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[1949.

MATRIMONIAL CAUSES AND PERSONAL STATUS CODE ACT, 1948.

At the Court at Buckingham Palace.

The 4th day of March, 1949.

Present: The King's Most Excellent Majesty in Council.

WHEREAS the Governor of the State of Western Australia (being one of the States constituting the Commonwealth of Australia) on the twenty-first day of January in the year one thousand nine hundred and forty-nine, reserved, for the signification of His Majesty's pleasure, a certain Bill passed by the Legislative Council and Legislative Assembly of the said State entitled "A Bill for an Act to Amend and Codify the law relating to Matrimonial Causes and to Declarations of Personal Status and for other purposes incidental thereto:"

And whereas the said Bill, so reserved as aforesaid, has been laid before His Majesty in Council, and it is expedient that it should be assented to by His Majesty:

Now, therefore, His Majesty doth by this present Order, by and with the advice of His Privy Council, declare His Assent to the said Bill.

E. C. E. LEADBITTER.

Matrimonial Causes and Personal Status Code Act,
1948.

PROCLAMATION

WESTERN AUSTRALIA, } By His Excellency The Honourable Sir James
TO WIT, } Mitchell, Knight Grand Cross of the Most Dis-
JAMES MITCHELL, } tinguished Order of Saint Michael and Saint
Governor. } George, Governor in and over the State of
[L.S.] } Western Australia and its Dependencies in the
Commonwealth of Australia.

WHEREAS the Bill for an Act to Amend and Codify the Law relating to Matrimonial Causes and to Declarations of Personal Status and for other purposes incidental thereto cited as the Matrimonial Causes and Personal Status Code Act, 1948, (No. 73 of 1948) was on the twenty-first day of January One thousand nine hundred and forty-nine reserved for the signification of His Majesty's pleasure and whereas at the Court at Buckingham Palace on the fourth day of March One thousand

nine hundred and forty-nine in the presence of the King's Most Excellent Majesty in Council His Majesty did by Order, by and with the advice of His Privy Council, declare His Assent to the said Bill: Now, therefore I, the said Governor acting with the advice and consent of the Executive Council and in exercise of the powers conferred on me by section 8 of the Interpretation Act, 1918-1948, do by this proclamation declare that His Majesty has assented to the said Bill and that the said Bill shall come into operation as an Act on the first day of January, 1950.

Given under my hand and the Public Seal of the said State, at Perth, this seventh day of October, One thousand nine hundred and forty-nine.

By His Excellency's Command,

VAL. R. ABBOTT,
Attorney General.

GOD SAVE THE KING !!!

MATRIMONIAL CAUSES AND PERSONAL STATUS CODE, 1948.

Crown Law Department,
Perth, 12th October, 1949.

The following Rules to be cited as the Matrimonial Causes and Personal Status Rules, 1949 are published for general information.

H. SHEAN,
Under Secretary for Law.

WE, the Honourable Sir John Patrick Dwyer, Chief Justice, the Honourable Albert Asher Wolff, the Honourable James Leonard Walker and the Honourable Lawrence Walter Jackson, Puisne Judges of the Supreme Court of Western Australia, acting in pursuance of the powers contained in the Matrimonial Causes and Personal Status Code, 1948 and the Interpretation Act, 1918-1948, do hereby make the following Rules:—

(See pages following.)

MATRIMONIAL ACTIONS AND ACTIONS FOR DECLARATION OF
PERSONAL STATUS.

RULES.

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MATRIMONIAL ACTIONS AND ACTIONS FOR DECLARATION OF PERSONAL STATUS.

RULES.

PRELIMINARY.

1. (a) All Rules and Regulations heretofore made by His Majesty's Supreme Court of Western Australia in the exercise of its jurisdiction in divorce and matrimonial causes (including Rules made under the Supreme Court Act, 1935, in this jurisdiction) and all Rules made under the Legitimacy Act, 1858 (Imp.), (as adopted by Ordinance 31 Vic. No. 8) are hereby rescinded as from the date on which the Matrimonial Causes and Personal Status Code, 1948, is proclaimed to come into force.

(b) The following Rules which are made in the exercise of the powers conferred on the Judges by the Matrimonial Causes and Personal Status Code, 1948 (No. 73 of 1948), and the Commonwealth Matrimonial Causes Act, 1945 (No. 22 of 1945), shall take effect in the said Court as from the date of such rescission.

2. These Rules may be cited as the Matrimonial Causes and Personal Status Rules, 1949.

APPLICATION OF SUPREME COURT RULES.

3. Notwithstanding the provisions of Order 68 of the Rules of the Supreme Court, where no rule of practice or procedure is prescribed by these Rules the general Rules relating to practice and procedure in the Supreme Court shall apply so far as they may be applicable and where there is no rule applicable to the particular circumstances of the case the Judge may make a rule for that particular case.

DEFINITIONS.

4. In these Rules—

“Code” means the Matrimonial Causes and Personal Status Code, 1948.

“Committee” means any person appointed by virtue of the Lunacy Act, 1903 (No. 15 of 1903), as amended to undertake the care and management of the property of an insane or incapable person under the order and direction of the Supreme Court.

“Judge” includes the Registrar when exercising jurisdiction in Chamber matters under these Rules.

“Person of unsound mind” means any person who is in fact of unsound mind, and includes any insane person or patient or incapable person within the meaning of the Lunacy Act, 1903, as amended.

ADMINISTRATION.

5. The administration of these Rules shall, subject to the direction of the Judges, be under the control of the Registrar who shall have the control and supervision of all officers and clerks in the central office who may be appointed for the administration of the Code and Rules.

6. The days and hours for the transaction of business at the Central Office under these Rules shall be the same as are fixed and shall be subject to the same conditions as are applicable generally in the case of other litigious business in the Supreme Court.

7. The Registrar shall sign every order nisi and final order and any order in the nature of a final determination in an action made under the Code and all such orders as are issued on fiats granted by him under these Rules.

8. The Registrar shall keep a book in which shall be entered particulars of all actions and a concise note shall be made of every step taken in the action and of all orders and proceedings therein. Such record may be as set out in Form 1 in the Schedule.

9. It shall be the duty of the Registrar to record all rules from time to time made by the Judges, and not less often than every two years after the making of any new rules to incorporate into these Rules every such rule and submit the whole body of the Rules to the Judges for re-promulgation in revised and consolidated form.

PARTIES.

In General.

10. Subject to these Rules any person may be a party to an action whether such person is of full age or not.

Persons under Disability.

11. (1) Unless a Judge otherwise orders, an infant shall sue or defend by some person of full age appointed by him as his guardian *ad litem* who consents to act and is approved by the Judge.

(2) A Judge may by order permit an infant to sue or defend without a guardian *ad litem* on being satisfied that the infant is not living under the protection of a parent or guardian and that the circumstances of the case render it unnecessary that the infant should sue or defend by a guardian *ad litem*.

12. (1) Subject as hereinafter provided a person of unsound mind may sue or defend if a committee of his person has been appointed by such committee as his guardian *ad litem* provided such committee has no interest adverse to that of the person of unsound mind.

(2) Where no committee has been appointed, or where a committee has an interest adverse to that of the person of unsound mind a Judge may appoint some fit and proper person to act as guardian *ad litem*.

13. Subject to the preceding provisions any person of full age may act as guardian *ad litem* on behalf of an infant or a plaintiff or defendant of unsound mind provided that such person has no interest adverse to that of the party proposed to be represented.

14. A person who agrees to act in any such capacity shall sign a consent in the form prescribed which shall be attested by the solicitor for the party or by a commissioner for affidavits or justice of the peace.

15. The Judge shall be satisfied by affidavit of the solicitor for the party on whose behalf such appointment is proposed to be made as to the fitness of the proposed guardian *ad litem* and that the proposed guardian has no interest in the action adverse to that of the infant or person of unsound mind: Provided that where such party has no solicitor acting on his behalf the Judge may accept an affidavit from any responsible person who in the opinion of the Judge is able to depose to the facts.

A form of appointment of a guardian *ad litem* by an infant who proposes to bring an action is set out in Form No. 2 in the Schedule.

A form of appointment of a guardian *ad litem* by a defendant infant is set out in Form No. 3 in the Schedule.

A form of consent to act as guardian *ad litem* is set out in Form No. 4 in the Schedule.

A form of affidavit testifying to the fitness of the proposed guardian *ad litem* and verifying his consent is set out in Form No. 5 in the Schedule.

16. A formal order of appointment shall not be necessary but no such representation shall be of any effect unless approved by the Judge by minute endorsed on the consent of the person who agrees to act.

17. Any such guardian *ad litem* may be removed by a Judge on sufficient ground being shown to the Judge by any person acting on behalf of the party on whose behalf such guardian was appointed, or such guardian may on his own motion be permitted by the Judge to retire.

18. (1) In the case of the removal or retirement of any such guardian *ad litem* a Judge may approve of the appointment of another guardian in his stead or dispense with any further appointment, as the Judge may think fit.

(2) In the case of the death of any such guardian the action shall not proceed until another guardian is appointed in the manner of the original appointment or a Judge permits the action to proceed without a further appointment.

19. The Court may make such order as to costs as shall be just against any such guardian *ad litem*: Provided that no order for costs shall be made against the Inspector General of the Insane or the Crown Solicitor when appointed as the guardian *ad litem* of a person of unsound mind: Provided further that the Court may in its discretion make an order for payment of costs out of the estate of the person of unsound mind.

Joinder of Adulterer or Adulteress.

20. A plaintiff who alleges as a ground of relief the adultery of the defendant shall join as co-defendant the person or persons with whom it is alleged the defendant has committed adultery unless a Judge shall otherwise direct in accordance with these Rules.

21. (1) If the name or names of the alleged adulterer or adulterers be unknown to the plaintiff at the time of issuing the writ the same must be supplied if and when the plaintiff becomes aware thereof and application shall be made forthwith to a Judge to amend the proceedings by inserting such name or names therein.

(2) On the making of any such order the Judge shall give such directions as he may think fit as to the service of the amended process.

FORM OF PROCEEDINGS.

22. Proceedings under the Code shall be instituted as follows:—

- (a) Actions for dissolution, judicial separation, nullity, and declarations of personal status—by specially endorsed Writ of Summons in the prescribed form.
- (b) All applications which are returnable in open court—by Notice of Motion.
- (c) All applications which are returnable in chambers (including applications which are permitted to be made *ex parte*)—by Notice in the prescribed form signed by the applicant or his solicitor.

23. (1) Every document filed shall bear an appropriate title of the action in which it is filed in accordance with Forms 6 to 12 in the Schedule.

(2) Where action is taken pursuant to the Matrimonial Causes Act, 1945 (Commonwealth) the title shall contain an addition to the heading after the words "Matrimonial Causes" namely "In the Matter of the Matrimonial Causes Act, 1945 (Commonwealth)."

24. (1) Every document filed shall in addition to the heading required by the Rules bear an appropriate endorsement showing clearly the nature of the document, e.g., "Writ of Summons and Claim for Dissolution of Marriage"; "Notice of Application by Plaintiff for Order for Maintenance"; "Affidavit of Service of Writ of Summons on Defendant"; "Plaintiff's Affidavit in Support of Application for Maintenance"; "Affidavit of A.B. in support of Plaintiff's Application for Maintenance."

In the case of affidavits there shall be a further endorsement showing the date of swearing of the affidavit.

(2) Every Notice of Motion and every Notice of Application to a Judge in Chambers shall where it is not intended to serve any party or person be endorsed with a memorandum to that effect at the foot of the Notice. Where it is intended to serve only such party or person as the Judge shall direct a memorandum to that effect shall be endorsed at the foot of the Notice:

(3) Every Notice of Motion or Notice of Application which is served on any other party or person under the Rules or pursuant to the order of a Judge shall be endorsed with a form of warning in accordance with Form No. 13 in the Schedule.

INITIATION OF ACTIONS AND PLEADINGS.

Writ of Summons and Statement of Claim.

25. Every action shall be commenced by Writ of Summons to be specially endorsed with a Statement of Claim which shall set out the relief claimed together with a reference to the particular statutory enactments under which the claim is made and shall contain a statement in summary form of the material facts relied on, and shall also specify the following:—

- (a) When and where the marriage was celebrated and the ages of the contracting parties (*if infants*) and the name and status of the wife before the marriage. Where the wife was a widow or divorcee at the time of the marriage her maiden name also shall be stated.
- (b) The respective domicils of husband and wife at the time of the marriage and any changes of domicile after the marriage and the facts relied on to establish such domicile or domicils.
- (c) The places of residence of the parties after the marriage and the relative periods therein.
- (d) In actions pursuant to Part III. of the Commonwealth Act No. 22 of 1945, the period of residence in the State where proceedings are instituted of the persons seeking relief and the places of residence during the two years preceding the action.
- (e) The children of the marriage and the dates of their birth, in whose custody they are and where they are residing, and whether there are any children the paternity of whom is in dispute.
- (f) Particulars of any prior or current matrimonial proceedings between the husband and wife or between any other person and the husband or the wife, and all decrees, judgments and orders made therein; and whether there has been any cessation of cohabitation between the parties and if so whether there has been any resumption of cohabitation.
- (g) The date and circumstances of final cessation of cohabitation.
- (h) In the case of an action for a declaration of presumption of death and dissolution of marriage, the last place of cohabitation of the parties, the date when and the place where the defendant was last seen or heard of and the steps which have been taken to trace the defendant.
- (i) The grounds on which relief is claimed setting out with sufficient particularity the individual facts relied on but not the evidence by which the facts are to be proved.
- (j) Whether damages are claimed and the amount of damages claimed.
- (k) Whether costs are claimed.

The above particulars shall be set out as nearly as possible in the order in which they appear in this rule.

A specimen Writ of Summons and Statement of Claim and endorsements in an action for dissolution of marriage appears in Form No. 14 in the Schedule.

A specimen set of additional averments to be made in the Statement of Claim in an Application for Declaration of Personal Status is also set out in Form No. 14 in the Schedule.

26. The plaintiff may include in the Statement of Claim a claim—

- (a) for custody of children or access to children; and
- (b) for maintenance either pending the determination of the action or by way of permanent maintenance or both.

27. In an action for dissolution of marriage on any of the following grounds—

- (a) incapacity to consummate the marriage;
- (b) incapacity on the ground of nonage;
- (c) incapacity on the ground of insanity;
- (d) duress or fraud;

the plaintiff shall in addition to other matters required to be set out in the Statement of Claim also state facts so far as the plaintiff truthfully can showing that there is no bar to the relief claimed by reason of any fact which under the Code might preclude the plaintiff from obtaining relief, as for example—a plaintiff who is claiming relief against a defendant who was allegedly incapable of contracting marriage on account of insanity must aver that the plaintiff was unaware of the insane party's condition at the time and that as soon as he discovered it he ceased to have any further marital relationship, whether the defendant has recovered sanity, and if so that the plaintiff has not had any marital relationship with the defendant after such recovery.

Declarations as to Personal Status.

28. In an action for declaration of personal status the plaintiff shall set out in his Statement of Claim the date and place of his birth, whether the birth is registered and where it is registered, the maiden name of his mother and where his mother was born and also the full name of his father; and if the plaintiff is known by any name other than the name by which he was registered or called at birth the plaintiff shall state how he came to acquire such other name, and shall in addition set out all other relevant facts relied on in support of the claim.

Summary of Claim.

29. After setting out the particulars hereinbefore referred to the Statement of Claim shall conclude with a summary of the relief claimed.

Endorsements.

30. There shall be endorsed on the writ the following memoranda—

(a) a statement as to whether it has been filed by the plaintiff in person or by a solicitor on his behalf and an address to be called "the address for service" where process and other documents not required to be served on the plaintiff personally may be left for him. Such address shall not be more than half a mile from the General Post Office, Perth;

(b) a form of acknowledgment of service.

The several forms of statement relating to the particulars to be specified pursuant to paragraphs (a) and (b) of sub-Rule (1) of this Rule are set out in Form 14 in the Schedule.

31. Every Statement of Claim shall be subscribed by the plaintiff with a statement of the fact that the particulars contained therein are correct, and where a solicitor issues the writ the Statement of Claims shall be endorsed with a statement by the solicitor that he has explained to the plaintiff the contents of the Statement of Claim and the effect of any non-statement or mis-statement of any material particular therein and that the Statement of Claim and particulars therein have been prepared in accordance with these Rules.

Specimens of certificates to be given by plaintiff and by solicitor are set out in Form No. 14 in the Schedule.

Authenticated Copy of Certificate of Marriage to be Filed with Writ.

32. The plaintiff shall when issuing the Writ of Summons file an authenticated copy of the certificate of marriage between the parties. If the certificate of marriage is in a foreign language it shall be accompanied by a translation in English verified by the affidavit of some person competent to translate the certificate.

33. Subject to the provisions of the preceding rule it shall not be necessary to verify the certificate by affidavit when it is filed, except where there is some discrepancy between the particulars set out in the certificate and the Writ of Summons, in which case the plaintiff shall file an affidavit exhibiting the certificate and accounting for the discrepancy as far as the plaintiff is able.

34. Where there is no official record of the marriage or the plaintiff is unable to obtain any such record the plaintiff shall make an affidavit which shall be filed with the writ explaining the circumstances and giving a summary of the facts on which the plaintiff will rely to establish the fact of marriage.

Statement of Defence.

35. If the defendant desires to defend the action he shall within the time stated in the writ file in the Central Office of the Supreme Court a Statement of Defence to the plaintiff's claim and shall also serve a copy of such statement on the plaintiff or his solicitor within twenty-four hours of filing the statement.

36. The time to be stated in the writ for filing a Statement of Defence shall be according to the place of service, that is to say:—

Where the Service is effected.	The time after Service for the Filing Statement of Defence is:
In the State of Western Australia—	
Not more than 200 miles from Perth	18 days
More than 200 miles but not more than 400 miles from Perth	26 days
More than 400 miles from Perth	31 days
Outside the State of Western Aus- tralia but within the Commonwealth of Australia	40 days
Outside the Commonwealth of Aus- tralia	Such time as may be fixed by the Registrar.

The number of days allowed shall be clear days.

37. Subject to these Rules a party who has not filed a Statement of Defence (including a counterclaim or an objection to jurisdiction) shall not be heard at the trial of the action or on the hearing of any ancillary or interlocutory application.

38. A defendant may if the defendant so desires file a limited defence to the plaintiff's claim, that is to say, the defendant may admit or elect not to plead to the allegation or allegations in respect of which relief is claimed but may intimate in the defence that the defendant desires to contest any claim made by the plaintiff for maintenance, custody of or access to children, damages or costs.

39. If further time to file a Statement of Defence is required the defendant may apply to a Judge and the Judge may allow such further time as he deems reasonable and where the action has been set down for trial or a date of trial fixed may stay further proceedings or adjourn the trial for such time and on such terms as to payment of costs and otherwise as may appear just.

40. Except where the defence raises an objection to the jurisdiction of the Court the defence shall set out which of the allegations in the Statement of Claim are admitted or denied and any statement of fact in the Statement of Claim which is not distinctly admitted or denied shall be taken to be admitted so far as the defendant is concerned, and the defendant shall not without leave of a Judge be entitled to adduce any evidence in denial thereof, but nothing in this rule shall be deemed to relieve the plaintiff of the obligation of proving the facts of the case and the grounds on which the claim to relief is founded.

41. Where in defence of any allegation of adultery the defendant pleads that the plaintiff's conduct conduced to the alleged adultery the defendant shall not be entitled to deny the adultery.

42. The defendant may in a defence counterclaim for relief against the plaintiff on any ground on which the defendant might issue a Writ of Summons and claim relief against the plaintiff and may raise any matters which would either preclude the Court absolutely from granting the relief claimed or raise a discretion in the Court to grant relief.

For specimen Statement of Defence see Form No. 15 in the Schedule.

43. (1) A defendant may raise an objection to the jurisdiction with or without admitting or putting any other matters in issue: Provided that where other matters are put in issue they shall be raised in the same Statement of Defence as the objection to the jurisdiction.

(2) The defendant shall within two days after filing the Statement of Defence apply to a Judge for directions as to how the objection to the jurisdiction should be tried.

(3) The Judge may give directions for the separate trial of the issue on the question of jurisdiction or may leave the matter to be determined at the trial of the action or other proceedings together with other matters in issue.

44. A Defence raising a plea to the jurisdiction shall set out concisely the grounds relied on in support of the plea.

For specimen Defence based on a plea to the jurisdiction see Form No. 16 in the Schedule.

45. (1) Where the defendant alleges in the Defence that the plaintiff has been guilty of adultery since the marriage the defendant shall serve the person with whom it is alleged the plaintiff committed adultery with an office copy of the Writ of Summons and endorsements and of the Defence within such time after filing the Defence as may be fixed by the Registrar: Provided that a Judge may by order dispense with the requirements of this rule either absolutely or subject to such conditions as he may think fit if the identity or whereabouts of such person cannot be ascertained.

(2) When making service under this rule the defendant shall also serve the party named with a notice informing the party that he or she is entitled to enter within the time mentioned in the notice a Statement of Defence in respect of the allegations made against him or her. Every such notice shall be signed by the defendant or the defendant's solicitor and shall be sealed with the seal of the Court and served as if it were a Writ of Summons. The time to be specified in the notice shall be in accordance with the times limited for filing defences generally after service of a Writ of Summons.

(3) Where in accordance with the requirements of this rule the alleged adulterer is required to be served the title of the action shall be amended in accordance with Form No. 8 in the Schedule.

(4) Every party so served shall have the right to enter a Defence within the time specified in the notice and rules relating to entry of defence in actions generally shall apply with the necessary modifications.

46. (1) Where a Defence counterclaims for substantive relief the Defence shall be signed by the defendant and certified by the defendant and the defendant's solicitor in the same way (with the necessary modifications) as Statements of Claim are required to be certified.

(2) Where a Defence is not a simple denial but raises new matters which if true would preclude the Court from granting relief or would confer a discretion on the Court to grant relief the defendant shall sign the Defence and certify as to the truth of the matters raised and the defendant's solicitor shall certify to the fact that the defendant has read the Statement of Defence or has had it read to him by the solicitor and acknowledged its truth.

47. (1) At the foot of the Statement of Defence there shall be subscribed a memorandum stating whether it has been filed by the defendant in person or by a solicitor on his behalf and an address to be called "the address for service" where process and other documents not required to be served on the defendant personally may be left for him.

(2) Such address shall not be more than half a mile from the General Post Office, Perth.

48. A defendant or person who has not filed a Statement of Defence need not unless the Code or these Rules otherwise direct or the Court or a Judge orders the contrary be served with any document or given any notice.

Reply.

49. Within eight days from the delivery of the Defence the plaintiff may file a Reply thereto raising any other matters of substance which may arise out of the Defence and which would if true operate as an answer to the allegations made in the Defence.

50. It shall not be necessary to join issue in a Reply and no Reply shall be delivered merely for that purpose, and if no Reply is delivered it shall be taken that the plaintiff and the defendant join issue on the matters left in issue in the Statement of Claim and the Defence.

51. A Reply shall be signed and certified subject to the necessary modifications in the same way as a Statement of Claim.

52. Within twenty-four hours after the filing of a Reply a copy thereof and all endorsements shall be served on the opposite party and any other party entitled to be heard as to any matters raised in issue therein.

Further Pleadings.

53. No further pleadings shall be allowed except by order of a Judge and the Judge may permit a rejoinder and surrejoinder in any case where in the opinion of the Judge the circumstances so warrant.

Special Statement where Court's Discretion Sought.

54. Any party desiring the exercise of the Court's discretion notwithstanding the adultery of that party shall state in his or her pleading sufficient particulars of the acts of adultery to identify the person with whom, the dates or periods when, and the place where such acts were committed together with the grounds on which it is claimed that the discretion should be exercised in favour of that party.

Amendments.

55. (1) A party may amend a Writ of Summons or Statement of Claim or Defence or any other pleading or document filed by that party without leave if it has not yet been served, but after service it shall be amended only by leave of a Judge which may be obtained *ex parte* and without any supporting affidavit unless the Judge otherwise orders.

(2) Every such amendment shall be filed and unless the Judge in making an order giving leave to amend dispenses with the re-service of the amended document it shall be delivered to the other party within twenty-four hours of filing and shall be so framed as to show the previous document and the effect of all amendments, all amendments being noted in red on the substituted document.

(3) Any pleading may be amended under this Rule notwithstanding that the facts on which the amendment is made are subsequent to the issue of the writ.

56. On delivery of any amendment the party to whom it is delivered shall be at liberty to amend his pleading within four days or such further time as may be allowed by a Judge.

57. The costs thrown away by reason of all such amendments shall be paid by the party responsible for the amendment unless the Court shall otherwise order.

58. The requirements of these Rules as to the verification and signing of Statements of Claim and Defence shall apply with the necessary modifications to every such amended pleading.

General.

59. (1) No copy of the Defence, Reply or other pleading whether original or amended shall be received for filing after the time prescribed by these Rules except by order of a Judge, unless the other party or parties affected thereby, by endorsement in writing on the document for filing, consent to its being filed after such time.

(2) No such Defence, Reply or other pleading shall be delivered to any other party unless it has first been filed and then it shall be delivered within the time allowed by these Rules for that purpose, and in any case where it has been filed as prescribed but not delivered within the time prescribed the party to whom it is delivered out of time shall not be bound to receive it except by order of a Judge.

(3) The costs of obtaining such order shall fall on the party applying for it unless the Court or a Judge shall otherwise direct.

60. Any party may apply to the opposite party for particulars of matters pleaded and if such particulars are not furnished may apply to a Judge for an order for such particulars to be delivered.

61. All particulars whether given in pursuance of an order or otherwise shall be filed before delivery and delivery to the party requiring them shall be made within twenty-four hours of the time of filing.

SERVICE.

General.

62. Subject as hereinafter provided personal service shall be effected on the defendant or opposite party or on any person on whom it is necessary to effect service under the Rules in the case of—

- (a) A Writ of Summons and Statement of Claim;
 - (b) a Defence which includes a counterclaim for relief or seeks a refusal of the exercise of discretion on the ground of the plaintiff's adultery with a named person in which case personal service shall be effected by the defendant on the named person of the Writ of Summons, Statement of Claim and Endorsements, and the Defence and counterclaim and Endorsements and the notice hereinbefore prescribed.
 - (c) an application for maintenance or custody of or access to children where the same has not been claimed in the Statement of Claim;
 - (d) any Notice of Motion;
- together in all cases with a copy of any affidavit filed therewith or in support.

63. In the following cases service shall be effected as therein prescribed—

- (a) where a solicitor files a Defence or any document on behalf of a party service on the solicitor shall be deemed to be service on the party;
- (b) where a party has given an address for service in accordance with the Rules service of process and documents may be effected by leaving the same at the address;
- (c) in ancillary, interlocutory or other proceedings in an action after service of a Writ of Summons where the defendant has not filed a Defence service need not be effected at all except in the case of applications for maintenance or custody of or access to children where the same has not been claimed in the Statement of Claim;

Provided that a Judge may in any particular case order that personal service or some form of service other than that prescribed in the preceding paragraphs shall be effected.

64. Service of process shall not be effected by a party to the action or proceeding except by special order of a Judge authorising such service.

65. Where personal service is required by these Rules or by the order of a Judge such service shall be effected by delivering the process together with all annexures and endorsements as prescribed by these Rules to the other party or person concerned, and at the time of such service the process server shall produce the original process sealed with the seal of the Court for inspection.

66. Where the Court is satisfied that personal service is impracticable it may order some other form of service or dispense with service altogether.

67. Where the Court orders some form of service other than personal service the Court shall specify the time which shall be limited in the particular case for the filing of the Statement of Defence and the day or act from which the period of time shall commence to run.

68. Where substituted service by advertisement is ordered copies of the newspapers containing the advertisement shall be filed in the Central Office.

69. Where an order for substituted service directs advertisement the form of the advertisement shall be settled by the Registrar.

70. Service of any order on the solicitor for a party on the record shall be good service for the purpose of attachment unless in the case of attachment the Court has reason to believe that the order has not come to the notice of the party concerned.

71. Where no Statement of Defence is filed an affidavit of service of the Writ of Summons and indorsement shall be made by the process server stating the deponent's means of knowledge of the identity of the person served and establishing such identity to the satisfaction of the Court and such affidavit shall be filed before any step is taken in default of Defence: Provided that where a person purporting to be a co-defendant has signed an acknowledgment of service and an acknowledgment that that person is the party named such acknowledgment shall be taken as *prima facie* evidence of the fact.

A specimen affidavit of service is set out in Form No. 17 in the Schedule.

Service where Defendant is of Unsound Mind.

72. When any person of unsound mind is a defendant service on any committee of such defendant, or if there be no such committee, on the person with whom the defendant resides or in whose care the defendant is, shall, unless a Judge otherwise order, be sufficient service on the defendant.

73. Where the defendant is confined in a mental hospital or a house licensed for the reception of insane patients then the defendant shall be deemed for the purposes of this rule to be in the care of the Superintendent or Deputy Superintendent thereof.

74. Where service is effected in accordance with the provisions of the preceding rule the process or document shall be endorsed with a notice that the contents or purport of the document shall be communicated to the person of unsound mind to whom it relates unless the person on whom the document was served is satisfied after consultation with the medical attendant of the person of unsound mind or the Superintendent or Deputy Superintendent of the Mental Hospital or licensed house where the defendant is confined that the communication would be detrimental to the defendant's mental condition or would be useless in the circumstances.

75. After service in accordance with the preceding rules the party at whose instance such service was effected shall unless otherwise directed file an affidavit made by the person with whom such person of unsound mind resides or under whose care he is, stating whether or not the contents or purport of the document were communicated to the person of unsound mind and if not giving the reasons therefor.

Service out of the Jurisdiction.

76. Any process or document in an action or in any ancillary proceeding may be served out of the jurisdiction without leave and subject thereto the procedure prescribed by Rule 8 of Order XI. of the Rules of the Supreme Court and the provisions of Rule 9 of that Order shall apply to any such service out of the jurisdiction: Provided that the official certificate required by paragraph 3 of Rule 8 of that Order shall in the case of a document of which personal service is required by these Rules show the means of knowledge of the process server of the identity of the person served.

INTERVENTION.

77. The filing of a plea by the Attorney General in an action stating the grounds on which relief should not be granted shall be deemed to initiate intervention by him in the action. In all other respects the action shall proceed as though such plea had been filed by an original party.

78. Any other person may apply to a Judge for leave to intervene in the action and if leave is granted may file a plea within the time limited by the order authorising intervention and proceed as if originally a party to the action: Provided that in the case of any difficulty in procedure arising by reason of such intervention a Judge on the application of any party may give such directions as he may think fit.

79. A copy of every plea or defence filed after intervention shall be delivered to the opposite party or any other party entitled to be heard as to any issues raised therein within twenty-four hours after filing.

80. Unless otherwise directed a person intervening shall join in the action at the stage which the action has reached and the name of the intervener shall appear thereafter in the title of the action.

81. A Judge of his own motion or on application being made to him before or at the trial may order service of the proceedings to be made on any person not already a party and who would not otherwise be required to be served.

82. Intervention in any ancillary proceeding shall be effected by notice of application supported by affidavit.

APPLICATIONS IN CHAMBERS.

General.

83. Interlocutory applications may be made at any time prior to the trial of the action.

84. Every application shall be made on notice to a Judge in Chambers.

A specimen notice of application appears in Form No. 18 in the Schedule.

85. The following matters may be dealt with by way of application to a Judge in Chambers:—

1. Directions as to service (*ex parte*).
2. Interim injunctions or injunctions after trial of any action or ancillary proceeding.
3. Leave to proceed where leave is required under these Rules (*ex parte*).
4. Leave to adduce evidence on affidavit (*ex parte*).
5. Interim custody of children.
6. Custody of and access to children.
7. Maintenance pending and after trial.
8. Commissions or requisitions to examine witnesses out of the jurisdiction of the Court.
9. *De bene esse* examination of witnesses.
10. Extension of time for any proceeding under the Code or under these Rules.
11. Leave to intervene prior to the hearing or after order nisi (*ex parte*).
12. Application for trial by jury.
13. Appointment of guardians to infants and persons of unsound mind.
14. Security for costs.
15. Appeals from the Registrar.
16. Any other matter or thing which by the Code or by these Rules is not expressly required to be dealt with in open court.
17. Any other matter or thing which by these Rules is required to be dealt with by a Judge in Chambers.

86. Every application to a Judge in Chambers shall be supported by affidavit as to the facts relied on as grounds for the application and the affidavit shall be made by some person able to depose of his own knowledge as to such facts, or where the deponent is unable personally to depose as to the facts he shall state the source of his means of knowledge of the facts.

87. Notwithstanding that an application may be made under these Rules *ex parte* a Judge may if he thinks fit order notice of the application to be given to any other party or to any person not a party on the record.

Applications in Emergency.

88. Notwithstanding that any particular application would under the Rules not be heard without due service on the other party, where it is shown to a Judge by an applicant that the applicant would be seriously prejudiced if service were effected before obtaining an order the Judge may make an order *ex parte* subject to such terms as to damages and costs as he may think fit and service on the other party within a limited time and subject in every case to leave being reserved to the other party affected within such time and upon such notice as may be fixed by the Court, or, if none is fixed within a reasonable time, to set aside the order or vary it, but subject thereto the order shall be binding and effective.

Powers of the Registrar.

89. (1) The Registrar may exercise all the powers of a Judge sitting in Chambers and, subject to any express directions the Judges may from time to time make by way of practice rule, shall hear and determine all matters normally transacted in Chambers save that he shall not deal with applications for committal or attachment or applications for custody of or access to children: Provided that any party aggrieved by any order or decision of the Registrar may appeal therefrom to a Judge in Chambers. Such appeal shall be by notice to attend before the Judge within eight days after the order or decision complained of or such further time as may be allowed by a Judge.

(2) An appeal from an order or decision of the Registrar shall not unless otherwise ordered by a Judge act as a stay of proceedings under the order or decision complained of.

GENERAL RULES REGARDING THE FILING AND SERVICE OF AFFIDAVITS.

90. In every case where affidavits are authorised to be used in evidence in any action or proceeding either by these Rules or by order of a Judge the plaintiff or other party having the carriage of the action or proceeding may file affidavits in support, and any opposing party entitled to be heard may file affidavits in defence or opposition, whereupon the other party may file affidavits in reply, in accordance with the Rules set out hereunder: Provided that the Rules set out hereunder shall not apply to affidavits filed for use in interlocutory proceedings in which case the Rules of the Supreme Court applicable to the filing of affidavits in interlocutory proceedings shall apply.

91. Affidavits shall be filed as follows:—

- (a) In any action or on any motion to be heard in open court at least fourteen days prior to the setting down of the action for trial or to the day appointed for the hearing of the motion.
- (b) On any application other than an interlocutory application at least seven days prior to the day appointed for the hearing thereof.

92. The following times shall be observed in the filing of affidavits subsequent to affidavits filed in support of any action or proceeding:—

- (a) Affidavits in defence of any action or in opposition to any proceeding shall be filed within seven days after service of any affidavit or affidavits in support of the action or proceeding.
- (b) Affidavits in reply shall be filed within five days after service of the affidavit or affidavits to which the party is entitled to reply.

93. All affidavits which are filed under these Rules shall be served on every party entitled to be heard in defence or opposition within twenty-four hours after filing.

94. No affidavits shall be filed after the affidavits in reply except by special leave of a Judge.

95. Where on account of the action of the opposing party or by reason of some unforeseen circumstances or circumstances beyond his control a party entitled to file affidavits in defence or reply is unable to complete, file and serve the affidavits within the limits of time hereinbefore prescribed then the affidavits may be filed within such extended time as may be agreed to by the other party or parties and in default of agreement within such time as may be fixed by a Judge, who shall if he considers the refusal of an extension of time by one party unreasonable order that the party so refusing shall pay the costs of the application for extension of time: Provided that in all cases where an extension of time is so granted the date of trial or hearing shall be adjourned unless the Judge otherwise orders so as to admit of compliance with the foregoing rules enjoining the filing of the affidavits within the times hereinbefore provided.

LEAVE TO PROCEED.

96. (1) Where a plaintiff charging adultery alleges inability to identify the person who committed adultery with the defendant or, having named the person, does not serve the person with the Writ of Summons and Statement of Claim or the Defence (where the allegation is made by way of countercharge in the Defence) that allegation shall not be inquired into by the Court unless the plaintiff obtains an order prior to trial permitting him to proceed without naming or serving the alleged adulterer. Such an order may be made on any of the following grounds:—

- (a) Where there is no evidence or not sufficient evidence against such person; or
- (b) where on the evidence the plaintiff is able to show that he has made reasonable inquiry and is unable to ascertain the identity or name of the person concerned; or
- (c) that service in such case would present unusual difficulties; or
- (d) on any other ground which appears to the Court to be sufficient.

(2) Application for leave under this Rule may be made ex parte.

97. (1) Where an infant is defendant or co-defendant in an action and neglects after service to file a Defence by a guardian ad litem as prescribed by these Rules, the plaintiff may apply to a Judge for an order for some proper person to be appointed as guardian to defend on behalf of the infant and no further step shall be taken in the action except by leave of a Judge until such appointment has been made unless the Judge dispenses with the same for good cause.

(2) No order shall be made under this Rule unless it appears that the Writ of Summons and the Statement of Claim were duly served in accordance with the Rules and that notice of such application was, after the expiration of the time allowed for filing a Defence and at least four clear days before the day named in such notice for hearing the application, served on—

- (a) the person (if there is such a person) with whom or under whose care the infant was at the time of service of the Writ of Summons and Statement of Claim; and also on
- (b) the father or mother of the infant when the infant does not reside with or under the care of such father or mother:

Provided that a Judge may on the hearing of the application dispense with service on the father or mother, and may dispense with service of notice altogether where the Judge is of the opinion that service would be impracticable or useless.

98. Where a person of unsound mind is defendant or co-defendant in an action no further step shall be taken after service of the Writ of Summons and Statement of Claim, except by leave of a Judge, until a guardian ad litem to defend on behalf of the person of unsound mind has been appointed in accordance with these Rules.

99. Where on the trial of an undefended action some question of fact or law arises and it appears that although the defendant is not of unsound mind he is physically or mentally enfeebled or defective to such an extent that the trial Judge is of the opinion that his interests should be protected the Judge may adjourn the trial and send the papers to the Attorney General with a direction to intervene if the circumstances appear to warrant intervention or a request that suitable legal representation be given to the defendant.

APPLICATIONS TO ADDUCE EVIDENCE AT TRIAL ON AFFIDAVIT.

100. Where a Judge has directed that all or any of the facts in issue in an action may be proved by affidavits the affidavits shall be filed within such time as the Judge shall direct when the application is made, and in default of any such direction in accordance with the general rules relating to the filing of affidavits.

DISCOVERY AND INTERROGATORIES.

101. (1) Except as hereinafter mentioned no application for discovery or for leave to administer interrogatories need be made by a party against any other party in regard to any fact in issue between the parties but it shall be sufficient to give notice requiring discovery or requiring the other party to answer the questions within ten days or such further time as may be agreed upon between the

parties or allowed by a Judge: Provided that after an action has been entered for trial there shall be no obligation on a party to give discovery except by order of a Judge.

(2) If the party required to give discovery or answer interrogatories makes default in complying with the requisitions of such notice within the prescribed time the party requiring discovery or answers to interrogatories may apply to a Judge for an order to compel compliance and if the Judge grant the order the party in default shall pay the costs of the application unless the Judge on good cause shown shall order otherwise.

(3) No security need be furnished unless the Judge otherwise orders.

(4) Subject to these Rules discovery shall be made on affidavit and the general practice and procedure of the Supreme Court shall apply.

A specimen request for discovery or answers to interrogatories is set out in Form No. 19 in the Schedule.

SECURITY FOR COSTS.

102. (1) In any defended action a party may apply for that party's costs to be secured.

(2) The Judge shall consider the respective means and ability of the parties, the bona fides of the applicant's case, and any other matter deemed relevant, and may require such information and verification from the applicant as he thinks desirable.

(3) The granting of the application shall be in the discretion of the Judge.

(4) The amount to be secured may be fixed by the Judge without taxation of costs and the amount so fixed shall be the limit of the liability to give security.

(5) The party ordered may pay the amount of the security into the Central Office in cash or may give security for the amount fixed or may pay the amount partly in cash and give security for the balance.

(6) The amount for which security is given shall be applied in payment of the costs of the party in whose favour the order was made unless the Judge shall for good cause otherwise direct.

(7) When granting an order for security further proceedings in the action or proceeding shall be stayed until the order is complied with unless the Judge otherwise orders.

A specimen bond for securing costs is set out in Form No. 20 in the Schedule.

MEDICAL INSPECTIONS IN ACTIONS FOR DISSOLUTION ON THE GROUND OF INCAPACITY TO CONSUMMATE.

103. (1) In actions for dissolution of marriage on the ground of incapacity to consummate the marriage the plaintiff shall make application to a Judge for directions as to the appointment of a medical inspector or medical inspectors after the Statement of Defence has been filed, or, where default has been made in filing a Defence, after the time for filing has expired.

(2) Unless the Judge otherwise orders, the appointment of one medical inspector shall be sufficient.

(3) Where the Judge appoints one medical inspector the medical inspector appointed may, where no defence has been filed, be the medical adviser of the plaintiff.

A specimen Order appears in Form No. 21 in the Schedule.

104. Unless a Judge otherwise orders it shall not be necessary for the parties to attend for identification by the medical inspector, nor for the medical inspector to be sworn before undertaking the examination, but in all cases the Judge shall be satisfied at trial of the identity of the person examined by the medical inspector either by oral evidence or by affidavit.

105. The Judge may order that a certificate given by the plaintiff's medical adviser to the plaintiff be received in evidence at the trial and may further order that the evidence of any medical inspector be given on affidavit.

106. Every report of an examination pursuant to an order of the Court shall be filed as soon as practicable or within such time as may be limited by the Judge, and either party shall be entitled to be supplied with a copy upon payment of the prescribed fee.

A specimen Report appears in Form No. 22 in the Schedule.

ORDERS TO SET ASIDE OR RESTRAIN TRANSACTIONS.

107. Every application under Division 3 of Part IV of the Code shall be made in Chambers.

108. If notice of such an application is to be given to a person not a party to the action the notice shall be signed by the applicant or the applicant's solicitor and sealed with the seal of the Court and served as if it were a Writ of Summons.

109. The applicant may apply to a Judge in Chambers *ex parte* for directions as to the persons to be served, the method of service and the date of hearing and any other matters which may be necessary to get the question before the Court.

ENTRY FOR TRIAL—DISMISSAL FOR WANT OF PROSECUTION—LEAVE TO WITHDRAW ACTION.

Entry and Notice.

110. An action may be entered for trial—

(a) by a plaintiff

(i) after the Defence has been delivered; or

(ii) when no Defence has been delivered within the prescribed time on proof of service of the Writ of Summons and Statement of Claim with endorsements; or

- (iii) at any time after an order dispensing with service on the defendant; or
 - (iv) where substituted service has been ordered, at any time after compliance with the order and after the expiration of the period fixed by the Judge for filing a defence;
- (b) By a defendant who has filed a Defence and counterclaimed for substantive relief, if the plaintiff neglects to enter the action for trial at the expiration of ten days from the date when the time for delivering a reply has elapsed.

111. If the plaintiff or defendant does not set the action down for trial in accordance with the Rules a co-defendant against whom an issue of adultery has been raised or an intervener against whom any such issue has been raised shall not be entitled to have the action set down for trial but shall be entitled to apply to a Judge to have the action dismissed for want of prosecution and the Judge may make an order accordingly or may permit the plaintiff or the defendant to set the action down for trial on such terms as to costs or otherwise as the Judge may think fit.

112. (1) Actions shall be entered for trial at least fourteen days prior to the opening day of the sessions at which it is desired the action shall be heard unless—

- (a) a Judge fixes a shorter time; or
- (b) the party entering is under terms to accept a shorter notice.

(2) On the day of entry notice shall be given to every other party entitled to be heard.

A specimen Entry for Trial and Notice is given in Form No. 23 in the Schedule.

113. Except with the consent of all parties to the action or by order of a Judge no action shall be called on for trial until the expiration of fourteen days from the day of entry for trial and service of notice thereof as required by these Rules.

114. The Registrar shall not allow an action to be set down for hearing unless from an examination of the records of the Court he ascertains that it is then proper to do so and in the case of any doubt or dispute the matter shall be referred to a Judge.

115. Where by leave of a Judge amendments have been made after an action has been set down for trial the record shall again be referred to the Registrar who shall satisfy himself that it is proper for the trial to proceed and that all necessary papers have been filed which ought to be in the possession of the Judge at trial, and in case of any doubt or dispute the matter shall be referred to a Judge.

116. Any party to an action may apply to a Judge in Chambers to have the action dismissed or to have any issue raised by an opposing party struck out on the grounds that the party entitled to the carriage of the action or the party raising the issue in the action is in default in not prosecuting the same with proper diligence, that is to say the party in default—

- (a) has not set the action down for trial and seven days have elapsed from the time when such defaulting party became entitled to do so;
- (b) has failed to supply further particulars of a pleading when required by an order of the Court to do so;
- (c) has failed to comply with an order granting the applicant security for costs;

and in such case the Judge may make an order accordingly or subject to such terms and conditions as the Judge may think fit.

Plaintiff's Application to Dismiss.

117. A plaintiff may apply to have his action dismissed and a defendant may apply to have any counterclaim raised in the Defence dismissed before trial.

118. An application under the preceding rule to have an action or counterclaim dismissed before going to trial may be made to a Judge in Chambers on notice to the other party or parties affected by the application but such notice shall not be necessary in the case of a Writ of Summons where the Writ has not yet been served on any such party or parties or in any case where the Judge dispenses with notice: Provided that the Judge may, if he thinks it expedient order service of notice of the application although the Writ has not been served.

Fixing Date of Trial.

119. The order of hearing of undefended actions and the dates for hearing those actions shall be fixed prior to the commencement of the session for which such actions are entered by a clerk in the Central Office to be appointed by the Registrar after the clerk has first consulted the Associate to the Judge who will try the actions: Provided that where the circumstances of the case call for the fixing of a special date for hearing such date shall be fixed by the Associate after consultation with the Judge if necessary.

In this rule "Undefended Action" means an action in which no defence has been filed by any defendant within the prescribed time or any extended time allowed by a Judge or in which all the defences filed have been struck out.

120. The order of hearing and the dates for hearing of defended actions shall be fixed by the Associate to the Judge who will try the actions and it shall be the duty of each party to the action to attend the Associate not less than five days before the day appointed for the opening day of the sittings with a view to agreeing as far as possible on a date for the hearing: Provided that if a party fail to attend, the Associate may fix a date at the instance of or after consultation with any party attending: Provided further that in case of difficulty the Associate or the parties or any of them may attend before the Judge in Chambers for the purpose of obtaining an order from the Judge fixing a date for the trial.

121. It shall be the duty of the Associate to keep exhibited in a conspicuous place on or near the outer door of his room a list of all fixtures from time to time made by him under these Rules so as to show the sitting dates in the month filled up and whether

a trial is likely to last a whole sitting day or less so that parties desiring to have dates fixed shall be in a position to see what dates are available at any particular time.

TRIAL.

General.

122. Subject to the Code every trial shall take place in open court on the oral evidence of the parties and their witnesses in the presence of the parties, their counsel and solicitors if they desire to attend: Provided that a judge may order that—

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

Record of Finding and Order.

123. It shall be the duty of the Associate to the Judge who tries the action to forward to the Registrar at the conclusion of the trial a record showing a summary of the proceedings in court as nearly as practicable in accordance with Form No. 24 in the Schedule.

124. The Registrar shall enter in the proper book the findings of the jury where there is a jury and the order of the Court in the action and sign the record.

A specimen of an order nisi in an action for dissolution of marriage in an undefended action is shown in Form No. 25 in the Schedule.

Ensuring Maintenance Provision where Dissolution is on Ground of Five Years' Separation.

125. (1) Where a wife is entitled to maintenance under an order obtained under the Married Women's Protection Act, 1922, or under an agreement between her and her husband and the husband makes application for a dissolution of marriage on the ground that the parties have lived separately and apart for a period of not less than five years prior to the commencement of the action and the defendant wife does not file a defence the order nisi shall state that the issue of the final order shall be subject to the condition that the plaintiff husband shall undertake at all times to abide by the terms of the maintenance order or the terms of the agreement subject to any variation or other provision which the Supreme Court may from time to time make.

(2) Where a defendant files a defence and the Court grants an order nisi for the dissolution of marriage on the ground that the parties have lived separately and apart for a period of not less than five years prior to the commencement of the action the Court may direct that the question of maintenance of the defendant be referred to the Registrar and the order nisi shall state that the final order shall not issue until the plaintiff has given security or sufficient guarantees for carrying out the terms of any order made by the Registrar or such variation thereof as the Court may make and the final order shall contain a statement of compliance.

(3) Notwithstanding the foregoing provisions of this rule neither party shall be precluded from having recourse to the general provisions of the Code and the general Rules relating to applications for maintenance.

A specimen statement of the additional matters required to be inserted in an order nisi pursuant to the provisions of this rule is set out in Form No. 26 in the Schedule.

Deficiency in Evidence or Procedural Defect to be made Good.

126. When the trial of any undefended action is adjourned to enable some deficiency in the evidence or some procedural defect to be made good such defect shall be made good to the satisfaction of the Judge within six months of the date of the adjournment, otherwise the action shall at the expiration of such period be listed for hearing and may be dismissed unless the Judge shall on good cause shown enlarge such period.

SETTING ASIDE AN ORDER NISI AND SHOWING CAUSE WHY AN ORDER NISI SHOULD NOT BE MADE FINAL.

127. (1) Motion to set aside an order nisi or to show cause why an order nisi should not be made final shall be supported by affidavit of the facts relied on.

(2) When the affidavits relating to the Motion are complete the matter shall be referred to a Judge who shall give directions for the trial of any questions of fact raised by the affidavits and may if he thinks fit direct that the matters raised be determined on the evidence contained in the affidavits.

PAYMENT INTO COURT OF DAMAGES OR COSTS AWARDED ON GRANTING OF ORDER NISI.

128. All damages or costs awarded against a defendant on the granting of an order nisi in an action for dissolution of marriage shall be paid into court and shall remain in court until the issue of the final order when, subject to any pending appeal or intervention proceedings, the sums paid in may be paid out to any party or person entitled thereto or to his or their solicitor subject to the terms of any order which the Court may have made by way of settlement of any damages.

APPLICATION FOR FINAL ORDER.

129. Application for a final order by a plaintiff in whose favour an order nisi has been made may be by notice in writing signed by the plaintiff, as set out in Form No. 27 in the Schedule.

130. Such notice shall be filed in the Central Office and on receipt of it the Registrar or some officer to be nominated by him shall note on the form whether there is any appeal pending or other proceeding filed in the Registry in opposition to the granting of the final order and whether the time limited by the order nisi for the granting of the final order has elapsed, and in the event of there being any apparent impediment to the granting of the final order the matter shall be referred to a Judge for his directions; otherwise, if the application is in order, the Registrar or such other officer shall certify the fact on the face of the application and the order nisi shall then be deemed to be made final and the final order of dissolution may thereupon be issued: Provided that where twelve months have elapsed from the date when the order could have been made final no final order shall be issued without leave of a Judge and unless the applicant file an affidavit stating the cause of the delay.

131. (1) Where an order nisi is made subject to a condition that the final order shall not issue until the plaintiff (*or defendant*) has furnished security or guarantees for a maintenance provision which the plaintiff (*or defendant*) is obliged to make under the terms of an order of the Court the final order shall not issue until such security or guarantees have been given and the Registrar has certified accordingly.

(2) The Registrar may act on the certificate of the parties or such other evidence as he may deem sufficient and in the case of any doubt or dispute may refer the matter to a Judge for his directions.

(3) In cases covered by this rule the final order shall contain a statement of compliance.

132. An application by a defendant against whom an order nisi has been made to have the order nisi made final shall be made by motion to the Court supported by affidavit as to the reasons why such application is made by the defendant and the Court shall be informed in the affidavit whether there are outstanding costs in the action payable to the plaintiff or any arrears of maintenance due by the defendant to the plaintiff and the reason for the non-payment.

133. Notice of such application and a copy of the affidavit in support shall be served on the plaintiff within such time as may be fixed by the Registrar unless a Judge dispense with service.

A specimen final order dissolving a marriage is set out in form No. 28 in the Schedule.

A specimen statement of compliance with the terms of a maintenance provision is set out in Form No. 29 in the Schedule.

A specimen order for nullity of marriage is set out in Form No. 30 in the Schedule.

A specimen final order obtained on the motion of the defendant is set out in Form No. 31 in the Schedule.

NEW TRIALS, REHEARING, AND APPEALS.

134. All motions for new trials of issues of fact tried by a jury, or for rehearing of actions heard by a Judge without a jury, and all appeals against any order or decision shall state in the notice of motion or in the notice of appeal as the case may be the grounds on which such motion or appeal is based and shall in the case of a motion for a new trial or for a rehearing be supported by affidavit by or on behalf of the party moving.

135. (1) The motion for a new trial or a rehearing shall specify the grounds on which the new trial or rehearing is sought.

(2) The notice of appeal shall specify whether all or part only of the verdict finding decision or order is complained of.

(3) Every motion for a new trial or rehearing shall be made within twenty-one days after the finding of the Judge or the verdict of the jury and shall be served on the other parties to the action or proceeding insofar as they may be affected by the result of any order which may be made on the motion.

136. It shall not be sufficient simply to state in a notice of appeal that a judgment or order is against the evidence or the weight of evidence or is wrong in law, but sufficient particulars shall be given to indicate the substance of the objection taken and if such particulars are not given the notice shall not be deemed to be notice within the meaning of this rule.

137. A notice of motion or notice of appeal may be amended at any time by leave of the Court or a Judge on such terms as the Court or the Judge may think fit.

ANCILLARY APPLICATIONS.

Maintenance.

138. Where maintenance is claimed on the Statement of Claim the Judge at trial may refer the matter for subsequent determination to the Registrar.

139. All applications for maintenance except when dealt with at the trial shall be heard by the Registrar.

A form of notice of application for maintenance is set out in Form No. 32 in the Schedule.

140. Application for maintenance of children may be made—

(a) by a plaintiff who has not included in the Statement of Claim a claim for maintenance of children at any time after service of the Writ of Summons in which custody of children is claimed, or on or after making an application for custody;

(b) by a defendant who has filed a Statement of Defence claiming custody;

(e) by any person who has obtained leave to intervene in the action for the purpose of applying for the custody, or who has the custody or control of any children under an order of the Court or under an order of any other competent court, after filing a defence in the action setting out such person's claim to custody of the children.

141. The plaintiff may apply for maintenance pending the determination of the action at any time after the Writ of Summons has been served on the defendant against whom the claim for maintenance is made or at any time after an order has been made dispensing with such service: Provided that the fact of marriage between the parties is established by affidavit already filed.

142. A defendant or other person claiming maintenance against a plaintiff may make application for maintenance pending the determination of the action at any time after filing and service of the defence or after filing of the defence where an order is made dispensing with service.

143. Applications to the Court to exercise the powers conferred by sections 46 to 49 of the Code for a permanent provision may be made at any time after final order of dissolution or the order for nullity or judicial separation, and the preceding Rules shall apply with the necessary modifications to any such application.

144. The affidavit in support of an application for variation of a settlement or to obtain an order for settlement, of any property shall state the nature of the variation or settlement proposed and shall set out the facts relied on and in the case of an application for the variation of a marriage settlement shall contain particulars of the marriage, of any children of the marriage, of all settlements whether ante-nuptial or post-nuptial, and of the funds brought into the settlement by the husband and wife, and full particulars so far as the applicant is able to state of all property to which the other party is entitled in possession or reversion or expectancy.

145. Where an application for variation of any settlement would if granted, affect the trusts or dispositions of any settlement notice thereof shall be served on the trustees of the settlement and such other persons as the Registrar may direct and any party so served may within fourteen days after service file an affidavit in answer.

146. On an application for variation of any settlement or for a secured provision the Court shall unless it is satisfied that the application if granted would not affect the rights or interests of any children of the marriage or that the settlement or secured provision makes adequate provision for any children direct that the children be served with notice of the application or be separately represented on the application if necessary by a guardian *ad litem* to be appointed in accordance with these Rules.

147. Every such application made to the Registrar shall be by notice of application and the affidavit in support shall state the facts on which the applicant relies and shall include a statement of the applicant's property and income and the property and income of the party against whom the application is made so far as is known to the applicant.

148. (1) Where a defendant who has not filed a Defence in the action desires to oppose an application for maintenance he shall file in the Central Office of the Supreme Court at Perth within the time prescribed therefor in the notice of application notice of intention to oppose the application and deliver a copy thereof within forty-eight hours of filing to the applicant or the applicant's solicitor.

(2) Such notice shall specify an address for service within half a mile of the General Post Office, Perth, at which service of any documents may be made on the defendant.

(3) The grounds on which opposition is to be made shall be supported by affidavit.

149. The rules relating to the filing and service of affidavits generally shall apply.

150. When the affidavits are complete or at the expiration of the time allowed for the completion of the same the applicant may bring the matter on for hearing before the Registrar.

151. On the hearing of any application the Registrar shall in the presence of the parties or their solicitors or such as attend and on proof of service of the proceedings on any party not attending but entitled to be heard investigate the allegations made in support of and in answer to the application and may order the attendance of the spouse and any other person for the purpose of being examined or cross-examined and such attendance may be enforced by subpoena. The Registrar may take the oral evidence of witnesses and at any stage of the proceedings order the discovery and production of any document or call for further affidavits.

152. (1) If any witness fail to observe the requirements of a subpoena which has been served upon him to attend before the Registrar, or if any witness attending before the Registrar refuse to be sworn or to answer any question which the Registrar may allow to be put, or is guilty of contumacious conduct, or if any person fail to obey an order for discovery or production of documents, the Registrar shall report such failure, refusal or conduct to a Judge and thereupon the witness shall be in the same position and be dealt with in the same way as if he had disobeyed a subpoena to attend before a Judge or had been guilty of such refusal or conduct before the Court.

(2) The report shall be in writing but without affidavit and the Registrar shall inform the witness or person to whom the report relates of the time when and the place where the matter therein mentioned will be reported to the Judge.

(3) Upon receiving the report the Judge may take such action thereon as he thinks fit.

153. The Registrar may refer the application or any question arising thereon to a Judge for his decision and pending the final determination of any application he may on or after the first day of the hearing make an interim order on such terms as he thinks just where the applicant is in necessitous circumstances although no evidence has been given on behalf of the opposing party, and may from time to time vary any such interim order.

154. On any application the Registrar may act upon the evidence given on any previous application in the action.

155. The provisions of the preceding rules shall apply with necessary modifications to any application to vary the terms of an order.

156. The costs of any application under these Rules shall be in the discretion of the Registrar.

Custody of Children.

157. Where custody of children is claimed at trial the Judge may in lieu of determining the matter at trial refer it to Chambers for subsequent determination.

158. All applications for custody of children other than applications referred to Chambers by a Judge at trial shall be dealt with on notice of application supported by affidavit. Every such affidavit shall state in whose custody the children are at the time of the issue of the application, their names and ages, the stage their education has reached, what proposals the applicant has for the future maintenance and welfare of the children and any other relevant information.

159. Where the child is not the child of the marriage of the parties, the applicant shall serve notice on any person being a parent or former guardian of the child whom the Judge may direct to be served, and for the purpose of enabling the Judge to give any such directions the applicant shall state all relevant facts known to the applicant concerning the parents of the child.

160. Where a party opposing the claim desires to have custody of the children the affidavit or affidavits filed on behalf of the opposing party shall state similar facts concerning the proposals of the opposing party for the future maintenance and welfare of the children.

161. Where the children, the subject of any application, are already the subject of any pending proceedings affecting the right of their custody either in the Supreme Court or in any other court of competent jurisdiction or where there is already an order in existence of any such court concerning the right to custody of the children the same shall be disclosed so far as is known to the applicant in the affidavits filed by him.

162. (1) The Court or a Judge may from time to time make interim orders concerning the custody of children pending the final determination thereof.

(2) An application for custody of children pending the determination of the action may be made—

(a) by a plaintiff, whether or not the plaintiff has made a claim in the writ for the custody of children—at any time after the service of the writ of summons;

(b) by a defendant—at any time after the issue of the writ of summons;

(c) by any other person—at any time after obtaining leave to intervene in the action for this purpose.

163. The foregoing rules shall apply with necessary modifications to applications for access to children.

164. No child in respect of whom an order for custody or access has been made shall be taken out of the jurisdiction of the Court except by virtue of any special terms in the order granting custody or access or pursuant to leave granted on application being made to a Judge.

165. Before granting leave to take a child out of the jurisdiction of the Court a Judge may require the applicant to give security to ensure the return of the child to the jurisdiction of the Court in accordance with any terms of the order granting leave to take the child out of the jurisdiction.

COSTS.

166. (1) Subject to the provisions of the Code the following costs and no more shall be allowable between party and party in all actions, ancillary matters, and proceedings and the costs set out shall include costs of all interlocutory and ex parte proceedings prior to trial or hearing:—

Undefended actions 35 guineas.

Defended actions 55 guineas.

Where the action is not defended at the trial but the plaintiff or party having the carriage of the action has reason to believe that the action will be defended and gets up the case on that basis 45 guineas.

Where the hearing of the action continues for more than one sitting day—for every additional day 25 guineas.

(Where in such case less than a day is involved the additional fee shall be such proportion of the 25 guineas as the Judge may allow.)

Applications for ancillary relief—

(i) Custody of or access to children with or without an application for maintenance 10 guineas.

(ii) Maintenance during pendency of action .. 5-10 guineas.

(iii) Permanent maintenance 5-15 guineas.

(iv) Variation of order for maintenance 5-10 guineas.

Appeals—

(i) Appeal against any order of the Registrar .. 5-10 guineas.

(ii) Appeal against the granting of an order nisi or order for judicial separation or nullity or any final order 25-40 guineas.

(iii) Appeal against any order of a Judge in Chambers 20-30 guineas.

Motion for re-hearing or re-trial 25-40 guineas.

- Any other motion which is contested 12-20 guineas.
- Where a motion is not contested at the hearing but the party moving had good reason to believe prior to the date of hearing that it would be contested—A sum not to exceed 15 guineas which the Judge may fix.
- On any intervention by the Attorney General 35-45 guineas.
- Where there is a maximum and a minimum prescribed by the above scale the fee, within the limits prescribed, shall be fixed by the Judge or Registrar, without prejudice however, to the provisions of the proviso to sub-rule (2) of this rule.

(2) The above costs shall include the costs of all services including counsel fees and the costs of town agents but shall not include disbursements necessarily and properly paid or incurred in court fees, jurors' fees, advertisements, witness expenses and other proper disbursements: Provided that notwithstanding anything hereinbefore contained—

- (a) in any action, application or proceeding presenting unusual difficulty or special features which in the opinion of the Judge call for a higher fee the Judge may certify accordingly and as to the fee which the Judge thinks proper and thereupon such fee shall be the fee recoverable;
- (b) in any particular case where the quantum of work performed does not justify the allowance of a fee according to the scale prescribed or a fee equal to the minimum fee prescribed, the Judge may fix such fee as in his opinion is just and reasonable;
- (c) the Judge may in his discretion direct that the costs be taxed;
- (d) in awarding or disallowing any particular part of the costs relating to any action or proceeding the Judge may fix the sum appropriate or refer the matter for taxation;
- (e) the Judge shall fix what he considers a proper sum to be charged for costs in any case which is not covered by the scale set out in sub-rule (1) of this Rule or in his discretion refer the matter for the taxation of costs;
- (f) if in the opinion of the Judge at trial the trial of any action has been unnecessarily protracted through the fault of any party otherwise entitled to costs in accordance with these Rules, the Judge may disallow such portion of the costs as he thinks just.

(3) All bills of costs required to be taxed under these Rules shall be referred to the Registrar or such other taxing officer as the Chief Justice may appoint for taxation of bills of costs. Such bills shall be filed and notice of the time appointed for taxation shall be given to the party filing the bill and he shall give to the other parties entitled to be heard on the taxation at least three clear days' notice of the appointment and shall at the same time or previously deliver to them a copy of the bill to be taxed.

(4) The taxing officer shall also tax and give his allocatur for all disbursements properly recoverable and carry into the allocatur the sum properly allowable for costs under these Rules so as to show the total amount recoverable.

(5) This rule shall not affect the right of a solicitor to charge and recover solicitor and client costs from his client.

(6) All solicitor and client costs and all costs referred for taxation under these Rules shall be in accordance with the scale of costs prescribed in Appendix N of the Rules of the Supreme Court and, subject to these Rules, the provisions of Order 65 of those Rules shall apply accordingly.

(7) (i) Subject to any special agreement in writing made between a solicitor and his client as to the remuneration payable to the solicitor both the solicitor and the client shall have the right to have the solicitor's charges in respect of solicitor and client costs taxed at any time before delivery of the bill or within thirty days after delivery of the bill.

(ii) On being requested by the client by notice in writing to submit his bill of costs for taxation the solicitor shall within fourteen days after receiving such notice file his bill for taxation and thereupon the taxing officer shall appoint a day and time to proceed with the taxation of the bill.

(iii) Notice of such appointment and a copy of the bill as filed for taxation shall be served by the solicitor on the client at an address to be specified in the notice requesting the bill to be submitted for taxation, such address to be within half a mile of the General Post Office at Perth.

(iv) Where a solicitor on his own initiative files his bill of costs for taxation as between solicitor and client the taxing officer shall appoint a day and time to proceed with the taxation. Notice of such appointment and a copy of the bill shall be served by the solicitor on the client.

(v) If there is no attendance of the client or of anyone on his behalf at the time appointed for the taxation the taxing officer shall before proceeding with the taxation be satisfied by affidavit that the bill of costs and notice of the taxation have been served on the client in accordance with these Rules a reasonable time before the time appointed for taxation.

(vi) Where a client has requested a solicitor to submit his bill of costs as between solicitor and client for taxation according to this rule no costs shall be recoverable by the solicitor except such costs as may be properly allowed by the taxing officer on taxation.

WARRANT FOR ARREST OF MAINTENANCE DEFAULTER UNDER SECTION 55 OF THE CODE.

167. Any party desiring the issue of a warrant for the arrest of a maintenance defaulter under section 55 of the Code shall make application in accordance with Form No. 33 in the Schedule. Every such application shall be supported by affidavit verifying the arrears under the maintenance order.

A specimen warrant is set out in Form No. 34 in the Schedule.

INDEX OF FORMS.

Form No.

1. Register of Actions.
2. Appointment of a guardian ad litem by a proposed plaintiff infant.
3. Appointment of a guardian ad litem by a defendant infant.
4. Consent to act as guardian ad litem on behalf of a plaintiff or defendant infant or person of unsound mind.
5. Affidavit of fitness and verification of consent.
- 6 to 12 Forms of title of action.
13. Form of warning to be endorsed on notice of motion.
14. Writ of Summons, Statement of Claim (including Statement of Claim in an application for Declaration of Personal Status), and endorsements.
15. Statement of Defence.
16. Defence based on lack of jurisdiction.
17. Affidavit of service of process.
18. Notice of application in Chambers.
19. Request for discovery or answers to interrogatories.
20. Bond for securing costs.
21. Order appointing medical inspector or inspectors.
22. Report of medical inspector.
23. Entry for trial and Notice.
24. Record of proceedings in Court.
25. Order nisi for dissolution of marriage in undefended action.
26. Conditions to be embodied in order nisi where the dissolution is on the ground of five years' separation and a defendant who has not defended has the benefit of a maintenance order under the Married Women's Protection Act, 1922, or the benefit of a maintenance agreement.
27. Application for final order.
28. Final order dissolving marriage.
29. Statement of compliance to be embodied in a final order when the party obtaining the order nisi is required before issue of the final order to furnish security or guarantees for compliance with a maintenance order.
30. Order for nullity of marriage.
31. Final order dissolving marriage on the application of the defendant.
32. Notice of application for maintenance.
33. Application for warrant for arrest of maintenance defaulter.
34. Form of warrant for arrest of maintenance defaulter.

Form No. 1.
REGISTER OF ACTIONS.

No.....
19..... No. of Children.....

Parties	Solicitor	Maiden name of Wife
Plaintiff		
Defendant		Where married and date
Co-defendant		

DOCUMENTS OTHER THAN IN CHAMBER APPLICATIONS		CHAMBER APPLICATIONS	
Date of Filing	Nature of Document	DATE FILED	Document Filed

Form No. 2.

(Title.)
APPOINTMENT OF A GUARDIAN AD LITEM BY A PROPOSED PLAINTIFF
INFANT.

I,
of
an infant who was born at
on the day of 19
hereby appoint
of (occupation)
(my lawful father, or as the case may be) to take and prosecute an action
against of
for (dissolution of my marriage to the said)
and for such other relief as the said may
consider necessary on my behalf.

As witness my hand and seal the day of 19 .
Signed, sealed and delivered by the }
said }
in the presence of— }
.....

Form No. 3.

(Title)
APPOINTMENT OF A GUARDIAN AD LITEM BY A DEFENDANT INFANT.

I, of
an infant who was born at on the
day of 19....
Hereby Appoint of
(my lawful father, or as the case may be) to defend the above action on my behalf and
to counterclaim for and to make
such other claim for relief as the said
may consider necessary on my behalf.

As Witness my hand and seal the day of 19....
Signed, Sealed and Delivered }
by the said }
in the presence of }

Form No. 4.

(Title)
CONSENT TO ACT AS GUARDIAN AD LITEM ON BEHALF OF A PLAINTIFF
OR DEFENDANT INFANT OR PERSON OF UNSOUND MIND.

I, of
Hereby Certify My Consent to take action or defend this action on behalf of
..... of
an infant (or person of unsound mind) and I Declare that I have no interest in the
action adverse to that of the said infant (or person of unsound mind).

Dated this day of 19....

(Signature of proposed Guardian ad litem).

Witness:

Solicitor or Commissioner for Affidavits or Justice of the Peace.

Form No. 5.

(Title)
AFFIDAVIT OF FITNESS AND VERIFICATION OF CONSENT.

I, of
Solicitor for the abovenamed
make oath and say as follows—

- 1
is a fit and proper person to act as guardian *ad litem* to sue (or defend) in
this action on behalf of the abovenamed.....
2. The consent of the said to act in
that capacity is hereto annexed and marked "A".
3. To the best of my knowledge, information and belief, the said
..... has no interest in the matters in
question in this action adverse to that of the said.....

Sworn, etc.

FORMS OF TITLE OF ACTION.

Form No. 6.

(In an action for dissolution between husband and wife.)

In the Supreme Court of } Matrimonial Causes
 Western Australia. } No..... of.....
 Between
 A BPlaintiff.
 and
 C BDefendant.

Form No. 7.

(In an action for dissolution where co-defendant joined.)

In the Supreme Court of } Matrimonial Causes
 Western Australia. } No..... of.....
 Between
 A BPlaintiff.
 C BDefendant.
 and
 D ECo-defendant.

Form No. 8.

(Where the defendant, in the Defence, alleges adultery by the plaintiff with another person, such other person shall, unless the Court dispenses with service on that person and the joinder of that person in the action, be added as a party in the title.)

In the Supreme Court of } Matrimonial Causes
 Western Australia. } No..... of.....
 Between
 A BPlaintiff.
 C BDefendant.
 D ECo-defendant.
 F GParty named by
 Defendant.

Form No. 9.

(In an action for Nullity.)

(a) Where the woman is Plaintiff—
 In the Supreme Court of } Matrimonial Causes
 Western Australia. } No..... of.....
 Between
 A B (otherwise.....) Plaintiff.
 (Insert name at date of marriage.)
 and
 C BDefendant.

(b) Where the woman is Defendant—
 In the Supreme Court of } Matrimonial Causes
 Western Australia. } No..... of.....
 Between
 A BPlaintiff.
 and
 C B (otherwise.....) Defendant.
 (Insert name at date of marriage.)

Form No. 10.

(Action by infant or person of unsound mind.)

In the Supreme Court of } Matrimonial Causes
 Western Australia. } No..... of.....
 Between
 A B an infant (or person of unsound mind) by his guardian
 ad litem.....Plaintiff.
 (Insert name of guardian.)
 and
 C BDefendant.

Form No. 11.

(Action against an infant or person of unsound mind.)

In the Supreme Court of } Matrimonial Causes
 Western Australia. } No..... of.....
 Between
 A BPlaintiff.
 and
 C B an infant (or person of unsound mind) by his guardian ad litem
Defendant,
 (Insert name of guardian.)

Form No. 12.

(In action for Declaration of Personal Status.)

In the Supreme Court of Western Australia. } No..... of.....

IN the matter of a question concerning the Legitimacy of—

Between A BPlaintiff.

and The Honourable the Attorney General of Western Australia and C D } Defendants.

(Here add the names of persons to be affected by the order whom the plaintiff desires to join as defendants and the names of such other persons as are directed to be joined by the Court or who intervene in the action after being served with notice by direction of the Court.)

Form No. 13.

FORM OF WARNING TO BE ENDORSED ON NOTICE OF MOTION.

TAKE notice that if you the abovenamed..... neglect to appear at the hearing of the above-mentioned motion the Court may proceed to hear and determine the matter and give judgment herein notwithstanding your absence.

Form No. 14.

(Title) (Royal Arms)

WRIT OF SUMMONS.

TAKE notice that the abovenamed plaintiff has commenced an action and filed a claim against you in the Central Office of the Supreme Court, Perth, for (dissolution of marriage or nullity of marriage or as the case may be) as appears by the particulars which are endorsed hereon (or annexed hereto).

Unless within clear days after service of this Writ on you (excluding the day on which it is served) you or a solicitor on your behalf file in the Central Office of the Supreme Court, Perth, a statement of your defence to the plaintiff's claim or a counterclaim for any relief to which you are entitled, the plaintiff may proceed in the action and you will not be entitled to be heard except by special leave of the Court.

Any statement of defence which is filed must specify an address not more than half a mile from the General Post Office, Perth, at which service on you of all future notices and proceedings in the action may be made.

Issued this.....day of.....19..... by the Court. Registrar.

(Seal of the Court).

Endorsements.

Note.—A defence may be limited to part only of the plaintiff's allegations or claims, e.g., denial of any allegation made on which a claim to relief is founded; or to contesting claims to custody or to maintenance or to damages.

If it is so desired notice may be given of intention not to defend.

This writ is filed by..... (in person) or by..... Solicitor for the plaintiff whose address for service is—

The plaintiff resides at..... and is a.....

This writ must be served within twelve months from date of issue or within six months of the date of renewal if renewed.

If the last day for delivering your statement of defence falls on a day on which the Central Office of the Supreme Court is closed for business such statement may be delivered on the next following day on which the office is open for business.

Place of trial..... Mode of trial.....

ACKNOWLEDGMENT OF SERVICE.

I..... of*..... the within named defendant (or co-defendant) hereby acknowledge service of the writ of summons and endorsements herein.

I further state that—

- †I intend to defend the action or †I intend to defend the action only as to the claim for or †I do not intend to defend the action at all.

Date..... Signature of Defendant (or Co-defendant).

*Address and occupation. †Strike out whichever is not applicable.

N.B.—If you intend to defend the action you must file a statement of defence setting out the grounds of your defence in accordance with the Rules. The above bare intimation will not be sufficient.

This form should be forwarded either to the Registrar of the Supreme Court, Perth, or to the plaintiff, or the plaintiff's solicitor.

Form No. 14—continued.

STATEMENT OF CLAIM.

1. The plaintiff was married to the defendant according to the rites and ceremonies of the _____ religion on the _____ day of _____ 19 _____, at _____ in the _____ church of _____ (or state place according to circumstances).

(If either of the contracting parties was an infant give date and place of birth.)

2. At the time of the marriage the plaintiff was domiciled in _____ and the defendant was domiciled in _____
The plaintiff is now domiciled in _____
and the defendant is domiciled in _____

3. (Give a brief history of the married life so as to show where the parties have resided since the marriage and up to the present time.)

4. The plaintiff and the defendant had the following issue of their marriage:—
(Insert names and dates of birth.)

The plaintiff and the defendant lawfully adopted the following child(ren) during the marriage—
(Insert names and dates of adoption.)

The plaintiff (or defendant) has the custody of a child (children) adopted by the plaintiff (or defendant).

The present custody and duration of the custody of each of such children is as follows:—

5. The following are particulars of any matrimonial proceedings including proceedings before any court of summary jurisdiction since the date of the marriage in which either of the parties to the marriage has been a party:—

The result of the proceedings was as follows:—

After the said proceedings cohabitation between the parties continued until _____ when it ceased in the following circumstances:—

or

Cohabitation ceased prior to the said proceedings but was resumed in the following circumstances on _____

or

Cohabitation ceased prior to the said proceedings and has not since been resumed.

6. Cohabitation between the parties finally ceased on the _____ day of _____ 19 _____ (after the plaintiff became aware of the defendant's adultery).

7. On the _____ day of _____ at _____ the defendant committed adultery. The name and address of the person with whom the defendant committed adultery is as follows:—

or

The plaintiff is not aware of the address of the person with whom the defendant committed adultery but the name of the person is—

or

The plaintiff is not aware of the identity of the person with whom the defendant committed adultery.

8. A summary of the facts relied on in proof of the alleged adultery is as follows:—

The defendant and the persons with whom it is alleged the defendant committed adultery were found in the act of adultery (state time and place),

or

The defendant and the person with whom it is alleged the defendant committed adultery have lived together as man and wife at _____

or

The defendant is the father (or mother) of a child of which the plaintiff is not the mother (or father).

9. Where maintenance is claimed in the statement of claim, give short particulars of the property and income of the plaintiff and of the defendant as far as is known.

10. The plaintiff claims to be entitled to relief under the provisions of paragraph _____ of section _____ of the Matrimonial Causes and Personal Status Code, 1948 (or under section _____ of the Matrimonial Causes Act of (name State) pursuant to the provisions of section _____ of the enabling statute, viz. the Divorce and Matrimonial Causes Act, 1945 (Commonwealth).

Form No. 14—continued.

11. The plaintiff claims—

- (1) a dissolution of the said marriage;
- (2) custody of the following children:—

or

access to the following children:—

- (3) maintenance (both pending the action and permanent) as follows:—

For the plaintiff
 For the following children:—

at the following rate:—

For the plaintiff £..... per week (or per month or per annum or at a rate to be assessed by the Court.)

For the children as follows:—

..... £..... (weekly, monthly, annually.)
 (or a rate to be assessed by the Court.)

- (4) the sum of £..... damages against the co-defendant;
- (5) costs against the

Witness:

.....
 Signature of Plaintiff.

PLAINTIFF'S CERTIFICATE VERIFYING STATEMENT OF CLAIM.

(1) I.....
 the abovenamed plaintiff do hereby certify that I have carefully read all the statements made in the foregoing Statement of Claim (or that such statements have been read to me by) and that such statements are true in every particular.

(2) There is no connivance or collusion or condonation on my part in regard to the grounds of action which would in any way affect my right to relief.

(3) I further state that I am not aware of and I have not withheld any material fact which if disclosed would debar me from the relief claimed and that I have been informed of and understand the penalties which may be imposed upon me for collusion, connivance or suppression of any material fact.

.....
 Signature of Plaintiff.

CERTIFICATE BY SOLICITOR.

I.....
 of.....
 hereby certify that the abovenamed plaintiff read the contents of the foregoing Statement of Claim in my presence (or that I read the contents of the foregoing Statement of Claim to the plaintiff) and the plaintiff stated that the statements of fact made therein are true in every particular; that I explained to the plaintiff the meaning of the terms collusion and connivance and the effect of the suppression of material facts and the penalties which may be imposed therefor and the plaintiff signed the foregoing certificate with full knowledge of their implication.

I further certify that the Writ of Summons and Statement of Claim and endorsements have been prepared in accordance with the Rules.

Solicitor for the plaintiff.

SPECIMEN FORM OF AVERMENTS TO BE INSERTED IN STATEMENT OF CLAIM WHERE THE GROUND OF ACTION IS INCAPACITY TO CONSUMMATE, INSANITY AT THE TIME OF THE MARRIAGE, LEGAL INCAPACITY ON THE GROUND OF NONAGE, DURESS OR FRAUD.

Incapacity to Consummate.

That the plaintiff was unaware at the time of the marriage of such incapacity. (Where the marriage still subsists and twelve months have not elapsed since it was celebrated.) That such incapacity has not been cured.

(Where the incapacity is cured.) That the parties have not cohabited since the incapacity was cured.

Insanity at the Time of the Marriage.

That the plaintiff was of unsound mind at the time of the marriage and did not understand the nature of the marriage contract. (Give particulars of the insanity.)

That the plaintiff has ever since been of the same condition of mind; (or that the plaintiff recovered sanity and has not since recovering sanity had any marital intercourse with the defendant,

or

That the defendant was of unsound mind at the time of the marriage and was unaware of the nature of the marriage contract. (Give particulars of the insanity.)

That the plaintiff was unaware at the time of the defendant's unsoundness of mind.

That the plaintiff discovered the defendant's unsoundness of mind on..... and became aware of it by reason of the following circumstances:—

On becoming aware of the defendant's unsoundness of mind the plaintiff withdrew from marital intercourse with the defendant and has not since had any marital intercourse with the defendant.

Form No. 14—continued.

Legal Incapacity on the Ground of Nonage.

That the plaintiff was (thirteen) years of age at the time of the marriage and is now years of age.

That the plaintiff attained an age of capacity to marry on the day of having then attained the age of years, but before attaining that age the plaintiff withdrew from marital intercourse with the defendant and has not since had any marital intercourse with the defendant.

Duress or Fraud.

That the marriage of the plaintiff was brought about by duress practised on him (her) by.....

Particulars of such duress are as follows:—

That after the marriage the plaintiff did not voluntarily cohabit with the defendant,

or

That the marriage of the plaintiff was brought about by fraud practised on him (her) by.....

Particulars of such fraud are as follows:—

That the plaintiff became aware of the fraud on the day of in the following circumstances:—

That since discovery of the fraud the plaintiff has not voluntarily cohabited with the defendant.

STATEMENT OF CLAIM IN AN APPLICATION FOR DECLARATION OF PERSONAL STATUS.

In the matter of the Matrimonial Causes and Personal Status Code 1948 and in the matter of

The plaintiff is a who resides at and is a natural born (or naturalised) subject of the King having been born at on the day of and is domiciled in the State of Western Australia and has been domiciled there since (insert date).

The plaintiff's birth is registered at.....

The plaintiff is the lawful son (or grandson) of

and

The maiden name of his mother (or grandmother) the said was and when his mother married she was a spinster (widow).

The plaintiff's mother was born at in the year.....

The said and were lawfully married at on the day of according to the rites and ceremonies of (or according to the laws of.....)

The plaintiff adopted the surname of in the following circumstances and by the following method:—

There was issue of the said marriage between the plaintiff's mother and father (or grandmother and grandfather) the following children, namely (here insert names, ages and dates of birth of other issue so far as is known to the plaintiff).

The plaintiff claims an interest in the following property:—

(Here set out particulars of property.)

which interest is derived under the following title:—

(Here set out the deed, will or other instrument or instruments under which the plaintiff claims title.)

.....one of the abovenamed children disputes the right of the plaintiff to any interest in the said property on the ground that he is not a legitimate son of his father (or that

(Here state the facts.)

and the plaintiff desires that the question of his legitimacy (or state the question) should be determined and a declaration made accordingly.

There have been no proceedings previously hereto with reference to the plaintiff's legitimacy (or with reference to the plaintiff's claim to) nor with reference to the validity of the said marriage of the plaintiff's parents (or grandparents) in any court by or on behalf of the plaintiff or of any of the parties to the said marriage.

The plaintiff claims—

(Here set out the declaration claimed.)

Note.—It is intended to serve the Writ of Summons with the Statement of Claim on His Majesty's Attorney General for the State of Western Australia and the parties named as defendants and on such other persons as the Court may direct.

ACTION FOR DECLARATION OF PERSONAL STATUS.

Notice to be Endorsed on the Writ after an Order for Directions has been Obtained.

To.....

of.....

You are hereby notified that by an Order of the Court dated the day of 19 , it was ordered that you be served with a Writ of Summons and Statement of Claim in this action.

Form No. 14—continued.

Take notice that you are at liberty within.....days of the service hereof upon you inclusive of the day of such service to file a defence at the Central Office of the Supreme Court, Perth, if you think fit to do so and thereafter should you so desire to contest the allegations in the Statement of Claim.

And further take notice that in default of your filing a defence and contesting the action the Court will hear the action and give judgment notwithstanding your absence.

The Writ of Summons is filed and Notice to Defend is issued by.....
of.....

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

Registrar.

Form No. 15.

STATEMENT OF DEFENCE.

(Title).

1. The defendant admits paragraphs 1, 2, 3 and 4 of the Statement of Claim.

2. The defendant denies that she committed adultery with the co-defendant on the.....day of.....19.... as alleged or at all.

The defendant denies that she deserted the plaintiff on the.....day of.....19.... or at all.

The defendant denies that she deserted the plaintiff on the.....day of.....19.... or at all, and says that the plaintiff was guilty of such acts of cruelty towards her that she was compelled to leave him on the.....day of.....19 and by reason of the plaintiff's acts
(*the defendant's physical or mental health broke down*)

or

the defendant had reasonable cause to fear for the safety of her life or to apprehend permanent injury to her health).

Particulars of Acts of Cruelty.

(*On the.....day of.....19...., at.....
the plaintiff attempted to throttle the defendant*).

(*On the.....day of.....19....,
the plaintiff attacked the defendant and beat her with a stick*).

3. As to paragraph No..... of the Statement of Claim the defendant admits that she committed adultery as alleged but will contend that the defendant was guilty of the following acts of cruelty towards her

(Give particulars.)

The defendant admits that she committed adultery as alleged but states that the plaintiff committed adultery with.....at.....
on the.....day of... 19...., and the defendant will therefore ask that the Court's discretion be not exercised in favour of the plaintiff.

Counterclaim.

The defendant repeats paragraph..... of the Statement of Defence and counterclaims for a dissolution of the said marriage.

The defendant claims the following ancillary relief

(*Here follow the forms as set out in the specimen Statement of Claim in Form 14 in the Schedule.*)

Note.—Where the defence is not a simple denial but raises new matter which if true would constitute an absolute bar or a discretionary bar to the granting of relief or contains a counterclaim by the defendant for substantive relief the Defence shall be signed by the defendant and a certificate (with the necessary modifications) added as if the counterclaim were a Statement of Claim (see form No. 14).

Filed and delivered in person by the defendant, who resides at

and is a

or by

of

Solicitor for the defendant.

The defendant's address for service is as follows:—

Form No. 16.

DEFENCE BASED ON LACK OF JURISDICTION.

(Title)

The defence of
filed under protest in this action is as follows:—

The defendant states that he will contend that this Court has no jurisdiction to try the matters in question in this action so far as concerns the defendant, on the following grounds:—

(*and if the defendant desires to plead in addition to the Statement of Claim in the ordinary way, the defendant must do so in the defence raising the plea to jurisdiction*)

(*Add certificates and signatures of defendant and solicitor as in general form of defence*).

Form No. 17.

AFFIDAVIT OF SERVICE OF PROCESS.

(Title).

I, of in the State of make oath and say as follows:—

1. That on day the day of 19 at I personally served the abovenamed with a true copy of the writ of summons, statement of claim and endorsements thereon (or specify the nature of the process) bearing date the day of 19 and issued out of this Honourable Court.

I did at the time and place of such service produce and show to the said the original writ (or specify the process or document) issued under the seal of the Court.)

2. My means of identifying the said are as follows:— (this paragraph is necessary only where the process served is a writ of summons.)

3. For the purpose of effecting such service I had to travel miles from my place of residence to the place where I effected service. Sworn, etc.

Form No. 18.

NOTICE OF APPLICATION IN CHAMBERS.

(Title)

TAKE NOTICE that the (plaintiff, defendant, or as the case may be) intends to make application to the Judge in Chambers on day the day of 19 at the hour of 10.30 in the forenoon for an order that

(Where notice to be served on any other party or person add the following)

(FURTHER TAKE NOTICE that if you desire to be heard you should attend according to the requisitions of this Notice, otherwise the matter may be dealt with in your absence.)

DATED this day of 19

To the abovenamed

This Notice was issued at the instance of of

Add if necessary: It is not intended to serve this notice on any party or person or—It is intended to serve this notice on such party or person as the Judge may direct.

Form No. 19.

REQUEST FOR DISCOVERY OR ANSWERS TO INTERROGATORIES.

(Title)

To the Defendant/Plaintiff or To the Defendant's/Plaintiff's solicitor.

TAKE NOTICE that the plaintiff/defendant requires the defendant/plaintiff to give discovery on affidavit of all documents in the custody possession or power of the defendant/plaintiff (or to answer the interrogatories set out hereunder) within ten days from the service of this notice AND FURTHER TAKE NOTICE that in default of discovery being made (or answers being supplied) in accordance with the requirements of this notice the plaintiff/defendant may apply to the Court for an order compelling such discovery (or answers) and the costs of such order will in the absence of any order to the contrary be borne by the defendant/plaintiff.

DATED this day of 19

(Signature of party or party's solicitor.)

LIST OF INTERROGATORIES.

- 1.
2.
3.
4.

Form No. 20.
BOND FOR SECURING COSTS.

(Title)

By this Bond I (*or We*)*.....
of
the..... the abovenamed acknowledge
myself (*ourselves*) bound to.....
Registrar of His Majesty's Supreme Court of Western Australia in the sum of.....
.....and hereby covenant with the said
.....to pay the same accordingly.

AS WITNESS my execution hereunder this day of 19 .

CONDITION.

THIS BOND is conditioned for the payment of such costs as may be awarded by the Court to be paid by the abovenamed.....
to the abovenamed.....
in this action pursuant to an order of the Honourable Mr. Justice.....
made herein on the.....day of.....19....
as soon as such costs shall become due and payable and if all such costs are so paid then this bond shall be of no further effect but otherwise it may be sued upon by the said Registrar or the said.....
who shall be entitled to the benefit of the said order if it shall have been assigned by the said Registrar to the said.....
for that purpose.

Signed sealed and delivered etc.

* Where there is more than one obligor set out their several names, addresses and occupations and insert the words "jointly and severally" between the words "hereby" and "covenant."

Form No. 21.
ORDER APPOINTING MEDICAL INSPECTOR OR INSPECTORS.

(Title)

On hearing the solicitors for the parties it is ordered that.....
be appointed as an inspector (*or be appointed as inspectors*) to examine the parts and organs of generation of.....
the defendant in this action and report in writing whether he is capable of performing the act of generation AND also to examine the parts and organs of generation of.....
of.....the plaintiff in this action
and report in writing whether she is or is not a virgin and has or has not any impediment on her part to prevent the consummation of marriage.

And it is further ordered that the report (*or reports*) of the inspector (*or inspectors*) under his (*or their*) hand(s) be delivered by the inspector (*or inspectors*) to the Registrar on or before the.....day of.....19....

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

Form No. 22.
REPORT OF MEDICAL INSPECTOR.

(Title)

I..... of.....
Medical Inspector appointed by order of the Hon. Mr. Justice.....
on the.....day of.....19....
DO HEREBY CERTIFY that I have examined the parts and organs of generation of.....
of.....the plaintiff
(*or of*.....*the defendant*)
and that the result of my examination is as follows:—

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

.....
Signature of Medical Inspector.

Form No. 23.
ENTRY FOR TRIAL
AND NOTICE.

(Title)

Enter this action for trial (defended) on a date to be fixed for the sittings of this Honourable Court commencing on the.....day of the month of.....19....

MODE OF TRIAL: Before a Judge (with a common/special jury).

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

Solicitor for the

Take Notice of the within Entry for Trial of this action.

Dated this.....day of.....19....

Solicitor for the

To.....

Form No. 24.
RECORD OF PROCEEDINGS IN COURT.

(Title)

Coram:
Nature of Proceeding:
Date of hearing:
Times of commencement and finishing on each day:
Counsel: Mr. for.
Instructed by.
Mr. for.
Instructed by.
Mr. for.
Instructed by.
Documents put in evidence.
Witnesses examined:
On behalf of the plaintiff—
On behalf of the defendant—
On behalf of the co-defendant—
Whether tried by Jury:
Finding of Judge or Jury:
Order made thereon:

Date:

Associate.

Form No. 25.

ORDER NISI FOR DISSOLUTION OF MARRIAGE IN UNDEFENDED ACTION.

(Title.)

Before the Honourable Mr. Justice. sitting at the Supreme Court, Perth, on the. day of. 19....

The Judge having taken the oral evidence of the plaintiff and of the witnesses produced on behalf of the plaintiff and having heard Counsel thereon, the defendant and the co-defendant not defending the action at the hearing, and having found that the plaintiff had sufficiently proved the claim (and assessed the damages to be paid by the co-defendant at the (agreed) sum of. pounds) IT IS ORDERED that—

(1) (Notwithstanding the adultery of the plaintiff and in the exercise of the discretion conferred on the Court by section 27 of the Matrimonial Causes and Personal Status Code, 1948) the marriage which took place on the. day of. 19...., at. in the State of. between. the plaintiff and. the defendant (then. bachelor, spinster, widower, widow, divorcee) BE DISSOLVED on the ground that since the celebration of the marriage [the defendant has been guilty of adultery with. the co-defendant] unless sufficient cause be shown to the Court within three months from the date first mentioned why this order should not be made final.

(2) The defendant and the co-defendant pay the costs incurred and to be incurred on behalf of the plaintiff in the action.

(3) The co-defendant do within. days from the making of this order lodge in court the sum of. pounds assessed as damages.

(4) and. children issue of the marriage (or adopted by the parties to the marriage or to whom the parties to the marriage stand in loco parentis) remain in the custody of the plaintiff until further order of the Court.

(5) Such children be not moved out of the jurisdiction of the Court without its sanction.

N.B.—Neither party to the marriage may re-marry until the final order is made or while an appeal or intervention proceeding is pending.

Form No. 26.

CONDITIONS TO BE EMBODIED IN ORDER NISI WHERE THE DISSOLUTION IS ON THE GROUND OF FIVE YEARS' SEPARATION AND A DEFENDANT WHO HAS NOT DEFENDED HAS THE BENEFIT OF A MAINTENANCE ORDER UNDER THE MARRIED WOMEN'S PROTECTION ACT, 1922, OR THE BENEFIT OF A MAINTENANCE AGREEMENT.

Add the following as the case may require at the end of the first clause in Form No. 25.

Provided that the final order herein shall issue subject to the plaintiff's undertaking at trial to abide by the terms of (a maintenance order made on the. day of. 19.... in favour of the defendant by a court of summary jurisdiction constituted under the Married Women's Protection Act, 1922) or (an agreement made on the. day of. 19.... between the plaintiff and the defendant providing for the maintenance of the defendant) subject to any variation or other provision which this Court may make from time to time.

or

Provided that the final order herein shall not issue until the question of what maintenance provision should be made by the plaintiff for the defendant has been determined by the Registrar (or the Registrar has reported to the Court what maintenance provision should be made by the plaintiff for the defendant and the Court has made an order thereon) and subject further if the order so requires to the furnishing of security or sufficient guarantees by the plaintiff for compliance with the terms of such order.

Form No. 27.

APPLICATION FOR FINAL ORDER.

(Title)

I.....the plaintiff in this action in whose favour an order nisi for dissolution of marriage was granted by this Honourable Court on the.....day of.....19.... returnable in [three months] HEREBY APPLY that the said order be made final.

I DECLARE that to the best of my knowledge the defendant is still living and that there has been no resumption of cohabitation since the granting of the order nisi.

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

Plaintiff.

This application was filed by the abovenamed plaintiff.

Original Order checked.

No intervention proceedings.

No appeal pending.

If appeal, how disposed of.

Where security or guarantees for maintenance have been ordered matter referred to Registrar.

Application certified in order.

(Initials of Checking Officer.)

Date.....

Form No. 28.

FINAL ORDER DISSOLVING MARRIAGE.

(Title)

Referring to the Order Nisi made in this action on the.....day of.....19....whereby it was ordered that the marriage which took place on the.....day of.....19....at the.....(here describe the church, registry office, or place) at.....(town or suburb) in the State of.....between the plaintiff and the defendant (then.....spinster—or as the case may be) be dissolved on the ground that

unless sufficient cause be shown to the Court within three months from the making thereof why the Order Nisi should not be made final and no such cause having been shown the Court on the application of the plaintiff by final order dissolved the said marriage.

GIVEN under the Seal of the Court this.....day of.....19....

[L.S.]

Registrar.

NOTE.—It is unlawful for a party to a marriage which has been dissolved to remarry if an appeal, or intervention proceeding is pending, until such appeal or proceeding has been disposed of.

This final order was taken out by.....the abovenamed plaintiff or by.....of.....Solicitor for the abovenamed plaintiff.

Form No. 29.

STATEMENT OF COMPLIANCE TO BE EMBODIED IN A FINAL ORDER WHEN THE PARTY OBTAINING THE ORDER NISI IS REQUIRED BEFORE ISSUE OF THE FINAL ORDER TO FURNISH SECURITY OR GUARANTEES FOR COMPLIANCE WITH A MAINTENANCE ORDER.

After the word "Court" in the last line in the body of Form No. 28 insert—

and the plaintiff having complied with the terms of an order made by.....requiring the plaintiff to furnish security (or guarantees) for a maintenance provision which the plaintiff is obliged to make in favour of the defendant pursuant to the order nisi.

Form No. 30.

ORDER FOR NULLITY OF MARRIAGE.

(Title.)

Before the Honourable Mr. Justice.....sitting at.....on the.....day of.....19....

The Judge having taken the oral evidence of the parties and their witnesses and having heard Mr.....of counsel for the plaintiff and Mr.....of counsel for the defendant found that the plaintiff had sufficiently proved the claim of the plaintiff that the marriage in fact which took place on the.....day of.....at (specify church, registry office or place) in (specify city or town) in the State of.....between.....(otherwise.....) then.....(e.g., spinster) the plaintiff and.....the defendant was absolutely void in law by reason of

and declared the plaintiff to be and to have been free from the bond of marriage with the defendant.

Given under the seal of the Court this.....day of.....19....

[L.S.]

Registrar.

This order was taken out by.....the abovenamed plaintiff or by.....of.....solicitor for the abovenamed plaintiff.

Form No. 31.

FINAL ORDER DISSOLVING MARRIAGE ON THE APPLICATION OF THE DEFENDANT.

(Title)

Referring to the Order Nisi made in this action on the..... day of.....19 at the instance of..... the abovenamed plaintiff whereby it was ordered that the marriage which took place on the.....day of.....19... at.....(here describe the church, registry office or place) at.....(town or suburb) in the State ofbetween the plaintiff and the defendant (then spinster—or as the case may be) be dissolved on the ground that

unless sufficient cause be shown to the Court within three months from the making thereof why the Order Nisi should not be made final and no such cause having been shown to the Court and the plaintiff having neglected to apply to the said Order Nisi made final the defendant on motion applied to the Court for the said final order and the Court on reading the motion and the affidavits of..... in support thereof sworn the.....day of.....19... and filed therein (and the affidavits on behalf of the plaintiff in opposition thereto ofsworn the.....day of 19 ...and filed therein) by final order dissolved the said marriage subject however to the following conditions which were complied with to the satisfaction of the Court before the issue of this order—

(For example)—

That the defendant pay to the plaintiff the sum of..... pounds being the plaintiff's costs of the action and the costs of the plaintiff in respect of the defendant's motion to obtain this order;

or

That the defendant pay to the plaintiff the sum of..... pounds being arrears of maintenance due by the defendant to the plaintiff and enter into a security to the satisfaction of the Registrar of the Court for securing to the plaintiff future maintenance to be payable by him in respect of

Given under the Seal of the Court this.....day of19....

[L.S.]

Registrar.

NOTE.—It is unlawful for a party to a marriage which has been dissolved to remarry if an appeal or intervention proceeding is pending, until such appeal or intervention proceeding has been disposed of.

This final order was taken out by..... of the abovenamed defendant or by..... ofSolicitor for the abovenamed defendant.

Form No. 32.

NOTICE OF APPLICATION FOR MAINTENANCE.

(Pending trial or permanent maintenance.)

Take notice that the plaintiff (or defendant) intends to apply to the Registrar in Chambers, Supreme Court, Perth, at a time to be fixed for an Order that (here state relief or order sought)

on the ground appearing in the affidavit of the said plaintiff (or defendant) sworn the.....day of.....19...., and filed herein a copy of which is served herewith.

Dated this.....day of.....19....

Solicitor for the Plaintiff (or Defendant).

To.....the Defendant (or Plaintiff) of..... or to his solicitor.

NOTICE TO BE ENDORSED IF THE OTHER PARTY HAS NOT FILED A DEFENCE.

Take notice that should you the said.....desire to oppose the said application or be heard thereon you must within.....days after service hereof on you inclusive of the day of such service file in the Central Office of the Supreme Court at Perth notice thereof with an address for service within half a mile of the General Perth Office at Perth together with an affidavit in pursuance of the Rules, setting out your property, income, and any other matter relied upon and that in default of your so doing the Registrar may proceed after the expiry of the said period of.....days to hear the said application and make such order thereon as he may think fit notwithstanding your absence.

This notice was filed, etc.

Form No. 33.

APPLICATION FOR THE ISSUE OF A WARRANT FOR THE ARREST OF A MAINTENANCE DEFAULTER UNDER SECTION 55 OF THE CODE.

(Title).

To

The Registrar, Supreme Court—

I..... of..... the abovenamed..... hereby apply for the issue of a warrant for the arrest and imprisonment of..... the abovenamed..... who has made default in the payment of periodical sums by way of maintenance due to me under an order of the Court made on the..... day of.....19...

the amount of default is as follows:—

Table with 3 columns: Description, Weeks at, Per week, and Currency (£). Rows include Costs and Total.

Dated this..... day of..... 19 ..

(Signature of Applicant.)

Form No. 34.

WARRANT FOR ARREST OF MAINTENANCE DEFAULTER UNDER SECTION 55 OF CODE.

(Title.)

To all Police Officers in the State of Western Australia and to the Superintendent (or keeper) of His Majesty's prison (or gaol) at.....in the said State. of..... the abovenamed..... having made default in the payment of periodical instalments of maintenance which he was ordered to pay under an order of the Court on the.....day of.....19.., to the extent hereinafter set out and being still in default, these are therefore to command you to arrest the said.....and convey him to prison or gaol at..... and deliver him to the Superintendent or keeper thereof together with this warrant and the said Superintendent or keeper is hereby required to receive the said.....into his custody in the said prison or gaol, there to imprison him for a term of.....days unless the sum hereinafter specified and further costs of.....making in all the sum of.....and the costs and expenses of executing this warrant amounting to a further sum of.....are sooner paid:

Provided that if the said.....shall pay any portion of the total amount payable under this warrant (namely £.....) then the period of imprisonment shall be thereby reduced by a period which will bear the same ratio to the period of the imprisonment as the portion paid bears to the total payable and the person is to be released on the expiry of the reduced period and in calculating any such reduction fractional parts of days are to be disregarded.

Extent of Arrears

Table with 3 columns: Description, Weeks at, Per week, and Currency (£). Rows include Extent of Arrears and Costs.

Given under my hand and the Seal of the Court at Perth in the said State this.....day of.....19...

Registrar of the Supreme Court.

The foregoing Rules are made at the Supreme Court, Perth, this 26th day of September, 1949.

- J. P. DWYER, Chief Justice.
A. A. WOLFF, Puisne Judge.
J. L. WALKER, Puisne Judge.
L. W. JACKSON, Puisne Judge.