case such affidavits or documents have been already filed or deposited in the Registry, the same must be searched for, looked up, and deposited with the proper clerk, in order to their being sent with the case to the Judge Ordinary.

**150.** Copies of any affidavit or documents to be read or used in support of a motion are to be delivered to the opposite parties to the suit who are entitled to be heard in opposition thereto.

#### *Taxing Bills of Costs.*

**151.** All bills of costs are referred to the Registrars of the Principal Registry of the Court of Probate for taxation, and may be taxed by them, without any special order for that purpose. Such bills are to be filed in the Registry. See also Rule 177.

**152.** Notice of the time appointed for taxation will be forwarded to the party filing the bill, at the address furnished by such party.

**153.** The party who has obtained an appointment to tax a bill of costs shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall at or before the same time deliver to him or them a copy of the bill to be taxed.

**154.** When an appointment has been made by a Registrar of the Court of Probate for taxing any bill of costs, and any parties to be heard on the taxation do not attend at the time appointed, the Registrar may, nevertheless, proceed to tax the bill after the expiration of a quarter of an hour, upon being satisfied by affidavit that the parties not in attendance had due notice of the time appointed.

**155.** The bill of costs of any proctor, solicitor, or attorney will be taxed on his application as against his client, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons, after sufficient notice given to the practitioner.

**156.** The fees payable on the taxation of any bill of costs shall be paid by the party on whose application the bill is taxed, and shall be allowed as part of such bill; but if more than one sixth of the amount of any bill of costs taxed as between practitioner and client is allowed on the taxation thereof, no costs incurred in such taxation shall be allowed as part of such bill. See also Rule 200.

**157.** 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 Registrar. See also Rules 178, 179, and 201.

*Wife's Costs (as amended 14th July, 1875).*

**158.** After directions given as to the mode of hearing or trial of a cause, or in an earlier stage of a cause by order of the Judge Ordinary, or of the Registrars, to be obtained on summons, a wife who is a Petitioner, or has entered an appearance as Respondent in a cause, may file her bill or bills of costs for taxation as against her husband, and the Registrar to whom such bills of costs are referred for taxation shall, when directions as to the mode of hearing or trial have been given, ascertain what is a sufficient sum of money to be paid into the Registry, or what is a sufficient security to be given by the husband to cover the costs of the wife of and incidental to the hearing of the cause; and shall thereupon issue an order upon the husband to pay or secure the said sum within a time to be fixed by the Registrar: provided that in case the husband should by reason of his wife having separate property, or for other reasons, dispute her right to recover any costs pending suit against him, the Registrar may suspend the order to pay the wife's taxed costs, or to pay or secure the sum ascertained to be sufficient to cover her costs of and incidental to the hearing of the cause, for such length of time as shall seem to him necessary to enable the husband to obtain the decision of the Court as to his liability.

**159.** When on the hearing or trial of a cause the decision of the Judge Ordinary or the verdict of the jury is against the wife, no costs of the wife of and incidental to such hearing or trial shall be allowed as against the husband, except such as shall be applied for, and ordered to be allowed by the Judge Ordinary, at the time of such hearing or trial. See also Rule 201.

*Summonses.*

**160.** A summons may be taken out by any person in any matter or suit depending in the Court for Divorce and Matrimonial Causes, provided there is no rule or practice requiring a different mode of proceeding.

**161.** The name of the cause or matter, and of the agent taking out the summons, is to be entered in the Summons Book, and a true copy of the summons is to be served on the party summoned one clear day at least before the summons is returnable, and before seven o'clock p.m. On Saturdays the copy of the summons is to be served before two o'clock p.m.

**162.** On the day and at the hour named in the summons the party taking out the same is to present himself with the original summons at the Judge's Chambers, or elsewhere appointed for hearing the same.

**163.** Both parties will be heard by the Judge Ordinary, who will make such order as he may think fit, and a minute of such order will be made by one of the Registrars in the Summons Book. See also Rules 181 to 184.

**164.** If the party summoned do not appear after the lapse of half an hour from the time named in the summons, the party taking out the summons shall be at liberty to go before the Judge Ordinary, who will thereupon make such order as he may think fit.

**165.** An attendance on behalf of the party summoned for the space of half an hour, if the party taking out the summons do not during such time appear, will be deemed sufficient, and bar the party taking out the summons from the right to go before the Judge Ordinary on that occasion.

**166.** If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons, or the copy served on the party summoned, must be filed in the Registry. An order will thereupon be drawn up, and delivered to the person filing such summons or copy.

**167.** If a summons is brought to the Registry, with consent to an order endorsed thereon, signed by the party summoned, or by his proctor, solicitor, or attorney, an order will be drawn up without the necessity of going before the Judge Ordinary: provided that the order sought is in the opinion of the Registrar one which, under the circumstances, would be made by the Judge Ordinary.

**168.** The same Rules and Regulations shall, so far as applicable, be observed in respect to summonses which may be heard and disposed of by the Registrars.

*Payment of Money out of Court.*

**169, 170, and 171.** Proceedings altered by "Supreme Court Funds Rules, 1884." For present Practice see p. 78.

*Registries and Officers.*

**172.** The Registry of the Court for Divorce and Matrimonial Causes, and the clerks employed therein, shall be subject to and under the control of the Registrars of the Principal Registry of the Court of Probate.

**173.** The Record Keepers, the Sealer, and other officers of the Principal Registry of the Court of Probate, shall discharge the same or similar duties in the Court for Divorce and Matrimonial Causes, and in the Registry thereof, as they discharge in the Court of Probate and the Principal Registry thereof.

*Proceedings under The Legitimacy Declaration Act, 1858.*

**174.** The above Rules and Regulations, so far as the same may be applicable, shall extend to applications and proceedings under The Legitimacy Declaration Act, 1858.

## ADDITIONAL RULES.—30TH JANUARY, 1869.

*Restitution for Conjugal Rights.*

**175.** The affidavit filed with the petition, as required by Rule 2, shall further state sufficient facts to satisfy one of the Registrars that a written demand 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.

**176.** At any time after the commencement of proceedings for restitution of conjugal rights the Respondent may apply by summons to the Judge, or to the Registrars in his absence, 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.

*As to Costs.*

**177.** In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, the proctor, solicitor, or attorney of the party to whom such costs are to be paid may forthwith file his bill of costs in the Registry, and obtain an appointment for the taxation, 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 rule *nisi* should have been granted, until the rule is disposed of, unless the Judge Ordinary shall, for cause shown, direct a more speedy taxation.

**178.** Upon the Registrar's certificate of costs being signed he shall at once issue an order of the Court for payment of the amount within seven days. See also Rules from 151 to 158, and 201.

**179.** This order shall be served on the proctor, solicitor, or attorney of the party liable (or if it is desired to enforce the order by attachment on the party himself), and if the costs be not paid within the seven days a writ of *fiery facias* or writ of sequestration shall be issued as of course in the Registry, upon an affidavit of service of the order and nonpayment. See also Rules 110, 111, and 203.



*As to Subpœnas.*

**180.** The issuing of fresh subpœnas in each term shall be abolished, and it shall not be necessary to serve more than one subpœna upon any witness.

## ADDITIONAL AND AMENDED RULES.—23RD FEBRUARY, 1875.

**181.** All summonses heretofore heard by the Registrars of the Principal Registry of the Court of Probate in the absence of the Judge Ordinary shall hereafter be heard before one or more of the Registrars at the Principal Registry of that Court during the period appointed for the sittings of the Court at Westminster, as well as in the Judge's absence.

**182.** All Rules and Regulations in respect to summonses now heard before the Judge Ordinary in Chambers at Westminster shall, so far as the same are applicable, be observed in respect of the summonses heard before one or more of the Registrars at the Principal Registry. See Rules from 160 to 168.

**183.** The Registrar before whom the summons is heard will direct such order to issue as he shall think fit, or refer the matter at once to the Judge Ordinary.

**184.** Any person heard on the summons objecting to the order so issued under the direction of the Registrars may, subject to any order as to costs, apply to the Judge Ordinary on summons to rescind or vary the same.

## ADDITIONAL RULES.—14TH JULY, 1875.

*Appearance.*

**185.** Application for leave to enter an appearance after a proceeding has been taken in default, heretofore made to the Judge Ordinary on motion in pursuance of Rule 20, shall hereafter be made by summons before one of the Registrars. See also Rule 20.

*Answer.*

**186.** In case the time allowed for entry of appearance to a citation should be more than eight days after service thereof, a Respondent who has entered an appearance may, within fourteen

days from the expiration of the time allowed for the entry of appearance, file in the Registry an answer to the petition. See also Rule 28.

*General Rule as to Pleadings.*

**187.** Either of the parties before the Court desiring to alter or amend a pleading may apply by summons to one of the Registrars for an order for that purpose. See also Rule 34.

*Evidence taken by Affidavit.*

**188.** In an undefended cause, when directions have been given that all or any of the facts set forth in the petition be proved by affidavits, such affidavits may be filed in the Registry at any time up to ten clear days before the cause is heard. See also Rule 51.

*Alimony.*

**189.** Application for an order for a further and fuller answer to a petition for alimony, heretofore made to the Judge Ordinary on motion in pursuance of Rule 86, shall hereafter be made by summons before one of the Registrars. See Rule 86.

**190.** A wife who has obtained a final decree of judicial separation, on such decree being affirmed on appeal, or after the expiration of the time for appealing against the decree if no appeal be then pending, may apply to the Court by petition for an allotment of permanent alimony, though no alimony shall have been allotted to her pending suit, and the Rules from 84 to 88, both inclusive, of the Rules and Regulations for this Court, bearing date 26th December, 1865, relating to petitions for alimony pending suit as varied by these and other Additional Rules and Regulations shall, so far as the same are applicable, be observed in respect to the proceedings upon such petitions for permanent alimony. See also Rules 84 to 88, and 91 and 92.

**191.** All applications for an allotment of alimony pending suit, and for an allotment of permanent alimony heretofore made to the Court by motion in pursuance of Rules 89 and 91, shall hereafter be referred to one of the Registrars at the Principal Registry, who shall investigate the averments in the petition for alimony, answer, and reply, in the presence of the parties, their

proctors, solicitors, or attorneys, and who, if he think fit, shall be at liberty to require the attention of the husband for the purpose of being examined or cross-examined, and to take the oral evidence of witnesses, and to require the production of any documents or to call for affidavits, and shall direct such order to issue as he shall think fit or refer the application, or any question arising out of it, to the Judge Ordinary for his decision. See Rules 89 and 91.

**192.** Any person heard on the reference as to alimony before one of the Registrars, objecting to the order issued under his direction, may (subject to any order as to costs) apply to the Judge Ordinary on summons to rescind or vary the same.

*Dismissal of Petition.*

**193.** 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 one of the Registrars, to obtain which it must be shown to his satisfaction that the costs have been paid.

*Decree Absolute.*

**194.** In case application by motion to make absolute a decree *nisi* for the dissolution of a marriage should from any cause be deferred beyond six days from the time when the affidavit required by Rule 80 is filed with the case for motion it must be shown by further affidavit that search has been made in the proper books up to within six clear days of the motion for decree absolute being heard, and that at such time no person had obtained leave to intervene, and that no appearance had been entered nor any affidavits filed on behalf of any person wishing to show cause against the decree *nisi* being made absolute, and in case leave to intervene had been obtained, or appearance entered or affidavits filed on behalf of any such person, it must also be shown by such further affidavit what proceedings, if any, have been taken thereon. See also Rules 80 and 207.

*Custody, Maintenance, and Education of Children.*

**195.** Rules from 97 to 102, both inclusive, of the Rules and Regulations for this Court, bearing date 26th December, 1865, shall, so far as the same are applicable, be observed in respect to

applications by petition, after a final decree in a cause for orders and provision with respect to the custody, maintenance, and education of children, the marriage of whose parents was the subject of the decree under the authority given to the Court by 22 & 23 Viet. c. 61, Section 4. See Rules 97 to 102.

*Persons of Unsound Mind.*

**196.** A committee duly appointed of a person found by inquisition to be of unsound mind may 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, application is to be made to one of the Registrars, who will 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: provided that if the opposite party is already before the Court when the application for the assignment of a guardian is made he or she shall be served with notice by summons of such application.

*Protection Orders.*

**197.** In the affidavit in support of an application on the part of a wife deserted by her husband for an order to protect her earnings and property acquired since the commencement of such desertion, the applicant must state whether she has any knowledge of the residence of her husband, and if he is known to be residing within the jurisdiction of the Court, he must be served personally with a summons to show cause why such order should not be made. See also Rule 124.

*Commission and Requisitions for Examination of Witnesses.*

**198.** The Registrar to whom a commission or requisition for examination of witnesses is referred for settlement, on application on behalf of the wife, may proceed at once and without summons to ascertain what is a sufficient sum of money to be paid or secured to her to cover her expenses in attending at the examination of such witnesses, and shall thereupon issue an order upon the husband to pay or secure the said sum within a time to be fixed in such order. See also Rule 137 and p. 104.

*Costs.*

**199.** The bond taken to secure the costs of a wife of and incidental to the hearing of a cause shall be filed in the Registry of the Court of Probate, and shall not be delivered out or be sued upon without the order of the Court.

**200.** If more than one sixth of the amount of any bill of costs taxed as between practitioner and client is disallowed on taxation thereof, the party on whose application the bill is taxed shall be at liberty to deduct the costs incurred by him in the taxation from the amount of the bill as taxed, if so much remains due, otherwise the same shall be paid by the practitioner to the person on whose application the bill is taxed. See also Rule 156.

**201.** 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 into the Registry of the Court of Probate, and such costs shall not be paid out of the said Registry to the party entitled to receive them under the decree *nisi* until the decree absolute has been obtained; but a wife who is unsuccessful in a cause, and who at the hearing of the cause has, in pursuance of Rule 159, obtained an order of the Judge Ordinary that her costs of and incidental to the hearing or trial of the cause shall be allowed against her husband to the extent of the sum paid or secured by him to cover such costs, may, nevertheless, proceed at once to obtain payment of such costs after allowance thereof on taxation. See also Rules 157, 178, and 179.

## ADDITIONAL RULES.—17TH APRIL, 1877.

*Showing Cause against a Decree Nisi.*

**202.** When the Queen's Proctor desires to show cause against making absolute a decree *nisi* for dissolution or nullity of marriage, he shall enter an appearance in the cause in which such decree *nisi* has been pronounced, and shall within fourteen days after entering appearance file his plea in the Registry, setting forth the grounds upon which he desires to show cause as aforesaid, and on the day he files his plea in the Registry, shall deliver a copy thereof to the person in whose favour such decree has been pronounced, or to his or her solicitor, and all subsequent pleadings and proceedings in respect to such plea shall be filed and carried on in the same

manner as directed by the existing Rules and Regulations Nos. 68 and 69, in regard to the plea of the Queen's Proctor, filed after obtaining leave to intervene in a cause, and the existing Rules and Regulations from No. 70 to No. 76, both inclusive, shall no longer be applicable to the Queen's Proctor on his showing cause as aforesaid, save as regards any proceedings already commenced in pursuance of the said Rules and Regulations. See Rules 68 and 69.

*Writs of Fieri Facias and other Writs.*

**203.** In default of payment of any sum of money at the time appointed by any order of the Court for the payment thereof, a writ of *fieri facias* or writ of sequestration or writ of *elegit* shall be issued as of course in the Registry upon an affidavit of service of the order and nonpayment. See also Rules 110, 111, and 179.

*Maintenance and Settlements.*

**204.** The Registrar to whom pleadings are referred for investigation under Rule 101 shall, if he thinks fit, be at liberty to require the attendance of the husband or wife for the purpose of being examined or cross-examined, and to take the oral evidence of witnesses in the same manner as on a reference for an allotment of alimony. See Rule 101.

ADDITIONAL AND AMENDED RULES.—JULY, 1880.

*Mode of Hearing or Trial.*

**205.** It shall not be necessary in any case to apply to the Court by motion for directions as to the mode of hearing or trial of a cause. When the pleadings are concluded, the parties to a cause may proceed in all respects as though upon the day of filing the last pleading a special direction had been given by the Court as to the mode of hearing or trial to the effect following:—

1st. In cases in which damages are not claimed that the cause be heard by oral evidence before the Court itself, without a jury.

2nd. In cases in which damages are claimed that the cause be tried before the Court with a common jury.

And any party to a cause may apply by summons for a direction that the cause may be heard or tried otherwise than is hereby provided. See Rules 40 and 45.

**206.** Before a cause is set down for hearing or trial the pleadings and proceedings in the cause shall be referred to one of the Registrars, who shall certify that the same are correct and in order, and the Registrar to whom the same are referred shall cause any irregularity in such pleadings or proceedings to be corrected, or refer any question arising therefrom to the Court for its direction. Any party to the cause objecting to such direction of the Registrar may (subject to any order as to costs) apply to the Court on summons to rescind or vary the same.

*Decree Absolute.*

**207.** Application to make absolute a decree *nisi* for dissolution or nullity of a marriage need not hereafter be made to the Court by motion as directed by Rules 80 and 194, but it shall be a sufficient compliance with the said rules to file in the Registry, with the affidavit or affidavits therein required, a notice in writing setting forth that application is made for such decree absolute, which will thereupon be pronounced in open court at a time appointed for that purpose. See Rules 80 and 194.

*Suits in formâ pauperis.*

**208.** Applications for leave to prosecute or defend a suit *in formâ pauperis* may hereafter be made to one of the Registrars, who will make such order thereon as he may see fit or refer the application to the Court.

**209.** The affidavit required by Rule 26, if application is made by a wife to prosecute a suit against her husband *in formâ pauperis*, shall state to the best of her knowledge and belief the amount of income or means of living of her husband. See also Rules 25 and 26.

**210.** When a husband has been admitted to prosecute a suit against his wife *in formâ pauperis*, the wife may apply for an order that she be at liberty to proceed with her defence *in formâ pauperis* on production of an affidavit that she has no separate property exceeding £25 in value after payment of her just debts.

**211.** When a wife has been permitted to prosecute a suit against her husband *in formâ pauperis*, the husband may apply

for leave to proceed with his defence *in forma pauperis* on production of an affidavit as to his income or means of living, and showing that besides his wearing apparel he is not worth £25 after payment of his just debts.

*Access to Children.*

**212.** Application on behalf of a husband or wife, parties to a cause, for access to the children of their marriage may hereafter be made by summons before one of the Registrars, who shall direct such order to issue as he thinks fit, subject to appeal to the Court by either party dissatisfied with the order as authorised by Rule 184. See also Rules 104 and 184.

*Greek Marriages Act, 1884.*

**213.** The affidavit verifying a petition under this Act shall be in the form and to the effect required by Rule 2.

*Maintenance and Settlements.*

**214.** All applications to the Court to exercise the authority given by Sections 2, 3, and 6 of 47 & 48 Vict. c. 68 (see *ante*, p. 137) are to be made in a petition, which may be filed as soon as by the said statute such applications can be made, or at any time thereafter. [Not before the Decree is made or before the time has expired for compliance with such Decree.]

**215.** Rules 97 to 102, both inclusive, and 195 and 204 shall, so far as the same are applicable, be observed in respect to applications by petition to exercise the authority given by the aforesaid Sections 2, 3, and 6 of 47 & 48 Vict. c. 68.

**216.** In divorce and matrimonial causes solicitors shall be entitled to charge, and be allowed the fees set forth in the column headed "Lower Scale" in Appendix N. annexed to the Rules of the Supreme Court, 1883, so far as the same are applicable to such causes.

**217.** The fees set forth in the column headed "Higher Scale" in the said Appendix N., so far as the same are applicable,



may be allowed either generally in any divorce or matrimonial cause, or as to the costs of any particular application made or business done therein if on special grounds arising out of the nature or importance or the difficulty or urgency of the case, the Court or a Judge shall at the trial or hearing or further consideration of such a cause, or at the hearing of any application therein, whether the cause shall or shall not be brought to trial or hearing or to further consideration (as the case may be), so order, or if the Taxing Registrar, under directions given to him for that purpose by the Court or a Judge, shall think that such allowance ought to be so made upon such special grounds as aforesaid.

**218.** Upon any reference to the Taxing Registrar to tax a bill of costs of a solicitor for the purpose of ascertaining the amount due to such solicitor in respect thereof, if such bill shall include charges for business done in any divorce or matrimonial cause, the Taxing Registrar may allow the fees set forth in the column "Higher Scale" in the said Appendix N., so far as the same are applicable in respect of such cause, or in respect of any particular application made or business done therein, if on such special grounds as in the last preceding Rule mentioned he shall think that such allowance ought to be so made.

## ADDITIONAL RULE, 1904.

### *Previous Proceedings.*

**219.** In all proceedings before the Court for Divorce and Matrimonial Causes the petition shall state whether or no there have been any, and if so what, proceedings previous thereto with reference to the marriage in the Divorce Division of the High Court by or on behalf of either of the parties to the marriage.

## TIME: OR, THE NEXT STEP.

### PLEADINGS.

*Pleadings should be filed within the time here specified, as by Rule 37, p. 206, no Pleading can be filed after the time allowed for doing so has expired—without leave to be obtained on Summons—the expense of which falls on the party applying for it.*

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Exclusive of Sundays, Christmas Day, and Good Friday—	
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Summons—Rule 121 - - - - -	219

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—Rule 32 - - - - -	205
[ <i>unless served abroad, then time extended</i>	
Act on Petition, eight days after leave given so to proceed—	
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"    Answer, within eight days after receiving Petition—	
Rule 58 - - - - -	209
"    Reply, Rejoinder, &c., within eight days after receiving	
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"    "    "    wife Respondent, any time	
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"    Alimony allotted by Registrar upon investigation	
when Pleadings complete—Rule 191 -	230
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Rule 81 - - - - -	213
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after expiration of time (three	
months) for Appeal—Rule 190	230
"    "    "    Answer and other proceedings,	
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<i>lite</i> - - - - -	127

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.. for Maintenance, any time after Decree <i>Nisi</i> —Rule 96	215
.. Answer, within fourteen days from service of Petition—Rule 98	215
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## FEES.

(As regulated by "Order as to Supreme Court Fees, 1884.")

### *Advertisements.*

	£	s.	d.
Settling Abstract for any Advertisement	-	-	0 10 0
Filing the Advertisement with the Abstract	-	-	0 2 6

### *Amending*

Any Document, pursuant to Order	-	-	0 2 6
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*Appeal.*

					£	s.	d.
Entering the Appeal	-	-	-	-	2	0	0
"    Judgment	-	-	-	-	1	0	0
Filing the Notice	-	-	-	-	0	2	0

*Appearance.*

Entering	-	-	-	-	0	2	0
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*Attendances.*

Attendances, with records or documents for each day or part of a day	-	-	-	-	1	0	0
(In addition to the expenses of the Officer attending.)							

*Bill of Exceptions*

Signed by the Judge	-	-	-	-	0	5	0
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*Bond.*

Filing	-	-	-	-	0	2	6
"    Registrar's Minute with	-	-	-	-	0	3	0

*Certificate or Minute.*

For every Certificate under the hand of the Judge or of one of the Registrars	-	-	-	-	0	3	0
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*Citation.*

On issuing every Citation	-	-	-	-	0	5	0
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*Commission or Requisition.*

On issuing every Commission or Requisition	-	-	-	-	1	0	0
Settling by Registrar. No Fee.							
Filing same with the Depositions	-	-	-	-	0	2	6

*Decree Absolute.*

Searching Appearance Book	-	-	-	-	0	1	0
"    Minutes	-	-	-	-	0	2	6
Filing Notice of Application	-	-	-	-	0	2	6
"    Affidavit	-	-	-	-	0	2	6

*Filing*

	£	s.	d.
Case on Motion, including Order	-	-	0 10 0
The Filing Fee for every other document brought into the Court or Registry	-	-	0 2 6

*Judge's Notes.*

Producing the Judge's Notes	-	-	0 5 0
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*Minute*

Of Registrar	-	-	0 3 0
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*Motions.*

Filing Case, including Order	-	-	0 10 0
------------------------------	---	---	--------

*Oaths.*

Administering an Oath to each Deponent	-	-	0 1 6
Marking each Exhibit	-	-	0 1 0

*Office Copies and Extracts.*

For every Office Copy or extract of a Minute, Order, or Decree entered in a Cause, or of any document filed in a Cause, or deposited in the Registry—

If five folios of seventy-two words or under	-	-	0 2 6
Exceeding five folios, per folio	-	-	0 0 6
If on parchment, extra	-	-	0 1 0
For the Seal of the Court affixed to any Minute, Order, or Decree, or to any Office Copy	-	-	0 5 0
Collating—			
If under ten folios	-	-	0 2 6
Above ten folios, per folio more	-	-	0 0 3

*Orders.*

For any Order	-	-	0 5 0
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*Protection Order.*

Filing Application for an Order for the Protection of a Wife's Earnings and Property	-	-	0 2 6
For entering the Order	-	-	0 5 0
Copy Order under Seal of the Court	-	-	0 10 0

*Questions for Jury.*

				£	s.	d.
Settling by the Registrar	-	-	-	0	10	0
Re-settling	-	-	-	0	10	0

*Receipt.*

Receipt for any documents	-	-	-	0	2	6
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*References to Registrars.*

On each reference for any inquiry before the Registrars—						
For every hour or part of an hour	-	-	-	0	10	0
For the Registrars' Report—						
If five folios of seventy-two words or under	-	-	-	0	5	0
Exceeding five folios, for every additional folio or part of a folio	-	-	-	0	2	0

*Report.*

Filing Report	-	-	-	0	2	6
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*Searches.*

Searching Appearance Books or Affidavits	-	-	-	0	1	0
Minute Books or Pleadings	-	-	-	0	2	6

*Setting Cause down.*

<i>Court itself</i> —setting down	-	-	-	2	0	0
.. Drawing Decree	-	-	-	1	0	0
.. Filing Certificate	-	-	-	0	2	6
.. If Appearance entered, additional fee for filing Notice	-	-	-	0	2	6
<i>Jury</i> —the same, with additional fee for filing Draft Questions	-	-	-	0	2	6
.. the same, with additional fee for filing Questions on Parchment	-	-	-	0	2	6

*Subpœna.*

On every Subpœna—three Witnesses	-	-	-	0	5	0
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*Summonses.*

On each Summons	-	-	-	0	3	0
On Order on Summons, including the entry of same	-	-	-	0	5	0



*Taking Evidence*

For taking the evidence of one or more Witnesses before the Registrar, and within three miles of the General Post Office—for each day - - - -	£	s.	d.
	3	3	0
If beyond that distance, for each day, in addition to travelling expenses - - - -	5	5	0
If for part of a day only, such smaller fee as the Registrar in his discretion shall think proper.			

*Taxing Costs.*

Taxing every Bill of Costs—

Under £4 - - - - -	0	2	0
Above £4. for every £2 - - - - -	0	1	0

*Writs.*

Sealing any Writ - - - - -	0	5	0
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## COSTS ALLOWED TO SOLICITORS.

Drawing and engrossing Petition—

If ten folios or under, including copy to file -	1	0	0
If exceeding ten folios, for every additional folio, including copy to file - - - - -	0	1	4

Drawing and engrossing Answers, Replications, and other Pleadings—Petitions for Alimony and Answers thereto &amp;c.—

If ten folios or under, including copy to file -	1	0	0
If exceeding ten folios, for every additional folio, including copy to file - - - - -	0	1	4

*Instructions.*

For Petition and Answers &c. - - - - -	0	6	8
Brief, or Case for Hearing - - - - -	0	13	4

## FEES

TO BE TAKEN FOR THEIR OWN USE BY SOLICITORS OF  
THE SUPREME COURT OF JUDICATURE IN RESPECT TO  
DIVORCE AND MATRIMONIAL CAUSES ON AND AFTER  
THE 1ST DAY OF JANUARY, 1886.

	Old Scale.		Higher Scale.		Lower Scale.	
<i>Citations, Subpœnas, Writs, Summons, Notices, and Service of same.</i>	£	s. d.	£	s. d.	£	s. d.
Citation, including Præcipe -	0	7 6	—		—	
Citation to see Proceedings, including Præcipe -	0	7 6	—		—	
Certificate of Service -	0	2 6	—		—	
Subpœna <i>ad testificandum</i> and Præcipe -	—		0	6 8	0	6 8
Subpœna <i>duces tecum</i> , if four folios of seventy-two words or under, and Præcipe -	—		0	6 8	0	6 8
If the Subpœna exceeds four folios in length, for each additional folio of seventy-two words -	—		0	1 4	0	1 4
Writ of Attachment, including Præcipe -	—		0	10 0	0	7 0
Writ of Sequestration, including Præcipe -	—		0	10 0	0	7 0
Summons, including copy for the Court -	—		0	8 8	0	5 0
Summons, each copy of, for service -	—		0	2 0	0	1 0
Or per folio -	—		0	0 4	0	0 4
For preparing Notice to Produce on the trial, or Notice to Admit -	—		0	7 6	0	5 0
If necessarily long, not exceeding per folio -	—		0	1 0	0	0 8
For preparing Notice of Motion -	—		0	5 0	0	3 0
Or per folio -	—		0	1 0	0	1 0

	Old Scale.			Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.	£	s.	d.
<i>Citations, &amp;c.</i> —continued.									
For preparing any other Notice -	—			0	1	6	0	1	6
If necessarily exceeding three folios, for each folio beyond three - - -	—			0	1	0	0	1	0
For each copy for Service -	—			0	1	0	0	1	0
Or per folio - - -	—			0	0	4	0	0	4
Personal service of Citation, Petition, or Subpœna, or other document—									
If within two miles of the place of business of the practitioner, or of the person employed to effect the service - -	0	5	0	0	5	0	0	5	0
If beyond that distance, for each mile beyond such two miles -	0	1	0	0	1	0	0	1	0
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition	—			0	7	0	0	7	0
In cases in which the person to be served shall avoid service, or shall reside beyond the jurisdiction, a sum to be allowed for service according to the circumstances.									
Service, where an Appearance has been entered, on the solicitor or party - - -	—			0	2	6	0	2	6

*Instructions.*

Instructions for Citations, Petitions, Answers, or other Pleadings, or amendment of Pleadings, for Interrogatories, special Affidavits, or applications for an Order for Protection of a Wife's Earnings and Property	0	6	8	0	13	4	0	6	8
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	Old Scale.			Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.	£	s.	d.
<i>Instructions—continued.</i>									
Instructions to defend Suit -	—	—	—	0	13	4	0	6	8
Ditto for Brief, on Hearing -	—	—	—	2	2	0	1	1	0
If there are several Witnesses examined, and the Brief or Case is necessarily long, an additional fee will be allowed.									
Ditto for Counsel to make any application to the Court where no other Brief -	—	—	—	0	10	0	0	6	8
<i>Pleadings and Perusal.</i>									
Drawing and engrossing all Petitions and Answers—									
If ten folios of seventy-two words or under, including a copy to file - -									
	1	0	0	—	—	—	—	—	—
If exceeding ten folios, for every additional folio, including a copy to file - -									
	0	1	4	—	—	—	—	—	—
Drawing and engrossing Replications and other subsequent Pleadings - - -									
	—	—	—	0	10	0	0	5	0
Or per folio - - -									
	—	—	—	0	1	0	0	1	0
For case for Motion, including fair copy for the Court - -									
	0	10	0	—	—	—	—	—	—
If necessarily more than seven folios, for every additional folio, including copy for the Court - - -									
	0	1	4	—	—	—	—	—	—
Drawing and engrossing Demurrer, inclusive of the statement of any matter of law to be argued—									
For ten folios of seventy-two words or under - -									
	0	10	0	—	—	—	—	—	—
If exceeding ten folios of seventy-two words, for every additional folio of seventy-two words - - -									
	0	1	0	—	—	—	—	—	—

<i>Pleadings and Perusal—continued.</i>	Old Scale.			Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.	£	s.	d.
Drawing Bill of Costs, per folio of seventy-two words, including copy for taxation - - -	—			0	0	8	0	0	8
Drawing any instrument to be filed in or issued by the Registry for which no other fee is herein allowed, inclusive of fair copy to be filed or issued, per folio of seventy-two words - - -	0	1	4	—			—		
For perusing and abstracting Pleadings, Affidavits, Exhibits, and other documents	—			0	13	4	0	6	8
Or per folio - - -	—			0	0	4	0	0	4

*Copies.*

Copies of Petitions, Answers, and other Pleadings, also of Exhibits, Bills of Costs, or other documents, where no other provision is made, at per folio of seventy-two words -	—			0	0	4	0	0	4
If any Exhibit or other document to be copied, or any part thereof, contains pencil marks or writing, or the copy thereof, or any part thereof, is required to be made <i>facsimile</i> , in addition to any other fee for the copy—									
For every folio of pencil marks or writing, or copy <i>facsimile</i> , or part of a folio - - -	0	0	4	—			—		

*Attendances.*

On entering Appearance - - -	0	6	8	—			—		
To search for Appearance to Citation - - -	0	6	8	—			—		
On Counsel with Brief, when the fee to Counsel is one guinea -	—			0	6	8	0	3	4

<i>Attendances</i> —continued.	Old Scale.			Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.	£	s.	d.
When the fee to Counsel exceeds one guinea and is under five guineas - - -	—			0	6	8	0	6	8
When the fee is five guineas or more, but under twenty guineas - - -	—			0	13	4	0	6	8
When the fee is twenty guineas -	—			1	1	0	0	13	4
When the fee is forty guineas or more - - -	—			2	2	0	—		
On consultation or conference -	—			0	13	4	0	13	4
In pursuance of Notice to admit -	—			0	13	4	0	6	8
Or per hour - - -	—			0	6	8	0	6	8
On Trial or Hearing when Cause is in paper and not tried or heard, <i>or on Motion in Court</i> - - -	—			0	10	0	0	10	0
On Trial or Hearing - - -	—			1	1	0	0	13	4
Or according to circumstances, not to exceed - - -	—			3	3	0	3	3	0
On taxation of Bills of Cost -	—			0	6	8	0	6	8
Or according to circumstances, not to exceed - - -	2	2	0	2	2	0	2	2	0
Unless very long, when an additional fee will be allowed.									
On examination of Witnesses before any Examiner, Commissioner, Officer, or other person -	—			0	13	4	0	13	4
Or according to circumstances, not to exceed - - -	—			2	2	0	2	2	0
Or if without Counsel, not to exceed - - -	—			3	3	0	3	0	0
For all necessary attendances in Chambers, in the Registry, before a Commissioner or Counsel, or upon the adverse parties or solicitor, for which no other fee herein is allowed - - -	0	6	8	—			—		

<i>Briefs, Cases for Hearing, Term Fees, &amp;c.</i>	Old Scale.			Higher Scale.			Lower Scale.			
	£	s.	d.	£	s.	d.	£	s.	d.	
For drawing Brief or Case for Hearing, per folio of seventy-two words - - -	—	0	1	0	0	1	0	0	1	0
For each copy, per folio of seventy-two words - -	—	0	0	4	0	0	4	0	0	4
For any special Letter during the dependence of the Cause -	0	3	6	—	—	—	—	—	—	—
For every term commencing on the day the Sittings commence and terminating on the day preceding the next Sittings in which any business is done	—	0	15	0	0	15	0	0	15	0
And, further, in Country Agency Causes or matters for Letters	—	0	6	0	0	6	0	0	6	0
Where no proceeding in the Cause is taken which carries a term fee a charge for Letters may be allowed if the circumstances require it.										
In addition to the above an allowance is to be made for the necessary expense of postage, carriage, and transmission of documents—										
For maps or plans, each from	{	1	1	0	—	—	—	—	—	—
		to								
		3	3	0	—	—	—	—	—	—
Copies of same, if required, each from	{	0	10	0	—	—	—	—	—	—
		to								
		1	0	0	—	—	—	—	—	—
<i>Affidavits.</i>										
Drawing and engrossing Affidavit of Service or Search—										
If three folios of seventy-two words or under - - -	0	5	0	—	—	—	—	—	—	—
If above, for every additional folio, including a copy for the Court - - -	0	1	4	—	—	—	—	—	—	—

<i>Affidavits</i> —continued.	Old Scale.			Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.	£	s.	d.
For drawing and engrossing any other Affidavit, including copy for the Court or Registry, per folio - - - -	—			0	1	4	0	1	4
For preparing each Exhibit in town or country - - -	—			0	1	0	0	1	0

*Interrogatories.*

For drawing the same, at per folio of seventy-two words - -	0	1	0	0	1	0	0	1	0
Copy thereof to be delivered to the Examiner and filed, at per folio of seventy-two words -	0	0	4	0	0	4	0	0	4

If it becomes necessary for solicitors to transact any business for which no fee is herein specified, such fee shall be taken by them as would be allowed for similar business done in the other Divisions of the High Court of Justice.

## FEES

TO BE TAKEN FOR THE USE OF OTHER PERSONS BY SOLICITORS OF THE SUPREME COURT OF JUDICATURE IN RESPECT TO DIVORCE AND MATRIMONIAL CAUSES ON AND AFTER THE 1ST DAY OF JANUARY, 1886.

*Counsels' Clerks' Fees.*

Not to exceed as under:—	£ s. d.		
Upon a fee to Counsel under five guineas - -	0	2	6
Five guineas and under ten guineas - -	0	5	0
Ten guineas and under twenty guineas - -	0	10	0
Twenty guineas and under thirty guineas - -	0	15	0
Thirty guineas and under fifty guineas - -	1	0	0
Fifty guineas and upwards—at per cent. on the fee paid - - - -	2	10	0



*Counsel's Clerks' Fees—continued.*

	£	s.	d.
On consultations—			
Senior's clerk - - - - -	0	7	6
Junior's clerk - - - - -	0	2	6
On general retainer (where allowed) - - - - -	0	10	6
On common retainer - - - - -	0	2	6
On conference - - - - -	0	5	0
<i>Allowance to Witnesses, including their board and lodging.</i>			
Common Witnesses, such as labourers, journeymen, &c.—			
If resident within five miles of the General Post Office,			
per diem - - - - -	0	5	0
	(	0	5
If resident beyond that distance, per diem, from - - - - -	0	7	6
	(	0	7
to			
Master tradesmen, yeomen, farmers, &c.—			
If resident within five miles of the General Post			
Office, per diem, from - - - - -	0	7	6
	(	0	10
to			
Office, per diem, from - - - - -	0	10	0
	(	0	10
to			
If resident beyond that distance, per diem, from - - - - -	0	15	0
	(	0	15
to			
Auctioneers and accountants—			
If resident within five miles of the General Post			
Office, per diem, from - - - - -	0	10	6
	(	1	1
to			
Office, per diem, from - - - - -	0	10	6
	(	0	10
to			
If resident beyond that distance, per diem, from - - - - -	1	1	0
	(	1	1
to			
Professional men—			
If resident within five miles of the General Post			
Office, per diem - - - - -	1	1	0
	(	2	2
to			
If resident beyond that distance, per diem, from - - - - -	2	2	0
	(	3	3
to			
Clerks to attorneys, or others—			
If resident within five miles of the General Post			
Office, per diem - - - - -	0	10	6
	(	0	15
to			
If resident beyond that distance, per diem, from - - - - -	0	15	0
	(	0	15
to			
If resident beyond that distance, per diem, from - - - - -	1	1	0
	(	1	1
to			

*Allowance to Witnesses &c.—continued.*

	£	s.	d.
Engineers and Surveyors—			
If resident within five miles of the General Post Office, per diem - - - - -	1	1	0
If resident beyond that distance, per diem, from - - - - -	1	1	0
		to	
	3	3	0
Notaries, per diem - - - - -	1	1	0
Esquires, bankers, merchants, and gentlemen, per diem	1	1	0
Females, according to station in life—			
If resident within five miles of the General Post Office, per diem, from - - - - -	0	5	0
		to	
	0	10	0
If resident beyond that distance, per diem, from - - - - -	0	5	0
		to	
	1	0	0
Police inspector—			
If resident within five miles of the General Post Office, per diem - - - - -	0	5	0
If resident beyond that distance, per diem, from - - - - -	0	7	6
		to	
	0	10	0
Police constable—			
If resident within five miles of the General Post Office, per diem - - - - -	0	3	0
If resident beyond that distance, per diem, from - - - - -	0	5	0
		to	
	0	7	6
The travelling expenses of Witnesses will be allowed according to the sums reasonably and actually paid; but in no case will there be an allowance for such expenses of more than one shilling per mile one way.			
Commissioners for taking oaths—			
For administering oaths to each Deponent - - - - -	0	1	6
For marking each Exhibit annexed to an Affidavit	0	1	0

## TAXING BILLS OF COSTS (Rules 151 *et seq.*).

The Registrars tax only Bills of Costs—or those parts of Bills referred to them—which concern matters before the Court; those relating to Deeds of Agreement &c. are referred to the proper Taxing Master.

*Bills referred* to the Registrars from other Courts for taxation are not filed—simply left at the Divorce Registry, and taken away after they are taxed.

**Husband's Costs against Co-respondent.**—If Co-respondent be condemned in costs, Petitioner's Bill can be brought in to be taxed immediately after the decree *nisi* has been made, but the Order for payment will direct such costs *to be paid into Court*, pending the decree being made absolute.

**Wife's Costs.**—So also is this the case where the wife is Petitioner and succeeds; but a wife who is unsuccessful may, if the Court has given her her costs of and incidental to the hearing, proceed at once to obtain payment, after taxation hereof. (See "WIFE'S COSTS.")

Total amount of the costs, and also two thirds of that amount endorsed on the Bill.

Taxing fee, 1s. on every £2 on *two thirds* of the total costs, is deposited with the Bill.

Filing fee, 2s. 6d.

If the amount so deposited is found to be in excess of the taxation fee, such excess will be returned on application at the Divorce Registry.

**Filed.**—The Bill is filed at the Divorce Registry, with the fees as above, and in due course the following appointment is sent by post.

Should the Bill be brought in by another solicitor to tax, then an address should be endorsed on it where such appointment is to be sent.

### APPOINTMENT TO TAX.

Mr. Registrar \_\_\_\_\_ has appointed the \_\_\_\_\_ day  
of \_\_\_\_\_, 190\_\_\_\_, at \_\_\_\_\_ o'clock, to tax the Bill of  
Costs filed in this Cause by \_\_\_\_\_.

N.B.—The party obtaining the appointment is to give the other parties to be heard on taxation—with copy Bill—at least one clear day's notice of the appointment.

**Early Appointment.**—If through some special cause, such as the case being close upon hearing or the party to pay going abroad, an early appointment is required, application can be made *by letter* to the Registrar, stating fully the reasons for urgency. The Registrar will require to be well satisfied with the reason given, as expedition in one case means delay in another; and the appointments are issued according to the date of the filing of the Bills.

**Notice of Appointment.**—Although it may be sufficient to give to the other side one day's notice where the appointment for special reasons is of short date, still, it would be better to give notice and deliver the Bill directly the appointment is received, so that the other side should have no occasion to ask for a postponement of taxation. This is the more important, as the Taxing Registrar's appointments are made a week or ten days in advance, and any postponement may cause considerable delay.

**Respondent's Costs.**—No Notice of Affidavit in Copy Bill is served on Co-respondent.

**Attending Taxing.**—All receipts for Witnesses' expenses, vouchers by counsel, briefs, and documents necessary to be produced to the Registrar should be brought.

**Agreeing Bill.**—After taxing, the solicitors can take the taxed Bill into the waiting room and correct their copies, and agree the amount as taxed, returning the Bill to the Registrar.

**Objections.**—Either party objecting to any portion of the Bill as taxed should set out item by item the parts objected to, and leave the same with the Registrar who taxed the Bill any time before the Certificate for Payment is signed. The Registrar will make an appointment for the consideration of the objections, when, if either party be dissatisfied, appeal to the Court can be made by Summons.

**Order for Payment.**—So also where an Order becomes necessary, the costs allowed can be added to the amount in the Certificate, *and if stay of proceedings is desired* the Order can be so drawn.

**Death of Husband: Money paid in.**—Wife's costs can be taxed, and order for payment out of Court made.

	s.	d.
Attending for Order - - - - -	6	8
Paid - - - - -	5	0
Copy and Service - - - - -	3	6

## FEEES.

Filing Bill - - - - -	2	6
Deposit - - - - -	-	-

## COSTS ALLOWED.

Drawing Bill, and two copies, per folio -	1	0
In undefended cases, only one copy being necessary, 8d. per folio.		
Attending Filing Bill - - - - -	6	8
Paid Filing - - - - -	2	6
Copy and Service—Appointment to Tax -	4	0
Attending Taxing, according to time -	-	-
Attending for Order, if required - - -	6	8
Paid - - - - -	5	0
Copy and Service - - - - -	3	6
Affidavit of Increase, if required - - -	-	-
Drawing same, per folio - - - - -	1	0
Attending Swearing - - - - -	6	8
Paid Commissioner - - - - -	1	6
Copy for other side, per folio - - - -	0	4
Paid Taxing Fee - - - - -	-	-

**BILLS OF COSTS:**

## INSTRUCTIONS AS TO DRAWING.

**Affidavit of Increase.**—Not to be filed with Bill. No charge allowed unless it is asked for by the other side, *or required by the Registrar.*

**Affidavit in support of Petition.**—Never more than 13s. 4d. allowed. Fee to counsel to settle *never allowed.*

**Alimony.**—Petition not required to be signed, so no allowances made *for obtaining signature*. No charge allowed for *paying* or *receiving* Alimony. No fair copy allowed when Petition settled by counsel. If the amount is settled by Registrar on first appointment, 13s. 4d. is allowed; if adjourned, 6s. 8d. *each adjournment*; but an additional fee is allowable if hearing prolonged, either on first appointment or adjournment.

**Appearance.**—Notice of taxation only given to other side if *an Appearance has been entered*.

**Appointment to Tax.**—This is sent, so there is no allowance for obtaining it. Notice of the Appointment, with copy of Bill, is only sent to other side when *an Appearance has been entered*; but if a solicitor who has acted for the opposite party gives notice that he has ceased to do so, the Notice of Appointment, with copy of Bill, must be served on the Party, *to be heard on taxation*, and if this cannot be done application for *substituted service* must be made.

**Assessed Costs.**—Not filed, nor Taxing Fee charged.

**Attendances.**—One Attendance on Petitioner signing Petition and swearing Affidavit, 6s. 8d.; one on filing same; one on issuing Citation—altogether three. If with Co-respondents, an additional 6s. 8d. with each. All necessary Attendances in Registry, 6s. 8d. A further allowance may be made *under special circumstances*.

**Brief.**—No allowance, as a rule, for drawing Brief for Motion. Copies of Case and Affidavits constitute the Brief; *but where observations seem necessary, some further allowance may be made*. Instructions for Brief, 13s. 4d. to 21s. (according to Scale 1886), and 6s. 8d. to 21s. a witness; Case on Evidence, 13s. 4d.; Fee to Counsel, £2 2s. to £5 5s.—seldom more. Affidavit of Discovery not allowed as part of Brief.

**Common Jury.**—Sheriff's Fee, 10s. 6d.; Jurors, 1s. each, *paid in Court*.

**Special Jury.**—Sheriff's Fee, £1 1s.; Jurors, £1 1s. each. No allowance if Jury discharged without giving a verdict.

**Counsel.**—Two Leaders rarely allowed. In undefended cases two Counsel never allowed. Attendance at Chambers not allowed unless certified for by the Judge or Registrar.

**Decree Nisi.**—Copy not allowed unless Decree contains some special order, such as *custody of children*, or *direction to pay damages*, &c., requiring to be served.

**Decree Absolute.**—A settled sum of £2 3s. 10d. is allowed.

**Discovery, Affidavit of,** not allowed as part of Brief.

**Drawing.**—Bills should be drawn on ordinary foolscap, *and the pages numbered*, the professional charges and disbursements being entered in separate columns, and each column cast with a summary at the end of the Bill. Endorse shortly particulars of Order &c. under which the Bill is to be taxed, *Defended or Undefended*. If Wife's Costs, whether *up to setting down only*. *If after Decree*, Wife unsuccessful, say Costs allowed up to £      paid in or secured.

**Fixing Security.**—If more than £20 or £30 asked, enquiry is made as to *number of Witnesses, where they come from*, and *whether advised to be produced*. If Witnesses are resident in London, expenses estimated at one day; if in the country, two or three days, according to distance they have to come.

**Folio.**—Seventy-two words, *each figure counting as a word*.

**Letters** of appointment or acknowledgment included in Term fees, *even between solicitor and client*. To Witnesses.—3s. 6d. is allowed for letter to the first Witness written to, and 1s. 6d. for each of the other Witnesses written to. Letters, Messengers, &c., usually about £2 2s., *but only in final Bill*.

**Mileage.**—If served at a distance of more than two miles from the office of the solicitor serving the same—for each mile one way, 1s. If served through country agent, *for correspondence in addition*, 7s.—*being two letters*, 3s. 6d. each.

**Objections.**—These should be drawn in three columns—(1) Item objected to; (2) Grounds of objection; (3) Registrar's observations—and should be left with the Taxing Registrar soon after the Bill has been taxed.

**Orders, in Agency Cases.**—Close copy allowed of such Orders as are to be carried out in the country, or as the Registrar may consider necessary for the information of the country solicitor, *but not of Orders for time*.

**Perusal.**—Perusing documents, when allowed, is 4d. per folio; perusing Opinion of Counsel, *nil*; perusing Pleadings, 6s. 8d.

**Pleadings.**—Perusing opponent's, 6s. 8d. allowed. Close copy of same allowed in Agency Cases, but not of own Pleadings.

**Refresher.**—This depends entirely on the case, but rarely exceeds the amount allowed by the Judicature Rules.

**Retainer.**—Only one allowed in undefended cases; in defended cases (if two Counsel) two Retainers.

**Scale: Lower and Higher.**—Costs always taxed on the *lower scale*, unless otherwise ordered.

**Service.**—Citations, 5s.; Pleadings, 3s. 4d.; Notices, 2s. 6d.; Orders, Copy, and Service, 3s. 6d.

**Shorthand Notes** of Judgment only allowed *on Appeals*, never of Evidence, unless by order of the Court.

**Solicitor and Client.**—Bill can be so taxed without Order.

**Taxing Costs.**—The allowance depends on length of Bill and time occupied, but the allowance is *never less than 13s. 4d.* As a rule, this allowance includes the fee for *adjusting figures*.

**Term Fee.**—Any proceeding in Court, or in the Registry, carries a Sitting Fee; application to make Decree Absolute does not.

**Trial.**—Extra day allowed where Cause not over in time for Witnesses to return same day. Country solicitor attending not allowed, *unless he is an allowable Witness*. If many Witnesses, some allowance made for clerk's attendance at the trial, and for *paying them*.

**Witnesses.**—*As a rule*, the costs of such Witnesses as are called and give evidence only allowed.

### WIFE PETITIONER.—UNDEFENDED CAUSE.

#### *C. v. C.*

1904.		£	s.	d.	£	s.	d.
<i>February.</i>	Instructions for Petition	-	-	—	0	6	8
	Attending retaining Mr. S.	-	-	—	0	6	8
	Paid his Fee and Clerk	-	-	—	1	3	6



<i>February</i> —continued.	£	s.	d.	£	s.	d.
Attending searching for Marriage Certificate -	—	—	—	0	6	8
Paid for same - - - - -	0	3	7	—	—	—
Drawing Petition and Copy, ten folios -	—	—	—	1	0	0
Attending Counsel to settle - - - - -	—	—	—	0	3	4
Copy for Counsel - - - - -	—	—	—	—	—	—
Paid his Fee and Clerk - - - - -	1	3	6	—	—	—
Instructions for Affidavit in support -	—	—	—	0	6	8
Drawing and engrossing same, five folios -	—	—	—	0	6	8
Attending Petitioner signing Petition -	—	—	—	—	—	—
Attending Petitioner to be sworn - - - - -	—	—	—	0	6	8
Paid Commissioner - - - - -	0	1	6	—	—	—
Instructions for Citation - - - - -	—	—	—	0	6	8
Drawing same (Parchment and Præcipe) -	—	—	—	0	7	6
Attending filing Petition and Affidavit -	—	—	—	0	6	8
Paid filing - - - - -	0	5	0	—	—	—
Attending getting Citation sealed - - - - -	—	—	—	0	6	8
Paid for Seal - - - - -	0	5	0	—	—	—
Paid Office Copy Petition, under Seal -	0	12	6	—	—	—
Attending for same - - - - -	—	—	—	0	6	8
Copy Citation for Service - - - - -	—	—	—	0	1	8
Attending instructing Process Server -	—	—	—	—	—	—
Paid serving Petition and Citation, if without mileage - - - - -	0	5	0	—	—	—
Endorsing Certificate of Service on Citation -	—	—	—	0	2	6
Sittings Fee (Hilary) - - - - -	—	—	—	0	15	0
<i>April.</i> Attending Searching for Appearance, none found - - - - -	—	—	—	0	6	8
Drawing Affidavit of No Appearance - - - - -	—	—	—	0	6	8
Attending swearing same - - - - -	—	—	—	0	6	8
Paid Commissioner - - - - -	0	1	6	—	—	—
Drawing Affidavit of Service and Citation -	—	—	—	0	6	8
Marking Citation as Exhibit - - - - -	—	—	—	0	1	0
Attending swearing same - - - - -	—	—	—	0	6	8
Paid Commissioner - - - - -	0	2	6	—	—	—
Attending filing Affidavit and Citation -	—	—	—	0	6	8
Paid filing - - - - -	0	5	0	—	—	—
Attending filing Affidavit of No Appearance -	—	—	—	0	6	8
Paid filing and for Search - - - - -	0	3	6	—	—	—
Instructions for Petition for Alimony - - - - -	—	—	—	0	6	8

	£	s.	d.	£	s.	d.
<i>April</i> —continued.						
Drawing same - - - -	-	-	-	1	0	0
Engrossing fair copy - - - -	-	-	-			Nil.
Attending Counsel to settle - - - -	-	-	-	0	3	4
Paid his fee and Clerk - - - -	1	3	6	-	-	-
Attending filing same - - - -	-	-	-	0	6	8
Paid filing - - - -	0	2	6	-	-	-
Fair Copy for Service - - - -	-	-	-			Nil.
Attending serving - - - -	-	-	-	0	3	4
Attending entering Application for Appointment - - - -	-	-	-	0	6	8
Paid - - - -	0	10	0	-	-	-
Attending Registrar: Order made - - - -	-	-	-	0	13	4
Should the allotment not be made on the first appointment, 6s. 8d. would be allowed for the adjournment and additional charge made for the evidence of income obtained for the second appointment, and, if then settled, 13s. 4d. would be allowed.						
Attending for Order - - - -	-	-	-	0	6	8
Paid - - - -	0	5	0	-	-	-
Copy and Service - - - -	-	-	-	0	3	6
Sittings Fee (Easter) - - - -	-	-	-	0	15	0
<i>June.</i> Drawing Application for Registrar's Certificate - - - -	-	-	-			Nil.
Attending lodging same - - - -	-	-	-	0	6	8
Attending setting Cause down - - - -	-	-	-	0	6	8
Paid - - - -	3	2	6	-	-	-
Drawing and Copy instructions to Counsel to advise on evidence - - - -	-	-	-	0	13	4
Fee to Mr. S. and Clerk - - - -	1	3	6	-	-	-
Attending him - - - -	-	-	-	0	3	4
Drawing Brief, forty folios - - - -	-	-	-	2	4	6
Copy with Petition and Citation - - - -	-	-	-	1	0	0
Drawing Bill, fifteen folios - - - -	-	-	-	0	10	0
Attending filing - - - -	-	-	-	0	6	8
Paid - - - -	-	-	-	0	2	6
Attending for appointment to tax - - - -	-	-	-			Nil.
Attending taxing and fixing security for future costs - - - -	-	-	-	1	0	0

<i>June</i> —continued.	£	s.	d.	£	s.	d.
Paid taxing - - - - -	-	-	-	-	-	-
Attending for Order - - - - -	-	-	-	0	6	8
Paid fixing security and for Order - - - - -	0	15	0	-	-	-
Copy and Service - - - - -	-	-	-	0	3	6
If personal - - - - -	-	-	-	0	5	0
Sittings Fee - - - - -	-	-	-	0	15	0

*Further Bill (after Hearing).*

Attending searching Cause List - - - - -	-	-	-	0	13	4
Attending Mr. S. with Brief - - - - -	-	-	-	0	6	8
Paid his Fee and Clerk - - - - -	3	5	6	-	-	-
Attending to appoint Conference - - - - -	-	-	-	0	3	4
Paid Fee and Clerk - - - - -	1	6	0	-	-	-
Attending Conference - - - - -	-	-	-	0	13	4
Attending for Subpœna, three Witnesses - - - - -	-	-	-	0	6	8
Paid sealing - - - - -	0	5	0	-	-	-
Copy and Service on three Witnesses - - - - -	-	-	-	0	15	0
Paid them - - - - -	-	-	-	-	-	-
Letter of Notice to attend Court - - - - -	-	-	-	0	3	6
Copy ditto (other two Witnesses 1s. 6d. each) - - - - -	-	-	-	0	3	0
Attending Court, Decree <i>Nisi</i> pronounced - - - - -	-	-	-	1	1	0
Attending paying Witnesses - - - - -	-	-	-	0	6	8
Paid them - - - - -	-	-	-	-	-	-
Attending ordering copy Decree <i>Nisi</i> - - - - -	-	-	-	-	-	Nil.
This Bill of Costs, fifteen folios - - - - -	-	-	-	0	10	0
Attending filing - - - - -	-	-	-	0	6	8
Paid - - - - -	0	2	6	-	-	-
Attending taxing - - - - -	-	-	-	0	13	4
Attending adjusting figures - - - - -	-	-	-	-	-	Nil.
Attending for Order - - - - -	-	-	-	0	6	8
Paid - - - - -	0	5	0	-	-	-
Copy and Service - - - - -	-	-	-	0	5	0
Paid taxing - - - - -	-	-	-	-	-	-
Sittings Fee - - - - -	-	-	-	0	15	0
Letters and Messengers (One or Two Guineas) - - - - -	-	-	-	-	-	-

## WIFE PETITIONER—DEFENDED CAUSE.

*B. v. B.*

1904.		£	s.	d.	£	s.	d.
<i>February.</i>	Instructions for Petition - - -	-	-	-	0	6	8
	Attending retaining Mr. S. - - -	-	-	-	0	6	8
	Paid his Fee and Clerk - - -	1	3	6	-	-	-
	Attending searching for Marriage Certificate	-	-	-	0	6	8
	Paid for same - - - - -	0	3	7	-	-	-
	Drawing Petition and Copy, ten folios	-	-	-	1	0	0
	Attending Counsel to settle - - -	-	-	-	0	3	4
	Copy for Counsel - - - - -	-	-	-	-	-	-
	Paid his Fee and Clerk - - -	1	3	6	-	-	-
	Instructions for Affidavit in support - - -	-	-	-	0	6	8
	Drawing and engrossing same - - -	-	-	-	0	6	8
	Attending Petitioner signing Petition	-	-	-	-	-	-
	Attending Petitioner to be sworn - - -	-	-	-	0	6	8
	Paid Commissioner - - - - -	0	1	6	-	-	-
	Instructions for Citation - - - - -	-	-	-	0	6	8
	Drawing same (Parchment and Præcipe) - - -	-	-	-	0	7	6
	Attending filing Petition and Affidavit	-	-	-	0	6	8
	Paid filing - - - - -	0	5	0	-	-	-
	Attending getting Citation sealed - - -	-	-	-	0	6	8
	Paid for Seal - - - - -	0	5	0	-	-	-
	Paid Office Copy Petition, under Seal	0	12	6	-	-	-
	Attending for same - - - - -	-	-	-	0	6	8
	Copy Citation for Service - - - - -	-	-	-	0	1	8
	Attending instructing Process Server	-	-	-	-	-	-
	Paid serving Petition and Citation - - -	0	5	0	-	-	-
	Endorsing Certificate of Service on Citation -	-	-	-	0	2	6
	Sittings Fee (Hilary) - - - - -	-	-	-	0	15	0
<i>April 2.</i>	Instructions for Petition for Alimony	-	-	-	0	6	8
	Drawing same - - - - -	-	-	-	1	0	0
	Engrossing fair Copy - - - - -	-	-	-	-	-	-
	Attending Counsel to settle same - - -	-	-	-	0	3	4
	Paid his Fee and Clerk - - - - -	1	3	6	-	-	-
	Attending searching to see if Respondent had entered Appearance:—	-	-	-	-	-	-
	Found he had - - - - -	-	-	-	0	6	8
	Attending filing Citation - - - - -	-	-	-	0	6	8

	£	s.	d.	£	s.	d.
<i>April 2</i> —continued.						
Paid filing - - - -	0	2	6	—	—	—
Attending filing Petition for Alimony -	—	—	—	0	6	8
Paid filing - - - -	0	2	6	—	—	—
Fair Copy for Service (4d. per folio) -	—	—	—	—	—	—
Attending serving - - - -	—	—	—	0	3	4
Attending Respondent's Summons for further time to file Answer - - - -	—	—	—	0	6	8
Perusing Answer to Petition for Alimony -	—	—	—	0	6	8
Attending entering Application for Appoint- ment - - - - -	—	—	—	0	6	8
Paid - - - - -	0	10	0	—	—	—
Fair Copy, Appointment and Service -	—	—	—	0	4	0
Attending Registrar: Order made - -	—	—	—	0	13	4
Attending for Order - - - -	—	—	—	0	6	8
Copy and Service - - - -	—	—	—	0	3	6
Drawing Summons for Discovery and Copy -	—	—	—	0	5	0
Attending issuing - - - -	—	—	—	0	6	8
Paid - - - - -	0	8	0	—	—	—
Copy and Service - - - -	—	—	—	0	3	6
Attending Hearing: Order made - -	—	—	—	0	6	8
Attending obtaining Order - - - -	—	—	—	0	6	8
Copy and Service - - - -	—	—	—	0	3	6
<i>May 18.</i> Perusing Respondent's Answer -	—	—	—	0	6	8
Attending Counsel with Answer to advise as to the sufficiency of same - - - -	—	—	—	—	—	—
Paid his Fee and Clerk - - - -	—	—	—	—	—	—
<i>May 19.</i> Drawing and engrossing Summons for particulars of alleged cruelty in Paragraph 3 of Respondent's Answer and for time to file Reply, and Copy -	—	—	—	0	5	0
Attending issuing same - - - -	—	—	—	0	6	8
Paid Stamps thereon - - - -	0	8	0	—	—	—
Copy and Service - - - -	—	—	—	0	3	6
Attending Hearing: Order made - -	—	—	—	0	6	8
Attending obtaining Order - - - -	—	—	—	0	6	8
Copy and Service - - - -	—	—	—	0	3	6
Attending Respondent's Summons for par- ticulars of cruelty charged in Petition: Order made - - - -	—	—	—	—	—	—

	£	s.	d.	£	s.	d.
<i>May 19</i> —continued.						
Sittings Fee (Easter) - - - -	-	-	-	0	15	0
Instructions for particulars of cruelty - - - -	-	-	-	-	-	-
Drawing same - - - -	-	-	-	-	-	-
Instructions for Affidavit of Petitioner that no further particulars could be given - - - -	-	-	-	-	-	-
Drawing same - - - -	-	-	-	-	-	-
Attending swearing and paid Commissioner - - - -	-	-	-	-	-	-
Attending filing and paid Stamps thereon - - - -	-	-	-	-	-	-
Copy and Service - - - -	-	-	-	-	-	-
<i>June 1.</i> Drawing and engrossing Summons for time to file Affidavit of Documents - - - -	-	-	-	0	5	0
Attending issuing - - - -	-	-	-	0	6	8
Paid Stamps thereon - - - -	0	8	0	-	-	-
Copy and Service - - - -	-	-	-	0	3	6
<i>June 8.</i> Attending Hearing: Order made - - - -	-	-	-	0	6	8
Attending for Order - - - -	-	-	-	0	6	8
Copy and service - - - -	-	-	-	0	3	6
Attending Respondent's Summons for time to file Affidavit of Documents: Order made - - - -	-	-	-	0	6	8
Perusing Order, when served - - - -	-	-	-	-	-	-
<i>June 10.</i> Instructions for Affidavit of Peti- tioner as to Documents - - - -	-	-	-	0	8	6
Drawing same, eleven folios - - - -	-	-	-	0	11	0
Engrossing same - - - -	-	-	-	0	3	8
Copy for Respondent's solicitors - - - -	-	-	-	0	3	8
Attending swearing - - - -	-	-	-	0	6	8
Paid Commissioner - - - -	0	1	6	-	-	-
Attending filing - - - -	-	-	-	0	6	8
Paid Stamps thereon - - - -	0	2	6	-	-	-
Service thereof on Respondent's solicitor - - - -	-	-	-	0	2	6
Attending Respondent's Summons for time to file particulars of Paragraph 3 of Answer - - - -	-	-	-	0	6	8
<i>June 12.</i> Writing Respondent's solicitor for Copy of his Affidavit of Documents - - - -	-	-	-	0	3	6
Perusing same - - - -	-	-	-	0	3	6
Fair Copy ditto - - - -	-	-	-	-	-	-

	£	s.	d.	£	s.	d.
<i>June 14.</i> Writing Home Secretary for per- mission to interview a Witness in the Cause at present a Prisoner - - -			—			
<i>June 16.</i> Drawing Summons and Copy for access to children - - -			—	0	5	0
Attending issuing - - -			—	0	6	8
Paid thereon - - -	0	8	0			
Copy and Service - - -			—	0	3	6
Attending Hearing adjourned for a week -			—	0	6	8
Attending adjourned Summons for Access when same further adjourned - - -			—	0	6	8
<i>June 28.</i> Perusing Respondent's Affidavit and particulars of cruelty alleged in Para- graph 3 of his Answer - - -			—	0	3	0
On receipt of copy correspondence disclosed by Respondent, paid for same - - -			—	4	10	0
Perusing same - - -			—	4	10	0
Attending adjourned Summons for Access: Order made - - -			—	0	6	8
Attending for same - - -			—	0	6	8
Copy and Service - - -			—	0	3	6
<i>July 4.</i> Instructions for Reply - - -			—	0	6	8
Drawing same, and Copy to file - - -			—	0	5	0
Attending Counsel with same to settle -			—	0	3	4
Paid his Fee and Clerk - - -			—	1	3	6
Attending bespeaking Registrar's Certificate: Pleadings in Order - - -			—	0	6	8
Attending for Certificate and setting Cause down - - -			—	0	6	8
Drawing Præcipe for same - - -			—			Nil.
Drawing same - - -			—			Nil.
Notice thereof; Copy and Service - - -			—	0	4	0
Notice Copy to file - - -			—	0	1	0
Paid - - -	3	5	0			
Instructions for Counsel to advise on evidence -			—	0	13	4
Paid fee therewith - - -	1	3	6			
Attending - - -			—	0	3	4
Attending to appoint Conference - - -			—	0	3	4

<i>July 4</i> —continued.		£	s.	d.	£	s.	d.
Paid his Fee and Clerk	- -	1	6	0	—	—	—
Attending for Subpœna	- -	—	—	—	0	6	8
Paid - - - - -	- - - - -	0	5	0	—	—	—
Service on three Witnesses	- - - - -	—	—	—	0	15	0
Instruction for Brief	- - - - -	—	—	—	3	3	0
Drawing same, thirty folios	- - - - -	—	—	—	1	10	0
Fair Copy	- - - - -	—	—	—	0	10	0
Fee to Counsel therewith	- - - - -	4	6	6	—	—	—
Attending him	- - - - -	—	—	—	0	6	8
Attending Court; Case heard; Decree <i>Nisi</i>	- - - - -	—	—	—	0	13	4
Drawing Bill of Costs and Copy, twenty folios (One or Two Guineas)	- - - - -	—	—	—	—	—	—
Attending filing same	- - - - -	—	—	—	0	6	8
Paid - - - - -	- - - - -	0	2	6	—	—	—
Notice to tax	- - - - -	—	—	—	0	4	0
Attending taxing	- - - - -	—	—	—	0	13	4
Attending fixing Amount of future Costs	- - - - -	—	—	—	0	6	8
Attending for Order	- - - - -	—	—	—	0	6	8
Paid for same and fixing security	- - - - -	0	15	0	—	—	—
Copy and Service	- - - - -	—	—	—	0	3	6
Sittings Fee	- - - - -	—	—	—	0	15	0
Letters &c.	- - - - -	—	—	—	2	2	0
Paid Witnesses	- - - - -	—	—	—	—	—	—

*Decree Absolute.*

To be added, without Bill	- - - - -	—	—	—	2	3	10
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## WIFE RESPONDENT—DEFENDED.

*M. v. M. and T.*

## HILARY SITTINGS.

1904.		£	s.	d.	£	s.	d.
Instructions to defend	- - - - -	—	—	—	0	6	8
Attending retaining Mr. S.	- - - - -	—	—	—	0	6	8
Paid his Fee and Clerk	- - - - -	1	3	6	—	—	—
Perusing Petition	- - - - -	—	—	—	0	6	8
Perusing Citation	- - - - -	—	—	—	0	1	8
Attending entering Appearance	- - - - -	—	—	—	0	6	8
Paid - - - - -	- - - - -	0	2	0	—	—	—



HILARY SITTINGS— <i>continued.</i>		£	s.	d.	£	s.	d.
Notice of Appearance	-	-	-	-	0	4	0
Instructions for Answer	-	-	-	-	0	6	8
Drawing same and Copy	-	-	-	-	1	0	0
Attending Counsel to settle same	-	-	-	-	0	3	4
Paid his Fee and Clerk	-	-	-	1	3	6	-
Instructions for Affidavit verifying Answer	-	-	-	-	0	6	8
Drawing same	-	-	-	-	0	6	8
Attending Respondent to be sworn	-	-	-	-	0	6	8
Paid Oath	-	-	-	0	1	6	-
Attending filing Answer and Affidavit	-	-	-	-	0	6	8
Paid	-	-	-	0	5	0	-
Copy Answer for Service	-	-	-	-	0	1	8
Attending serving	-	-	-	-	0	3	4
Instructions for Affidavit in support of Application for Custody and Access	-	-	-	-	0	6	8
Drawing same, five folios	-	-	-	-	0	5	0
Engrossing	-	-	-	-	0	1	8
Attending Counsel to settle, and paid Fee	-	-	-	-	-	-	-
Attending Respondent to be sworn	-	-	-	-	0	6	8
Paid Oath	-	-	-	0	1	6	-
Copy for Service	-	-	-	-	0	1	8
Drawing Case on Motion and Copy	-	-	-	-	0	10	0
Drawing Notice of Motion, Copy and Service	-	-	-	-	0	4	0
Fee to Counsel to settle	-	-	-	-	-	-	-
Copy to file	-	-	-	-	0	1	0
Attending filing Case, Affidavit, and Notice	-	-	-	-	0	6	8
Paid	-	-	-	0	15	0	-
Brief Copy Case and Notice	-	-	-	-	0	4	4
Brief Copy Affidavit	-	-	-	-	0	1	8
Perusing Affidavit of Petitioner in Reply	-	-	-	-	0	6	8
Brief Copy	-	-	-	-	0	1	8
Attending Counsel with Case and Papers	-	-	-	-	0	6	8
Paid his Fee and Clerk	-	-	-	2	4	6	-
Attending arranging Conference	-	-	-	-	-	-	-
Paid his Fee	-	-	-	-	-	-	-
Attending Court: Order for Access made	-	-	-	-	0	13	4
Writing Respondent informing her	-	-	-	-	-	-	-
Attending bespeaking Copy Order	-	-	-	-	0	6	8
Paid	-	-	-	0	5	0	-
Copy for Service and Service	-	-	-	-	0	3	6

HILARY SITTINGS— <i>continued.</i>		£	s.	d.	£	s.	d.
Perusing Reply	- - - -	—	—	—	0	6	8
Attending Respondent, arranging as to Access, and writing Petitioner's solicitor	- - - -	—	—	—	—	—	—
Sittings Fee	- - - -	—	—	—	0	15	0

## EASTER SITTINGS.

Perusing letter from Petitioner's solicitor as to Access, and writing in reply	- - - -	—	—	—	—	—	—
Attending Registry, entering Application for Appointment to settle Access	- - - -	—	—	—	0	6	8
Paid	- - - -	0	10	0	—	—	—
Notice thereof, Copy, and Service	- - - -	—	—	—	0	4	0
Attending Appointment: Order made	- - - -	—	—	—	0	6	8
Paid for same	- - - -	0	5	0	—	—	—
Copy for Service and Service	- - - -	—	—	—	0	3	6
Preparing Summons for Discovery	- - - -	—	—	—	0	3	0
Copy to file	- - - -	—	—	—	0	2	0
Attending issuing	- - - -	—	—	—	0	6	8
Paid	- - - -	0	8	0	—	—	—
Copy and Service	- - - -	—	—	—	0	3	6
Attending Summons: Order made	- - - -	—	—	—	0	6	8
Attending for Order	- - - -	—	—	—	0	6	8
Copy and Service	- - - -	—	—	—	0	3	6
Perusing Summons for trial by Jury	- - - -	—	—	—	—	—	—
Attending hearing same: Order made	- - - -	—	—	—	0	6	8
Paid for Copy Petitioner's Affidavit of Discovery	- - - -	0	4	4	—	—	—
Perusing same	- - - -	—	—	—	0	6	8
Attending inspecting Documents	- - - -	—	—	—	0	13	4
Perusing Notice Cause set down	- - - -	—	—	—	0	1	0
Paid for copies of Documents	- - - -	1	0	0	—	—	—
Case on Evidence: Counsel to advise	- - - -	—	—	—	0	13	4
Attending him	- - - -	—	—	—	0	6	8
Paid his Fee and Clerk	- - - -	2	4	6	—	—	—
Perusing Opinion	- - - -	—	—	—	—	—	—
Sittings Fee	- - - -	—	—	—	0	15	0

## TRINITY SITTINGS.

Drawing this Bill and Copies, twenty-five folios	- - - -	—	—	—	1	5	0
Attending filing	- - - -	—	—	—	0	6	8
Paid	- - - -	0	2	6	—	—	—

TRINITY SITTINGS— <i>continued.</i>		£	s.	d.	£	s.	d.
Notice of taxing Copy and Service	-	-	-	-	0	4	0
Attending taxing	-	-	-	-	0	13	4
Attending agreeing amount	-	-	-	-	-	-	-
Attending fixing amount of future Costs	-	-	-	-	0	6	8
Attending for Order	-	-	-	-	0	6	8
Paid for same and fixing security	-	-	0	15	0	-	-
Copy and Service	-	-	-	-	0	3	6
Sittings Fee	-	-	0	15	0	-	-

## MICHAELMAS SITTINGS.

Persuing Petitioner's Notice to Produce	-	-	-	-	0	6	8
Attending Co-respondent's Summons for Commission: No Order	-	-	-	-	0	6	8
Attending searching Cause List	-	-	-	-	0	6	8
Preparing Notice to Admit and Copy Service	-	-	-	-	0	7	6
Instructions for Brief: Four Witnesses	-	-	-	-	4	4	0
Drawing same, fifty folios	-	-	-	-	2	10	0
Fair Copy	-	-	-	-	0	16	8
Fee to Counsel therewith	-	-	9	9	0	-	-
Attending him	-	-	-	-	0	6	8
Conference Fee	-	-	1	6	0	-	-
Attending him	-	-	-	-	0	6	8
Copy Pleadings for Counsel, eighteen folios	-	-	-	-	0	6	0
Copy Correspondence, thirty folios	-	-	-	-	0	10	0
Petitioner's Notice to Admit	-	-	-	-	0	4	0
Respondent's ditto	-	-	-	-	0	2	0
Attending Conference	-	-	-	-	0	13	4
Drawing Præcipe and Subpcena	-	-	-	-	0	6	8
Paid	-	-	0	5	0	-	-
The like	-	-	-	-	0	6	8
Paid	-	-	0	5	0	-	-
Service of same on four Witnesses	-	-	-	-	1	0	0
Notice to Respondent to attend Court to- morrow	-	-	-	-	0	3	6
The like to four Witnesses, 1s. 6d. each	-	-	-	-	0	6	0
Attending Court; Case in paper; not reached	-	-	-	-	0	10	0
Attending Court; Case heard; Decree <i>Nisi</i> ; usual Order for Wife's Costs	-	-	-	-	2	2	0
Sittings Fee	-	-	-	-	0	15	0

		HILARY SITTINGS.			£ s. d.			£ s. d.		
Drawing this Bill and Copies,	twenty-eight									
folios	-	-	-	-	-	-	1	8	0	
Attending filing	-	-	-	-	-	-	0	6	8	
Paid	-	-	-	-	-	0	2	6		
Notice of taxing Copy and Service	-	-	-	-	-	-	0	4	0	
Attending taxing	-	-	-	-	-	-	0	13	4	
Attending agreeing amount	-	-	-	-	-	-	0	6	8	
Attending Registrar with Authority for Payment out of Court	-	-	-	-	-	-	0	6	8	
Attending at Paymaster's lodging same	-	-	-	-	-	-	0	6	8	
Attending for Cheque	-	-	-	-	-	-	0	6	8	
Sittings Fee	-	-	-	-	-	-	0	15	0	
Letters &c.	-	-	-	-	-	-	2	2	0	
Paid Witnesses	-	-	-	-	-	-				

### HUSBAND PETITIONER—COSTS AGAINST CO-RESPONDENT.

*M. v. M. and T.*

TRINITY SITTINGS.

*June, 1904.*

		£ s. d.			£ s. d.		
Instructions for Petition	-	-	-	-	0	6	8
Attending retaining Mr. D.	-	-	-	-	0	6	8
Paid his Fee and Clerk	-	-	-	1	3	6	
Attending searching for Marriage Certificate	-	-	-	-	0	6	8
Paid	-	-	-	0	3	7	
Drawing and engrossing Petition	-	-	-	-	1	0	0
Attending Counsel therewith to settle	-	-	-	-	0	3	4
Paid his Fee and Clerk	-	-	-	1	3	6	
Instructions for Affidavit in support	-	-	-	-	0	6	8
Drawing same and fair Copy	-	-	-	-	0	6	8
Attending Petitioner signing Petition, and swearing Affidavit	-	-	-	-	0	6	8
Paid Oath	-	-	-	0	1	6	
Attending filing Petition and Affidavit	-	-	-	-	0	6	8
Paid	-	-	-	0	5	0	
Attending for Copy Petition under Seal	-	-	-	-	0	6	8
Paid ( <i>according to length</i> )	-	-	-	0	10	0	
Instructions for Citation against Respondent	-	-	-	-	0	6	8

TRINITY SITTINGS— <i>continued.</i>		£	s.	d.	£	s.	d.
Drawing same (Parchment and Præcipe)	-	—	—	—	0	7	6
Attending getting same sealed	-	-	-	-	0	6	8
Paid	-	0	5	0	—	—	—
Copy for Service	-	-	-	-	0	1	8
Instructions for Citation against Co-respondent	-	—	—	—	0	6	8
Drawing same (Parchment and Præcipe)	-	—	—	—	0	7	6
Attending getting same sealed	-	-	-	-	0	6	8
Paid	-	0	5	0	—	—	—
Copy for Service	-	-	-	-	0	1	8
Service of Petition and Citation on Respondent	-	—	—	—	0	5	0
Mileage	-	-	-	-	0	2	0
Service of ditto on Co-respondent	-	-	-	-	0	5	0
Mileage	-	-	-	-	0	3	0
Attending searching and found Appearance entered for Respondent	-	-	-	-	0	6	8
Paid search	-	0	1	0	—	—	—
Attending searching and found Appearance entered for Co-respondent	-	-	-	-	0	6	8
Paid search	-	0	1	0	-	-	-
Endorsing Citation with Certificate of Service on Respondent	-	-	-	-	0	2	6
Endorsing Citation with Certificate of Service on Co-respondent	-	-	-	-	0	2	6
Perusing Answer of Respondent	-	-	-	-	0	6	8
The like: Co-respondent	-	-	-	-	0	6	8
Perusing Petition for Alimony	-	-	-	-	0	6	8
Attending Petitioner and advising thereon	-	—	—	—	—	—	—
Instructions for Answer	-	-	-	-	0	6	8
Drawing and engrossing same	-	-	-	-	1	0	0
Attending Counsel to settle	-	-	-	-	0	3	4
Paid his Fee and Clerk	-	1	3	6	—	—	—
Attending Petitioner being Sworn to Answer	-	—	—	—	0	6	8
Paid	-	0	1	6	—	—	—
Attending filing same	-	-	-	-	0	6	8
Paid	-	0	2	6	—	—	—
Copy for Service	-	-	-	-	0	2	0
Service	-	-	-	-	0	3	4
Attending: Order made	-	-	-	-	0	13	4
Sittings Fee	-	-	-	-	0	15	0

MICHAELMAS SITTINGS.							
<i>November, 1896.</i>		£	s.	d.	£	s.	d.
Drawing Application for Registrar's Certificate of Pleadings being in Order	- -	—			—		
Attending for same: Petition to be amended, Respondent's name in Petition not agreeing with that in the Certificate of Marriage	- - - -	—			—		
Instructions for Affidavit by Petitioner explaining error	- - - -	—			—		
Drawing same &c. &c.	- - - -	—			—		
Attending filing same and amending Petition pursuant to Order	- - - -	—			—		
Copy and re-service	- - - -	—			—		
Drawing questions for Jury and Copy	- - - -	—			0	10	0
Attending Registry with same to settle	- - - -	—			0	6	8
Paid	- - - -	0	10	0	—		
Attending obtaining same settled	- - - -	—			0	6	8
Copy and Service on Respondent's solicitor	- - - -	—			0	6	8
Copy and Service on Co-respondent's solicitor	- - - -	—			0	6	8
Attending for Registrar's Certificate Pleadings in Order	- - - -	—			0	6	8
Attending setting Cause down	- - - -	—			0	6	8
Drawing Præcipe	- - - -	—			—		
Paid	- - - -	3	10	0	—		
Notice thereof:—							
Copy and Service: Respondent	- - - -	—			0	4	0
The like: Co-respondent	- - - -	—			0	4	0
Instructions for case to advise on evidence	- - - -	—			0	6	8
Drawing same and fair Copy	- - - -	—			—		
Attending Counsel therewith	- - - -	—			0	6	8
Paid his Fee and Clerk	- - - -	2	4	6	—		
Perusing Opinion	- - - -	—			—		
Attending Petitioner on Evidence &c.	- - - -	—			—		
Drawing Præcipe and Subpœna for A. B. &c.	- - - -	—			0	6	8
Paid	- - - -	0	5	0	—		
The like for E. & F.	- - - -	—			0	6	8
Paid	- - - -	0	5	0	—		
Service of same on them—Five Witnesses	- - - -	—			1	5	0
Instructions for Brief	- - - -	—			—		

MICHAELMAS SITTINGS— <i>continued.</i>		£	s.	d.	£	s.	d.
Drawing same and proofs, fifty folios	-	-	-	-	2	10	0
Fair Copy for Counsel -	-	-	-	-	0	16	8
The like: Pleadings, fifteen folios	-	-	-	-	0	5	0
The like: Correspondence, twelve folios	-	-	-	-	0	4	0
Attending Counsel with Brief -	-	-	-	-	0	6	8
Paid his Fee and Clerk	-	-	-	-	-	-	-
Attending Counsel, arranging Conference	-	-	-	-	0	3	4
Paid his Fee and Clerk	-	-	-	-	1	6	0
Attending Conference -	-	-	-	-	0	13	4
Notice to produce -	-	-	-	-	0	5	0
The like: to admit -	-	-	-	-	0	5	0
Copies for Service -	-	-	-	-	0	2	0
Service -	-	-	-	-	0	5	0
Attending same: Order made -	-	-	-	-	0	6	8
Attending giving Inspection of Documents	-	-	-	-	0	6	8
Attending Respondent's solicitor on his signing	-	-	-	-	-	-	-
Admission -	-	-	-	-	0	6	8
Perusing Notice to Admit -	-	-	-	-	0	6	8
The like: to produce -	-	-	-	-	0	6	8
Copies for Counsel -	-	-	-	-	0	2	0
Attending searching Cause List	-	-	-	-	0	13	4
Writing Petitioner Cause in Paper to-morrow	-	-	-	-	0	3	6
Writing same to the five Witnesses, 1s. 6d. each	-	-	-	-	0	7	6
Attending Court all day: Case not reached -	-	-	-	-	0	7	6
Clerk's attendance on Witnesses	-	-	-	-	-	-	-
Attending Court: Case heard: Decree <i>Nisi</i>	-	-	-	-	-	-	-
with Damages -	-	-	-	-	2	2	0
Clerk's attendance on Witness	-	-	-	-	0	10	6
Paid Jury -	-	-	-	-	0	12	0
Sheriff's Fee -	-	-	-	-	0	10	6
Attending paying Witnesses	-	-	-	-	0	6	8
Paid them—A -	-	-	-	-	-	-	-
B -	-	-	-	-	-	-	-
C -	-	-	-	-	-	-	-
D -	-	-	-	-	-	-	-
E -	-	-	-	-	-	-	-
Attending bespeaking Copy Decree under	-	-	-	-	-	-	-
Judge's hand for Service on Co-	-	-	-	-	-	-	-
respondent	-	-	-	-	0	6	8

MICHAELMAS SITTINGS— <i>continued.</i>		£	s.	d.	£	s.	d.
Paid	- - - - -	0	5	0	—	—	—
Attending obtaining same	- - - - -	—	—	—	0	6	8
Copy for Service	- - - - -	—	—	—	0	1	0
Service of same	- - - - -	—	—	—	0	5	0
Drawing this Bill and Copies, thirty folios	- - - - -	—	—	—	1	10	0
Attending filing same	- - - - -	—	—	—	0	6	8
Paid	- - - - -	0	2	6	—	—	—
Perusing Appointment to tax	- - - - -	—	—	—	Nil.		
Notice to tax	- - - - -	—	—	—	0	4	0
Attending taxing and agreeing amount	- - - - -	—	—	—	1	1	0
Attending for Order	- - - - -	—	—	—	0	6	8
Paid	- - - - -	0	5	0	—	—	—
Copy and Service	- - - - -	—	—	—	0	3	6
Sittings Fee	- - - - -	—	—	—	0	15	0
Letters &c.	- - - - -	—	—	—	2	2	0

The amount of Respondent's Bill is added to this, and the Order made for the two amounts, *including* £2 3s. 10d., *the costs of the Decree Absolute.*

#### PETITIONER'S COSTS ON OBJECTIONS TO TAXATION.

	£	s.	d.	£	s.	d.
Drawing and Copy Objections	-	-	—	0	6	8
Attending filing and obtaining Appointment	-	-	—	0	6	8
Copy Objection for Respondent's solicitor	-	-	—	0	3	4
Notice of Appointment	-	-	—	0	4	0
Perusing Respondent's Objections	-	-	—	0	3	4
Attending Registrar on the Objections	-	-	—	0	6	8
Summons on Appeal to Judge	-	-	—	0	5	0
Paid	-	-	0	8	0	—
Copy and Service	-	-	—	0	3	6
Attending Summons when the Judge allowed						
Petitioner's Objections and disallowed						
Respondent's - - - - -	-	-	—	0	13	4
Copy and Service of Order	-	-	—	0	3	6
Drawing Costs and Copy	-	-	—	0	2	0
Attending filing	-	-	—	0	6	8
Paid	-	-	0	2	6	—
Copy for Respondent's solicitor	-	-	—	0	1	0
Notice of Appointment to tax	-	-	—	0	4	0



PETITIONER'S COSTS &c.— <i>continued.</i>	£	s.	d.	£	s.	d.
Attending taxing - - - -	-	-	-	0	6	8
Sittings Fee - - - -	-	-	-	0	15	0
Paid taxing - - - -	-	-	-	-	-	-

COSTS OF APPEAL.

*Petitioner's Costs on Respondent's Appeal from Judge's Order.*

	£	s.	d.	£	s.	d.
Instructions on Appeal - - - -	-	-	-	0	13	4
Drawing and Copy Observations - - - -	-	-	-	0	6	8
Copy Notice of Appeal - - - -	-	-	-	0	1	0
Fee to Mr. - - - -	3	5	6	-	-	-
Attending him - - - -	-	-	-	0	6	8
Conference Fee - - - -	1	6	0	-	-	-
Attending him - - - -	-	-	-	0	3	4
Attending Conference - - - -	-	-	-	0	13	4
Attending searching List of Appeals - - - -	-	-	-	0	13	4
Attending Court: Appeal dismissed - - - -	-	-	-	1	1	0
Attending for Order - - - -	-	-	-	0	6	8
Copy and Service - - - -	-	-	-	0	3	6
Drawing Costs and Copy - - - -	-	-	-	0	2	0
Attending filing - - - -	-	-	-	0	6	8
Paid - - - -	0	2	6	-	-	-
Copy for Respondent's solicitor - - - -	-	-	-	0	1	0
Notice of Appointment to tax - - - -	-	-	-	0	4	0
Attending taxing - - - -	-	-	-	0	6	8
Paid taxing - - - -	-	-	-	-	-	-
Sittings Fee - - - -	-	-	-	0	15	0

PETITIONER'S COSTS : SUING IN FORMÂ PAUPERIS.

	£	s.	d.
Drawing Case for Opinion of Counsel in support of Application for Leave to prosecute Suit <i>in formâ pauperis</i>	0	13	4
Attending Counsel - - - -	0	3	4
Paid his Fee and Clerk - - - -	1	3	6
Drawing Affidavit verifying Case and Opinion - - - -	-	-	-
Paid Oath and Exhibit - - - -	-	-	-
Attending Commissioner - - - -	-	-	-
Drawing Petition, ten folios - - - -	0	2	6
Engrossing - - - -	0	1	8

PETITIONER'S COSTS &c.— <i>continued.</i>		£	s.	d.
Drawing Affidavit verifying same, eight folios	- - - - -	0	2	0
Engrossing	- - - - -	0	1	4
Paid Oath	- - - - -	0	1	6
Attending swearing	- - - - -			—
Attending filing Petition and extracting Citation	- - - - -			—
Copy Petition for Service	- - - - -	0	1	8
Citation and Præcipe Forms	- - - - -	0	1	0
Copy Citation for Service	- - - - -	0	0	10
Service of Citation	- - - - -	0	5	0
Sittings Fee	- - - - -			—
Attending searching for Appearance	- - - - -			—
Drawing and Engrossing Affidavit of Service of Citation and Exhibit	- - - - -	0	1	0
Attending swearing	- - - - -			—
Paid Oath and Exhibit	- - - - -	0	2	6
Attending filing same	- - - - -			—
Attending bespeaking Registrar's Certificate	- - - - -			—
Attending setting Cause down	- - - - -			—
Drawing Brief and Proofs, twenty folios	- - - - -	0	5	0
Fair Copy, including Petition, thirty folios	- - - - -	0	5	0
Attending Counsel	- - - - -			—
Paid telegram to Petitioner to attend Court with Witnesses	- - - - -	0	10	0
Paid Witnesses ( <i>according to scale</i> )	- - - - -			—
Paid Service of Subpœnas ( <i>according to scale</i> )	- - - - -			—
Attending searching Cause List	- - - - -			—
Attending Court: Decree <i>Nisi</i> pronounced	- - - - -			—
Drawing Bill of Costs and Copy, ten folios	- - - - -	0	3	4
Attending filing Bill	- - - - -			—
Attending taxing	- - - - -			—
Solicitor's expenses	- - - - -	6	6	0
Attending for Order	- - - - -			—
Service of Order	- - - - -	0	5	0

N.B.—A party suing or defending *in forma pauperis* who has obtained judgment with costs is not entitled to be allowed, on taxation of costs between party and party, either Counsel's Fees or Solicitor's Costs, *other than costs out of pocket*.<sup>1</sup>

<sup>1</sup> *Carson v. Pickersgill*, 14 Q. B. D. 85; 954 L. J. Q. B. 312; *Richardson v. Richardson and Plowman*, [1895] P. 276-346.

## CONSANGUINITY AND AFFINITY.

### *The Prohibited Degrees of Kindred and Affinity.*

#### A MAN MAY NOT MARRY HIS

1. Grandmother.
2. Grandfather's Wife.
3. Wife's Grandmother.
4. Father's Sister (*Aunt by blood*).
5. Mother's Sister (*Aunt by blood*).
6. Father's Brother's Wife (*Aunt by affinity*).
7. Mother's Brother's Wife (*Aunt by affinity*).
8. Wife's Father's Sister (*Wife's aunt*).
9. Wife's Mother's Sister (*Wife's aunt*).
10. Mother.
11. Stepmother.
12. Wife's Mother (*Mother-in-law*).
13. Daughter.
14. Wife's Daughter (*Stepdaughter*).
15. Son's Wife (*Daughter-in-law*).
16. Sister.
17. Wife's Sister (*Sister-in-law*).
18. Brother's Wife (*Sister-in-law*).
19. Son's Daughter (*Granddaughter*).
20. Daughter's Daughter (*Granddaughter*).
21. Son's Son's Wife (*Son's daughter-in-law*).
22. Daughter's Son's Wife (*Daughter's daughter-in-law*).
23. Wife's Son's Daughter (*Stepson's daughter*).
24. Wife's Daughter's Daughter (*Stepdaughter's daughter*).
25. Brother's Daughter (*Niece*).
26. Sister's Daughter (*Niece*).
27. Brother's Son's Wife (*Nephew's wife*).
28. Sister's Son's Wife (*Nephew's wife*).
29. Wife's Brother's Daughter (*Wife's niece*).
30. Wife's Sister's Daughter (*Wife's niece*).

#### A WOMAN MAY NOT MARRY HER

1. Grandfather.
2. Grandmother's Husband.
3. Husband's Grandfather.
4. Father's Brother (*Uncle by blood*).
5. Mother's Brother (*Uncle by blood*).
6. Father's Sister's Husband (*Uncle by affinity*).
7. Mother's Sister's Husband (*Uncle by affinity*).
8. Husband's Father's Brother (*Husband's uncle*).
9. Husband's Mother's Brother (*Husband's uncle*).
10. Father.
11. Stepfather.
12. Husband's Father (*Father-in-law*).
13. Son.
14. Husband's Son (*Stepson*).
15. Daughter's Husband (*Son-in-law*).
16. Brother.
17. Husband's Brother (*Brother-in-law*).
18. Sister's Husband (*Brother-in-law*).
19. Son's Son (*Grandson*).
20. Daughter's Son (*Grandson*).
21. Son's Daughter's Husband (*Son's son-in-law*).
22. Daughter's Daughter's Husband (*Daughter's son-in-law*).
23. Husband's Son's Son (*Stepson's son*).
24. Husband's Daughter's Son (*Stepdaughter's son*).
25. Brother's Son (*Nephew*).
26. Sister's Son (*Nephew*).
27. Brother's Daughter's Husband (*Niece's husband*).
28. Sister's Daughter's Husband (*Niece's husband*).
29. Husband's Brother's Son (*Husband's nephew*).
30. Husband's Sister's Son (*Husband's nephew*).

1. The prohibited degrees include all persons related in lineal consanguinity, whether in the ascending or descending line.

2. Half-blood relationship has the same effect as relationship of the whole blood.

3. As consanguinity and affinity are contracted "as well by unlawful company of man and woman as by lawful marriage," it matters not whether the parties are related or connected through lawful wedlock or otherwise: they are equally restricted from intermarriage within the prohibited degrees.

4. The kindred of the husband are not of affinity to the kindred of the wife, and therefore a man may marry his brother's wife's sister: that is, two brothers may marry two sisters. So also a man born of his father's first wife may marry his father's second wife's daughter by a former husband: that is, a father and his son may marry a mother and her daughter.

5. Consanguinity bars marriage to the third degree inclusive collaterally, according to the mode of computation adopted by the Civil Law, which is the basis of the rule in England. The marriages of relations in the fourth degree (as first cousins), and any subsequent degree, are lawful by the Statute of 32 Hen. VIII.<sup>1</sup>

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<sup>1</sup> Hammick's *Marriage Law of England*, pp. 43, 44.

## APPENDIX.

STATUTES DEALING WITH DIVORCE AND MATRIMONIAL  
CAUSES &c.

- 8 & 9 Vict. c. 113, s. 1 - (Admission in Evidence of Official and other Documents, 1845), 283.
- 14 & 15 Vict. c. 40, ss. 12, 21, & 22 - (Admission in Evidence of Certificates of Marriage in India, 1851), 284.
- 14 & 15 Vict. c. 99, s. 14 - (Admission in Evidence of Copies of Documents, 1851), 285.
- 17 & 18 Vict. c. 80, s. 58 - (Admission in Evidence of Certificates of Marriage in Scotland, 1854), 286.
- 20 & 21 Vict. c. 85 - (Matrimonial Causes Act, 1857), 286.
- 21 & 22 Vict. c. 93 - (Legitimacy Declaration Act, 1858), 306.
- 21 & 22 Vict. c. 108 - (Matrimonial Causes Amendment Act, 1858), 309.
- 22 & 23 Vict. c. 61 - (Husband and Wife competent to give Evidence, 1859), 314.
- 23 & 24 Vict. c. 144 - (Decree *Nisi* not Absolute till after three months, 1860), 316.
- 25 & 26 Vict. c. 81 - (Matrimonial Causes Perpetuating Act, 1862), 319.
- 27 & 28 Vict. c. 44 - (As to discharging Orders of Protection, 1864), 320.
- 28 & 29 Vict. c. 64 - (Colonial Marriage Act, 1865), 321.
- 29 Vict. c. 32 - (Decree *Nisi* not Absolute till after six months, 1866), 322.
- 31 & 32 Vict. c. 61 - (Consular Marriage Act, 1868), 323.
- 31 & 32 Vict. c. 77 - (As to Appeals, 1868), 325.
- 32 & 33 Vict. c. 68 - (Evidence Further Amendment Act, 1869), 326.
- 36 Vict. c. 31 - (Extending Intervention of Queen's Proctor to Nullity Suits, 1873), 328.
- 41 Vict. c. 19 - (Costs of Intervention; Magistrates may make Orders equivalent to a Judicial Separation - where Husband convicted of Aggravated Assault, 1878), 329.
- 42 Vict. c. 8 - (Registration of Marriages &c. (Army) Act, 1879, Admission in Evidence of Certificates of such), 330.

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- 42 Vict. c. 11 - - (Bankers' Books Evidence Act, 1879), 332.
- 42 & 43 Vict. c. 29 - (Confirmation of Marriages on Her Majesty's Ships, 1879), 335.
- 44 & 45 Vict. c. 68 - (As to Appeals, Sections 9 and 10, 1881), 336.
- 45 & 46 Vict. c. 75, s. 17 (Married Women's Property Act, 1882), 339.
- 47 & 48 Vict. c. 20 - (Greek Marriages Act, 1884), 340.
- 47 & 48 Vict. c. 68 - (Restitution of Conjugal Rights, 1884), 343.
- 47 & 48 Vict. c. 61, s. 14 (Execution of Instruments by Person Nominated by the Court, Judicature Act, 1884), 344.
- 49 & 50 Vict. c. 27 - (As to the Guardianship and Custody of Children, 1886), 345.
- 51 & 52 Vict. c. 46 - (The Oaths Act, 1888), 349.
- 52 Vict. c. 10 - (The Commissioners for Oaths Act, 1889), 351.
- 53 & 54 Vict. c. 44 - (Judicature Act, 1890), 356.
- 54 & 55 Vict. c. 50 - (Commissioners for Oaths Act, 1891), 357.
- 54 & 55 Vict. c. 53 - (New Trial, Judicature Act, 1891), 358.
- 56 & 57 Vict. c. 63 - (Married Women's Property Act, 1893), 360.
- 57 & 58 Vict. c. 16 - (Supreme Court of Judicature (Procedure) Act, 1894), 361.
- 58 & 59 Vict. c. 39 - (Summary Jurisdiction (Married Women) Act, 1895), 365.
- 2 Edw. VII. c. 28, s. 5 - (Protection for Wife or Husband of Habitual Drunkard, 1902), 368.
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## STATUTES.

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### ADMISSION IN EVIDENCE OF OFFICIAL AND OTHER DOCUMENTS.

(8 & 9 Vict. c. 113, Section 1.)

An Act to facilitate the Admission in Evidence of certain Official and other Documents. [8th August, 1845.]

**W**HEREAS it is provided by many Statutes that various certificates, official and public documents, documents and proceedings of corporations and of joint stock and other companies, and certified copies of documents, bye-laws, entries in registers and other books, shall be receivable in evidence of certain particulars in courts of justice, provided they be respectively authenticated in the manner prescribed by such Statutes: And whereas the beneficial effect of these provisions has been found by experience to be greatly diminished by the difficulty of proving that the said documents are genuine; and it is expedient to facilitate the admission in evidence of such and the like documents:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present Parliament assembled, and by the authority of the same, that whenever by any Act now in force or hereafter to be in force any certificate, official or public document, or document or proceeding of any corporation or joint stock or other company, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any court of justice, or before any legal tribunal, or either House of Parliament, or any committee of either House, or in any judicial proceeding, the same shall respectively be admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp, and signed, as directed by the respective Acts made or to be hereafter made, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature or of the official character of the person appearing to have signed the same, and without any further proof thereof in every case in which the original record could have been received in evidence.

## ADMISSION IN EVIDENCE OF CERTIFICATES OF MARRIAGE IN INDIA.

(14 & 15 Vict. c. 40, Sections 12, 21, and 22.)

An Act for Marriages in India.

[24th July, 1851.]

*Certificates of Marriages to be transmitted Periodically to the Secretary of  
the Government &c.*

12. The marriage registrar shall forthwith separate the certificate from the marriage register book, and transmit it, at the end of every month, to the Secretary to the Government of the Presidency or place within which he resides, or to such other officer as may for this purpose be appointed under the laws or regulations hereinafter mentioned; and if no marriages have been registered during such month, the marriage registrar shall certify such fact under his hand, and such certificate shall be transmitted as aforesaid; and the marriage registrar shall keep safely the said register book until it be filled, and shall then transmit the same to the Secretary to the Government, or to such other officer as aforesaid, to be kept by him with the records of his office: provided that with regard to those marriages so certified, of which it may appear to the Governor-General in Council desirable that evidence should be transmitted to England, the Secretary to the Government, or such other officer as aforesaid, shall, at the end of every three calendar months in each year, send all the certificates of marriage sent to him as aforesaid during such three months, signed by him, to the Secretary of the East India Company, for the purpose of being delivered to the Registrar-General of Births, Deaths, and Marriages in England.

*Marriages may continue to be Solemnised as heretofore.—Power to Governor-General in Council to make Laws for the Registration of Marriages not solemnised under this Act.*

21. Nothing herein contained shall invalidate or affect any marriage which may be solemnised in India by persons in holy orders, or any marriages which may be solemnised under the provisions of the Act of the fifty-eighth year of King George the Third, chapter eighty-four, or any other marriages which under the laws for the time being in force in India might have been there solemnised in case this Act had not been passed: Provided that it shall be lawful for the Governor-General of India in Council, from time to time by laws and regulations to be made as aforesaid, to provide for the registration of any marriages solemnised in India by persons in holy orders, or of any marriages



there solemnised under the provisions of the said Act of the fifty-eighth year of King George the Third, chapter eighty-four, or of any other marriages there solemnised, of which it may appear to the said Governor-General in Council desirable that evidence should be transmitted to England, and to provide for the care and custody of the registers of such marriages, and for the transmission of certificates thereof to the Secretaries of the Governments of the respective Presidencies, or to other officers, and for their sending the same to the Secretary of the East India Company, for the purpose of being delivered to the Registrar-General of Births, Deaths, and Marriages in England, and also to provide for the authentication of such certificates.

*Certificates delivered to Registrar-General under this Act, or under any Laws or Regulations made thereunder, to be subject to the Provisions of*  
6 & 7 Will. IV. c. 86.

22. The certificates which shall be delivered to the Registrar-General of Births, Deaths, and Marriages in England, under this Act, or under any laws or regulations to be made thereunder, shall be kept in the General Register Office, in the same manner, and indexes thereof shall be made and searches permitted, and copies thereof, sealed or stamped with the seal of the General Register Office, shall be given in the like manner as by the Act of the Session holden in the sixth and seventh years of King William the Fourth, chapter eighty-six, is provided concerning the certified copies (kept in such office under the said Act) of the registers of births, deaths, and marriages in England; and every certified copy, purporting to be sealed or stamped with the seal of the said General Register Office, of any such certificate delivered to the said Registrar-General under this Act, or under such laws or regulations, shall be received as evidence of the marriage to which the same relates, without further proof of such certificate, or of any entry therein.

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## ADMISSION IN EVIDENCE OF COPIES OF DOCUMENTS.

(14 & 15 Vict. c. 99, Section 14.)

An Act to amend the Law of Evidence.

[7th August, 1851.]

*Examined or Certified Copies of Documents admissible in Evidence.*

14. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no Statute exists which renders its

contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any court of justice, or before any person now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted, and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding fourpence for every folio of ninety words.

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## ADMISSION IN EVIDENCE OF CERTIFICATES OF MARRIAGE IN SCOTLAND.

(17 & 18 Vict. c. 80, Section 58.)

An Act to provide for the better Registration of Births, Deaths, and Marriages in Scotland. [August, 1854.]

*Extracts of Entries to be admissible as Evidence.*

58. Every extract of any entry in the register books to be kept under the provisions of this Act, duly authenticated and signed by the Registrar-General, if such extract shall be from the registers kept at the General Registry Office, and by the registrar if from any parochial or district register, shall be admissible as evidence in all parts of Her Majesty's Dominions, without any other or further proof of such entry.

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## MATRIMONIAL CAUSES ACT, 1857.

(20 & 21 Vict. c. 85.)

An Act to amend the Law relating to Divorce and Matrimonial Causes in England. [28th August, 1857.]

**W**HEREAS it is expedient to amend the law relating to divorce and to constitute a court with exclusive jurisdiction in matters matrimonial in England, and with authority in certain cases to decree the dissolution of a marriage: Be it therefore enacted by

the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Commencement of Act.*

1. This Act shall come into operation on such day, not sooner than the 1st day of January, 1858, as Her Majesty shall by Order in Council appoint, provided that such order be made one month at least previously to the day so to be appointed.

*Jurisdiction in matters Matrimonial now rested in Ecclesiastical Courts to cease.*

2. As soon as this Act shall come into operation, all jurisdiction now exerciseable by any ecclesiastical court in England in respect of divorces *à mensâ et thoro*, suits of nullity of marriage, suits of jactitation of marriage, suits for restitution of conjugal rights, and in all causes, suits, and matters matrimonial, shall cease to be so exerciseable, except so far as relates to the granting of marriage licences, which may be granted as if this Act had not been passed.

*The Court may enforce Decrees or Orders made before this Act comes into operation.*

3. Any decree or order of an ecclesiastical court of competent jurisdiction which shall have been made before this Act comes into operation, in any cause or matter matrimonial, may be enforced or otherwise dealt with by the Court for Divorce and Matrimonial Causes hereinafter mentioned, in the same way as if it had been originally made by the said court under this Act.

*As to Suits pending when this Act comes into operation.*

4. All suits and proceedings in causes and matters matrimonial which at the time when this Act comes into operation shall be pending in any ecclesiastical court in England shall be transferred to, dealt with, and decided by the said Court for Divorce and Matrimonial Causes as if the same had been originally instituted in the said court.

*Power to Judges whose Jurisdiction is determined to deliver Written Judgments.*

5. Provided that if at the time when this Act comes into operation any cause or matter which would be transferred to the said Court for Divorce and Matrimonial Causes under the enactment hereinbefore contained shall have been heard before any judge having jurisdiction in relation to such cause or matter, and be then standing for judgment, such judge may at any time within six weeks after the time when this Act comes into operation give in to one of the registrars attending the Court for Divorce and

Matrimonial Causes a written judgment thereon signed by him; and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment, and every such decree or order shall have the same force and effect as if it had been drawn up in pursuance of a judgment of the Court for Divorce and Matrimonial Causes on the day on which the same was delivered to the registrar, and shall be subject to appeal under this Act.

*Jurisdiction over Causes Matrimonial to be exercised by the Court for Divorce and Matrimonial Causes.*

6. As soon as this Act shall come into operation, all jurisdiction now vested in or exercisable by any ecclesiastical court or person in England in respect of divorces *à mensâ et thoro*, suits of nullity of marriage, suits for restitution of conjugal rights, or jactitation of marriage, and in all causes, suits, and matters matrimonial, except in respect of marriage licences, shall belong to and be vested in Her Majesty, and such jurisdiction, together with the jurisdiction conferred by this Act, shall be exercised in the name of Her Majesty in a court of record to be called "The Court for Divorce and Matrimonial Causes."

*No Decree for Divorce à mensâ et thoro to be made hereafter, but a Judicial Separation.*

7. No decree shall hereafter be made for a divorce *à mensâ et thoro*, but in all cases in which a decree for a divorce *à mensâ et thoro* might now be pronounced the court may pronounce a decree for a judicial separation, which shall have the same force and the same consequences as a divorce *à mensâ et thoro* now has.

*Judges of the Court.*<sup>1</sup>

8. The Lord Chancellor, the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, the Lord Chief Baron of the Court of Exchequer, the senior puisne judge for the time being in each of the three last-mentioned courts, and the judge of Her Majesty's Court of Probate constituted by any Act of the present Session, shall be the judges of the said court.

*Judge of the Court of Probate to be the Judge Ordinary, and shall have full authority &c.*

9. The judge of the Court of Probate shall be called the "judge ordinary" of the said court, and shall have full authority, either alone or with one or more of the other judges of the said

<sup>1</sup> See 22 & 23 Vict. c. 61, Sections 1 and 3.

court, to hear and determine all matters arising therein, except petitions for the dissolving of or annulling marriage, and applications for new trials or questions or issues before a jury, bills of exception, special verdicts, and special cases, and, except as aforesaid, may exercise all the powers and authority of the said Court.

*Petitions for Dissolution of a Marriage &c. to be heard by three Judges.<sup>1</sup>*

**10.** All petitions, either for the dissolution or for a sentence of nullity of marriage, and applications for new trials of questions or issues before a jury, shall be heard and determined by three or more judges of the said court, of whom the judge of the Court of Probate shall be one.

*Who to act as Judge during absence of the Judge Ordinary.*

**11.** During the temporary absence of the judge ordinary, the Lord Chancellor may by writing under his hand authorise the Master of the Rolls, the judge of the Admiralty Court, or either of the lords justices, or any vice-chancellor, or any judge of the superior courts of law at Westminster, to act as judge ordinary of the said Court for Divorce and Matrimonial Causes, and the Master of the Rolls, the judge of the Admiralty Court, lord justice, vice-chancellor, or judge of the superior courts, shall, when so acting, have and exercise all the jurisdiction, power, and authority which might have been exercised by the judge ordinary.

*Sittings of the Court.*

**12.** The Court for Divorce and Matrimonial Causes shall hold its sittings at such place or places in London or Middlesex or elsewhere as Her Majesty in Council shall from time to time appoint.

*Seal of the Court.*

**13.** The Lord Chancellor shall direct a seal to be made for the said court, and may direct the same to be broken, altered, and renewed at his discretion; and all decrees and orders, or copies of decrees or orders, of the said court, sealed with the said seal, shall be received in evidence.

*Powers of Officers of the Court increased by 21 & 22 Vict. c. 108, Section 4.*

**14.** The registrars and other officers of the principal registry of the Court of Probate shall attend the sittings of the Court for Divorce and Matrimonial Causes, and assist in the proceedings thereof, as shall be directed by the rules and orders under this Act.

<sup>1</sup> Altered by 23 & 24 Vict. c. 144, Sections 1 and 2.

*Power to Advocates, Barristers, &c., of Ecclesiastical and Superior Courts to Practise in the Court.*

15. All persons admitted to practice as advocates or proctors respectively in any ecclesiastical court in England, and all barristers, attornies, and solicitors entitled to practice in the superior courts at Westminster, shall be entitled to practice in the Court of Divorce and Matrimonial Causes; and such advocates and barristers shall have the same relative rank and precedence which they now have in the judicial committee of the privy council, unless and until Her Majesty shall otherwise order.

*Sentence of Judicial Separation may be obtained by Husband or Wife for Adultery &c.*

16. A sentence of judicial separation (which shall have the effect of a divorce *à mensâ et thoro* under the existing law, and such other legal effect as herein mentioned), may be obtained, either by the husband or the wife, on the ground of adultery, or cruelty, or desertion without cause for two years and upwards.

*Application for Restitution of Conjugal Rights or Judicial Separation may be made by Husband or Wife by Petition to Court &c.*

17. Application for restitution of conjugal rights, or for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the court, or to any judge of assize at the assizes held for the county in which the husband and wife reside or last resided together, and which judge of assize is hereby authorised and required to hear and determine such petition, according to the rules and regulations which shall be made under the authority of this Act; and the court or judge to which such petition is addressed, on being satisfied of the truth of the allegations therein contained, and that there is no legal ground why the same should not be granted, may decree such restitution of conjugal rights or judicial separation accordingly, and where the application is by the wife may make any order for alimony which shall be deemed just: Provided always that any judge of assize to whom such petition shall be presented may refer the same to any of Her Majesty's counsel or serjeant-at-law named in the commission of assize or *visi prius*, and such counsel or serjeant shall, for the purpose of deciding upon the matters of such petition, have all the powers that any such judge would have had by virtue of this Act or otherwise.

*Powers of Judges of Assize for purposes of deciding Applications under authority of this Act.<sup>1</sup>*

18. For the purpose of hearing and deciding all applications under the authority of this Act, the judge of assize or person

<sup>1</sup> Repealed by 21 & 22 Viet. c. 108, Section 19.

nominated by him as aforesaid shall be entitled to avail himself of the services of all officers, and use and exercise all powers and authorities, which the court of assize may employ, use, and exercise for the determination of causes and other matters now usually heard and decided by them respectively, and the said judge of assize or other person shall also for the purpose have and be entitled to exercise all the powers and authorities hereby given to the court for the hearing and deciding applications made to it, and also the powers hereby given to the court to make provision touching the custody, maintenance, and education of children; and every order made by any judge of assize or other person under the authority of this Act may, on the application of the person obtaining the same, be entered as an order of the court, and when so entered shall have the same force and effect, and be enforced in the same manner, as if such order had been originally made by the court.

*The Court to regulate Fees on proceedings before Judges &c.*<sup>1</sup>

19. The court shall from time to time fix and regulate the fees which shall be payable upon all proceedings under any application to a judge of assize under this Act; and such fees shall be received in money, for their own benefit, by the persons to whom or for whose use the same shall be directed to be paid.

*Orders may be Reviewed.*<sup>1</sup>

20. Any order so entered as aforesaid may be reviewed, and either altered or reversed on appeal to the judge ordinary of the court, but such appeal shall not stay the intermediate execution of the order, unless the judge ordinary shall so direct, who shall have power, if such appeal be dismissed or abandoned, to order the appellant to pay to the other party the full costs incurred by reason of such appeal.

*Wife deserted by her Husband may apply to a Police Magistrate or Justices in Petty Sessions for Protection.*<sup>2</sup>

21. A wife deserted by her husband may at any time after such desertion, if resident within the metropolitan district, apply to a police magistrate, or if resident in the country to justices in petty sessions, or in either case to the court, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her husband or his creditors, or any person claiming under him; and such magistrate or justices or court, if satisfied of the fact of such desertion, and that the

<sup>1</sup> Repealed by 21 & 22 Vict. c. 108, Section 19.

<sup>2</sup> See 21 & 22 Vict. c. 108, Sections 7, 8, 9, 10; also 27 & 28 Vict. c. 44, Section 1.

same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a *feme sole*: provided always that every such order, if made by a police magistrate, or justices at petty sessions, shall, within ten days after the making thereof, be entered with the Registrar of the County Court within whose jurisdiction the wife is resident; and that it shall be lawful for the husband and any creditor or other person claiming under him to apply to the court, or to the magistrate or justices by whom such order was made, for the discharge thereof: provided also that if the husband or any creditor or person claiming under the husband shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable at the suit of the wife (which she is hereby empowered to bring) to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid: if any such order of protection be made, the wife shall during the continuance thereof be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts, and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

*Court to act on Principles of the Ecclesiastical Courts.*

**22.** In all suits and proceedings, other than proceedings to dissolve any marriage, the said court shall proceed and act and give relief on principles and rules which in the opinion of the said court shall be as nearly as may be conformable to the principles and rules on which the ecclesiastical courts have heretofore acted and given relief, but subject to the provisions herein contained and to the rules and orders under this Act.

*Decree of Separation obtained during the absence of Husband or Wife may be reversed<sup>1</sup>*

**23.** Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the court praying for a reversal of such decree on the ground that it was obtained in his or her absence, and that there was reasonable ground for the alleged desertion, where desertion was the ground of such decree; and the court may, on being satisfied of the truth

<sup>1</sup> See also 21 & 22 Vict. c. 108, Section 8.



of the allegations of such petition, reverse the decree accordingly, but the reversal thereof shall not prejudice or affect the rights or remedies which any other person would have had in case such reversal had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

*Court may direct Payment of Alimony to Wife or to her Trustee.*

**24.** In all cases in which the court shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself or to any trustee on her behalf, to be approved by the court, and may impose any terms or restrictions which to the court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the court expedient so to do.

*In case of Judicial Separation the Wife to be considered a feme sole with respect to Property she may acquire &c.<sup>1</sup>*

**25.** In every case of a judicial separation the wife shall, from the date of the sentence and whilst the separation shall continue, be considered as a *feme sole* with respect to property of every description which she may acquire or which may come to or devolve upon her; and such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead: provided that, if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

*Also for Purposes of Contract and Suing.*

**26.** In every case of a judicial separation the wife shall, whilst so separated, be considered as a *feme sole* for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant: provided that where upon any such judicial separation alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessaries supplied for her use: provided also

<sup>1</sup> See also 21 & 22 Vict. c. 108, Section 7.

that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

*On Adultery of Wife or Incest &c. of Husband, Petition for Dissolution of Marriage may be presented.—As to “Incestuous Adultery.”*

27. It shall be lawful for any husband to present a petition to the said court, praying that his marriage may be dissolved, on the ground that his wife has since the celebration thereof been guilty of adultery: and it shall be lawful for any wife to present a petition to the said court, praying that her marriage may be dissolved on the ground that since the celebration thereof her husband has been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *à mensâ et thoro*, or of adultery coupled with desertion, without reasonable excuse, for two years or upwards; and every such petition shall state as distinctly as the nature of the case permits the facts on which the claim to have such marriage dissolved is founded: provided that, for the purposes of this Act, incestuous adultery shall be taken to mean adultery committed by a husband with a woman with whom if his wife were dead he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity or affinity; and bigamy shall be taken to mean marriage of any person, being married, to any other person during the life of the former husband or wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere.

*Adulterer to be a Co-respondent.—Cause may be tried by a Jury.*<sup>1</sup>

28. Upon any such petition presented by a husband the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless on special grounds, to be allowed by the court, he shall be excused from so doing; and on every petition presented by a wife for dissolution of marriage the court, if it see fit, may direct that the person with whom the husband is alleged to have committed adultery be made a respondent; and the parties or either of them may insist on having the contested matters of fact tried by a jury as hereinafter mentioned.

*Court to be satisfied of Absence of Collusion.*

29. Upon any such petition for the dissolution of a marriage, it shall be the duty of the court to satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether

<sup>1</sup> See also 21 & 22 Vict. c. 108, Section 11.

or no the petitioner has been in any manner accessory to or conniving at the adultery, or has condoned the same, and shall also inquire into any countercharge which may be made against the petitioner.

*Dismissal of Petition.*

**30.** In case the court, on the evidence in relation to any such petition, shall not be satisfied that the alleged adultery has been committed, or shall find that the petitioner has during the marriage been accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, then and in any of the said cases the court shall dismiss the said petition.

*Power to Court to Pronounce Decree for Dissolving Marriage.—Decree Nisi only in the First Instance.<sup>1</sup>*

**31.** In case the court shall be satisfied on the evidence that the case of the petitioner has been proved, and shall not find that the petitioner has been in any manner accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, then the court shall pronounce a decree declaring such marriage to be dissolved: provided always that the court shall not be bound to pronounce such decree if it shall find that the petitioner has during the marriage been guilty of adultery, or if the petitioner shall, in the opinion of the court, have been guilty of unreasonable delay in presenting or prosecuting such petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse, or of such wilful neglect or misconduct as has conducted to the adultery.

*Alimony.<sup>2</sup>*

**32.** The court may, if it shall think fit, on any such decree, order that the husband shall to the satisfaction of the court secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it shall deem reasonable, and for that purpose may refer it to any one of the conveyancing counsel of the Court of Chancery to settle and approve of a

<sup>1</sup>See 23 & 24 Viet. c. 144, Section 7.

<sup>2</sup>See also 29 & 30 Viet. c. 32, Section 1.

proper deed or instrument to be executed by all necessary parties; and the said court may in such case, if it shall see fit, suspend the pronouncing of its decree until such deed shall have been duly executed; and upon any petition for dissolution of marriage the court shall have the same power to make interim orders for payment of money by way of alimony or otherwise, to the wife, as it would have in a suit instituted for judicial separation.

*Husband may claim Damages from Adulterers.*

**33.** Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner, and such petition shall be served on the alleged adulterer and the wife, unless the court shall dispense with such service, or direct some other service to be substituted; and the claim made by every such petition shall be heard and tried on the same principles, in the same manner, and subject to the same or the like rules and regulations as actions for criminal conversation are now tried and decided in courts of common law; and all the enactments herein contained with reference to the hearing and decision of petitions to the court shall, so far as may be necessary, be deemed applicable to the hearing and decision of petitions presented under this enactment; and the damages to be recovered on any such petition shall in all cases be ascertained by the verdict of a jury, although the respondents or either of them may not appear; and after the verdict has been given the court shall have power to direct in what manner such damages shall be paid or applied, and to direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife.

*Power to Court to order Adulterer to pay Costs.*

**34.** Whenever in any petition presented by a husband the alleged adulterer shall have been made a co-respondent, and the adultery shall have been established, it shall be lawful for the court to order the adulterer to pay the whole or any part of the costs of the proceedings.

*Power to Court to make Orders as to Custody of Children.<sup>1</sup>*

**35.** In any suit or other proceeding for obtaining a judicial separation or a decree of nullity of marriage, and on any petition

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<sup>1</sup> Extended to after decree by 22 & 23 Viet. c. 61, Section 4.

for dissolving a marriage, the court may from time to time, before making its final decree, make such interim orders, and may make such provision in the final decree, as it may deem just and proper with respect to the custody, maintenance, and education of the children the marriage of whose parents is the subject of such suit or other proceeding, and may, if it shall think fit, direct proper proceedings to be taken for placing such children under the protection of the Court of Chancery.

*Questions of Fact may be Tried before the Court.*

**36.** In questions of fact arising in proceedings under this Act it shall be lawful for, but, except as hereinbefore provided, not obligatory upon, the court to direct the truth thereof to be determined before itself, or before any one or more of the judges of the said court, by the verdict of a special or common jury.

*Where a Question is ordered to be Tried a Jury may be Summoned as in the Common Law Courts.—Rights to Challenge.*

**37.** The court, or any judge thereof, may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the superior courts of common law at Westminster, and may also make any other orders which to such court or judge may seem requisite; and every such jury shall consist of persons possessing the like qualifications, and shall be struck, summoned, balloted for, and called in like manner, as if such jury were a jury for the trial of any cause in any of the said superior courts; and every juryman so summoned shall be entitled to the same rights, and subject to the same duties and liabilities, duly as if he had been summoned for the trial of any such cause in any of the said superior courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause.

*Such Question to be reduced into Writing, and a Jury to be sworn to Try it, Judge to have same Powers as at nisi prius.*

**38.** When any such question shall be so ordered to be tried such question shall be reduced into writing in such form as the court shall direct, and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence; and upon every such trial the court or judge shall have the same powers, jurisdiction, and authority as any judge of any of the said superior courts sitting at *nisi prius*.

*Bill of Exceptions, Special Verdict, and Special Case.*

**39.** Upon the trial of any such question or of any issue under this Act a bill of exceptions may be tendered, and a general or special verdict or verdicts, subject to a special case, may be returned, in like manner as in any cause tried in any of the said superior courts; and every such bill of exceptions, special verdict, and special case respectively shall be stated, settled, and sealed in like manner as in any cause tried in any of the said superior courts, and where the trial shall not have been had in the Court for Divorce and Matrimonial Causes shall be returned into such court without any writ of error or other writ; and the matter of law in every such bill of exceptions, special verdict, and special case shall be heard and determined by the full courts, subject to such right of appeal as is hereinafter given in other cases.

*Court may direct Issues to try any Fact.*

**40.** It shall be lawful for the court to direct one or more issue or issues to be tried in any court of common law, and either before a judge of assize in any county or at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, in like manner as is now done by the Court of Chancery.

*Affidavit in Support of a Petition.*

**41.** Every person seeking a decree of nullity of marriage, or a decree of judicial separation, or a dissolution of marriage, or decree in a suit of jactitation of marriage, shall, together with the petition or other application for the same, file an affidavit verifying the same so far as he or she is able to do so, and stating that there is not any collusion or connivance between the deponent and the other party to the marriage.

*Service of Petition.*

**42.** Every such petition shall be served on the party to be affected thereby, either within or without Her Majesty's dominions, in such manner as the court shall by any general or special order from time to time direct, and for that purpose the court shall have all the powers conferred by any statute on the Court of Chancery: Provided always that the said court may dispense with such service altogether in case it shall seem necessary or expedient so to do.

*Examination of Petitioner.*

**43.** The court may, if it shall think fit, order the attendance of the petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of any petition, but no such petitioner shall be bound to answer any question tending to show that he or she has been guilty of adultery.

*Adjournment.*

**44.** The court may from time to time adjourn the hearing of any such petition, and may require further evidence thereon, if it shall see fit so to do.

*Court may Order Settlement of Property for Benefit of Innocent Party and Children of Marriage.<sup>1</sup>*

**45.** In any case in which the court shall pronounce a sentence of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the court that the wife is entitled to any property, either in possession or reversion, it shall be lawful for the court if it shall think proper to order such settlement as it shall think reasonable to be made of such property, or any part thereof, for the benefit of the innocent party, and of the children of the marriage, or either or any of them.

*Mode of taking Evidence.*

**46.** Subject to such rules and regulations as may be established as herein provided, the witnesses in all proceedings before the court, where their attendance can be had, shall be sworn and examined orally in open court: Provided that parties, except as hereinbefore provided, shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party or by direction of the court, be subject to be cross-examined by or on behalf of the opposite party orally in open court, and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

*Court may issue Commissions or give Orders for Examination of Witnesses Abroad or unable to attend.*

**47.** Provided that where a witness is out of the jurisdiction of the court, or where, by reason of his illness or from other circumstances, the court shall not think fit to enforce the attendance of the witness in open court, it shall be lawful for the court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said court, or other person to be named in such order for the purpose: and all the powers given to the courts of law at Westminster by the acts of the thirteenth year of King George the Third, chapter sixty-three, and of the first year of

<sup>1</sup> See 22 & 23 Vict. c. 61, Section 5, and 23 & 24 Vict. c. 144, Section 6.

King William the Fourth, chapter twenty-two, for enabling the courts of law at Westminster to issue commissions and give orders for the examination of witnesses in actions depending in such courts, and to enforce such examination, and all the provisions of the said Acts, and of any other Acts for enforcing or otherwise applicable to such examination and the witnesses examined, shall extend and be applicable to the court and to the examination of witnesses under the commissions and orders of the said court, and to the witnesses examined, as if such court were one of the courts of law at Westminster, and the matter before it were an action pending in such court.

*Rules of Evidence in Common Law Courts to be observed.*

48. The rules of evidence observed in the superior courts of common law at Westminster shall be applicable to and observed in the trial of all questions of fact in the court.

*Attendances of Witnesses on the Court.*

49. The court may, under its seal, issue writs of subpoena or subpoena *duces tecum*, commanding the attendance of witnesses at such time and place as shall be therein expressed: and such writs may be served in any part of Great Britain or Ireland: and every person served with such writ shall be bound to attend, and to be sworn and give evidence in obedience thereto, in the same manner as if it had been a writ of subpoena or subpoena *duces tecum* issued from any of the said superior courts of common law in a cause pending therein, and served in Great Britain or Ireland, as the case may be: Provided that any petitioner required to be examined, or any person called as a witness or required or desiring to make an affidavit or deposition under or for the purposes of this Act, shall be permitted to make his solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would be permitted so to do under The Common Law Procedure Act, 1854, in cases within the provisions of that Act.

*Penalties for False Evidence.*

50. All persons wilfully deposing or affirming falsely in any proceeding before the court shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attached thereto.



*Costs.*

**51.** The court on the hearing of any suit, proceeding, or petition under this Act, and the House of Lords on the hearing of any appeal under this Act, may make such order as to costs as to such court or house respectively may seem just: Provided always that there shall be no appeal on the subject of costs only.

*Enforcement of Orders and Decrees.*

**52.** All decrees and orders to be made by the court in any suit, proceeding, or petition to be instituted under authority of this Act shall be enforced and put in execution in the same or the like manner as the judgments, orders, and decrees of the High Court of Chancery may be now enforced and put in execution.

*Power to make Rules &c. for Procedure, and to alter them from time to time.*

**53.** The court shall make such rules and regulations concerning the practice and procedure under this Act as it may from time to time consider expedient, and shall have full power from time to time to revoke or alter the same.

<sup>o</sup> *Fees to be Regulated.*

**54.** The court shall have full power to fix and regulate from time to time the fees payable upon all proceedings before it, all which fees shall be received, paid, and applied as herein directed: Provided always that the said court may make such rules and regulations as it may deem necessary and expedient for enabling persons to sue in the said court *in formâ pauperis*.

*Appeal from the Judge Ordinary to the Full Court.*

**55.** Either party dissatisfied with any decision of the court in any matter which, according to the provisions aforesaid, may be made by the judge ordinary alone, may, within three calendar months after the pronouncing thereof, appeal therefrom to the full court, whose decision shall be final.

*Appeal to the House of Lords in case of Petition for Dissolution of a Marriage.<sup>1</sup>*

**56.** Either party dissatisfied with the decision of a full court on any petition for the dissolution of a marriage may, within three months after the pronouncing thereof, appeal therefrom to

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<sup>1</sup> Repealed by 31 & 32 Vict. c. 77, Section 2.

the House of Lords if Parliament be then sitting, or if Parliament be not sitting at the end of such three months, then within fourteen days next after its meeting; and on the hearing of any such appeal, the House of Lords may either dismiss the appeal or reverse the decree, or remit the case to the court, to be dealt with in all respects as the House of Lords shall direct.

*Liberty to Parties to Marry again.—No Clergyman compelled to Solemnise certain Marriages.<sup>1</sup>*

57. When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death: Provided always that no clergyman in holy orders of the United Church of England and Ireland shall be compelled to solemnise the marriage of any person whose former marriage may have been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnising or refusing to solemnise the marriage of any such person.

*If Minister of any Church &c. refuses to perform Marriage Ceremony, any other Minister may perform such Service.*

58. Provided always that when any minister of any church or chapel of the United Church of England and Ireland shall refuse to perform such marriage service between any persons who but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in holy orders of the said united church, entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage service in such church or chapel.

*No action in England for Criminal Conversation.*

59. After this Act shall have come into operation no action shall be maintainable in England for criminal conversation.

*All Fees, except as herein provided, to be collected by Stamps.*

60. None of the fees payable under this Act, except as herein expressly provided, shall be received in money, but every such fee shall be collected and received by a stamp denoting the

<sup>1</sup> See 31 & 32 Vict. c. 77, Section 4.

amount of the fee which would otherwise be payable; and the fees to be so collected by stamps shall be "stamp duties," and be under the management of the Commissioners of Inland Revenue.

*Provisions concerning Stamps for the Court of Probate to be applicable to the purposes of this Act.*

**61.** The provisions contained in or referred to by an Act of the present Session of Parliament, "to amend the laws relating to probates and letters of administration in England," and applicable to the collection and payment and accounts of the fees to be received thereunder by means of stamps, and to such stamps, and the vellum, parchment, or paper on or to which the same shall be impressed or affixed, and in relation to documents which ought to have stamps impressed thereon or affixed thereto, and to the punishment of persons for such wrongful acts as therein mentioned in relation to stamps, or fees, or sums of money which ought to be collected by means of stamps, shall be applicable to and for the purposes of this Act, as if such provisions as aforesaid had been contained or referred to in this Act with reference to the like matters, and the court under this Act had been mentioned, instead of the Court of Probate, or the judge thereof, as the case may be.

*Expenses of the Court to be paid out of Monies to be provided by Parliament.*

**62.** It shall be lawful for the Commissioners of Her Majesty's Treasury, out of such monies as may be provided by and appropriated by Parliament for the purpose, to cause to be paid all necessary expenses of the court, under this Act, and other expenses which may be incurred in carrying the provisions of this Act into effect, except as herein otherwise provided.

*Stamp Duty on Admission of Proctors, and Annual Certificates.*

**63.** The same amount of stamp duty as is now payable on the admission of a proctor to any ecclesiastical court shall be payable by every person to be admitted as a proctor in the Court of Divorce and Matrimonial Causes, or in the Court of Probate, who shall not have been previously admitted as a proctor in the other of such courts, or in any ecclesiastical or admiralty court, and have paid the stamp duty in respect thereof; and every person who shall practise as a proctor or as a solicitor or attorney in the said Court of Divorce and Matrimonial Causes, or the said Court of Probate, shall obtain an annual certificate to authorise him so to do, under the Stamp Duty Acts, in the same manner as proctors practising in the ecclesiastical or admiralty courts, and solicitors and attorneys practising in Her Majesty's Courts at Westminster,

are now required to do by the said Acts or any of them, and shall be subject and liable to the same penalties and disabilities in case of any neglect to obtain such certificates as such proctors, attornies, and solicitors are now subject and liable to for any similar neglect, and as if the clause and provisions of the said Acts in relation to such certificates had been inserted in this Act, and especially enacted in reference to proctors, solicitors, and attornies practising in the said Court of Divorce and Matrimonial Causes and Court of Probate, provided that one annual certificate only shall be required for any one person, although he may practise in more than one of the capacities aforesaid, or in several of the courts hereinbefore mentioned.

*Compensation to Proctors.*

**64.** Every person who at the time of the passing of this Act has been duly admitted and is practising as a proctor in any ecclesiastical court in England shall, at the expiration of two years from and after the commencement of this Act, be entitled to make a claim for compensation to the Commissioners of Her Majesty's Treasury; and the said commissioners, by examination of evidence on oath (which they are hereby empowered to administer), or otherwise as they shall think fit, shall inquire into and ascertain the loss, if any, of professional gains and profits in respect of suits relating to marriage and divorce sustained by such proctors respectively, upon a comparison in each case of the average clear gains of the three years immediately before the commencement of this Act, arising from such last-mentioned business, and the average of the same gains during the two years immediately succeeding the commencement of this Act; and the said commissioners shall in each case, having regard to all the circumstances, award a reasonable compensation, by way of annuity, to the persons sustaining such loss, during their lives, but in no case shall such annuity exceed one half of the annual loss so ascertained as aforesaid; and such annuities shall be paid out of monies to be annually provided by Parliament for that purpose, and the persons receiving the same shall be subject to the provisions contained in the nineteenth section of the Act of fourth and fifth William the Fourth, chapter twenty-four.

*As to Salary of Judge of Court of Probate, if appointed Judge of Court of Divorce &c.*

**65.** In case the judge of the Court of Probate established by any Act passed during the present Session shall be appointed judge ordinary of the Court for Divorce and Matrimonial Causes, the salary of such judge shall be the sum of five thousand pounds per annum; but such judge, if afterwards appointed judge of the Admiralty Court, shall not be entitled to any increase of salary.

*Power to Secretary of State to order all Letters Patent, Records, &c. to be transmitted from all Ecclesiastical Courts.—Penalty on Disobeying such Order.*

**66.** Any one of Her Majesty's Principal Secretaries of State may order every judge, registrar, or other officer of any ecclesiastical court in England or the Isle of Man, or any other person having the public custody of or control over any letters patent, records, deeds, processes, acts, proceedings, books, documents, or other instrument relating to marriages, or to suits for divorce, nullity of marriage, restitution of conjugal rights, or to any other matters or causes matrimonial, except marriage licences, to transmit the same, at such times and in such manner, to such places in London or Westminster, and under such regulations, as the said Secretary of State may appoint; and if any judge, registrar, officer, or other person shall wilfully disobey such order, he shall for the first offence forfeit the sum of one hundred pounds, to be recoverable by any registrar of the Court of Probate as a debt under this Act in any of the superior courts at Westminster, and for the second and subsequent offences the judge ordinary may commit the person so offending to prison for any period not exceeding three calendar months, provided that the warrant of committal be countersigned by one of Her Majesty's Principal Secretaries of State, and the said persons so offending shall forfeit all claim to compensation under this Act.

*Rules &c. to be laid before Parliament.*

**67.** All rules and regulations concerning practice or procedure, or fixing or regulating fees, which may be made by the court under this Act, shall be laid before both Houses of Parliament within one month after the making thereof, if Parliament be then sitting, or if Parliament be not then sitting within one month after the commencement of the then next Session of Parliament.

*Yearly Account of Fees &c. to be laid before Parliament.*

**68.** The judge ordinary of the Court for Divorce and Matrimonial Causes for the time being shall cause to be prepared in each year ending 31st December a return of all fees and monies levied in such year on account of the fee fund of the Court of Divorce and Matrimonial Causes, and of any other fund under the authority of this Act; also a return of the annual salaries of the said judge ordinary, and of all persons holding offices in the said court, with all the incidental expenses of the said court, whether the salaries and incidental expenses aforesaid be defrayed out of fees or out of any other monies; also, a return of all superannuations, pensions, annuities, retiring allowances, and compensations made payable under this Act, in each year, stating the gross amount, and the amount in detail, of such changes: Provided always that all such

returns as aforesaid shall be presented to both Houses of Parliament on or before the 31st March in each year, if Parliament is then sitting, and if Parliament is not sitting then such returns shall be presented within one month of the first meeting of Parliament after the 31st March in each year.

## LEGITIMACY DECLARATION ACT, 1858.

(21 & 22 Vict. c. 93.)

An Act to enable Persons to establish Legitimacy and the Validity of Marriages, and the right to be deemed Natural-born Subjects.

[2nd August, 1858.]

WHEREAS it is expedient to enable persons to establish their legitimacy, and the marriage of their parents and others from whom they may be descended, and also to enable persons to establish their right to be deemed natural-born subjects: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Application to Court for Divorce and Matrimonial Causes for Declaration of Legitimacy or Validity or Invalidity of Marriage.*

1. Any natural-born subject of the Queen, or any person whose right to be deemed a natural-born subject depends wholly or in part on his legitimacy or on the validity of a marriage, being domiciled in England or Ireland, or claiming any real or personal estate situate in England, may apply by petition to the Court for Divorce and Matrimonial Causes, praying the court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring either of the matters aforesaid; and any such subject or person, being so domiciled or claiming as aforesaid, may in like manner apply to such court for a decree declaring that his marriage was or is a valid marriage, and such court shall have jurisdiction to hear and determine such application and to make such decree declaratory of the legitimacy or illegitimacy of such person, or of the validity or invalidity of such marriage, as to the court may seem just; and such decree, except as hereinafter mentioned, shall be binding to all intents and purposes on Her Majesty and on all persons whomsoever.

*Application to Court for Declaration of Right to be deemed a Natural-born Subject.*

2. Any person, being so domiciled or claiming as aforesaid, may apply by petition to the said court for a decree declaratory of his right to be deemed a natural-born subject of Her Majesty, and the said court shall have jurisdiction to hear and determine such application, and to make such decree thereon as to the court may seem just, and where such application as last aforesaid is made by the person making such application as herein mentioned for a decree declaring his legitimacy or the validity of a marriage, both applications may be included in the same petition; and every decree made by the said court shall, except as hereinafter mentioned, be valid and binding to all intents and purposes upon Her Majesty and all persons whomsoever.

*Petition to be accompanied by Affidavit.*

3. Every petition under this Act shall be accompanied by such affidavit verifying the same, and of the absence of collusion, as the court may by any general rule direct.

*20 & 21 Vict. c. 85 to apply to Proceedings under this Act.*

4. All the provisions of the Act of the last Session, chapter eighty-five, so far as the same may be applicable, and the powers and provisions therein contained in relation to the making and laying before Parliament of rules and regulations concerning the practice and procedure under that Act, and fixing the fees payable upon proceedings before the court, shall extend to applications and proceedings in the said court under this Act, as if the same had been authorised by the said Act of the last Session.

*Power to Award and Enforce payment of Costs.*

5. In all proceedings under this Act the court shall have full power to award and enforce payment of costs to any person cited, whether such person shall or shall not oppose the declaration applied for, in case the said court shall deem it reasonable that such costs shall be paid.

*Attorney-General to have a Copy of Petition one month before it is filed, and to be Respondent.*

6. A copy of every petition under this Act, and of the affidavit accompanying the same, shall, one month at least previously to the presentation or filing of such petition, be delivered to Her Majesty's Attorney-General, who shall be a respondent upon the hearing of such petition and upon every subsequent proceeding relating hereto.

*Court may require Persons to be Cited.*

7. Where any application is made under this Act to the said court such person or persons (if any) besides the said Attorney-General as the court shall think fit shall, subject to the rules made under this Act, be cited to see proceedings or otherwise summoned in such manner as the court shall direct, and may be permitted to become parties to the proceedings and oppose the application.

*Saving for Rights of Persons not Cited.*

8. The decree of the said court shall not in any case prejudice any person, unless such person has been cited or made a party to the proceedings or is the heir-at-law or next-of-kin, or other real or personal representative of or derives title under or through a person so cited or made a party; nor shall such sentence or decree of the court prejudice any person if subsequently proved to have been obtained by fraud or collusion.

*Person domiciled in Scotland may insist, on an action of Declarator, that he is a Natural-born Subject.*

9. Any person domiciled in Scotland, or claiming any heritable or moveable property situate in Scotland, may raise and insist, in an action of declarator before the Court of Session, for the purpose of having it found and declared that he is entitled to be deemed a natural-born subject of Her Majesty; and the said court shall have jurisdiction to hear and determine such action of declarator, in the same manner and to the same effect, and with the same power to award expenses, as they have in declarators of legitimacy and declarators of bastardy.

*No Proceedings to affect Final Judgments &c. already Pronounced.*

10. No proceeding to be had under this Act shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

*Acts to be read together. Short Title.*

11. The said Act of the last Session and this Act shall be construed together as one Act; and this Act may be cited for all purposes as "The Legitimacy Declaration Act, 1858."



**MATRIMONIAL CAUSES AMENDMENT ACT, 1858.**

(21 & 22 Vict. c. 108.)

An Act to amend the Act of the Twentieth and Twenty-first Victoria,  
Chapter Eighty-five. [2nd August, 1858.]

**W**HEREAS in the last Session of Parliament an Act was passed, intituled "An Act to amend the Law relating to Divorce and Matrimonial Causes in England"<sup>1</sup>; And whereas it is expedient to amend the same: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*The Judge Ordinary of the Court for Divorce and Matrimonial Causes  
may sit in Chambers.*

1. It shall be lawful for the judge ordinary of the Court for Divorce and Matrimonial Causes for the time being to sit in chambers for the despatch of such part of the business of the said court as can in the opinion of the said judge ordinary, with advantage to the suitors, be heard in chambers; and such sittings shall from time to time be appointed by the said judge ordinary.

*The Treasury to cause Chambers to be Provided.*

2. The Commissioners of Her Majesty's Treasury shall from time to time provide chambers in which the said judge ordinary shall sit for the despatch of such business as aforesaid, and until such chambers are provided the said judge ordinary shall sit in chambers in any room which he may find convenient for the purpose.

*Powers of Judge when sitting in Chambers.*

3. The said judge ordinary when so sitting in chambers shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open court.

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<sup>1</sup> 20 & 21 Vict. c. 85.

*The Registrars to do all acts heretofore done by Surrogates.*

4. The registrars of the principal registry of the Court of Probate shall be invested with and shall and may exercise with reference to proceedings in the Court for Divorce and Matrimonial Causes the same power and authority which surrogates of the official principal of the Court of Arches could or might before the passing of the twentieth and twenty-first Victoria, chapter seventy-seven, have exercised in chambers with reference to proceedings in that court.

*Evidence on which Divorce obtained prior to 20 & 21 Vict. c. 85 may be used in support of Petition in the Court for Divorce and Matrimonial Causes.*

5. In every cause in which a sentence of divorce and separation from bed, board, and mutual cohabitation has been given by a competent ecclesiastical court before the Act of the twentieth and twenty-first Victoria, chapter eighty-five, came into operation, the evidence in the cause in which such sentence was pronounced in such ecclesiastical court may, whenever from the death of a witness or from any other cause it may appear to the court reasonable and proper, be received on the hearing of any petition which may be presented to the said Court for Divorce and Matrimonial Causes.

*Wives deserted by their Husbands may apply to the Judge for an Order to protect Property &c. acquired by them.*

6. Every wife deserted by her husband, wheresoever resident in England, may, at any time after such desertion, apply to the said judge ordinary for an order to protect any money or property in England she may have acquired or may acquire by her own lawful industry, and any property she may have become possessed of or may become possessed of after such desertion, against her husband and his creditors, and any person claiming under him; and the judge ordinary shall exercise in respect of every such application all the powers conferred upon the Court for Divorce and Matrimonial Causes under the twentieth and twenty-first Victoria, chapter eighty-five, section twenty-one.

*Provisions respecting Property of Wife to extend to Property vested in her as Executrix &c.*

7. The provisions contained in this Act and in the said Act of the twentieth and twenty-first Victoria, chapter eighty-five, respecting the property of a wife who has obtained a decree for judicial separation or an order for protection shall be deemed to extend to property to which such wife has become or shall become entitled as executrix, administratrix, or trustee since the sentence

of separation or the commencement of the desertion (as the case may be); and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

*Order for Protection of Earnings &c. of Wife to be deemed valid.*

8. In every case in which a wife shall under this Act or under the said Act of the twentieth and twenty-first Victoria, chapter eighty-five, have obtained an order to protect her earnings or property, or a decree for judicial separation, such order or decree shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal with the wife, be deemed valid and effectual; and no discharge, variation, or reversal of such order or decree shall prejudice or affect any rights or remedies which any person would have had in case the same had not been so reversed, varied, or discharged in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the making such order or decree and of the discharge, variation, or reversal thereof; and property of or to which the wife is possessed or entitled for an estate in remainder or reversion at the date of the desertion or decree (as the case may be) shall be deemed to be included in the protection given by the order or decree.

*Order to state the Time at which the Desertion commenced.*

9. Every order which shall be obtained by a wife under the said Act of the twentieth and twenty-first Victoria, chapter eighty-five, or under this Act, for the protection of her earnings or property, shall state the time at which the desertion in consequence whereof the order is made commenced: and the order shall, as regards all persons dealing with such wife in reliance thereon, be conclusive as to the time when such desertion commenced.

*Indemnity to Corporations &c. making Payments under Orders afterwards Reversed.*

10. All persons and corporations who shall in reliance on any such order or decree as aforesaid, make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same, shall, notwithstanding such order or decree may then have been discharged, reversed, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the order or decree been discontinued, be protected and indemnified in the same way in all respects as if, at the time of such payment, transfer, or other act, such order or decree were valid and still subsisting without variation in full

force and effect, and the separation of the wife from her husband had not ceased or been discontinued, unless at the time of such payment, transfer, or other act such persons or corporations had notice of the discharge, reversal, or variation of such order or decree, or of the cessation or discontinuance of such separation.

*Where alleged Adulterer a Co-respondent, Court may order him to be Dismissed from the Suit.*

11. In all cases now pending, or hereafter to be commenced, in which, on the petition of a husband for a divorce, the alleged adulterer is made a co-respondent, or in which, on the petition of a wife, the person with whom the husband is alleged to have committed adultery is made a respondent, it shall be lawful for the court, after the close of the evidence on the part of the petitioner, to direct such co-respondent or respondent to be dismissed from the suit, if it shall think there is not sufficient evidence against him or her.

*Persons who administer Oaths under 20 & 21 Vict. c. 77 to administer under 20 & 21 Vict. c. 85.*

12. Registrars, surrogates, commissioners for taking oaths in the Court of Chancery, and all other persons now or hereafter authorised to administer oaths under the Act of the twentieth and twenty-first Victoria, chapter seventy-seven, or under this Act, shall have power to administer oaths under the Act of the twentieth and twenty-first Victoria, chapter eighty-five.

*Bills of Proctors, Attornies, &c., to be subject to Taxation.*

13. The bill of any proctor, attorney, or solicitor, for any fees, charges, or disbursements in respect of any business transacted in the Court for Divorce and Matrimonial Causes, and whether the same was transacted before the full court or before the judge ordinary, shall, as well between proctor or attorney or solicitor and client, as between party and party, be subject to taxation by any one of the registrars belonging to the principal registry of the Court of Probate, and the mode in which any such bill shall be referred for taxation, and by whom the costs of taxation shall be paid, shall be regulated by the rules and orders to be made under the Act of the twentieth and twenty-first of Victoria, chapter eighty-five, and the certificate of the registrar of the amount at which such bill is taxed shall be subject to appeal to the judge of the said court.

*Power to enforce Decree as to Costs.*

14. The judge ordinary of the Court for Divorce and Matrimonial Causes, and the registrars of the principal registry of the Court of

Probate, shall respectively, in any case where an ecclesiastical court having matrimonial jurisdiction had, previously to the commencement of the Act of the twentieth and twenty-first Victoria, chapter eighty-five, made any order or decree in respect of costs, have the same power of taking such costs, and enforcing payment thereof, or of otherwise carrying such order or decree into effect, as if the cause wherein such decree was made had been originally commenced and prosecuted in the said Court for Divorce and Matrimonial Causes: Provided that in taxing any such costs, or any other costs incurred in causes depending in any ecclesiastical court previously to the commencement of the said recited Act, all fees, charges, and expenses shall be allowed which might have been legally made, charged, and enforced according to the practice of the Court of Arches.

*Judge to exercise Power and Authority over Proctors &c.*

15. The judge ordinary of the Court for Divorce and Matrimonial Causes shall have and exercise, over proctors, solicitors, and attornies practising in the said court, the like authority and control as is now exercised by the judges of any court of equity or of common law over persons practising therein as proctors, solicitors, or attornies.

*Commissioners may be appointed in the Isle of Man &c.*

16. It shall be lawful for the judge ordinary of the Court for Divorce and Matrimonial Causes to appoint, by commission under seal of the court, any persons practising as solicitors in the Isle of Man, in the Channel Islands, or any of them, to administer oaths and to take declarations or affirmations to be used in the said court; and such persons shall be entitled from time to time to charge and take such fees as any other persons performing the same duties in the Court for Divorce and Matrimonial Causes may charge and take.

*Appeal in cases of Nullity of Marriage to lie to the House of Lords.<sup>1</sup>*

17. Whereas doubts may be entertained whether the right of appeal given by the Act of the twentieth and twenty-first Victoria, chapter eighty-five, section fifty-six, extends to sentences on petitions for nullity of marriage: Be it enacted and declared that either party dissatisfied with any such sentence may appeal therefrom in the same manner, within the same time, and subject to the same regulations as affect appeals against sentences on petitions for the dissolution of marriage.

<sup>1</sup> Repealed by 31 & 32 Vict. c. 77, Section 2.

*Judge Ordinary may grant Rule nisi for New Trial &c.*

18. Where any trial shall have been had by a jury before the full court or before the judge ordinary, or upon any issue directed by the full court or by the judge ordinary, it shall be lawful for the judge ordinary, subject to any rules to be hereafter made, to grant a rule *nisi* for a new trial, but no such rule shall be made absolute except by the full court.

*So much of 20 & 21 Vict. c. 85 as to applications to Judges of Assize repealed.*

19. So much of the Act of the twentieth and twenty-first Victoria, chapter eighty-five, as authorises application to be made for restitution of conjugal rights, or for judicial separation by petition to any judge of assize, and as relates to the proceedings on such petition, shall be and the same is hereby repealed.

*Remainder of Act repealed by 52 Vict. c. 10.*

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## MATRIMONIAL CAUSES AMENDMENT ACT, 1859.

*(22 & 23 Vict. c. 61.)*

An Act to make further Provision concerning the Court for Divorce and Matrimonial Causes. [13th August, 1859.]

WHEREAS it is expedient to make further provision concerning "The Court for Divorce and Matrimonial Causes," established by the Act of the Session holden in the twentieth and twenty-first years of Her Majesty, chapter eighty-five: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Judges of the Queen's Bench &c. to be Judges of the Court for Divorce.*

1. In addition to the judges mentioned in section eight of the said Act, all the judges for the time being of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, not already made judges of the Court for Divorce and Matrimonial Causes, shall be judges of such court.

*Judge Ordinary and eight of the other Judges to appoint the Sittings of the full Court.*

2. The judge ordinary of the said court, and eight or more of the other judges thereof, shall, from time to time, by general orders for this purpose, appoint so many sittings of the full court in every year, and at such times as may appear to them necessary or convenient for disposing of the matters arising in the said court which may not be heard and determined by the judge ordinary alone; and the judges of the said court shall, by a rota or otherwise as they may deem most convenient, make provision for the attendance of the requisite number of judges to make a full court at the times so appointed for the sittings of the full court.

*Precedence of the Judge Ordinary.*

3. The judge ordinary shall have place and precedence in the said court next after the Lord Chief Baron of Her Majesty's Court of Exchequer.

*The Court may make Orders as to Custody of Children after a final Decree of Separation.<sup>1</sup>*

4. The court after a final decree of judicial separation, nullity of marriage, or dissolution of marriage, may upon application (by petition) for this purpose make, from time to time all such orders and provisions with respect to the custody, maintenance, and education of the children the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the Court of Chancery, as might have been made by such final decree or by interim orders in case the proceedings for obtaining such decree were still pending; and all orders under this enactment may be made by the judge ordinary alone or with one or more of the other judges of the court.

*As to Marriage Settlements of Parties after final Decree of Nullity of Marriage.<sup>2</sup>*

5. The court after a final decree of nullity of marriage or dissolution of marriage may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage or of their respective parents as to the court shall seem fit.

<sup>1</sup> 20 & 21 Vict. c. 85.

<sup>2</sup> Extended by 41 Vict. c. 19, Section 3.

*On a Petition by Wife on account of Adultery &c. both Husband and Wife competent &c. to give Evidence.*

6. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

*Extension of Right of Appeal to House of Lords.*

7. The right of appeal to the House of Lords given by the fifty-sixth section of the recited Act shall extend to all sentences and final judgments on petitions under The Legitimacy Declaration Act, 1858.

## MATRIMONIAL CAUSES AMENDMENT ACT, 1860.

*(23 & 24 Vict. c. 111.)*

An Act to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes. [28th August, 1860.]

**B**E it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*The Judge Ordinary may exercise Powers now rested in the full Court.  
Judge Ordinary may call in the assistance of one of the other Judges.*

1. It shall be lawful for the judge ordinary of the Court for Divorce and Matrimonial Causes alone to hear and determine all matters arising in the said court, and to exercise all powers and authority whatever which may now be heard and determined and exercised respectively by the full court or by three or more judges of the said court, the judge ordinary being one, or where the judge ordinary shall deem it expedient, in relation to any matter which he might hear and determine alone by virtue of this Act, to have the assistance of one other judge of the said court, it shall be lawful for the judge ordinary to sit and act with such one other judge accordingly, and, in conjunction with such other judge, to exercise all the jurisdiction, powers, and authority of the said court.



*Judge may direct any matter to be heard by the Full Court.  
Appeal to the Full Court.*

2. Provided always that the judge ordinary may, where he shall deem it expedient, direct that any such matter as aforesaid shall be heard and determined by the full court; and in addition to the cases in which an appeal to the full court now lies from the decision of the judge ordinary, either party dissatisfied with the decision of such judge sitting alone in granting or refusing any application for a new trial which by virtue of this Act he is empowered to hear and determine may, within fourteen days after the pronouncing thereof, appeal to the full court, whose decision shall be final.

*Appeal to the House of Lords: Repealed by 31 & 32 Vict. c. 77, Section 2.*

3. Where there is a right of appeal to the House of Lords from the decision of the full court, there shall be the like right of appeal to the said House from the decision of the judge ordinary alone, or with any other judge, under this Act.

*Regulation of the Sittings of the Full Court.*

4. The sittings of the full court shall be holden during the seventh and five following days of sitting in each term, and on such other days as the judge ordinary, with the assent of the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of the Exchequer, shall from time to time appoint; and the judges of the Courts of Queen's Bench, Common Pleas, and Exchequer shall, by a rota or otherwise, as they deem most convenient, make provision for the attendance of the requisite number of such judges to make with the judge ordinary a full court during such sittings; and section two of the Act of the last Session of Parliament, chapter sixty-one, shall be repealed.

*Court may, where one Party only appears, require Counsel to be appointed  
to argue on the other side.*

5. In every case of a petition for a dissolution of marriage it shall be lawful for the court, if it shall see fit, to direct all necessary papers in the matter to be sent to Her Majesty's proctor, who shall, under the directions of the Attorney-General, instruct counsel to argue before the court any question in relation to such matter, and which the court may deem it necessary or expedient to have fully argued; and Her Majesty's proctor shall be entitled to charge and be reimbursed the cost of such proceeding as part of the expense of his office.

*20 & 21 Vict. c. 85, Section 45, amended.*

6. And whereas by section forty-five of the Act of the Session holden in the twentieth and twenty-first years of Her Majesty, chapter eighty-five, it was enacted, that "in any case in which the court should pronounce a sentence of divorce or judicial separation for adultery of the wife, if it should be made appear to the court that the wife was entitled to any property, either in possession or reversion, it should be lawful for the court, if it should think proper, to order such settlement as it should think reasonable to be made of such property, or any part thereof, for the benefit of the innocent party and of the children of the marriage, or either of them": Be it further enacted that any instrument executed pursuant to any order of the court made under the said enactment before or after the passing of this Act, at the time of or after the pronouncing of a final decree of divorce or judicial separation, shall be deemed valid and effectual in the law, notwithstanding the existence of the disability of coverture at the time of the execution thereof.

*Decrees.—Collusion.*

7. Every decree for a divorce shall in the first instance be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than three months<sup>1</sup> from the pronouncing thereof, as the court shall by general or special order from time to time direct; and during that period *any person shall be at liberty*, in such manner as the court shall by general or special order<sup>2</sup> in that behalf from time to time direct, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not brought before the court; and, on cause being so shown, the court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may require; and at any time during the progress of the cause or before the decree is made absolute any person may give information to Her Majesty's proctor of any matter material to the due decision of the case, who may thereupon take such steps as the Attorney-General may deem necessary or expedient; and if from any such information or otherwise the said proctor shall suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case, he may, under the direction of the Attorney-General, and by leave of the court, intervene in the

<sup>1</sup> Now six months (29 & 30 Vict. c. 32, Section 3).

<sup>2</sup> Extended to decrees and suits for *nullity* by 36 Vict. c. 31, Section 1.

suit, alleging such case of *collusion*, and retain counsel and subpoena witnesses to prove it; and it shall be lawful for the court to order the costs of such counsel and witnesses, and otherwise, arising from such intervention, to be paid by the parties or such of them as it shall see fit, including a wife if she have separate property; and in case the said proctor shall not thereby be fully satisfied his reasonable costs, he shall be entitled to charge and be reimbursed the difference as part of the expense of his office.

*Continuance of Act: Made Perpetual by 25 & 26 Vict. c. 81, Section 1.*

8. This Act shall continue in force until the 31st July, 1862, and no longer.

## MATRIMONIAL CAUSES PERPETUATING ACT, 1862.

*(25 & 26 Vict. c. 81.)*

An Act to make perpetual "An Act to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes."

[7th August, 1862.]

WHEREAS an Act passed in the Session of Parliament held in the twenty-third and twenty-fourth years of the reign of Her Majesty, chapter one hundred and forty-four, and intituled "An Act to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes," is about to expire; and it is expedient to make the same perpetual: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Recited Act made Perpetual.*

1. There shall be repealed the eighth section of the said Act, whereby it is provided that the same is to continue in force until the thirty-first day of July, one thousand eight hundred and sixty-two, and no longer, and the said Act shall be and is hereby made perpetual.

**MATRIMONIAL CAUSES AMENDMENT ACT, 1864.**

(27 & 28 Vict. c. 44.)

An Act to amend the Act relating to Divorce and Matrimonial Causes in England, Twentieth and Twenty-first Victoria, Chapter Eighty-five. [14th July, 1864.]

**W**HEREAS it is expedient to amend an Act passed in the twentieth and twenty-first years of the reign of Her present Majesty, chapter eighty-five: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Amending Provisions of 20 & 21 Vict. c. 85 as to Orders of Protection of Property of Wife deserted by her Husband.*

1. Where under the provisions of section twenty-one of the said Act a wife deserted by her husband shall have obtained or shall hereafter obtain an order protecting her earnings and property from a police magistrate, or justices in petty sessions, or the Court for Divorce and Matrimonial Causes, as the case may be, the husband and any creditor or other person claiming under him may apply to the court or to the magistrate or justices by whom such order was made for the discharge thereof as by the said Act authorised; and in case the said order shall have been made by a police magistrate and the said magistrate shall have died or been removed, or have become incapable of acting, then in every such case the husband or creditor, or such other person as aforesaid, may apply to the magistrates for the time being acting as the successor or in the place of the magistrate who made the order of protection, for the discharge of it, who shall have authority to make an order discharging the same; and an order for discharge of an order for protection may be applied for to and be granted by the court, although the order for protection was not made by the court, and an order for protection made at one petty sessions may be discharged by the justices of any later petty sessions, or by the court.

## VALIDITY OF MARRIAGES CONTRACTED IN HER MAJESTY'S POSSESSIONS ABROAD.

(28 & 29 Vict. c. 61.)

An Act to remove Doubts respecting the Validity of certain Marriages contracted in Her Majesty's Possessions abroad. [29th June, 1865.]

WHEREAS laws have from time to time been made by the Legislatures of divers of Her Majesty's possessions abroad for the purpose of establishing the validity of certain marriages previously contracted therein, but doubts are entertained whether such laws are in all respects effectual for the aforesaid purpose beyond the limit of such possessions: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Colonial Laws establishing Validity of Marriages to have Effect throughout Her Majesty's Dominions.—Not to give Effect to Marriages unless Parties are competent to contract Marriage.*

1. Every law made or to be made by the Legislature of any such possession as aforesaid for the purpose of establishing the validity of any marriage or marriages contracted in such possession shall have and be deemed to have had from the date of the making of such law the same force and effect for the purpose aforesaid within all parts of Her Majesty's dominions as such law may have had or may hereafter have within the possession for which the same was made: Provided that nothing in this law contained shall give any effect or validity to any marriage unless at the time of such marriage both of the parties thereto were, according to the law of England, competent to contract the same.

*Definition of "Legislature."*

2. In this Act the word "Legislature" shall include any authority competent to make laws for any of Her Majesty's possessions abroad, except the Parliament of the United Kingdom and Her Majesty in Council.

## MATRIMONIAL CAUSES ACT, 1866.

(29 Vict. c. 32.)

An Act further to Amend the Procedure and Powers of the Court for  
Divorce and Matrimonial Causes. [11th June, 1866.]

WHEREAS by the Act passed in the Session of Parliament holden in the twentieth and twenty-first years of the reign of Her present Majesty, intituled "An Act to amend the Laws relating to Divorce and Matrimonial Causes in England,"<sup>1</sup> it is by the thirty-second section enacted "that the court may, on pronouncing any decree for a dissolution of marriage, order that the husband shall to the satisfaction of the court secure to the wife such gross or annual sum of money as to the court may seem reasonable, and for that purpose may refer it to one of the conveyancing counsel of the Court of Chancery to settle and approve of a proper deed to be executed by all necessary parties":

And whereas it sometimes happens that a decree for a dissolution of marriage is obtained against a husband who has no property on which the payment of any such gross or annual sum can be secured, but, nevertheless, he would be able to make a monthly or weekly payment to the wife during their joint lives:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Power to order Monthly or Weekly Payments to Wife from Husband on  
Dissolution of Marriage.*

1. In every such case it shall be lawful for the court to make an order on the husband for payment to the wife during their joint lives of such monthly or weekly sums for her maintenance and support as the court may think reasonable: Provided always that if the husband shall afterwards from any cause become unable to make such payments it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order, wholly or in part, as to the court may seem fit.

<sup>1</sup> 20 & 21 Vict. c. 85.

*In Cases of Opposition on certain Grounds.*

2. In any suit instituted for dissolution of marriage, if the respondent shall oppose the relief sought on the ground in case of such a suit instituted by a husband of his adultery, cruelty, or desertion, or in case of such a suit instituted by a wife on the ground of her adultery or cruelty, the court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had filed a petition seeking such relief.

*Decree Nisi not Absolute till after Six Months.—Extended to Decrees for Nullity by 36 Vict. c. 31, Section 1.*

3. No decree *nisi* for a divorce shall be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the court shall, under the power now vested in it, fix a shorter time.

## THE CONSULAR MARRIAGE ACT, 1868.

(31 & 32 Vict. c. 61.)

An Act for removing Doubts as to the Validity of certain Marriages between British Subjects in China and elsewhere, and for amending the Law relating to the Marriage of British Subjects in Foreign Countries. [16th July, 1868.]

WHEREAS by an Act of the Session of the twelfth and thirteenth years of the reign of Her present Majesty, chapter sixty-eight, entitled "An Act for facilitating the Marriage of British Subjects resident in Foreign Countries," provision is made for the solemnisation of marriages in foreign countries, or places where there may be a British consul duly authorised in that behalf, between persons, both or one of whom is or are a British subject or British subjects, and it is thereby enacted that every British consul-general and consul appointed or to be appointed to reside in any foreign country or place who shall be directed or authorised in writing under the hand of one of Her Majesty's Principal Secretaries of State to solemnise and register marriages, and any persons duly authorised to act in the absence of such consul, shall, in the country or place in which he is so appointed to reside, or in

which he is directed or authorised to solemnise or register marriages as aforesaid, be a consul duly authorised for all the purposes of the said Act :

And whereas marriages have been from time to time solemnised at certain places in China and elsewhere between persons, being both or one of them subjects or a subject of this realm, by persons acting temporarily as consuls in such places :

And whereas doubts are entertained as to the validity of the said marriages, owing to a question having arisen whether the persons by whom the same were solemnised were duly authorised in that behalf, and it is expedient to remove such doubts as to the said marriages, and as to any marriages which may be celebrated in like manner after the passing of this Act :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Short Title.*

1. This Act may be cited for all purposes as "The Consular Marriage Act, 1868."

*Certain past Marriages herein specified Confirmed.*

2. All marriages solemnised before the passing of this Act (both or one of the parties thereto being subjects or a subject of this realm) by or in the presence of any person acting or purporting to act in the place of a British consul, such consul being duly authorised to solemnise and register marriages according to the provisions of the said recited Act, shall be as valid in law as if the same had been solemnised by or in the presence of such British consul.

*Acting Consuls to have power to solemnise Marriages.*

3. From and after the passing of this Act, every person acting or legally authorised to act in the place of a British consul, such consul being duly authorised to solemnise and register marriages between persons (both or one of them being a subject or subjects of this realm), shall be deemed to be a British consul duly authorised for all the purposes of the said recited Act.



## DIVORCE AMENDMENT ACT, 1868.

(31 & 32 Vict. c. 77.)

An Act to amend the Law relating to Appeals from the Court for Divorce and Matrimonial Causes in England. [31st July, 1868.]

**W**HEREAS it is expedient to amend the law relating to appeals from the Court for Divorce and Matrimonial Causes with a view to prevent unnecessary delay in the final determination of suits for dissolution or nullity of marriage:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Interpretation.*

1. Throughout this Act the expression "the court" shall mean the Court for Divorce and Matrimonial Causes.

*Section 56 of 20 & 21 Vict. c. 85; Section 17 of 21 & 22 Vict. c. 108; and Section 3 of 23 & 24 Vict. c. 144, repealed.*

2. Section fifty-six of the Act of twentieth and twenty-first Victoria, chapter eighty-five, section seventeen of the Act of twenty-first and twenty-second Victoria, chapter one hundred and eight, and section three of the Act of twenty-third and twenty-fourth Victoria, chapter one hundred and forty-four, are hereby repealed.

*Appeals to House of Lords to be within One Month.—No Appeal in Undefended Suits for Dissolution unless by leave of Court.*

3. Either party dissatisfied with the final decision of the court on any petition for the dissolution or nullity of marriage may, within one calendar month after the pronouncing thereof, appeal therefrom to the House of Lords, and on the hearing of any such appeal the House of Lords may either dismiss the appeal or reverse the decree, or remit the case to be dealt with in all respects as the House of Lords shall direct: Provided always that in suits for dissolution of marriage no respondent or co-respondent, not appearing and defending the suit on the occasion of the decree *nisi* being made, shall have any right of appeal to the House of Lords against the decree when made absolute, unless the court, upon application made at the time of the pronouncing of the decree absolute, shall see fit to permit an appeal.

*Liberty to Parties to Marry again.*

4. Section fifty-seven of the said Act of twenty-first Victoria, chapter eighty-five, shall be read and construed with reference to the time for appealing as varied by this Act; and in cases where under this Act there shall be no right of appeal, the parties respectively shall be at liberty to marry again at any time after the pronouncing of the decree absolute.

*Short Title.*

5. This Act may be cited as "The Divorce Amendment Act, 1868."

*Qualified Retrospective Operation.*

6. This Act shall extend to all suits pending at the time when the same shall come into operation, notwithstanding that a decree may have been pronounced therein: Provided, nevertheless, that this Act shall not affect any pending appeal nor shall the same prejudice any subsisting right of appeal against a decree already pronounced, provided such appeal be lodged within one calendar month after this Act shall come into operation.

## EVIDENCE FURTHER AMENDMENT ACT, 1869.

(32 & 33 Vict. c. 68.)

An Act for the Further Amendment of the Law of Evidence.

[9th August, 1869.

WHEREAS the discovery of truth in courts of justice has been signally promoted by the removal of restrictions on the admissibility of witnesses, and it is expedient to amend the law of evidence with the object of still further promoting such discovery:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Section 4 of 14 & 15 Vict. c. 99, and part of Section 2 of 16 & 17 Vict. c. 83, repealed.*

1. The fourth section of chapter ninety-nine of the Statutes passed in the fourteenth and fifteenth years of Her present Majesty,

and so much of the second section of "The Evidence Amendment Act, 1853," as is contained in the words "or in any proceeding instituted in consequence of adultery," are hereby repealed.

*Parties in Actions for Breach of Promise of Marriage.*

2. The parties to any action for breach of promise of marriage shall be competent to give evidence in such action: Provided always that no plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

*Parties and their Husbands and Wives to be Witnesses in Suits for Adultery*

3. The parties to any proceeding instituted in consequence of adultery, and the husbands and wives of such parties, shall be competent to give evidence in such proceeding: Provided that no witness in any<sup>1</sup> proceeding, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence in the same proceeding in disproof of his or her alleged adultery.

*Repealed by 51 & 52 Vict. c. 45.*

4. If any person called to give evidence in any court of justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following promise and declaration:—

"I solemnly promise and declare that the evidence given by me to the court shall be the truth, the whole truth, and nothing but the truth."

And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried, and convicted for perjury as if he had taken an oath.

*Short Title.*

5. This Act may be cited for all purposes as "The Evidence Further Amendment Act, 1869."

*Extent of Act.*

6. This Act shall not extend to Scotland.

<sup>1</sup> The word "such" seems to have been omitted accidentally. Stephen's *Digest of the Law of Evidence*, fifth edition, Article 109.

## MATRIMONIAL CAUSES ACTS, 1857 to 1873.

(36 Vict. c. 31.)

An Act to extend to Suits for Nullity of Marriage the Law with respect to the Intervention of Her Majesty's Proctor and others in Suits in England for Dissolving Marriages. [16th June, 1873.]

WHEREAS under section seven of the Act of the Session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and forty-four, intituled "An Act to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes," and under section three of the Act of the Session of the twenty-ninth and thirtieth years of the reign of Her present Majesty, chapter thirty-two, intituled "An Act further to amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes," a decree for divorce is required in the first instance to be a decree *nisi*, and not to be made absolute until after the expiration of six months, unless the court otherwise direct, and provision is made for any person showing cause why the decree should not be made absolute by reason of the same having been obtained by collusion, or of material facts not having been brought before the court, and power is given to any person to give information to Her Majesty's proctor, who is thereupon authorised to take such steps as the Attorney-General may deem necessary or expedient, and such proctor, if he suspects that any parties to the suit are acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case, is authorised under the direction of the Attorney-General and by leave of the court to intervene in the suit, and otherwise proceed as therein mentioned, and provision is made for the payment of his costs in so acting:

And whereas it is expedient to extend such provisions to a suit for nullity of marriage:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Extension of Section 7 of 23 & 24 Vict. c. 114, and Section 3 of 29 & 30 Vict. c. 32, to Suits for Nullity of Marriage.*

1. The above-mentioned sections of the said Acts shall extend to decrees and suits for nullity of marriage in like manner as they apply to decrees and suits for divorce, and shall be construed

as if they were herein enacted, with the substitution of the words "a decree for nullity of marriage" for the words "decree for a divorce" or "divorce," as the case may require.

*Short Title.*

2. This Act, together with the Acts specified in the Schedule to this Act, may be cited as "The Matrimonial Causes Acts, 1857 to 1873," and each Act may be cited as the Matrimonial Causes Act of the year in which it was passed.

**SCHEDULE.**

MATRIMONIAL CAUSES ACTS.

SESSION AND CHAPTER.	TITLE.
20 & 21 Vict. c. 85	- An Act to amend the law relating to Divorce and Matrimonial Causes in England.
21 & 22 Vict. c. 108	- An Act to amend the Act of the twentieth and twenty-first Victoria, chapter eighty-five.
22 & 23 Vict. c. 61	- An Act to make further provision concerning the Court for Divorce and Matrimonial Causes.
23 & 24 Vict. c. 144	- An Act to amend the procedure and powers of the Court for Divorce and Matrimonial Causes.
29 & 30 Vict. c. 32	- An Act further to amend the procedure and powers of the Court for Divorce and Matrimonial Causes.
31 & 32 Vict. c. 77	- An Act to amend the law relating to appeals from the Court for Divorce and Matrimonial Causes in England.

**MATRIMONIAL CAUSES ACT, 1878.**

(41 Vict. c. 19.)

An Act to amend the Matrimonial Causes Acts. [27th May, 1878.]

**B**E it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Short Title.*

1. This Act may be cited as "The Matrimonial Causes Act, 1878."

*Costs of Intervention.*

2. Where the Queen's proctor or any other person shall intervene or show cause against a decree *nisi* in any suit or proceeding for divorce or for nullity of marriage, the court may make such order as to the costs of the Queen's proctor, or of any other person who shall intervene or show cause as aforesaid, or of all and every party or parties thereto, occasioned by such intervention or showing cause as aforesaid, as may seem just; and the Queen's proctor, any other person as aforesaid, and such party or parties shall be entitled to recover such costs in like manner as in other cases: Provided that the Treasury may, if it shall think fit, order any costs which the Queen's proctor shall, by any order of the court made under this section, pay to the said party or parties, to be deemed to be part of the expenses of his office.

*Extension of Power given by 22 & 23 Vict. c. 61, Section 5.*

3. The court may exercise the powers vested in it by the provisions of section five of the Act of the twenty-second and twenty-third years of Victoria, chapter sixty-one, notwithstanding that there are no children of the marriage.

[*Remainder of this Act repealed by 58 & 59 Vict. c. 39.*]

## REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES (ARMY) ACT, 1879.

(42 Vict. c. 8.)

An Act to make further provision for the Registration of Deaths, Marriages, and Births occurring out of the United Kingdom among officers and soldiers of Her Majesty's Forces, and their families.

[23rd May, 1879.]

**B**E it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Short Title.*

1. This Act may be cited as "The Registration of Births, Deaths, and Marriages (Army) Act, 1879."

*Transmission to Registrar of Registers of Births, Deaths, and Marriages of Army kept in pursuance of Her Majesty's Regulations.*

2. If Her Majesty is pleased from time to time to make regulations respecting the registration of births and deaths occurring and marriages solemnised out of the United Kingdom among officers and soldiers of Her Majesty's land forces and their families or any of them, the registers kept from time to time in pursuance of the said regulations shall, in manner provided by the regulations for the time being in force, be authenticated and transmitted to the Registrar-General of Births and Deaths in England.

Where it appears from any such register that an officer or soldier whose death or marriage is entered therein, or to whose family a person whose death, marriage, or birth is entered therein belonged, was a Scotch or Irish subject of Her Majesty, the Registrar-General of Births and Deaths in England shall, as soon as may be after receiving the register, send a certified copy of so much thereof as relates to such death, marriage, or birth to the Registrar-General of Births and Deaths in Scotland or Ireland, as the case may require.

Every Registrar-General of Births and Deaths to whom a register or certified copy of a register is sent, in pursuance of this section, shall cause the same to be filed and preserved in or copied in a book to be kept by him for the purpose, and to be called the "Army Register Book," and such book shall be deemed to be a certified copy of the register book within the meaning of the Acts relating to the registration of births and deaths in England, Scotland, and Ireland respectively.

*Provision as to existing documents evidencing Deaths, Marriages, and Births among Officers and Soldiers of the Army and their Families.*

3. Whereas, under the directions of Her Majesty, or of one of Her Majesty's Principal Secretaries of State, or the Commander-in-Chief or other lawful authority, various documents, such as registers, muster-rolls, and pay lists have been kept, showing the deaths and births which have occurred, and the marriages which have been solemnised among officers and soldiers of Her Majesty's land forces and their families:

And whereas it is expedient to make further provision respecting the said documents: Be it therefore enacted as follows:—

Where any of such documents, or any certified extracts thereof made under the direction of one of Her Majesty's Principal Secretaries of State, have either before or after the passing of this Act been transmitted to the Registrar-General of Births and Deaths in England, such documents or extracts

shall be deemed to be in the legal custody of the said Registrar-General, and shall be admissible in evidence; and a copy of any such document or extract of, or any part thereof, if purporting to be certified to be a true copy under the seal of the register office of the Registrar-General, shall be admissible in evidence of such document, extract, or part.

*Saving as to Births, Deaths, and Marriages in the United Kingdom.*

4. Nothing in this Act shall apply to any deaths, marriages, or births which occur in the United Kingdom, except where the same occurred before the commencement of this Act.

*Commencement of Act.*

5. This Act shall come into operation on the first day of July, One thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

## BANKERS' BOOKS EVIDENCE ACT, 1879.

(42 Vict. c. 11.)

An Act to amend the Law of Evidence with respect to Bankers' Books.  
[23rd May, 1879.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Short Title.*

1. This Act may be cited as "The Bankers' Books Evidence Act, 1879."

*Repeal of 39 & 40 Vict. c. 48.*

2. The Bankers' Books Evidence Act, 1876, shall be repealed as from the passing of this Act, but such repeal shall not affect anything which has been done or happened before such repeal takes effect.

*Mole of Proof of Entries in Bankers' Books.*

3. Subject to the provisions of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded.



*Proof that Book is a Banker's Book.*

4. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

*Verification of Copy.*

5. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct.

Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

*Case in which Banker &c. not compellable to produce Book &c.*

6. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause.

*Court or Judge may order Inspection &c.*

7. On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or judge otherwise directs.

*Costs.*

8. The costs of any application to a court or judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of a court or judge made under or for the purposes of this Act shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned

by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceeding.

*Interpretation of "Bank," "Banker," and "Bankers' Books."*

9. In this Act the expressions "bank" and "banker" mean any person, persons, partnership, or company carrying on the business of bankers and having duly made a return to the Commissioners of Inland Revenue, and also any savings bank certified under the Acts relating to savings banks, and also any post office savings bank.

The fact of any such bank having duly made a return to the Commissioners of Inland Revenue may be proved in any legal proceeding by production of a copy of its return verified by the affidavit of a partner or officer of the bank, or by the production of a copy of a newspaper purporting to contain a copy of such return published by the Commissioners of Inland Revenue; the fact that any such savings bank is certified under the Acts relating to savings bank may be proved by an office or examined copy of its certificate; the fact that any such bank is a post office savings bank may be proved by a certificate purporting to be under the hand of Her Majesty's Postmaster-General or one of the secretaries of the Post Office.

Expressions in this Act relating to "bankers' books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank.

*Interpretation of "Legal Proceeding," "Court," "Judge."*

10. In this Act—

The expression "legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration;

The expression "the court" means the court, judge, arbitrator, persons, or person before whom a legal proceeding is held or taken;

The expression "a judge" means with respect to England a judge of the High Court of Justice, and with respect to Scotland a lord ordinary of the Outer House of the Court of Session, and with respect to Ireland a judge of the High Court of Justice in Ireland;

The judge of a county court may with respect to any action in such court exercise the powers of a judge under this Act.

*Computation of Time.*

11. Sunday, Christmas Day, Good Friday, and any bank holiday shall be excluded from the computation of time under this Act.

## CONFIRMATION OF MARRIAGES ON HER MAJESTY'S SHIPS ACT, 1879.

(42 & 43 Vict. c. 29.)

An Act to remove Doubts as to the Validity of certain Marriages of British Subjects on Board Her Majesty's Ships. [21st July, 1879.]

WHEREAS officers commanding Her Majesty's ships on foreign stations have permitted marriages to be solemnised according to religious rites or ceremonies, or to be contracted *per verba de presenti* in the presence of such officers, in the belief that marriages were authorised by law to be so solemnised and contracted, and doubts have arisen with respect to the validity of such marriages, and it is expedient to confirm the same:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Short Title.*

1. This Act may be cited as "The Confirmation of Marriages on Her Majesty's Ships Act, 1879."

*Confirmation of Marriages of British Subjects solemnised on board  
Her Majesty's Ships.*

2. All marriages, both of the parties being British subjects, which before the passing of this Act have been solemnised on board one of Her Majesty's vessels on a foreign station in the presence of the officer commanding such vessel, whether solemnised according to any religious rite or ceremony, or contracted *per verba de presenti*, shall be valid in like manner as if the same had been solemnised within Her Majesty's dominions with the due observance of all forms required by law.

Provided that this enactment shall not render valid any marriage which before the passing of this Act had been declared invalid by any court of competent jurisdiction in any proceeding touching such marriage, or any right dependent on the validity or invalidity thereof, or render valid any marriage where either of the parties has before the passing of this Act and during the life of the other party lawfully intermarried with any person.

## SUPREME COURT OF JUDICATURE ACT, 1881.

(44 & 45 Vict. c. 68.)

An Act to amend the Supreme Court of Judicature Acts; and for other purposes. [27th August, 1881.]

**W**HEREAS it is expedient to amend the constitution of Her Majesty's Court of Appeal, and to make further provisions concerning the Supreme Court of Judicature and the officers thereof, and such other matters as are hereinafter mentioned:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Short Title.*

1. This Act may be cited as "The Supreme Court of Judicature Act, 1881."

*Master of the Rolls to be Judge of Appeal only.*

2. From and after the passing of this Act the present and every future Master of the Rolls shall cease to be a judge of Her Majesty's High Court of Justice, but shall continue by virtue of his office to be a judge of Her Majesty's Court of Appeal, and shall retain the same rank, title, salary, right of pension, patronage, and powers of appointment or dismissal, and all other powers, privileges, and disqualifications now and heretofore belonging to the said office of Master of the Rolls and all other duties of the said office except that of a judge of Her Majesty's High Court of Justice: Provided that the present Master of the Rolls shall not by virtue of this Act be subject to any disqualification to which he is not by law now subject, nor shall be required to act under any commission of assize, *nisi prius*, *oyer* and *terminer*, or gaol delivery; and the existing personal officers of the Master of the Rolls shall continue to be attached to him and be under his authority, and to hold their respective offices upon the same tenure and in the same manner in all respects as if this Act had not passed: Provided also that any Master of the Rolls to be hereafter appointed shall be under an obligation to go circuits and to act as a commissioner under commissions of assize, or other commissions authorised to be issued in pursuance of The Supreme Court of Judicature Act, 1873,<sup>1</sup> in the same manner in all respects as he

<sup>1</sup> 35 & 37 Vict. c. 66.

would have been under the last-mentioned Act, or any Acts or Act amending the same, if he had continued to be a judge of the Chancery Division of the High Court of Justice.

*Existing Vacancy in Court of Appeal not to be filled up.*

3. The vacancy now existing among the ordinary judges of the said Court of Appeal shall not be filled up, and the number of ordinary judges of that court shall henceforth be five.

*President of Probate Division to be an ex officio Judge of Court of Appeal.*

4. The president for the time being of the Probate, Divorce, and Admiralty Division of the High Court of Justice shall henceforth be an *ex officio* judge of Her Majesty's Court of Appeal with the same powers, and in the same manner in all respects as the other *ex officio* judges thereof; he shall not be entitled in the said court to any precedence over any existing judge to which he would not have been entitled as a judge of the Supreme Court of Judicature if this Act had not passed.

*New Judge of High Court instead of Master of the Rolls.*

5. It shall be lawful for Her Majesty to supply the vacancy in the High Court of Justice, to be occasioned by the removal therefrom of the Master of the Rolls, by the appointment, immediately after the passing of this Act, and from time to time afterwards, of a judge, who shall be in the same position as if he had been appointed a puisne judge of the said High Court in pursuance of The Judicature Acts, 1873 and 1875<sup>1</sup>; and all the provisions of The Supreme Court of Judicature Acts, 1873 and 1875,<sup>2</sup> for the time being in force in relation to the qualification and appointment of puisne judges of the said High Court, and to their duties and tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such judges, and all other provisions relating to such puisne judges, or any of them, with the exception of such provisions as apply to existing judges only, shall apply to the judge appointed in pursuance of this section, in the same manner as they apply to the other puisne judges of the said High Court respectively. The judge so appointed shall be attached to the Chancery Division of the said High Court, subject to such power of transfer as in The Supreme Court of Judicature Act, 1873, mentioned.

<sup>1</sup> 36 & 37 Vict. c. 66.

<sup>2</sup> 38 & 39 Vict. c. 77.

*Judge under 40 & 41 Vict. c. 9.*

6. The power given to Her Majesty by The Supreme Court of Judicature Act, 1877, to appoint a judge of the High Court of Justice in addition to the number of judges authorised to be appointed by The Supreme Court of Judicature Acts, 1873 and 1875, may be exercised by Her Majesty from time to time, so as at all times to make due provision for the business of the Chancery Division of the High Court of Justice: Provided that no such appointment shall be made unless or until the number of judges attached for the time being to the Chancery Division of the High Court, other than the Lord Chancellor, is, by death, resignation, or otherwise, reduced below five.

*Rolls Court Chambers and Clerks &c.*

7. The Lord Chancellor shall have power by order under his hand to direct that the court and chambers, heretofore used by the Master of the Rolls as a judge of the Chancery Division of the High Court of Justice, shall (so long as may be necessary or convenient) be used by such judge of the said Chancery Division of the said High Court as shall be in any such order in that behalf named; and the chief and other clerks and other officers, heretofore attached to the said court and chambers respectively, shall (subject to any rules or orders of court) be and continue attached to the judge to be named in any such order, and, after such court and chambers shall have ceased to be so used, to the judge to whom the business previously transacted in such court and chambers respectively shall be for the time being assigned.

*Title of Justices.*

8. And whereas it is expedient to amend section four of The Supreme Court of Judicature Act, 1877<sup>1</sup>: Be it enacted that the exception of Presidents of Divisions from the enactment that the judges of the High Court of Justice shall be styled justices of the High Court shall not apply to any judge to be hereafter appointed who may be or become President of the Probate, Divorce, and Admiralty Division of the High Court of Justice.

*Appeals under Divorce Act.*

9. All appeals which, under section fifty-five of the Act of the twentieth and twenty-first years of Her present Majesty, chapter eighty-five, or under any other Act, might be brought to

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<sup>1</sup> 40 & 41 Vict. c. 9.

the full court established by the said first-mentioned Act, shall henceforth be brought to Her Majesty's Court of Appeal and not to the said full court.

The decision of the Court of Appeal on any question arising under the Acts relating to divorce and matrimonial causes, or to the declaration of legitimacy, shall be final, except where the decision either is upon the grant or refusal of a decree on a petition for dissolution or nullity of marriage, or for a declaration of legitimacy, or is upon a question of law on which the Court of Appeal give leave to appeal; and, save as aforesaid, no appeal shall lie to the House of Lords under the said Acts.

Subject to any order made by the House of Lords, in accordance with The Appellate Jurisdiction Act, 1876,<sup>1</sup> every appeal to the House of Lords against any such decision shall be brought within one month after the decision appealed against is pronounced by the Court of Appeal if the House of Lords is then sitting, or, if not, within fourteen days after the House of Lords next sits.

This section, so far as is consistent with the tenor thereof, shall be construed as one with the said Acts.

*As to Appeal against Decrees nisi for Dissolution or Nullity of Marriage.*

10. No appeal from an order absolute for dissolution or nullity of marriage shall henceforth lie in favour of any party who, having had time and opportunity to appeal from the decree *nisi* on which such order may be founded, shall not have appealed therefrom.

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## MARRIED WOMEN'S PROPERTY ACT, 1882.

(45 & 46 Vict. c. 75, Section 17.)

*Questions between Husband and Wife as to Property to be decided in a summary way.*

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides,

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<sup>1</sup> 39 & 40 Vict. c. 59.

and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or The Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be) by writ of *certiorari* or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

## GREEK MARRIAGES ACT, 1884.

(17 & 18 Vict. c. 20.)

An Act to remove Doubts as to the Validity of certain Marriages of Members of the Greek Church in England. [3rd July, 1884.]

**W**HEREAS it is alleged that certain marriages have been from time to time, between the years 1836 and 1857, solemnised between members of the Greek Church in the Greek Chapel then situate at 9 Finsbury Circus, in the City of London, and afterwards, within the said period, at London Wall, in the said City;



And that similar marriages have been from time to time, within the said period, solemnised at the residences of members of the said Church;

And that such marriages were respectively solemnised in conformity with the rights and ceremonies of the Greek Church by a priest of that Church, and entries of the said respective marriages so solemnised have from time to time been made in the register book kept for that purpose at the said chapels respectively, or otherwise, in the custody of the said priest;

And that the said marriages were respectively solemnised in the belief that the aforesaid conformity to and compliance with the rites and ceremonies of the Greek Church constituted a compliance with the law of England;

And whereas objections may be made to the validity of such marriages, by reason of the same not having been solemnised in any consecrated or licensed church or chapel of the Church of England, or in any registered building, or at the office of the registrar, and not having been solemnised after due publication of banns, or under licence or special licence, or in the presence of a clerk in holy orders of the Church of England, or a registrar of marriages, and it is expedient to confirm, in the manner and subject to the proviso hereinafter mentioned, any marriage which may have been contracted in the manner and under the circumstances aforesaid, notwithstanding all or any of the aforesaid defects:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Any party to any such marriage as aforesaid, and any child or grandchild of any such party, and any person interested in the validity of any such marriage, may respectively apply to the Probate and Matrimonial Division of Her Majesty's High Court of Justice by petition, praying the court for a decree declaring that such marriage was a valid marriage; and the said court shall have jurisdiction to hear and determine such application, and shall, if an entry of such marriage shall appear to have been duly made upon the register book aforesaid, and if the court be satisfied that such marriage was solemnised in the manner and in the belief aforesaid, and was in all other respects good and lawful, declare the same to have been a valid marriage, notwithstanding all or any of the defects aforesaid: Provided always that this Act shall not extend to render valid any marriage which before the passing thereof has been declared invalid by any court of competent jurisdiction in any proceeding touching such marriage, or any right dependent on the validity or invalidity thereof, or any marriage where either of the parties thereto has afterwards during the life of the other intermarried with any other person.

Any petition under this Act shall be accompanied by such affidavit verifying the same as the said court may from time to time direct.<sup>1</sup>

In respect of all matters and things by this Act not specially provided for, the provisions of sections five, six, and seven of the Act 21 & 22 Vict. c. 93, shall, *mutatis mutandis*, apply, and all proceedings under this Act shall be had and taken in conformity therewith, and with such of the rules for the time being in force with reference to applications to the court under the said Act as may be applicable, or with such rules as the judges of the said court for the time being authorised to make rules may from time to time prescribe.<sup>2</sup>

2. Provided always, and be it further enacted, that the status of any person or any right of any person to any real or personal property or any estate or interest of any such person in any real or personal property which may be dependent on the invalidity of any such marriage shall not be altered, taken away, or injuriously affected by any decree made under the provisions of this Act: but shall be and remain as valid and effectual in law to all intents and purposes as if this Act had not been passed.

3. The priest of the Greek Church, or other the person in whose custody the register books relating to such marriages as aforesaid shall be kept, on the passing of this Act, shall forthwith transmit to the Registrar of the Probate and Matrimonial Registry a copy signed by him of the register aforesaid, and the said registrar shall receive and preserve the same in the said registry.

4. This Act may be cited as "The Greek Marriages Act, 1884."

<sup>1</sup> *As directed by the President.*—Such affidavit shall be in the form and to the effect required by Rule 2 of the Divorce Rules and Orders.

*Rule 2.*—Every petition shall be accompanied by an affidavit made by the petitioner, verifying the facts of which he or she has personal cognisance, and deposing as to belief in the truth of the other facts alleged in the petition, and such affidavit shall be filed with the petition.

<sup>2</sup> 21 & 22 Vict. c. 93, Section 5.—Power to award and enforce costs.

" " " 6.—Attorney-General to have a copy of petition one month before it is filed and to be a respondent.

" " " 7.—Court may require persons to be cited.

**MATRIMONIAL CAUSES ACT, 1884.***(47 & 48 Vict. c. 68.)***Restitution of Conjugal Rights.**

[14th August, 1884.]

**W**HEREAS it is expedient to amend the law as to the restitution of conjugal rights in England:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "The Matrimonial Causes Act, 1884."

2. From and after the passing of this Act a decree for restitution of conjugal rights shall not be enforced by attachment: but where the application is by the wife the court may, at the time of making such decree, or at any time afterwards, order that in the event of such decree not being complied with within any time in that behalf limited by the court, the respondent shall make to the petitioner such periodical payments as may be just, and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation. The court may, if it shall think fit, order that the husband shall, to the satisfaction of the court, secure to the wife such periodical payment, and for that purpose may refer it to any one of the conveyancing counsel of the court to settle and approve of a proper deed or instrument to be executed by all necessary parties.

3. Where the application for restitution of conjugal rights is by the husband, if it shall be made to appear to the court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the court may, if it shall think fit, order a settlement to be made to the satisfaction of the court of such property, or any part thereof, for the benefit of the petitioner and of the children of the marriage, or either or any of them, or may order such part as the court may think reasonable of such profits of trade or earnings to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either or any of them.

4. The court may from time to time vary or modify any order for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may

temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same order wholly or in part, as the court may think just.

5. If the respondent shall fail to comply with a decree of the court for restitution of conjugal rights such respondent shall thereupon be deemed to have been guilty of desertion without reasonable cause, and a suit for judicial separation may be forthwith instituted, and a sentence of judicial separation may be pronounced although the period of two years may not have elapsed since the failure to comply with the decree for restitution of conjugal rights; and when any husband who has been guilty of desertion by failure on his part to comply with a decree for restitution of conjugal rights has also been guilty of adultery, the wife may forthwith present a petition for dissolution of her marriage, and the court may pronounce a decree *nisi* for the dissolution of the marriage on the grounds of adultery coupled with desertion. Such decree *nisi* shall not be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the court shall fix a shorter time.

6. The court may, at any time before final decree on any application for restitution of conjugal rights, or after final decree if the respondent shall fail to comply therewith, upon application for that purpose, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of the children of the petitioner and respondent as might have been made by interim orders during the pendency of a trial for judicial separation between the same parties.

7. This Act shall not extend to Scotland or Ireland.

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## JUDICATURE ACT, 1884.

*(17 & 18 Vict. c. 61, Section 14.)*

*Execution of Instruments by Order of the Court.*

14. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract, or other document, or to indorse any negotiable instrument, the court may, on such terms and conditions (if any) as may be just, order that such conveyance, contract, or

other document shall be executed, or that such negotiable instrument shall be indorsed by such person as the court may nominate for that purpose; and in such case the conveyance, contract, document, or instrument so executed or indorsed shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

## GUARDIANSHIP OF INFANTS ACT, 1886.

(19 & 50 Vict. c. 27.)

An Act to amend the Law relating to the Guardianship and Custody of Infants. [25th June, 1886.]

WHEREAS it is expedient to amend the law relating to the guardianship and custody of infants:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Short Title.*

1. This Act may be cited as "The Guardianship of Infants Act, 1886."

*On Death of Father. Mother to be Guardian alone or jointly with Others.*

2. On the death of the father of an infant, and in case the father shall have died prior to the passing of this Act then from and after the passing of this Act, the mother if surviving shall be the guardian of such infant, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead, or refuses or refuse to act, the court may, if it shall think fit, from time to time appoint a guardian or guardians to act jointly with the mother.

*Mother may appoint Guardian in certain cases.*

3. (1) The mother of any infant may by deed or will appoint any person or persons to be guardian or guardians of such infant after the death of herself and the father of such

infant (if such infant be then unmarried), and where guardians are appointed by both parents they shall act jointly.

(2) The mother of any infant may by deed or will provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the court, after her death, if it be shown to the satisfaction of the court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be authorised and empowered so to act as aforesaid, or make such other order in respect of the guardianship as the court shall think right.

(3) In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the court for its direction, and the court may make such order or orders regarding the matters in difference as it shall think proper.

*Powers of Guardian.*

4. Every guardian in England and Ireland under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be) of an infant as any guardian appointed by will or otherwise now has in England under the Act twelve Charles the Second, chapter twenty-four, or in Ireland under the Act of the Irish Parliament, fourteen and fifteen Charles the Second, chapter nineteen, or otherwise.

*Court may make Orders as to Custody.*

5. The court may, upon the application of the mother of any infant (who may apply without next friend), make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or after the death of either parent of any guardian under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as it may think just.

*Power to Court to remove Guardian.*

6. In England and Ireland the High Court of Justice, in any division thereof, and in Scotland either division of the Court of Session, may, in their discretion, on being satisfied that it is for the welfare of the infant, remove from his office any testamentary

guardian, or any guardian appointed or acting by virtue of this Act, and may also, if they shall deem it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed.

*Guardianship in case of Divorce or Judicial Separation.*

7. In any case where a decree for judicial separation, or a decree either *nisi* or absolute for divorce, shall be pronounced, the court pronouncing such decree may thereby declare the parent by reason of whose misconduct such decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and in such case the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of such children.

*Application of Act to Scotland.*

8. In the application of this Act to Scotland the word "guardian" shall mean tutor, and the word "infant" shall mean pupil.

*Interpretation of Terms.*

9. In the construction of this Act the expression "the court" shall mean—

In England the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside.

In Ireland the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside.

In Scotland the Court of Session or the sheriff court within whose jurisdiction the respondent or respondents or any of them may reside.

Any application under this Act to the High Court of Justice in England or to the High Court of Justice in Ireland shall be made to the Chancery Division of the said courts respectively in such manner as may be prescribed by Rules of Court.

In Scotland the expression "the Court of Session" shall mean either division of the said court, and in vacation the Lord Ordinary on the Bills.

*As to removing Proceedings and Appeals.*

10. In England and Ireland when any application has been made under this Act to a county court the High Court of Justice shall, at the instance of any party to such application, order such

application to be removed to the High Court of Justice and there proceeded with before a judge of the Chancery Division, on such terms as to costs as it may think proper.

In England and Ireland an appeal shall lie to the High Court of Justice from any order made by a county court under this Act; and, subject to any Rules of Court made after the passing of this Act, any such appeal shall be heard by a judge of the Chancery Division of the High Court of Justice at chambers or in court, as he shall direct.

In Scotland any application made under this Act to a sheriff court may be removed to the Court of Session, at the instance of any party, in the manner provided by and subject to the conditions prescribed by the ninth section of The Sheriff Court (Scotland) Act, 1887.<sup>1</sup>

In Scotland an appeal shall lie to either division of the Court of Session from any order made by the Lord Ordinary on the Bills or a sheriff court under this Act.

*Rules as to Procedure.*

11. Rules for regulating the practice and procedure in any proceedings under this Act, and the forms in such proceedings, may from time to time be made—

- (a) So far as respects the High Court of Justice or Her Majesty's Court of Appeal in England or Ireland by Rules of Court; and
- (b) So far as respects the Court of Session in Scotland by Act of Sederunt; and
- (c) So far as respects any county court in England or Ireland and the Sheriff Court in Scotland in like manner as rules and orders respecting those courts can respectively for the time being be made.

*Tutors.*

12. In Scotland tutors being administrators-in-law, tutors-nominate, and guardians appointed or acting in terms of this Act who shall, by virtue of their office, administer the estate of any pupil, shall be deemed to be tutors within the meaning of an Act passed in the twelfth and thirteenth years of the reign of Her Majesty, intituled "An Act for the better protection of the property

<sup>1</sup> 10 & 11 Viet. c. 50.



of pupils, absent persons, and persons under mental incapacity, in Scotland," and shall be subject to the provisions thereof: Provided always that such tutors being administrators-in-law, tutors-nominate, and guardians aforesaid shall not be bound to find caution in terms of the twenty-sixth and twenty-seventh sections of the last recited Act, unless the court, upon the application of any party having interest, shall so direct.

*Saving Clause.*

**13.** Nothing in this Act contained shall restrict or affect the jurisdiction of the High Court of Justice in England, and of the High Court of Justice in Ireland, or of any division of the said courts, and of the Court of Session in Scotland, to appoint or remove guardians, or (in the case of Scotland) tutors or factors *loco tutoris* or otherwise in respect of infants.

## THE OATHS ACT, 1888.

(51 & 52 Vict. c. 46.)

An Act to amend the Law as to Oaths.

[24th December, 1888.]

**B**E it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*When Affirmation may be made instead of Oath.*

**1.** Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath; and if any person making such affirmation shall wilfully, falsely, and corruptly affirm any matter or thing which, if deposed on oath, would have amounted to wilful and corrupt perjury, he shall be liable to prosecution, indictment, sentence, and punishment in all respects as if he had committed wilful and corrupt perjury.

*Form of Affirmation.*

2. Every such affirmation shall be as follows:—

“I, A. B., do solemnly, sincerely, and truly declare and affirm,” and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.

*Validity of Oath not affected by absence of Religious Belief.*

3. Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had, at the time of taking such oath, no religious belief shall not for any purpose affect the validity of such oath.

*Form of Affirmation in Writing.*

4. Every affirmation in writing shall commence “I, \_\_\_\_\_ of \_\_\_\_\_, do solemnly and sincerely affirm,” and the form in lieu of jurat shall be “Affirmed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ Before me.”<sup>1</sup>

*Swearing with Uplifted Hand.*

5. If any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question.

*Repeal.*

6. The Acts mentioned in the Schedule to this Act are hereby repealed to the extent in the third column of the Schedule mentioned.

*Short Title.*

7. This Act may be cited as “The Oaths Act, 1888.”

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<sup>1</sup> As directed by the President no affirmations under this Act are to be received unless the objection to take an oath, and the ground of the objection, in the terms of the Act, is stated in “the form in lieu of jurat.”

## FORM OF AFFIRMATION—suggested.

Affirmed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, by A. B., who has objected to take an oath, stating as the ground of such objection that he [or she] has no religious belief [or that the taking of an oath is contrary to his [or her] religious belief.

Before me

## SCHEDULE.

SESSION AND CHAPTER.	TITLE.	EXTENT OF REPEAL.
17 & 18 Vict. c. 125.	The Common Law Procedure Act, 1854.	Section twenty.
19 & 20 Vict. c. 102.	The Common Law Procedure Amendment Act (Ireland), 1856.	Sections twenty-three and twenty-four.
24 & 25 Vict. c. 66.	An Act to give relief to persons who may refuse or be unwilling, from alleged conscientious motives, to be sworn in criminal proceedings.	The entire Act.
28 & 29 Vict. c. 9.	The Affirmation (Scotland) Act, 1865.	The entire Act.
30 & 31 Vict. c. 35.	An Act to remove some defects in the administration of the Criminal Law.	Section eight.
31 & 32 Vict. c. 39.	The Jurors Affirmation (Scotland) Act, 1868.	The entire Act.
31 & 32 Vict. c. 75.	The Juries Act (Ireland), 1868.	Section three.
32 & 33 Vict. c. 68.	The Evidence Further Amendment Act, 1869.	Section four.
33 & 34 Vict. c. 49.	The Evidence Amendment Act, 1870.	The entire Act.

## THE COMMISSIONERS FOR OATHS ACT, 1889.

(52 Vict. c. 10.)

An Act for amending and consolidating Enactments relating to the Administration of Oaths. [31st May, 1889.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Appointment and Powers of Commissioners for Oaths.*

1. (1) The Lord Chancellor may from time to time, by commission signed by him, appoint persons being practising solicitors, or other fit and proper persons, to be commissioners for oaths, and may revoke any such appointment.

(2) A commissioner for oaths may, by virtue of his commission, in England or elsewhere, administer any oath or take any affidavit for the purposes of any court or matter in England, including any of the ecclesiastical courts or jurisdictions, matters ecclesiastical, matters relating to applications for notarial faculties, and matters relating to the registration of any instrument, whether under an Act of Parliament or otherwise, and take any bail or recognisance in or for the purpose of any civil proceeding in the Supreme Court, including all proceedings on the revenue side of the Queen's Bench Division.

(3) Provided that a commissioner for oaths shall not exercise any of the powers given by this section in any proceeding in which he is solicitor to any of the parties to the proceeding, or clerk to any such solicitor, or in which he is interested.

*Powers of certain Officers of Court &c. to administer Oaths.*

2. Every person who, being an officer of or performing duties in relation to any court, is for the time being so authorised by a judge of the court, or by or in pursuance of any rules or orders regulating the procedure of the court, and every person directed to take an examination in any cause or matter in the Supreme Court, shall have authority to administer any oath or take any affidavit required for any purpose connected with his duties.

*Taking of Oaths out of England.*

3. (1) Any oath or affidavit required for the purpose of any court or matter in England, or for the purpose of the registration of any instrument in any part of the United Kingdom, may be taken or made in any place out of England before any person having authority to administer an oath in that place.

(2) In the case of a person having such authority otherwise than by the law of a foreign country, judicial and official notice shall be taken of his seal or signature affixed, impressed, or subscribed to or on any such oath or affidavit.

*Appointment of Persons to administer Oaths for Prize Proceedings.*

4. The Lord Chancellor may, whenever it appears to him necessary to do so, authorise any person to administer oaths and take affidavits for any purpose relating to prize proceedings in the Supreme Court, whilst that person is on the high seas, or out of Her Majesty's dominions, and it shall not be necessary to affix any stamp to the document by which he is so authorised.

*Jurat to state where and when Oath is taken*

5. Every commissioner before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and at what date the oath or affidavit is taken or made.

*Powers as to Oaths and Notarial acts Abroad.*

6. (1) Every British ambassador, envoy, minister, chargé d'affaires, and secretary of embassy or legation exercising his functions in any foreign country, and every British consul-general, consul, vice-consul, acting consul, pro-consul, and consular agent exercising his functions in any foreign place may, in that country or place, administer any oath and take any affidavit, and also do any notarial act which any notary public can do within the United Kingdom; and every oath, affidavit, and notarial act administered, sworn, or done by or before any such person shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in any part of the United Kingdom.

(2) Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any person authorised by this section to administer an oath in testimony of any oath, affidavit, or act being administered, taken, or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.

*Perjury.*

7. Whoever wilfully and corruptly swears falsely in any oath or affidavit taken or made in accordance with the provisions of this Act, shall be guilty of perjury in every case where if he had so sworn in a judicial proceeding before a court of competent jurisdiction he would be guilty of perjury.

*Forgery.*

8. Whoever forges, counterfeits, or fraudulently alters the seal or signature of any person authorised by or under this Act to administer an oath, or tenders in evidence, or otherwise uses, any affidavit having any seal or signature so forged or counterfeited or fraudulently altered, knowing the same to be forged, counterfeited, or fraudulently altered, shall be guilty of felony, and liable on conviction to penal servitude for any term not exceeding seven years and not less than five years, or to imprisonment with or without hard labour for any term not exceeding two years.

*Trial of Offences.*

9. Any offence under this Act, whether committed within or without Her Majesty's dominions, may be inquired of, dealt with, tried, and punished in any county or place in the United Kingdom in which the person charged with the offence was apprehended or is in custody, and for all purposes incidental to or consequential on the trial or punishment the offence shall be deemed to have been committed in that county or place.

*Impounding of Documents.*

10. Where any offence under this Act is alleged to have been committed with respect to any affidavit, a judge of any court before which the affidavit is produced may order the affidavit to be impounded and kept in such custody and for such time and on such conditions as he thinks fit.

*Definitions.*

11. In this Act, unless the context otherwise requires—

“Oath” includes affirmation and declaration:

“Affidavit” includes affirmation, statutory or other declaration, acknowledgment, examination, and attestation or protestation of honour:

“Swear” includes affirm, declare, and protest:

“Supreme Court” means the Supreme Court of Judicature in England.

*Repeal.*

12. The enactments specified in the Schedule to this Act are hereby repealed to the extent specified in that Schedule.

Provided that this repeal shall not affect—

(a) Anything done or suffered under any enactment repealed by this Act; nor

(b) Any appointment made under or authority given by or in pursuance of any enactment so repealed; nor

(c) Any punishment incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment so repealed; nor

(d) Any legal proceeding for enforcing any such punishment;

And any such legal proceeding may be instituted or continued and any such punishment may be imposed as if this Act had not been passed.

*Commissions issued before commencement of Act.*

13. A commissioner authorised before the commencement of this Act to administer oaths in the Supreme Court shall be deemed to be a commissioner for oaths within the meaning of this Act.

*Commencement.*

14. This Act shall commence and come into operation on the first day of January One thousand eight hundred and ninety.

*Short Title.*

15. This Act may be cited as "The Commissioners for Oaths Act, 1889."

**SCHEDULE.**

SESSION AND CHAPTER.	EXTENT OF REPEAL.
16 & 17 Chas. II. c. 9 ...	The whole Act.
17 Geo. II. c. 7 ...	The whole Act.
4 Geo. III. c. 21 ...	The whole Act.
6 Geo. IV. c. 87 ...	Section twenty.
3 & 4 Will. IV. c. 42 ...	Section forty-two.
4 & 5 Will. IV. c. 42 ...	The whole Act.
2 & 3 Vict. c. 58 ...	Section six from "and that any commissioner."
5 & 6 Vict. c. 103 ...	Sections seven and eight.
6 & 7 Vict. c. 82 ...	Sections one to four.
11 & 12 Vict. c. 10 ...	The whole Act.
15 & 16 Vict. c. 76 ...	Section twenty-three.
15 & 16 Vict. c. 86 ...	Sectionstwenty-two,twenty-three,andtwenty-four.
16 & 17 Vict. c. 70 ...	Section fifty-seven.
16 & 17 Vict. c. 78 ...	The whole Act.
17 & 18 Vict. c. 78 ...	Section six from "and any examiner" to the end of the section.
	Sections seven to eleven.
18 & 19 Vict. c. 42 ...	The whole Act.
18 & 19 Vict. c. 134 ...	Section fifteen.
20 & 21 Vict. c. 77 ...	Section twenty-seven to " Provided that " and from "and any person who" to end of section.
21 & 22 Vict. c. 95 ...	Sections thirty to thirty-four.
21 & 22 Vict. c. 108 ...	Sections twenty to twenty-three.
22 Vict. c. 16 ...	The whole Act except section five.
28 & 29 Vict. c. 104 ...	Sections eighteen, nineteen, forty-three, and forty-four.
32 & 33 Vict. c. 38 ...	The whole Act.
40 & 41 Vict. c. 25 ..	Section eighteen.

## SUPREME COURT OF JUDICATURE ACT, 1890.

(53 & 54 Vict. c. 44.)

An Act to amend the Supreme Court of Judicature Acts.

[14th August, 1890.]

**B**E it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Motions for New Trial.*

1. From and after the commencement of this Act every motion for a new trial, or to set aside a verdict, finding, or judgment, in any cause or matter in the High Court in which there has been a trial thereof, or of any issue therein with a jury shall be heard and determined by the Court of Appeal and not by a divisional court of the High Court: Provided always that such motions shall be heard and determined before not less than three judges of the Court of Appeal sitting together.

This section shall extend to every such motion of which notice may have been given, whether before or after the passing of this Act, but which has not been heard before the commencement of this Act.

### *Motions for Judgment.*

2. Every motion for judgment in any such cause or matter shall be heard and determined by the judge before whom such trial with a jury took place, and not by a divisional court, unless it be impossible or inconvenient that such judge should act, in which case such motion shall be heard and determined by some other judge to be nominated by the President of the Division to which the cause or matter belongs.

### *Power to make Rules.*

3. The power of making rules conferred by The Supreme Court of Judicature Act, 1873, and the Acts amending the same, shall extend to this Act.

### *Criminal and Bankruptcy Matters.*

4. Nothing in this Act shall alter the practice in any criminal cause or matter or in bankruptcy, or in proceedings on the Crown side of the Queen's Bench Division.



*Costs.*

5. Subject to the Supreme Court of Judicature Acts, and the Rules of Court made thereunder, and to the express provisions of any Statute, whether passed before or after the commencement of this Act, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and to what extent such costs are to be paid.

*Extent of Act.*

6. This Act shall not apply to Ireland or Scotland.

*Commencement and Short Title.*

7. This Act shall commence on the twenty-fourth day of October One thousand eight hundred and ninety, and may be cited for all purposes as "The Supreme Court of Judicature Act, 1890."

## COMMISSIONERS FOR OATHS ACT, 1891.

(54 & 55 Vict. c. 59.)

An Act to Amend the Commissioners for Oaths Act, 1889.

[5th August, 1891.

**W**HEREAS doubts have been entertained whether the powers to administer oaths and take affidavits conferred on a commissioner for oaths by The Commissioners for Oaths Act, 1889,<sup>1</sup> extend to oaths and affidavits required by special provisions to be made before a justice of the peace, or any particular person or officer, and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Affidavit &c. may be made before Commissioner at any Place.*

1. Where by or under The Merchant Shipping Acts, 1854 to 1889, or The Customs Consolidation Act, 1876, or The Patents, Designs, and Trade Marks Acts, 1883 to 1888, or The Pawnbrokers

Act, 1872, or Acts amending the same respectively, any oath or affidavit is required to be taken or made before any particular person or officer, whether having special authority or otherwise, and whether at any particular place, or within any specified limits or otherwise, such oath or affidavit may be taken or made before a commissioner for oaths, at any place, and shall be as effectual to all intents and purposes as if taken or made before such person or officer, and at any particular place or within specified limits.

*Amendment of 52 & 53 Vict. c. 10, Section 6, as to Acting Consular Agent.*

2. In section six of The Commissioners for Oaths Act, 1889, after the words "consular agent" shall be inserted the words "acting consul-general, acting vice-consul, and acting consular agent."

*Construction and Short Titles.*

3. This Act shall be read with The Commissioners for Oaths Act, 1889, and may be cited as "The Commissioners for Oaths Act, 1891," and The Commissioners for Oaths Act, 1889, and this Act may be cited together as "The Commissioners for Oaths Acts, 1889 and 1891."

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## SUPREME COURT OF JUDICATURE ACT, 1891.

(54 & 55 Vict. c. 53.)

An Act to amend the Supreme Court of Judicature Acts.

[5th August, 1891.]

**B**E it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Ex-Lord Chancellor to be a Judge of Court of Appeal.*

1. Every person who has held the office of Lord Chancellor shall be an *ex officio* judge of the Court of Appeal, but he shall not be required to sit and act as a judge of that court, unless upon the request of the Lord Chancellor he consents so to do, and while so sitting and acting he shall rank therein according to his precedence as a peer.

*President of Probate, Divorce, and Admiralty Division*

2. Whenever there is a vacancy in the office of a judge of the High Court who is president of the Probate, Divorce, and Admiralty Division thereof, it shall be lawful for Her Majesty, by letters patent, to appoint to that office as president of the said division any person who is a barrister of not less than fifteen years' standing, or who is a judge of the High Court or Court of Appeal, and the person so appointed shall, without prejudice to the rights of any judge of the Supreme Court existing at the passing of this Act, take precedence in court next after all ordinary judges of the Court of Appeal appointed before the time at which he shall become an ordinary or *ex officio* member thereof.

*Assessors in House of Lords.*

3. For the purpose of aiding the House of Lords in the hearing and determination of appeals in Admiralty actions, the House may, in any such appeal in which it may think it expedient to do so, call in the aid of one or more assessors specially qualified, and hear such appeal wholly or partially with the assistance of such assessors.

This section shall be carried into effect in pursuance of Orders made by the House of Lords.

*Explanation of Position of High Court of Justice under 27 & 28 Vict. c. 25.*

4. Whereas doubts have arisen with respect to the position of the High Court in England and appeals therefrom in cases of prize, and it is expedient to remove such doubts: Be it therefore enacted as follows:—

- (1) The High Court in England shall be a prize court within the meaning of The Naval Prize Act, 1864, and shall have all such jurisdiction on the high seas, and throughout Her Majesty's dominions, and in every place where Her Majesty has jurisdiction, as under The Naval Prize Act, 1864, or otherwise the High Court of Admiralty possessed when acting as a prize court.
- (2) Subject to Rules of Court, all causes and matters within the jurisdiction of the High Court under this Act as a prize court shall be assigned to the Probate, Divorce, and Admiralty Division of the Court.
- (3) Any appeal from the High Court when acting as a prize court shall lie only to Her Majesty in Council, in accordance with The Naval Prize Act, 1864.

*Short Titles and Construction.*

5. This Act may be cited as "The Supreme Court of Judicature Act, 1891," and shall be construed as one with The Supreme Court of Judicature Acts, 1873 to 1890, which Acts, with this Act, may be cited together as "The Judicature Acts, 1873 to 1891."

## MARRIED WOMEN'S PROPERTY ACT, 1893.

(56 & 57 Vict. c. 63.)

An Act to amend The Married Women's Property Act, 1882.

[5th December, 1893.

**B**E it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Effect of Contracts by Married Women.*

1. Every contract hereafter entered into by a married woman, otherwise than as agent,

- (a) Shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract;
- (b) Shall bind all separate property which she may at that time or thereafter be possessed of or entitled to; and
- (c) Shall also be enforceable by process of law against all property which she may thereafter while discoverd be possessed of or entitled to;

Provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating.

*Costs may be ordered to be paid out of Property subject to Restraint on Anticipation.*

2. In any action or proceeding now or hereafter instituted by a woman or by a next friend on her behalf, the court before which such action or proceeding is pending shall have jurisdiction

by judgment or order from time to time to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as may be just.

*Will of Married Woman.*

3. Section twenty-four of The Wills Act, 1837, shall apply to the will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or re-published after the death of her husband.

*Repeal.*

4. Sub-sections three and four of section one of The Married Women's Property Act, 1882, are hereby repealed.

*Short Title.*

5. This Act may be cited as "The Married Women's Property Act, 1893."

*Extent.*

6. This Act shall not apply to Scotland.

## SUPREME COURT OF JUDICATURE (PROCEDURE) ACT, 1894.

(57 & 58 Vict. c. 16.)

An Act to amend the Supreme Court of Judicature Acts.

[3rd July, 1894.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Appeals.—Regulations as to Appeals.*

1. (1) No appeal shall lie—

(a) From an order allowing an extension of time for appealing from a judgment or order; nor

(b) Without the leave of the judge, or of the Court of Appeal, from any interlocutory order or interlocutory judgment made or given by a judge, except in the following cases: namely—

(i.) Where the liberty of the subject or the custody of infants is concerned; and

(ii.) Cases of granting or refusing an injunction or appointing a receiver; and

(iii.) Any decision determining the claim of any creditor or the liability of any contributory, or the liability of any director or other officer under The Companies Acts, 1862 to 1890, in respect of misfeasance or otherwise; and

(iv.) Any decree *nisi* in a matrimonial cause, and any judgment or order in an Admiralty action determining liability; and

(v.) Any Order on a special case stated under The Arbitration Act, 1889; and

(vi.) Such other cases, to be prescribed by Rules of Court, as may in the opinion of the authority for making such rules be of the nature of final decisions.

(2) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory order within the meaning of this section.

(3) No appeal shall lie from an order of a judge giving unconditional leave to defend an action.

(4) In matters of practice and procedure every appeal from a judge shall be to the Court of Appeal.

(5) In all cases where there is a right of appeal to the High Court from any court or person, the appeal shall be heard and determined by a Divisional Court constituted as may be prescribed by Rules of Court; and the determination thereof by the Divisional Court shall be final, unless leave to appeal is given by that court or by the Court of Appeal.

(6) An application for leave to appeal may be made *ex parte* or otherwise, as may be prescribed by Rules of Court.

#### *Appeals from Quarter Sessions.*

2. (1) Every case stated by a court of quarter sessions otherwise than under the Acts eleven and twelve Victoria, chapter seventy-eight, and twelve and thirteen Victoria, chapter forty-five, for the consideration of the High Court shall be deemed to be an appeal, and shall be heard and determined accordingly.

(2) On the hearing of any appeal from a court of quarter sessions the appellate court may draw any inference of fact which might have been drawn in the court of quarter sessions, and may give any judgment or make any order which ought to have been given or made by that court, or may remit the order, and in criminal matters the conviction with the order, and the case stated on it, with the opinion or direction of the appellate court, for re-hearing and determination by the court of quarter sessions, or may remit the case for re-statement.

(3) On the hearing of any such appeal the appellate court shall have full power to determine how and by whom the costs of the proceedings in the appellate court and in the court of quarter sessions are to be borne.

(4) The judgment on any such appeal, or, where an appeal to a court of quarter sessions has been directed to be entered for re-hearing, then that appeal shall, on motion by any party to the appeal, be entered at the sessions next or next but one after the delivery of the judgment, or the giving of the direction, and shall, unless the appellate court otherwise directs, have effect as if the judgment had been given, or, in case of an appeal directed to be re-heard, the appeal had been heard and determined, by the court of quarter sessions at the time of the decision, in respect of which the appeal from quarter sessions was brought, and entry and respite of any appeal to quarter sessions in respect of which a case has been stated for the consideration of the High Court shall not be necessary.

*Rules of Court.—Explanation of Power to make Rules.*

3. It is hereby declared that the power to make rules conferred by The Judicature Acts, 1873 to 1891, includes power to make rules for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given.

- (a) On any application in any matter or proceeding relating to the distribution of any fund or property, whether in court or not; and
- (b) On any application upon summons for directions pursuant to such rules.

*Amendment of Provisions as to Rule Committee.*

4. The persons in whom the power of making Rules of Court pursuant to section seventeen of The Appellate Jurisdiction Act, 1876,<sup>1</sup> and section nineteen of The Supreme Court of Judicature Act, 1881,<sup>2</sup> is vested, shall include the President of the Incorporated Law Society for the time being, and shall also include two persons

<sup>1</sup> 39 & 40 Vict. c. 59.

<sup>2</sup> 44 & 45 Vict. c. 68.

(one of whom shall be a practising barrister) to be appointed for the purpose in the same manner as the four judges in the last-mentioned section referred to.

*Power to make Rules of Court as to Enactments in Schedule.*

5. The power to make rules conferred by The Judicature Acts, 1873 to 1891, shall include power to make rules with respect to the matters contained in and regulated by the enactments described in the Schedule to this Act.

*Rules as to Payments out of Court.*

6. Rules made by the Lord Chancellor with the concurrence of the Treasury under The Chancery Funds Act, 1872,<sup>1</sup> or The Supreme Court of Judicature (Funds &c.) Act, 1883,<sup>2</sup> may determine the smallest amount which shall, notwithstanding any order of the court, be paid by the Paymaster-General: Provided as follows—

- (1) Nothing in this section shall apply to any periodical payments of annuities, or of dividends or interest of funds in court;
- (2) The amount so determined shall not exceed one shilling; and
- (3) Any sums retained by the Paymaster-General in accordance with any such rule shall, in such manner as the Treasury may direct, be either paid into the Exchequer or appropriated in aid of the money granted by Parliament for the expenses of the Supreme Court.

*Short Title and Commencement.*

7. This Act may be cited as "The Supreme Court of Judicature (Procedure) Act, 1894," and shall be read with The Judicature Acts, 1873 to 1891, and shall come into operation at the expiration of two months after the passing thereof.

<sup>1</sup> 35 & 36 Vict. c. 44.

<sup>2</sup> 46 & 47 Vict. c. 29.



## SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895.

(58 & 59 Vict. c. 39.)

An Act to amend the Law relating to the Summary Jurisdiction of Magistrates in reference to Married Women. 6th July, 1895.

**B**E it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Short Title.*

1. This Act may be cited for all purposes as "The Summary Jurisdiction (Married Women) Act, 1895."

*Application of Act.*

2. This Act shall not extend to Scotland or Ireland.

*Commencement of Act.*

3. This Act shall come into operation on the first day of January One thousand eight hundred and ninety-six.

*By and to whom Orders may be applied for.*

4. Any married woman whose husband shall have been convicted summarily of an aggravated assault upon her within the meaning of section forty-three of The Offences against the Person Act, 1861,<sup>1</sup> or whose husband shall have been convicted upon indictment of an assault upon her, and sentenced to pay a fine of more than five pounds or to a term of imprisonment exceeding two months, or whose husband shall have deserted her, or whose husband shall have been guilty of persistent cruelty to her, or wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain, and shall by such cruelty or neglect have caused her to leave and live separately and apart from him, may apply to any court of summary jurisdiction acting within the city, borough, petty sessional or other division or district, in which any such conviction has taken place, or in which the cause of

<sup>1</sup> 24 & 25 Vict. c. 100.

complaint shall have wholly or partially arisen, for an order or orders under this Act: Provided that where a married woman is entitled to apply for an order or orders under this section on the ground of the conviction of her husband upon indictment, she may apply to the court before whom her husband has been convicted, and that court shall, for the purposes of this section, become a court of summary jurisdiction, and shall have the power without a jury to hear an application, and make the order or orders applied for.

*Powers of Court.*

5. The court of summary jurisdiction to which any application under this Act is made may make an order or orders containing all or any of the provisions following: viz.—

- (a) A provision that the applicant be no longer bound to cohabit with her husband (which provision while in force shall have the effect in all respects of a decree of judicial separation on the ground of cruelty):
- (b) A provision that the legal custody of any children of the marriage between the applicant and her husband, while under the age of sixteen years, be committed to the applicant:
- (c) A provision that the husband shall pay to the applicant personally, or for her use, to any officer of the court or third person on her behalf, such weekly sum not exceeding two pounds as the court shall, having regard to the means both of the husband and wife, consider reasonable:
- (d) A provision for payment by the applicant or the husband, or both of them, of the costs of the court and such reasonable costs of either of the parties as the court may think fit.

*Limitations of Powers of Court.*

6. No orders shall be made under this Act on the application of a married woman if it shall be proved that such married woman has committed an act of adultery: Provided that the husband has not condoned, or connived at, or by his wilful neglect or misconduct conduced to such act of adultery.

*Court may vary or discharge Order.*

7. A court of summary jurisdiction acting within the city, borough, petty sessional or other division or district, in which any order under this Act or the Acts mentioned in the Schedule

hereto, or either of them, has been made, may, on the application of the married woman or of her husband, and upon cause being shown upon fresh evidence to the satisfaction of the court, at any time, alter, vary, or discharge any such order, and may upon any such application from time to time increase or diminish the amount of any weekly payment ordered to be made, so that the same do not in any case exceed the weekly sum of two pounds. If any married woman upon whose application an order shall have been made under this Act, or the Acts mentioned in the Schedule hereto, or either of them, shall voluntarily resume cohabitation with her husband, or shall commit an act of adultery, such order shall upon proof thereof be discharged.

*Procedure.*

8. All applications under this Act shall be made in accordance with the Summary Jurisdiction Acts, and, in the case of a conviction of a husband for aggravated assault upon his wife, her application may, by leave of the court, be made by summons to be issued and made returnable immediately upon such conviction.

*Enforcement of Orders for Payment of Money.*

9. The payment of any sum of money directed to be paid by any order under this Act may be enforced in the same manner as the payment of money is enforced under an order of affiliation.

*Court may Refuse an Order in cases more fit for the High Court.*

10. If in the opinion of a court of summary jurisdiction the matters in question between the parties or any of them would be more conveniently dealt with by the High Court, the court of summary jurisdiction may refuse to make an order under this Act, and in such case no appeal shall lie from the decision of the court of summary jurisdiction: Provided always that the High Court, or a judge thereof, shall have power by order in any proceeding in the High Court relating to or comprising the same subject-matter as the application so refused as aforesaid, or any part thereof, to direct the court of summary jurisdiction to rehear and determine the same.

*Appeal.*

11. Save as is hereinbefore provided, an appeal shall lie from any order or the refusal of any order by a court of summary jurisdiction under this Act to the Probate, Divorce, and Admiralty Division of the High Court of Justice. Rules of Court may from time to time be made regulating the practice and procedure in such

appeals. And, until altered or repealed, any rules already made as to appeals under section four of The Matrimonial Causes Act, 1878, shall apply to appeals under this Act.

*Repeal of Acts.*

12. The Acts specified in the Schedule to this Act are hereby repealed to the extent therein mentioned, except so far as they apply to Ireland.

**SCHEDULE.**

ENACTMENTS REPEALED.

YEAR AND CHAPTER.	TITLE OR SHORT TITLE.	EXTENT OF REPEAL.
41 & 42 Vict. c. 19	Matrimonial Causes Act, 1878.	Section four.
49 & 50 Vict. c. 52	Married Women (Maintenance in Case of Desertion) Act, 1886.	The whole Act.

**THE LICENSING ACT, 1902.**

(2 Edw. VII. c. 28.)

*Protection for Wife or Husband of Habitual Drunkard.*

5. (1) Where the husband of a married woman is a habitual drunkard, as defined by section three of The Habitual Drunkards Act, 1879,<sup>1</sup> the married woman shall be entitled to apply for an order under The Summary Jurisdiction (Married Women) Act, 1895, and that Act shall apply accordingly.

(2) Where the wife of a married man is a habitual drunkard, as defined by section three of The Habitual Drunkards Act, 1879,<sup>1</sup> the married man shall be entitled to apply to a court of summary jurisdiction for an order under this sub-section, and on any such application the court may make one or more orders containing all or any of the following particulars:—

- (a) A provision that the applicant be no longer bound to cohabit with his wife (which provision while in force shall have the effect in all respects of a decree of judicial separation on the ground of cruelty):

<sup>1</sup> 42 & 43 Vict. c. 19.

- (b) A provision for the legal custody of any child born of the marriage:
- (c) A provision that the applicant shall pay to his wife personally, or for her use, to any officer of the court or other person on her behalf, such weekly sum not exceeding two pounds as the court, having regard to the means both of the applicant and his wife, considers reasonable:
- (d) A provision for payment by the applicant or his wife, or both of them, of the costs of the court, and such reasonable costs of the parties or either of them as the court may think fit.

Subject to the foregoing provisions, The Summary Jurisdiction (Married Women) Act, 1895,<sup>1</sup> shall apply to an application and order under this sub-section in like manner as it applies to an application and order under that Act, except that for references to a married woman and her husband shall be substituted references to a married man and his wife.

Provided that instead of making an order in pursuance of Paragraph (a) of this sub-section the court may, with the consent of the wife, order her to be committed to and detained in any retreat licensed under The Inebriates Acts, 1879 to 1900, the licensee of which is willing to receive her; and such order shall have effect as if she had been admitted to the retreat under section ten of The Habitual Drunkards Act, 1879, as amended by any subsequent enactment, and the court may order an officer of the court or a constable to remove her to the retreat accordingly.

# PRINCIPAL REPORTED DECISIONS

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## CAUSES MATRIMONIAL.

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*Carew v. Carew*, [1894] P. 31; 63 L. J., P. D. & A. 74; 6 R. 662.

*Grieve v. Grieve*, [1893] P. 288; 63 L. J., P. D. & A. 29; 1 R. 533; 69 L. T. 462.

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*Constantinidi v. Constantinidi and Lance*, 72 L. J., P. 82; [1903] P. 246; 89 L. T. 340.

*Coombs v. Coombs*, 73 L. J., P. 23.

*Shaw v. Shaw*, 20 T. L. R. 795.

*Wyke v. Wyke*, 73 L. J., P. 38; [1904] P. 149; 90 L. T. 172; 20 T. L. R. 193.

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Evidence of Bigamy allowed to be supplied by. — *Burshon v. Burshon*, 1 R. 497  
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*Noblett v. Noblett and Kershaw*, 1 L. R., P. & D. 651 ; 29 L. T. 716.

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*Forster v. Forster*, 2 S. & T. 553 ; 31 L. J., P. & M. 184 ; 6 L. T. 693 ;  
10 W. R. 810.

*Grafton v. Grafton*, 27 L. T. 768 ; 21 W. R. 292.

*Hayward v. Hayward*, 1 S. & T. 85 ; 28 L. J., P. & M. 9.

*Hill v. Hill*, 33 L. J., P. & M. 104 ; 10 Jur., N. S. 371.

*Patterson v. Patterson, Curtis and Dore*, 33 L. J., P. & M. 36.

*Westmeath (Marquis) v. Westmeath (Marchioness)*, 3 Knapp, P. C. C. 42.

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*Holt v. Holt and Davis*, 1 L. R., P. & D. 610 ; 16 L. T. 662.

*Hooper v. Hooper*, 28 L. J., P. & M. 26.

*Madan v. Madan and De Thoren*, 17 L. T. 326 ; 16 W. R. 211.

*Munby v. Munby*, 1 L. R., P. & D. 701 ; 38 L. J., P. & M. 72 ; 21 L. T. 155 ;  
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*Ellis v. Ellis*, 8 P. D. 188 ; 52 L. J., P. D. 99 ; 49 L. T. 222 ; 31 W. R. 912.

*Madan v. Madan and De Thoren*, 19 L. T. 612 ; 17 W. R. 265.

*Nicholson v. Nicholson and Ratcliffe*, 32 L. J., P. & M. 127 ; 9 L. T. 118.

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*Thompson v. Thompson and Johnson*, 1 L. R., P. & D. 553; 37 L. J.,  
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*Dunn v. Dunn*, [1888] W. N. 56, 61; 13 P. D. 91; 57 L. J., P. & M. 56.

*Holt v. Holt*, 28 L. J., P. & M. 12.

*Phillips v. Phillips and Medlyn*, 4 S. & T. 129.

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*Madan v. Madan and Thoren*, 37 L. J., P. & M. 10; 18 L. T. 337;  
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Wife having an Income apart from her Husband—*continued.*

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Pronounced in spite of Marriage after Decree *Nisi* in ignorance of Law.—*Moore v. Moore*, [1892] P. 382; 62 L. J., P. D. & A. 10; 1 R. 488; 67 L. T. 530 (see also BIGAMY, committed by Petitioner in ignorance of Law).

Re-marriage after, in case of Divorce pronounced in India.—*Warter v. Warter*, 15 P. D. 152; 59 L. J., P. D. & A. 87; 63 L. T. 250; 54 J. P. 631.

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DECREE *NISI* :

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*Dickinson v. Dickinson*, 88 L. T. R. 7, 28th October, 1889.

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*Cock v. Cock*, 3 S. & T. 514; 33 L. J., P. & M. 157; 10 Jur., N. S. 806; 10 L. T. 726.

*Cargill v. Cargill*, 1 S. & T. 235; 27 L. J., P. & M. 69; 4 Jur., N. S. 764.

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*Gatehouse v. Gatehouse*, 1 L. R., P. & D. 331; 36 L. J., P. & M. 121; 16 L. T. 34.

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*Dickinson v. Dickinson*, 62 L. T. 330.

*Drew v. Drew*, 64 L. T. 840.

*Edwards v. Edwards*, 62 L. J., P. D. & A. 33.

*Koch v. Koch*, [1899] P. 221; 68 L. J., P. 90; 81 L. T. 61.

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*Wassell v. Wassell*, 68 L. J., P. 127; 81 L. T. 496.

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Agreement not to Sue.—*Aldridge v. Aldridge, or A. v. M.*, 13 P. D. 210; 8 L. J., P. D. & A. 8; 59 L. T. 896; 37 W. R. 240.Bar.—*Aldridge v. Aldridge or A. v. M.*, 13 P. D. 210; 58 L. J., P. D. S.Alimony *pendente lite* after Decree *Nisi*.—*Childes v. Childes* (otherwise *Burford*), 68 L. J., P. 90.American Divorce: Domicil; Jurisdiction.—*Turner v. Thompson*, 13 P. D. 37; 57 L. J., P. D. 40 (*nom. T. v. T.*).

## NULLITY—continued.

- Celebration: Pretence of Holy Orders. — *Reg. v. Ellis*, Cox C. C. 469.
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- Domicil: Residence (see DOMICIL).
- Duress and Fraud:
- Clarke* or *Ford* (otherwise *Stier*) v. *Stier*, [1896] P. 1; 65 L. J., P. D. & A. 13.
- Cooper* (otherwise *Crane*) v. *Crane*, [1891] P. 369; 61 L. J., P. D. & A. 35; 40 W. R. 127.
- Duress: Mental Prostration: Incapacity to resist Coercion. — *Scott v. Scott*, 12 P. D. 21; 56 L. J., P. D. 11; 57 L. T. 421; 35 W. R. 258.
- Evidence of Identity: Practice. — *Il.* (otherwise *G.*) v. *G.*, 69 L. J., P. 129.
- Marriage by Force, Fraud, Duress, and Conspiracy. — *Chick v. Chick*, [1896] P. 1; 65 L. J., P. 13; 73 L. T. 632; 44 R. 668.
- Marriage cannot be Impeached on the ground of Impotence after the death of one of the Parties. — *A. v. B.* and *Another*, 1 P. & D. 559.
- Marriage with Deceased Wife's Sister: Both Parties cognisant of Impediment. — *Andrews*, *f. c.* *Ross v. Ross*, 11 P. D. 15.
- On ground of Bigamy: Respondent having Wife living at time of Ceremony with Petitioner: Provision for Wife. — *Bateman v. Bateman* (otherwise *Harrison*), 78 L. T. 472.
- On ground of Impotence: Delay: Sincerity:
- G. v. M.*, 10 App. Cas. 171; 53 L. T. 398.
- L.* (otherwise *B.*) v. *L.*, [1895] P. 271; 64 L. J., P. D. & A. 121.
- M.* (otherwise *D.*) v. *D.* (No. 1), 10 P. D. 75; 54 L. J., P. D. 68; 33 W. R. 657.
- On ground of Insanity. — *Durham v. Durham*, 10 P. D. 80.
- Practice: Summons by Petitioner for Directions: Notice to Queen's Proctor before Setting Down. — *M. v. M.* (otherwise *A.*), 76 L. T. 472.
- Pronounced by Foreign Court: Application to vary Settlements here. — *Moore* (otherwise *Bull*) v. *Moore*, [1891] P. 279; 60 L. J., P. D. & A. 76.
- Provision for Children: Postponement of making decree Absolute. — *Langworthy v. Langworthy*, 11 P. D. 85; 55 L. J., P. D. 33; 54 L. T. 776; 34 W. R. 356.
- Refusal of Wife to allow Consummation: Inference of Impotence. — *F. v. P.* (otherwise *F.*), 75 L. T. 492; *B.* (otherwise *H.*) v. *B.*, 1904 P. 39; 70 L. J., P.
- Wife Pregnant by a Third Person at time of Marriage: Husband ignorant of her Condition. — *Moss v. Moss*, [1897] P. 263; 66 L. J., P. 154; 77 L. T. 220; 45 W. R. 635.
- See ALIMONY; CHILDREN; COSTS; DOMICIL; EVIDENCE; GUARDIAN AD LITEM; LEGITIMACY DECLARATION ACT; OPERATION OF FOREIGN OR SCOTCH DIVORCES ON ENGLISH MARRIAGES; PLEADING; PRACTICE.
- See also, as to Variation of Settlements where Decree pronounced on ground of Impotence, VARIATION OF SETTLEMENTS.
- OPERATION OF FOREIGN OR SCOTCH DIVORCES ON ENGLISH MARRIAGES:
- Bigamy: Divorce in America. — *Briggs v. Briggs*, 5 P. D. 163; 49 L. J., P. D. 38; 28 W. R. 702.
- When Foreign Divorce estops Wife from Petitioning. — *Power v. Power*, 1 S. & T. 551; 29 L. J., P. & M. 26; 2 L. T. 89; 8 W. R. 594.
- When granted on grounds insufficient in England:
- Harvey v. Farnie*, 8 App. Cas. 43; 52 L. J., P. D. 33; 48 L. T. 273; 31 W. R. 433; 47 J. P. 308.
- Rex v. Lolley*, R. & R., C. C. 237; 2 C. & F. 567*n.*

OPERATION OF FOREIGN OR SCOTCH DIVORCES ON ENGLISH MARRIAGES—*continued*.

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*Dolphin v. Robins*, 7 H. L. Cas. 390; 3 Macq., H. L. Cas. 563; 29 L. J., P. & M. 11; 5 Jur., N. S. 1271.

*Pitt v. Pitt*, 4 Macq., H. L. Cas. 627; 10 Jur., N. S. 735; 10 L. T. 626; 12 W. R. 1089.

*Shaw v. Gould*, 3 L. R., H. L. 55; 37 L. J., Ch. 433; 18 L. T. 833.

*Wilson, in re*, 1 L. R., Eq. 247; 35 L. J., Ch. 243; 12 Jur., N. S. 132; 13 L. T. 576; 14 W. R. 161.

Where Marriage dissolved by Foreign Court:

*Birt v. Boutin*, *f. c. Birt*, 1 L. R., P. & D. 487; 37 L. J., P. & M. 50; 18 L. T. 586; 16 W. R. 816.

*Cohen v. Cohen*, 34 L. T. 33; 24 W. R. 283.

See CASES COLLECTED.—4 Fisher's Digest, 284 to 286.

## ORDER:

Power to rectify Mistake.—*E. v. E.* (otherwise *T.*), 72 L. J., P. 44; [1903] P. 88.

## PARAPHERNALIA

Of wife.—*Tasker v. Tasker*, [1895] P. 1; 64 L. J., P. D. & A. 36.

## PARLIAMENTARY BILLS OF DIVORCE:

Joynt's Divorce Bill, H.L. (Ir.), 13 App. Cas. 741.

See CASES COLLECTED.—4 Fisher's Digest, 283; [1886] 202; [1887] 206.

## PARTICULARS

Must be Full.—*Hartopp v. Hartopp*, 71 L. J., P. 78; 87 L. T. 188, C. A.

See PLEADING.

## PARTIES:

Both guilty of Misconduct (*see* CONDUCT CONDUCTING TO ADULTERY; DISCRETION OF COURT).

Name of Innocent Intervener unnecessarily retained in Title of Suit in subsequent Proceedings.—*Connemara v. Connemara*, [1892] P. 102; 61 L. J., P. D. & A. 96; 66 L. T. 592.

Reconciliation of, after Decree *Nisi*.—*Flower v. Flower*, [1893] P. 290; 63 L. J., P. D. & A. 28; 1 R. 534.

See PLEADING; PRACTICE.

PARTY of Unsound Mind (*see* PRACTICE).

PAUPER SUIT (*see* COSTS; PRACTICE).

## PEER:

Right of, to retain his Title after Second Marriage with a Commoner.

Wife of, Divorced on her own Petition.

See INJUNCTION.

PERMANENT ALIMONY (*see* ALIMONY).

## PERMANENT MAINTENANCE:

Basis of Calculation:

*Kettlewell v. Kettlewell*, [1898] P. 138; 67 L. J., P. 16; 77 L. T. 631.

*Shoorthouse v. Shoorthouse*, 78 L. T. 687; 79 L. T. 366.

*Sykes v. Sykes*, [1897] P. 306; 66 L. J., P. 162.

*Dum Solo et Casta Clause*.—*Smith v. Smith*, [1898] P. 29; 67 L. J., P. 54; 78 L. T. 28.

Gross Sum ordered to be paid to Wife.—*Stanley v. Stanley*, [1898] P. 227; 68 L. J., P. 7; 79 L. T. 104; 47 W. R. 272.

PERMANENT MAINTENANCE—*continued*.

Injunction to restrain Husband from parting with Property if Order complied with. *Newton v. Newton*, [1896] P. 36; 65 L. J. P. 15.

Variation of Order: Appeal: Practice.—*Smith v. Smith*, 79 L. T. 121.

See also ALIMONY.

PERSISTENT CRUELTY (*see* SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895).

## PETITION FOR DISSOLUTION

Dismissed by Consent (*see* PRACTICE).

Signed, and Affidavit in support of sworn to, by solicitor:

*Hobson, ex parte*, 6 R., 661; 70 L. T. 816.

*Russell v. Russell* (or *Russell, ex parte*), 59 L. J., P. D. & A. 13; 62 L. T. 186; 54 P. 167.

See also ADULTERY; BIGAMY; DELAY; PLEADING; PRACTICE; SETTLEMENTS.

## PETITIONER:

Decree pronounced in absence of.—*Nicolson v. Nicolson*, 1 R. 498; 68 L. T. 28.

Guilty of Misconduct (*see* CONDUCT CONFERRING TO ADULTERY).

See also ALIMONY; BARS TO DIVORCE; CHILDREN; COLLUSION; CONDONATION; COSTS; CRUELTY; DESERTION; DOMICIL; EVIDENCE; GROUNDS FOR JUDICIAL SEPARATION AND DIVORCE; GUARDIAN AD LITEM; JUDICIAL SEPARATION; NULLITY; PLEADING; PRACTICE; RESTITUTION OF CONJUGAL RIGHTS; SOLICITOR; VARIATION OF SETTLEMENTS.

## PLEADING:

Adultery admitted on Pleadings and Condonation pleaded. *Beecher v. Boucher*, 1 R. 494; 67 L. T. 720.

Amendment of:

*Charter v. Charter*, 58 L. J., P. D. & A. 41; 60 L. T. 872.

*Lapington v. Lapington*, 14 P. D. 21; 58 L. J., P. D. & A. 26; 59 L. T. 608; 37 W. R. 384; 52 J. P. 727.

Answer:

Alimony *Pendente Lite*:

*Carew v. Carew*, [1891] P. 360; 61 L. J., P. D. & A. 21; 65 L. T. 167.

*Tonge v. Tonge*, [1892] P. 51; 61 L. J., P. D. & A. 87; 67 L. T. 390.

Alleging Familiarities not amounting to Adultery. *Cox v. Cox*, 70 L. T. 200.

Restitution of Conjugal Rights.—*Russell v. Russell*, 71 L. T. 268.

Bigamy: Subsequent Adultery not alleged in Petition. *R. v. R.*, [1895] v. *Bonaparte*, 65 L. T. 795.

Citation: Loss of.—*Cridland v. Cridland*, 60 L. T. 398.

Custody of Child: Paternity: Plea by Respondent. *Gibson v. Gibson* and *Bell*, 72 L. J., P. 34; [1903] P. 92; 88 L. T. 573.

Domicil, Question of, not raised on Pleadings: May be argued notwithstanding.—*Parkinson v. Parkinson*, 69 L. T. 53.

Former Petition still on File.—*Ouslow v. Ouslow*, 60 L. T. 680.

Legitimacy Declaration Act.—*Warter v. Warter*, 15 P. D. 35; 59 L. J., P. D. & A. 45; 62 L. T. 328.

Notice of Motion for New Trial.—*Taplin v. Taplin*, 13 P. D. 100; 57 L. J., P. D. & A. 79; 58 L. T. 925; 37 W. R. 256; 52 J. P. 106.

Particulars: Queen's Proctor's Plea.—*Pierce v. Pierce*, 66 L. T. 861.

Registrar's Certificate as to Pleadings being in Order. *Cox v. Cox*, [1895] 60 L. T. 398.

Restitution of Conjugal Rights: Demand for Cohabitation, Form of. *Smith v. Smith*, 15 P. D. 47; 59 L. J., P. D. & A. 9; 62 L. T. 237; 38 W. R. 276; C. A. reversing 15 P. D. 11; 61 L. T. 697.

## PLEADING—continued.

Striking Name of innocent Intervener out of subsequent Proceedings.—*Connemara v. Connemara*, [1892] P. 102; 61 L. J., P. D. & A. 96; 66 L. T. 592.

Wilful Neglect no Pleading.—*Robinson v. Robinson*, 72 L. J., P. 63; [1903] P. 155; 89 L. T. 74.

See RESTITUTION OF CONJUGAL RIGHTS.

## PLEADING: ANSWER:

Citation: Description of Respondent where Address not known.—*Forster v. Forster*, 32 L. J., P. & M. 131.

Denying jurisdiction of Court only.—*Hilson v. Hilson and Howell*, 2 L. R., P. & D. 292; 40 L. J., P. & M. 58; 25 L. T. 206; 19 W. R. 1072.

Pleading Countercharges:

*Allen v. Allen and D'Arcy*, 28 L. J., P. & M. 81; 5 Jur., N. S. 128.

*Hall v. Hall*, 32 L. J., P. & M. 117; 11 W. R. 810.

*Hughes v. Hughes*, 1 L. R., P. & D. 219; 35 L. J., P. & M. 94.

*Mawford v. Mawford*, 14 W. R. 516.

*Robinson v. Robinson*, 2 P. D. 75; 46 L. J., P. D. 47; 36 L. T. 414; 25 W. R. 376.

What may be pleaded in:

*Fitzgerald v. Fitzgerald*, 31 L. J., P. & M. 12; 11 W. R. 85.

*Green v. Green*, 33 L. J., P. & M. 64.

*M. v. M.*, 31 L. J., P. & M. 168.

*Rowe v. Rowe*, 4 S. & T. 162; 34 L. J., P. & M. 111; 11 Jur., N. S. 568; 12 L. T. 639; 13 W. R. 1048.

*Seller v. Seller*, 28 L. J., P. & M. 99; 5 Jur., N. S. 686.

*Shaw v. Shaw*, 2 S. & T. 515; 31 L. J., P. & M. 35; 6 L. T. 477.

*Tuthill v. Tuthill*, 31 L. J., P. & M. 214.

*Williams v. Williams*, 1 L. R., P. & D. 178; 35 L. J., P. & M. 85; 14 L. T. 770; 14 W. R. 1022.

*Yeatman v. Yeatman and Rummell*, 21 L. T. 733.

## PLEADING: GENERAL:

All Pleadings should be as short as possible.—*Suggate v. Suggate*, 1 S. & T. 489; 28 L. J., P. & M. 7.

See also PRACTICE.

## PLEADING: PARTICULARS:

Facts omitted in.—*Baucroft v. Baucroft and Runney*, 34 L. J., P. & M. 31; 13 W. R. 506.

Not corresponding to Charges:

*Grafton v. Grafton*, 28 L. T. 144.

*Saunderson v. Saunderson, Stephens and Hiscock*, 41 L. J., P. & M. 24; 25 L. T. 857; 20 W. R. 261.

Of Plea that marriage was Illegal.—*Silver v. Silver*, 21 L. T. 734.

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*Barnes v. Barnes and Grimwade*, 16 W. R. 281.

*Boddy v. Boddy*, 28 L. J., P. & M. 16.

*Codrington v. Codrington and Anderson*, 3 S. & T. 368; 33 L. J., P. & M. 53; 10 L. T. 139.

*Goldney v. Goldney*, 32 L. J., P. & M. 13.

*Higgs v. Higgs and Hopkins*, 11 W. R. 154.

*Hunt v. Hunt and Duke*, 2 S. & T. 574; 31 L. J., P. & M. 163; 6 L. T. 727.

*Leete v. Leete*, 2 S. & T. 568; 31 L. J., P. & M. 121; 6 L. T. 507.

*Smith v. Smith and Liddard*, 29 L. J., P. & M. 62; 5 Jur., N. S. 1318.

Where insufficient.—*Codrington v. Codrington and Anderson*, 4 S. & T. 63.



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## Affidavit verifying:

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*Forster v. Forster*, 1 S. & T. 167.  
*Steel v. Steel*, 1 L. R., P. & D. 361; 36 L. J., P. & M. 50; 16 L. T. 125.  
*Studdy v. Studdy*, 28 L. J., P. & M. 105.  
*Tourle v. Tourle*, 1 S. & T. 165; 27 L. J., P. & M. 52.

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- Burden v. Burden*, 2 S. & T. 417; 31 L. J., P. & M. 94; 8 Jur., N. S. 157;  
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*Mordaunt v. Moncrieffe*, 2 L. R., H. L. (Sc.) 371; 13 L. J., P. & M. 19;  
 30 L. T. 619; 22 W. R. 12.  
*Mordaunt v. Mordaunt, Cole and Johnstone*, 2 L. R., P. & D. 382;  
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## By Committee of:

- Baker v. Baker*, 5 P. D. 112; 6 P. D. 12; 19 L. J., P. D. 49;  
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*Woodgate v. Taylor*, 2 S. & T. 512; 30 L. J., P. & M. 197; 5 L. T. 119.

## Alleging Adultery:

- Ambler v. Ambler and Houghton*, 32 L. J., P. & M. 6; 7 L. T. 299;  
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*Forman v. Forman and Davies*, 32 L. J., P. & M. 80; 11 W. R. 191.  
*Matison v. Matison*, 29 L. J., P. & M. 80.  
*Porter v. Porter and Jaggard*, 3 S. & T. 796; 33 L. J., P. & M. 207;  
 13 W. R. 108.  
*Spilsbury v. Spilsbury*, 3 S. & T. 210; 32 L. J., P. & M. 126; 9 L. T. 23.  
*Windham v. Windham and Ginglioi*, 32 L. J., P. & M. 89; 9 Jur., N. S. 82.

## Alleging Cruelty:

- Goldney v. Goldney*, 32 L. J., P. & M. 13.  
*Green v. Green*, 33 L. J., P. & M. 64.  
*Leete v. Leete*, 2 S. & T. 568; 31 L. J., P. & M. 121; 6 L. T. 507.  
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## Alleging Desertion:

- Brookes v. Brookes*, 1 S. & T. 326; 28 L. J., P. & M. 38.  
*Pyne v. Pyne*, 1 S. & T. 80.

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 40 L. J., P. & M. 6; 23 L. T. 600; 19 W. R. 215.

Delay in objecting to Form of.—*Hepworth v. Hepworth*, 30 L. J., P. & M. 215;  
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## In Suits for Nullity:

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*Wells v. Collam, f. c. Wells*, 3 S. & T. 364; 33 L. J., P. & M. 11; 19 Jur.,  
 N. S. 144; 10 L. T. 138; 12 W. R. 672.

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## PRACTICE:

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## PRACTICE—continued.

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*Slater v. Slater and Bolderson*, 69 L. J., P. 48.

See, as to Appeals from Justices, SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895.

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## PRACTICE: ABATEMENT OF SUITS:

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*Forman v. Forman and Davis*, 32 L. J., P. & M. 80; 11 W. R. 401.*Green v. Green*, 33 L. J., P. & M. 83.*Griffith v. Griffith*, 3 S. & T. 355; 33 L. J., P. & M. 81; 10 L. T. 308.

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*Hitchcock v. Hitchcock*, 36 L. J., P. & M. 40.*Wright v. Wright*, 1 S. & T. 80; 27 L. J., P. & M. 31; 30 L. T. 370; 6 W. R. 507.Application to Rescind Amendment.—*Greator v. Greator*, 34 L. J., P. & M. 9.By adding Allegation of Desertion.—*Pyne v. Pyne*, 1 S. & T. 80.

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*Bartlett v. Bartlett and Balmano*, 34 L. J., P. & M. 64.*Henslow v. Henslow and Beardsley*, 40 L. J., P. & M. 31; 24 L. T. 846; 19 W. R. 786.*Synonds v. Synonds and Hannan*, 23 L. T. 568; 19 W. R. 166.

By altering Prayer from Judicial Separation to Dissolution:

*Cartledge v. Cartledge*, 4 S. & T. 249.*Lewis v. Lewis*, 29 L. J., P. & M. 123.

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*Dent v. Dent*, 4 S. & T. 105; 34 L. J., P. & M. 118; 13 L. T. 252.*Lemprière v. Lemprière and Rochel*, 1 L. R., P. & D. 569; 37 L. J., P. & M. 78; 19 L. T. 50; 16 W. R. 1192.*Rowley v. Rowley*, 4 S. & T. 137; 11 Jur., N. S. 562; 12 L. T. 505.*Smith v. Smith*, 1 S. & T. 359; 28 L. J., P. & M. 27.

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By striking out Charge.—*Hudson v. Hudson*, 33 L. J., P. & M. 7, 9 Jur. N. S. 1302; 9 L. T. 579; 12 W. R. 216.

## Of Answer:

*Corpatana v. Corpatana*, 23 W. R. 456.  
*Firminger v. Firminger and Ollard*, 17 W. R. 335.  
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*Jayne v. Jayne and Prothero*, 18 W. R. 53.  
*Plumer v. Blumer and Bygrave*, 1 S. & T. 257.

Of Charge of Adultery.—*Jago v. Jago and Graham*, 32 L. J., P. & M. 48, 11 W. R. 192.

## Of Dates of Charges:

*Bunyard v. Bunyard*, 32 L. J., P. & M. 176; 11 W. R. 960.

*Windham v. Windham and Ginglani*, 32 L. J., P. & M. 89; 9 Jur. N. S. 82

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*Ambler v. Ambler and Hoghton*, 32 L. J., P. & M. 6, 7 L. T. 339, 11 W. R. 111.

*Austin v. Austin*, 41 L. J., P. & M. 8; 25 L. T. 856; 20 W. R. 128.

*Bannister v. Bannister and Davis*, 20 L. J., P. & M. 53.

*Borham v. Borham and Brown*, 2 L. R., P. & D. 193; 10 L. J., P. & M. 6, 23 L. T. 600; 19 W. R. 215.

*Cartledge v. Cartledge*, 13 L. J., P. & M. 135; 8 Jur. N. S. 193.

*Parkinson v. Parkinson*, 2 L. R., P. & D. 27; 39 L. J., P. & M. 21, 21 L. T. 597.

*Rowley v. Rowley*, 1 S. & T. 487; 29 L. J., P. & M. 15; 7 W. R. 653.

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*Cartledge v. Cartledge*, 4 S. & T. 249.

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*Spilsbury v. Spilsbury*, 3 S. & T. 210; 32 L. J., P. & M. 126; 9 L. T. 23.

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## PRACTICE: ANSWER:

## Effect of not Answering:

*Burrell v. Burrell*, 32 L. J., P. & M. 136.

*Hepworth v. Hepworth*, 6 Jur. N. S. 831.

*Norris v. Norris*, 1 S. & T. 174; 27 L. J., P. & M. 72.

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*Alexander v. Alexander and Anon*, 6 Jur. N. S. 56; 8 W. R. 452.

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- Issue of Fact ordered to be tried by Jury:  
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30 L. J., P. & M. 177; 4 L. T. 416.

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*Boardman v. Boardman*, 1 L. R., P. & D. 233; 14 W. R. 1024.*Conradi v. Conradi, Worrell and Hay*, 1 L. R., P. & D. 514; 37 L. J.,  
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19 L. T. 48.*Jessop v. Jessop*, 2 S. & T. 301; 30 L. J., P. & M. 193; 7 Jur., N. S. 609;  
4 L. T. 308; 9 W. R. 640.*Studholme v. Studholme and Cullum*, 25 W. R. 165.

## PRACTICE: INTERVENTION BY PERSONS OTHER THAN THE QUEEN'S PROCTOR:

May bring forward Evidence of Facts pleaded at Trial, but not proved.—

*Masters v. Masters*, 34 L. J., P. & M. 7.When condemned in Costs.—*Forster v. Forster and Berridge*, 3 S. & T. 151;  
32 L. J., P. & M. 206; 9 L. T. 148.

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*Boren v. Boren and Evans*, 3 S. & T. 530; 33 L. J., P. & M. 129;  
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10 L. T. 352; 13 W. R. 110.

## PRACTICE: NEW TRIAL:

Filing Affidavits in reply to Motion for.—*Nicholson v. Nicholson and Ratcliffe*,  
32 L. J., P. & M. 135; 11 W. R. 686.Granted on Terms as to Costs.—3 S. & T. 214; 32 L. J., P. & M. 127;  
9 L. T. 118.Issues ordered to be Tried Separately on making Rule Absolute for New  
Trial.—*Barnes v. Barnes and Beaumont*, 1 L. R., P. & D. 572;  
38 L. J., P. & M. 9; 19 L. T. 826; 17 W. R. 75.Judge dissatisfied with Verdict because on One Issue only.—*Fitzgerald*  
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*v. Codrington and Anderson*, 34 L. J., P. & M. 60; 11 Jur., N. S. 286;  
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9 L. T. 454; 12 W. R. 126.

## PRACTICE: NEW TRIAL—continued.

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*Miller v. Miller and Hicks*, 2 S. & T. 127; 31 L. J., P. & M. 73; 5 L. T. 850.

*Scott v. Scott*, 3 S. & T. 320; 33 L. J., P. & M. 1; 9 Jur., N. S. 1251; 9 L. T. 454; 12 W. R. 126.

*Stone v. Stone and Appleton*, 3 S. & T. 608; 31 L. J., P. & M. 33; 13 W. R. 414.

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*Deek v. Deek*, 2 S. & T. 90; 29 L. J., P. & M. 129; 2 L. T. 512; 8 W. R. 666.

*Firebrace v. Firebrace*, 4 P. D. 63; 47 L. J., P. & M. 11; 39 L. T. 94; 26 W. R. 617.

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*Moon v. Moon*, 5 Jur., N. S. 1365.

*Rich v. Rich*, 32 L. J., P. & M. 77.

*Temple v. Temple*, 31 L. J., P. & M. 34.

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*Chilcott v. Chilcott and Smith*, 43 L. J., P. & M. 8; 29 L. T. 518; 22 W. R. 166.

*Perret v. Perret and Allt*, 35 L. T. 910.

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*Deane v. Deane*, 4 Jur., N. S. 148.

*Lacey v. Lacey*, 28 L. J., P. & M. 24.

*Parker v. Parker*, 5 Jur., N. S. 103.

*Robotham v. Robotham*, 1 S. & T. 73; 27 L. J., P. & M. 33; 1 Jur., N. S. 148.

*Sudlow v. Sudlow*, 28 L. J., P. & M. 4.

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## Substituted Service: By Advertisement:

*Elsley v. Elsley*, 32 L. J., P. & M. 145.

*Peckover v. Peckover*, 1 S. & T. 219.

*Smith v. Smith*, 3 S. & T. 216; 32 L. J., P. & M. 115; 9 L. T. 118.

## Undertaking of Solicitor to accept Service:

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*Fitzgerald v. Fitzgerald*, 3 L. R., P. & D. 136; 43 L. J., P. & M. 13;  
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*Codrington v. Codrington and Anderson*, 4 S. & T. 63.

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*Ratcliffe v. Ratcliffe*, 1 S. & T. 217; 27 L. J., P. & M. 60.

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*Robinson v. Robinson and Lane*, 1 S. & T. 362; 27 L. J., P. & M. 91; 5 Jur. N. S. 392.

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*Cooke v. Cooke and Lucy*, 28 L. J., P. & M. 56.

*Gough v. Gough and Baynton*, 32 L. J., P. & M. 128.

*Graham v. Graham and Griffiths*, 31 L. J., P. & M. 96*n*.

*Rowley v. Rowley*, 34 L. J., P. & M. 97; 12 L. T. 315.

*Wood v. Wood and Hutchinson*, 1 L. R., P. & D. 266; 36 L. J., P. & M. 48; 15 L. T. 418.

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*Burroughs v. Burroughs*, 2 S. & T. 544; 5 L. T. 771.

*Osborne v. Osborne and Martelli*, 33 L. J., P. & M. 38; 10 Jur. N. S. 80; 9 L. T. 456.

Omitting to put in Answer: Effect at Trial.—*Lyne v. Lyne and Blackney*, 1 L. R., P. & D. 503; 37 L. J., P. & M. 9; 17 L. T. 29; 16 W. R. 159.

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*Bacon v. Bacon and Bacon*, 2 S. & T. 53; 29 L. J., P. & M. 61.

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*Cherry v. Cherry*, 1 S. & T. 319; 28 L. J., P. & M. 36.

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*Round v. Round*, 20 L. T. 87.

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*Hart v. Hart*, 18 Ch. D. 670; 50 L. J., Ch. 697; 45 L. T. 13; 30 W. R. 8.

*Hooper v. Hooper*, 1 S. & T. 219; 3 S. & T. 251; 29 L. J., P. & M. 59; 8 W. R. 319.

*Rowley v. Rowley*, 34 L. J., P. & M. 97; 1 L. R., H. L. 63; 35 L. J., P. & M. 110.

*Ryder v. Ryder*, 30 L. J., P. & M. 164.

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*Ashley v. Ashley*, 2 S. & T. 388; 30 L. J., P. & M. 175; 5 L. T. 139.

*Hall v. Hall*, 48 L. J., P. D. 57; 40 L. T. 525; 27 W. R. 664.

*Lutwyche v. Lutwyche*, 28 L. J., P. & M. 56; 5 Jur. 76.

PREMARITAL MISCONDUCT (*see EVIDENCE*).

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PROPERTY: Mistake as to (*see VARIATION OF SETTLEMENTS*).

PROTECTION ORDER:

Discharge of:

*Hall, ex parte*, 27 L. J., P. & M. 19.

*Mudge v. Adams*, 6 P. D. 54; 50 L. J., P. D. 49; 44 L. T. 185; 29 W. R. 307.

*Sharpe, ex parte*, 5 B. & S. 322; 33 L. J., P. & M. 152; 10 Jur., N. S. 1018; 10 L. T. 458; 12 W. R. 756.

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*Aldridge, ex parte*, 1 S. & T. 88.

*Cargill v. Cargill*, 1 S. & T. 235; 4 Jur., N. S. 764.

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*Matthew v. Matthew*, 19 L. T. 662.

*Morris, in re*, 71 L. J., P. 56; [1902] P. 101; 86 L. T. 596.

*Sevell, ex parte*, 28 L. J., P. & M. 8.

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QUEEN'S PROCTOR (*see* COSTS; INTERVENTION; NULLITY; PLEADING; PRACTICE).

## QUEEN'S PROCTOR: INTERVENTION BY :

Collusion charged against Petitioner and Co-respondent. *Taylor v. Taylor*, [1891] P. 283; 60 L. J., P. D. & A. 88; 61 L. T. 870.

And Suppression of Material Facts. *Butler v. Butler*, 15 P. D. 66; 59 L. J., P. D. & A. 25; 62 L. T. 314; 38 W. R. 390.

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Collusive Agreement.—*Churchward v. Churchward*, [1895] P. 7; 64 L. J., P. D. & A. 18.

Costs.—*Hechler v. Hechler*, 58 L. J., P. D. & A. 27.

Money paid in for Wife's Costs ordered to be paid out to Queen's Proctor.—*Butler v. Butler*, 15 P. D. 161; 59 L. J., P. D. & A. 86; 63 L. T. 260.

Security for, of Wife: Payment of Money out of Court pending Intervention.—*Butler v. Butler*, 15 P. D. 32, 126; 59 L. J., P. D. & A. 30; 62 L. T. 477.

Court has no Power to allow Third Party charged with Adultery by Queen's Proctor to Intervene:

*Carew v. Carew*, [1894] P. 31; 63 L. J., P. D. & A. 71; 6 R. 662.

*Grieve v. Grieve*, [1893] P. 288; 63 L. J., P. D. & A. 20; 1 R. 533; 69 L. T. 462.

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Decree Rescinded on, in First Suit: Acts as estoppel in Second Suit by same Petitioner.—*Butler v. Butler*, [1894] P. 25; 63 L. J., P. D. & A. 1; 1 R. 535; 69 L. T. 545; 42 W. R. 49, C. A.

On ground of Delay: Question for Jury.—*Broughton v. Broughton*, [1895] P. 288; 64 L. J., P. D. & A. 125.

Papers sent to Queen's Proctor by Court. *Stercus v. Stercus*, 61 L. T. 814.

Parties Reconciled: Decree Rescinded without requiring Plea of Queen's Proctor.—*Flower v. Flower*, [1893] P. 290; 63 L. J., P. D. & A. 28; 1 R. 534; 42 W. R. 204.

Plea of: Particulars.—*Pierce v. Pierce*, 66 L. T. 861.

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Alimony *pendente lite* in Arrear. *Angliss v. Angliss*, 1 R. 532; 69 L. T. 462.

Husband appointed where Co-respondent condemned in Costs due before Payment.—*Waddell v. Waddell*, [1892] P. 226; 61 L. J., P. D. & A. 110; 67 L. T. 389.

RECONCILIATION of Parties after Decree *Nisi* (*see* QUEEN'S PROCTOR INTERVENTION).RE-CONVEYANCE of Settled Property to Wife (*see* VARIATION OF SETTLEMENTS).

## REGISTRAR:

- Certificate of, as to Pleadings being in Order: Loss of Citation.—*Cridland v. Cridland*, 60 L. T. 398.
- Estimate by, as to Costs of Wife.—*Allen v. Allen*, [1894] P. 134; 63 L. J., P. D. & A. 78; 70 L. T. 326; 42 W. R. 230.
- Jurisdiction of: Alimony *pendente lite*: Production of Books.—*Carew v. Carew*, [1891] P. 360; 61 L. J., P. D. & A. 24; 65 L. T. 167.
- Compromise of: Suit Separation Deed.—*De Ricci v. De Ricci*, [1891] P. 378; 61 L. J., P. D. & A. 17.
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Application must be made to Divisional Court:

*Chambers v. Chambers*, 60 L. T. 514.

*Watson v. Watson*, 89 L. T. 78.

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## RE-MARRIAGE:

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See PRACTICE.

RESIDENCE (*see* JURISDICTION).

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RESPONDENT GUILTY (*see* CONDUCT CONDUCTING TO ADULTERY; DISCRETION OF COURT; EVIDENCE).

## RESTITUTION OF CONJUGAL RIGHTS:

Allowance to Husband out of Wife's Separate Estate: Restraint on Anticipation.—*Michell v. Michell*, [1891] P. 208; 60 L. J., P. D. & A. 46; 64 L. T. 607; 39 W. R. 680; C. A. reversing, [1891] P. 166; 64 L. T. 91.

Cruelty as Answer.—*Russell v. Russell*, [1895] P. 315; 64 L. J., P. D. & A. 105, C. A.

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Refusal to obey: Adultery previous to Decree revived.—*Bigwood v. Bigwood*, 13 P. D. 89; 57 L. J., P. D. 80; 58 L. T. 642; 36 W. R. 928.

Delay in commencing Proceedings for:

*Beauclerk v. Beauclerk*, [1895] P. 220; 64 L. J., P. D. & A. 102; 6 R. 657; 71 L. T. 376; 59 J. P. 8.

*See also Russell v. Russell*, 71 L. T. 268.

Effect of Separation Deeds in Restitution Suit:

*Clark v. Clark*, 10 P. D. 188; 54 L. J., P. D. 57; 52 L. T. 234; 33 W. R. 405; 49 J. P. 516.

*Tress v. Tress*, 12 P. D. 128; 56 L. J., P. D. 93; 57 L. T. 501; 35 W. R. 672; 51 J. P. 504.

Injunction to restrain Respondent from parting with Property after Decree.—*Wallis v. Wallis*, 65 L. T. 796.

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*Swift v. Swift*, 63 L. T. 262.

*Theobald v. Theobald*, 15 P. D. 26; 59 L. J., P. D. & A. 21; 62 L. T. 187.



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Misconduct short of Matrimonial Offence may be sufficient ground to refuse Decree of: Discretion of Court:

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## Must allege some Legal Offence:

*Burroughs v. Burroughs*, 2 S. & T. 303; 30 L. J., P. & M. 186; 7 Jur., N. S. 610; 4 L. T. 374; 9 W. R. 680.

*Rippingall v. Rippingall and Delacour*, 24 W. R. 967.

*Stace v. Stace*, 37 L. J., P. & M. 51; 18 L. T. 740; 16 W. R. 1176.

*Wooley v. Wooley*, 31 L. T. 647; 23 W. R. 386.

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*Morris v. Freeman*, 3 P. D. 65.

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*Waters v. Waters*, 34 L. T. 33; 24 W. R. 190.

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*Hope v. Hope*, 1 S. & T. 94; 27 L. J., P. & M. 43; 4 Jur., N. S. 515; 31 L. T., O. S. 138.

*Seaver v. Seaver*, 2 S. & T. 665.

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**REVIVAL**

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*Houghton v. Houghton*, 72 L. J., P. 31; [1903] P. 150, 89 L. T. 76; W. R. 272.

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*Hunt v. Hunt*, [1897] 2 Q. B. 547; 67 L. J., Q. B. 18; 77 L. T. 42.

*Kunski v. Kunski*, 68 L. J., P. 18.

*Rowell v. Rowell*, [1900] 1 Q. B. 9; 69 L. J., Q. B. 55; 81 L. T. 429.

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*Jones v. Jones*, [1895] P. 201; 64 L. J., P. D. & A. 84.

*Woodhead v. Woodhead*, [1895] P. 343.

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Guilty Wife.—*Hamilton v. Hamilton*, 1 R. 506; 68 L. T. 467.

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*Chalmers v. Chalmers*, 1 R. 504; 68 L. T. 28.

*Edwards v. Edwards*, [1894] P. 33; 63 L. J., P. D. & A. 62; 70 L. T. 39.

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## SOLICITOR

Allowed to sign Petition and swear Affidavit in support of

*Hobson, ex parte*, 6 R. 661; 70 L. T. 816.

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*Bradshaw v. Bradshaw*, [1897] P. 24; 66 L. J., P. 31; 75 L. T. 391; 45 W. R. 142; 61 J. P. 8.
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- Duties of Justices: Practice: Costs.—*Harling v. Harling*, 74 L. T. 559; 60 J. P. 577.
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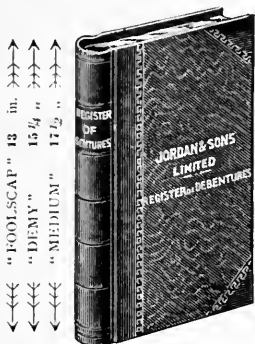
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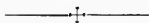


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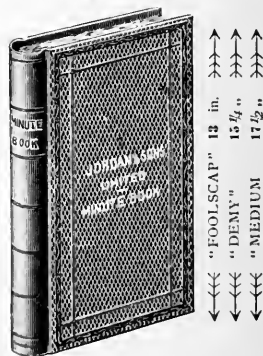
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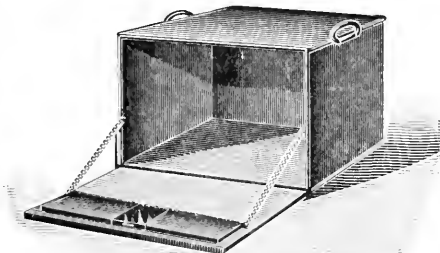
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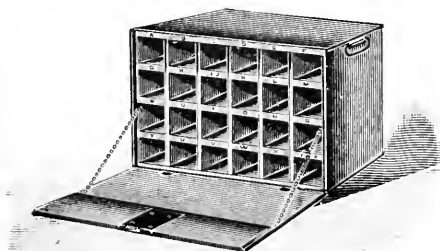
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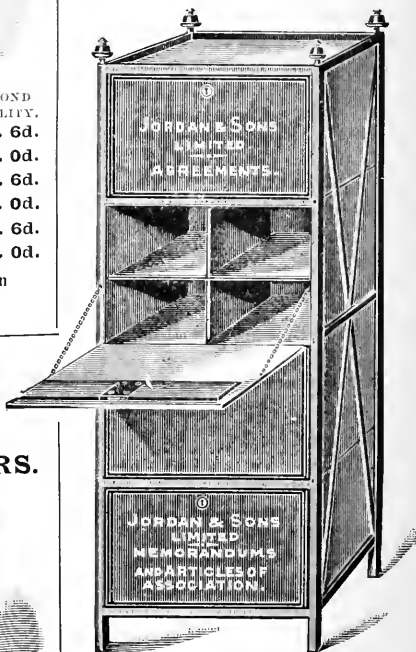
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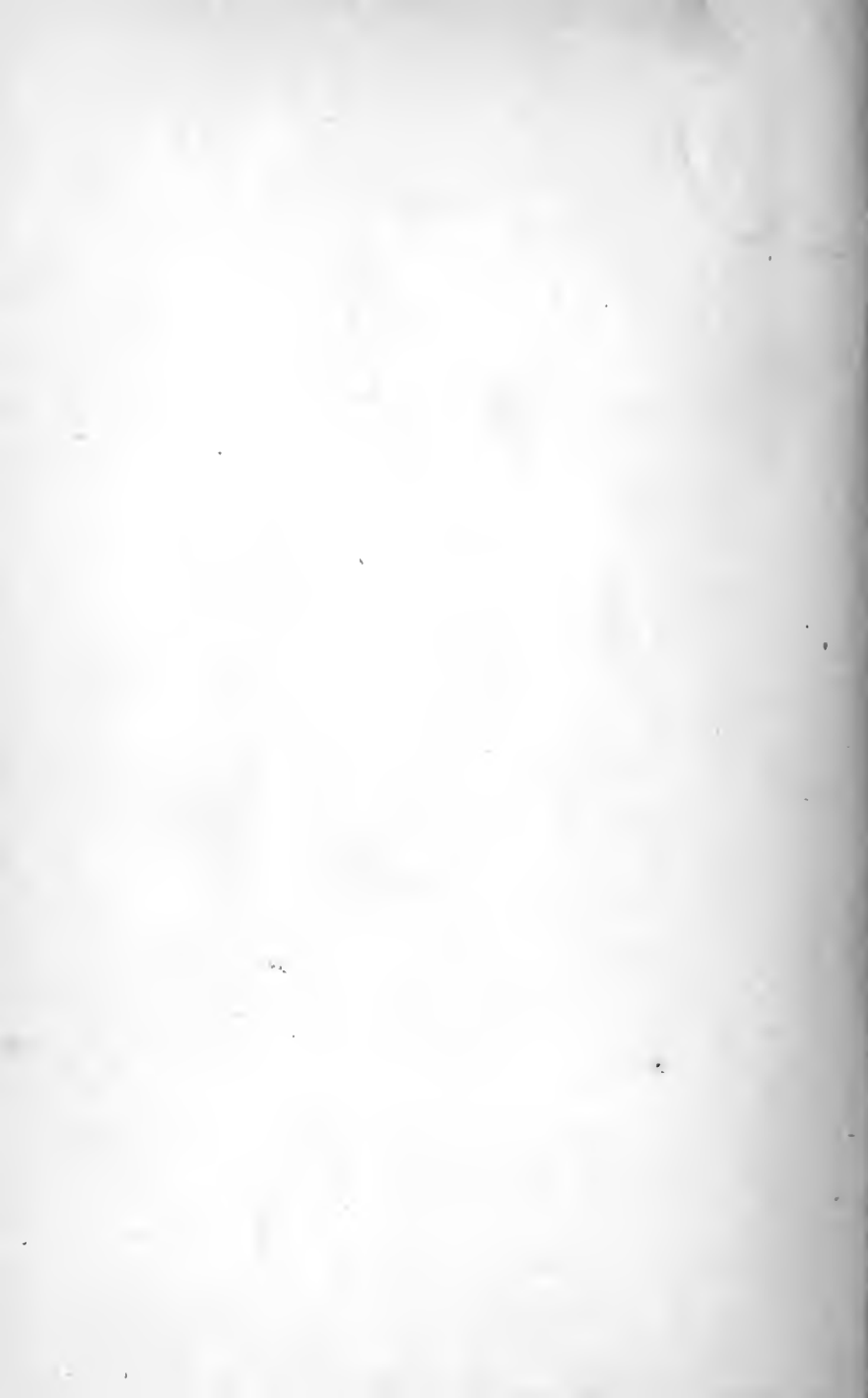
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