

**CHAPTER 166.**

**MATRIMONIAL CAUSES.**

**RULES OF COURT (MATRIMONIAL CAUSES).**

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**FIRST SCHEDULE.**

**SOLICITORS' FEES.**

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## SECOND SCHEDULE.

## TABLE OF FEES TO BE TAKEN IN THE SUPREME COURT FOR DIVORCE AND MATRIMONIAL CAUSES.

Rules of  
Court,  
22nd March,  
1921.

## RULES OF COURT

*made on the 2nd March, 1921, and approved by the Governor and Court of Policy on the 22nd March, 1921.*

The following rules shall take effect in the Supreme Court for divorce and matrimonial causes, and may be cited as the Rules of Court (Matrimonial Causes).

## INTERPRETATION.

1. In these rules—

“ the Ordinance ” means the Matrimonial Causes Ordinance;

“ the Court ” includes a judge thereof;  
reference by numbers to orders and rules is to orders and rules so numbered in the Rules of Court, 1900.

## PETITION.

2. Proceedings before the Court in divorce and matrimonial causes shall be commenced by petition, preferred unto the Supreme Court of British Guiana.

3. In all proceedings before the Court exercising jurisdiction under the Ordinance, a petition shall state—

(a) whether or not there have been any, and if so what, proceedings previous thereto with reference to the marriage, by or on behalf of either of the parties to the marriage;

(b) the description of the husband;

(c) the place of residence of each of the parties to the marriage;

(d) the domicile of the parties to the marriage, unless the petitioner is asserting a domicile for the wife different from that of the husband, when it will be sufficient if the domicile of the husband is stated.

4. (1) There shall be filed with every petition an affidavit made by the petitioner verifying the facts of which he or she has personal knowledge, and deposing to belief in the truth of the other facts alleged in the petition.

(2) Where a petitioner seeks a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit for jactitation of marriage, the petitioner's affidavit filed with his or her petition shall also state that no collusion or connivance exists between the petitioner and the other party to the marriage or alleged marriage.

5. (1) The affidavit filed with a petition for restitution of conjugal rights shall also state sufficient facts to satisfy the Registrar that a written demand for cohabitation and restitution has been made by the petitioner upon the party to be cited, and that, after a reasonable opportunity for compliance therewith, the cohabitation and restitution have been withheld.

(2) At any time after the commencement of proceedings for restitution of conjugal rights, the respondent may apply by summons for an order to stay the proceedings in the cause by reason that he or she is willing to resume or to return to cohabitation with the petitioner.

#### CO-RESPONDENTS.

6. (1) Upon a husband filing a petition for dissolution of marriage on the ground of adultery, any alleged adulterer shall be made a co-respondent in the cause unless the Court shall otherwise direct.

(2) Application for the direction shall be made on motion founded on affidavit.

7. If the name of the alleged adulterer is unknown to the petitioner at the time of filing his petition, it must be supplied as soon as known, and application to amend the petition by inserting the name therein must be made forthwith by summons, and the Court shall give directions as to the amendment and such further directions as are deemed necessary as to service of the amended petition.

8. The term "respondent" where hereinafter used includes all co-respondents so far as the same is applicable to them.

#### CITATION.

9. (1) Every petitioner who files a petition and affidavit shall forthwith extract a citation under the seal of the Court for service on each respondent in the cause, and the party extracting it, or his or her solicitor, shall take it, together with a præcipe



and a copy or copies of the citation for service, to the registry and there deposit the præcipe and procure the citation to be sealed.

(2) The address given in the præcipe must be within one mile of the General Post Office.

**10.** (1) Service of a citation shall be personal and shall be effected by a person authorised in that behalf by the Registrar.

(2) To every person served with a citation shall be delivered, together with a copy thereof, a certified copy of the petition under the seal of the Court.

(3) In cases where personal service cannot be effected applications may be made by summons for substitution of some other mode of service.

(4) After service has been effected, the citation, with a certificate of service endorsed thereon, shall be forthwith returned into and filed in the registry.

(5) When it is ordered that a citation be advertised, the newspapers containing the advertisement are to be filed in the registry with the citation.

(6) The citation referred to in an affidavit of service thereof must be annexed to the affidavit and marked by the person before whom the affidavit is sworn.

#### CHANGE OF SOLICITOR.

**11.** Any party to a cause shall be at liberty to change his or her solicitor, without an order for that purpose, upon notice of the change, containing an address for service of pleadings and other instruments within one mile of the General Post Office, being filed in the registry, but until that notice is filed and a copy thereof served, the former solicitor shall be considered the solicitor of the party until the final conclusion of the cause, whether in the Court of first instance or the Court of appeal.

#### APPEARANCE.

**12.** (1) Before a petitioner can proceed after having extracted a citation, an appearance must have been entered by or on behalf of the respondents, or it must be shewn by affidavit, filed in the registry, that they have been duly cited and have not appeared.

(2) All appearances to citations are to be entered in the registry in a book provided for that purpose and, unless otherwise required, within ten days after service of the citation.

(3) An appearance may be entered at any time before a proceeding has been taken in default, or afterwards by leave of the Court on application by summons founded on affidavit.

(4) Every entry of appearance shall be accompanied by an address within one mile from the General Post Office.

13. If a party cited wishes to raise any question as to the jurisdiction of the Court, he or she must enter an appearance under protest, and within two days give notice of motion for extension of the protest and to raise the question of jurisdiction. After the entering of an absolute appearance to the citation a party cited cannot raise any objection to the jurisdiction.

#### ANSWER.

14. (1) Each respondent who has entered an appearance may, within ten days after service of citation on him or her, file in the registry an answer to the petition.

(2) When the time allowed for entry of appearance is more than ten days after service of citation, a respondent who has entered an appearance may, within ten days from the expiration of that time, file in the registry an answer to the petition.

(3) Each respondent shall, on the day he or she files an answer, deliver a copy thereof to the petitioner, or to his or her solicitor.

15. (1) Every answer which contains matter other than a simple denial of the facts stated in the petition shall be accompanied by an affidavit made by the respondent verifying the other or additional matter, so far as he or she has personal knowledge thereof, and deposing as to his or her belief in the truth of the rest of the other or additional matter, and the affidavit shall be filed with the answer.

(2) In cases involving a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the respondent who is husband or wife of the petitioner shall, in the affidavit filed with the answer, also state that there is not any collusion or connivance between the deponent and the petitioner.

#### SUBSEQUENT PLEADINGS.

16. (1) Within ten days from the filing and delivery of the answer, the petitioner may file a reply thereto, and the same time shall be allowed for filing any further pleading by way of rejoinder, or any subsequent pleading.



(2) A copy of every reply and subsequent pleading shall, on the day the same is filed, be delivered to the opposite parties, or to their solicitor.

#### AMENDMENT OF PLEADINGS, ETC.

17. (1) Either party desiring to alter or amend any pleading must apply to the Court for permission to do so on summons, unless the alteration or amendment be merely verbal, or in the nature of a clerical mistake, or error arising from any accidental slip or omission, when it may be made without summons.

(2) The costs of and occasioned by any amendment made under this rule shall be borne by the party making it, unless the Court otherwise orders.

(3) When a petition, answer, or other pleading has been ordered to be altered or amended, the time for filing and delivering a copy of the next pleading shall be reckoned from the time of compliance with the order.

(4) A copy of every pleading, showing the alterations and amendments made therein, shall be delivered to the opposite parties on the day the alterations and amendments are made in the pleadings filed in the registry, and the opposite parties, if they have already pleaded thereto, shall be at liberty to amend their pleadings within four days after the delivery, or such further time as may be allowed for the purpose.

(5) The Court may at any time, and on such terms as to costs or otherwise as are deemed just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question at issue raised by or depending on the proceedings.

#### PARTICULARS.

18. (1) Further and better particulars of any matter stated in any pleading may in all cases be ordered by the Court on application by summons.

(2) Before applying for particulars by summons, a party may apply for them by letter, and the costs of the letter and of any particulars delivered pursuant thereto shall be allowable on taxation. In dealing with the costs of any application for particulars by summons, the provisions of this subrule shall be taken into consideration by the Court.

(3) Particulars of matters stated in a petition shall not be ordered under this rule to be delivered before answer, unless the Court shall be of opinion that they are necessary or desirable to enable the respondent to plead, or ought for any other special reason to be so delivered.

(4) The party at whose instance particulars have been delivered under the Court's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time.

#### RAISING POINTS OF LAW.

19. (1) Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the judge who hears the cause at or after the hearing.

(2) By consent of the parties, or by order of the Court on the application by summons of either party, the point so raised may be set down for argument and disposed of at any time before the hearing.

(3) If in the opinion of the Court the decision of the point of law substantially disposes of the whole suit, or of any distinct ground of suit, defence, or reply therein, the Court may thereupon dismiss the suit or make such other order therein as may be just.

#### INTERVENERS.

20. (1) Application for leave to intervene in any cause must be made to the Court by motion, supported by affidavit.

(2) Every party intervening must join in the proceedings at the stage in which he finds them, unless it is otherwise ordered by the Court.

#### INTERVENTION OF THE ATTORNEY GENERAL.

21. (1) The Attorney General shall, within ten days after he has obtained leave to intervene in any cause, enter an appearance and plead to the petition, and on the day he files his plea in the registry, deliver a copy thereof to the petitioner or his or her solicitor.



(2) All subsequent pleadings and proceedings in respect of the Attorney General's intervention in a cause shall be filed and conducted in the same manner as heretofore directed in respect of the pleadings and proceedings of the original parties to the cause.

#### EVIDENCE ON COMMISSION OR LETTER OF REQUEST: AFFIDAVITS.

22. (1) The provision of Order XXXIV, rules 10, 11 and 12, shall apply to proceedings under the Ordinance.

(2) If in any case the Court so orders, there shall be issued a request to examine a witness in lieu of a commission.

23. (1) Any of the parties to the cause may apply to the Court for leave to join in a commission or letters of request for examination of witnesses out of the jurisdiction of the Court and to examine witnesses thereunder, and the Court may direct the necessary alterations to be made in the commission or letters for that purpose and settle the same.

(2) After an application hereunder has been made, the commission or letters of request shall not issue without the direction of the Court.

24. If a husband or wife applies for and obtains an order, or a commission, or letters of request for the examination of witnesses, the wife shall be at liberty, without any special order for that purpose, to apply to the Registrar to ascertain and report to the Court what is a sufficient sum of money to be paid or secured to the wife to cover her expenses of attendance at the examination of the witnesses in pursuance of the order, or by virtue of the commission or letters of request; and that sum of money shall be paid or secured before the order, commission, or letters is or are issued from the registry, unless the Court otherwise directs.

25. The provisions of Order XXXIV, rules 14 to 27, as to affidavits shall apply to proceedings under the Ordinance.

#### SETTING DOWN CAUSE FOR HEARING.

26. (1) When the pleadings are concluded the petitioner shall set down the cause for hearing and on the same day give notice of his having done so to each party in the cause for whom an appearance has been entered.



(2) If the petitioner fails to set down the cause for hearing, or to give due notice thereof, for ten days after conclusion of the pleadings, either of the respondents entitled to be heard at the hearing may set down the cause, and shall on the same day give notice of his having done so to the petitioner and to each of the other parties to the cause for whom an appearance has been entered.

(3) If none of the parties to the cause sets down the same for hearing within one month after the conclusion of the pleadings, the Registrar shall set down the cause for hearing and on the same day give notice of his having done so to the petitioner and to each of the other parties to the cause for whom an appearance has been entered.

(4) A copy of every notice of the cause being set down for hearing given by a party thereto shall be filed in the registry.

#### HEARING.

27.—(1) No cause shall be called on for hearing until after the expiration of fourteen days from the day when the same has been set down for hearing and notice of hearing has been given, except with the consent of all parties thereto.

(2) The Registrar shall enter in the court book the decree of the Court and sign the same.

#### EVIDENCE TAKEN BY AFFIDAVIT.

28. (1) When the Court has directed that all or any of the facts set forth in the pleadings be proved by affidavits, those affidavits shall be filed in the registry within ten days after the time when the direction was given, unless the Court shall otherwise direct.

(2) In an undefended cause when directions have been given that all or any of the facts set forth in the petition be proved by affidavits, those affidavits may be filed in the registry at any time up to ten clear days before the cause is heard.

(3) Counter-affidavits as to any facts to be proved by affidavit may be filed within ten days after the filing of the affidavit which they are intended to answer.

(4) Affidavits in reply to the counter-affidavits cannot be filed without the permission of the Court.

(5) Copies of all affidavits and counter-affidavits shall, on the same day as they are filed, be delivered to the other parties to be heard at the hearing of the cause, or to their solicitors.

29. Application for an order for the attendance of a deponent for the purpose of being cross-examined in open Court shall be made by summons.

#### REVERSAL OF DECREE OF JUDICIAL SEPARATION.

30. (1) A petition to the Court for the reversal of a decree of judicial separation must set forth the grounds on which the petitioner relies.

(2) Before the petition can be filed, an appearance on behalf of the party praying for reversal must be entered in the cause in which the decree has been pronounced.

(3) A certified copy of the petition, under the seal of the Court, shall be delivered personally to the party in the cause in whose favour the decree has been made, who may, within ten days after the date of delivery, file an answer thereto in the registry, and shall, on the day on which the answer is filed, deliver a copy thereof to the other party in the cause, or to his or her solicitor.

(4) All subsequent pleadings and proceedings arising from the petition and answer shall be filed and conducted in accordance with the same directions as heretofore given in respect of an original petition for judicial separation and answer thereto, so far as those directions are applicable.

#### SHOWING CAUSE AGAINST A DECREE.

31. (1) Subject to the provisions of rule 32, any person desiring to show cause against making absolute a decree nisi for dissolution of marriage or nullity of marriage, shall enter an appearance in the cause in which the decree has been pronounced, and shall, at the time of entering appearance, or within four days thereafter, file affidavits setting forth the facts upon which he relies and deliver copies of the same to the party in whose favour the decree nisi has been pronounced.

(2) That party may, within ten days after delivery of the affidavits, file affidavits in answer and shall, upon the same day deliver copies thereof to the person showing cause against the decree being made absolute, who may, within ten days file affidavits in reply and shall, upon the same day, deliver copies thereof to the party supporting the decree nisi.

(3) No affidavits are to be filed in rejoinder to the affidavits in reply without permission of the Court.

(4) The questions raised on the affidavits shall be argued in such manner and at such time as the Court may direct.



32.—(1) The last preceding rule shall not apply to the Attorney General, but when the Attorney General desires to show cause against making absolute a decree nisi for dissolution of marriage or nullity of marriage, he shall enter an appearance in the cause in which that decree has been pronounced and shall, within ten days after entering appearance, file his plea in the registry setting forth the grounds upon which he desires to show cause.

(2) On the day the Attorney General files his plea he shall deliver a copy thereof to the person in whose favour the decree nisi has been pronounced, or to his or her solicitor, and all subsequent pleadings and proceedings in respect of the Attorney General's intervention in a cause shall be filed and conducted in the same manner as before directed in respect of the pleadings and proceedings of the original parties to the cause.

#### DECREE ABSOLUTE.

33. (1) An application to make absolute a decree nisi for dissolution of marriage or nullity of marriage shall be made by filing in the registry a notice in writing setting forth that the application is made, and it must be shown by affidavit—

(a) that search has been made in the proper books of the registry up to within two days of the affidavit being filed; and

(b) that at that time no person had obtained leave to intervene in the cause and no appearance had been entered nor affidavits filed by or on behalf of any person wishing to show cause against the decree nisi being made absolute; and,

(c) if leave to intervene had been obtained or appearance entered, or affidavits filed on behalf of any such person as aforesaid, what proceedings, if any, had been taken thereon.

(2) If application to make absolute the decree nisi is for any reason deferred beyond six days from the time when the affidavit in the last preceding rule mentioned is filed, it must be shown by further affidavit—

(a) that search has been made in the proper books up to within six clear days of the hearing of the application; and

(b) that at that time no person had obtained leave to intervene and no appearance had been entered, nor any affidavits filed by or on behalf of any person wishing to show cause against the decree nisi being made absolute; and,

(c) if leave to intervene had been obtained or appearance entered, or affidavits filed by or on behalf of any such person as aforesaid, what proceedings, if any, had been taken thereon.

## ALIMONY.

**34.** (1) The wife, being petitioner in a cause, may file her petition for alimony pending suit at any time after the citation has been duly served upon her husband, or after an order made by a judge to dispense with that service, provided the fact of marriage between the parties is established by affidavit previously filed.

(2) The wife, being the respondent in a cause, may also, after having entered an appearance, file the like petition.

**35.** (1) The husband shall, within ten days after the filing and delivery of a petition for alimony, file his answer thereto upon oath, and, being respondent in a cause, must enter an appearance before he can do so.

(2) The wife, if not satisfied with her husband's answer, may object to the same as insufficient and apply to the Court on summons for an order on her husband to give a further and better answer, or to attend on the hearing of the petition for the purpose of being examined on his answer.

(3) If the answer of the husband alleges that the wife has property of her own, she may within four days, file a reply on oath to that allegation, but the husband is not at liberty to file a rejoinder to that reply without the permission of the Court.

**36.** A copy of every petition for alimony, answer and reply must be delivered to the opposite party, or his or her solicitor, on the day the same is filed.

**37.** After the husband has filed an answer to the petition for alimony, or, if no answer is filed, at the expiration of the time allowed for filing an answer, the wife may apply by motion for an allotment of alimony pending suit and proceed to examine witnesses in support of her petition, notice of the motion and of the intention to examine witnesses being given to the husband or his solicitor four days before the motion is heard and the witnesses are examined, unless the Court shall dispense with that notice.

**38.** No affidavits can be read or used as evidence in support of or in opposition to the averments contained in a petition for alimony or in the answer thereto, or in a reply, except such as may be required by the Court.



39. A wife who has obtained a final decree of judicial separation in her favour, on the decree being affirmed on appeal, or after the expiration of the time for appealing against it if no appeal be then pending, may apply to the Court by petition for an allotment of permanent alimony, although no alimony has been allotted pending suit, and the above rules 35 and 36 shall be observed in respect of the proceedings upon that petition.

40. A wife may, at any time after alimony has been allotted to her, whether pending suit or permanently, file her petition for an increase of alimony allotted, by reason of the increased facilities of her husband, or the husband may file a petition for a diminution of the alimony allotted, by reason of his reduced facilities, and the course of proceeding in those cases shall be the same as above required in respect of the original petition for alimony, and the allotment thereof, so far as the same is applicable.

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

42. Alimony pending suit, and also permanent alimony, shall be paid to the wife, or to some person or persons to be nominated in writing by her and approved by the Court as trustee or trustees on her behalf.

#### MAINTENANCE AND SETTLEMENTS.

43. (1) Applications to the Court to exercise the authority given by sections 14, 16, 22, 26, 27 and 30 of the Ordinance are to be made in a separate petition, which must, unless by leave of the Court, be filed as soon as by the said sections those applications can be made, or within one month thereafter.

(2) When application is made for maintenance under section 14, the petition may be filed as soon as, but not before, a decree nisi has been pronounced.

(3) A certified copy of the petition, under seal of the Court, shall be personally served on the husband or wife, as the case may be, and on the person or persons who may have any legal or beneficial interest in the property in respect of which the application is made, unless the Court on summons shall direct any other mode of service, or dispense with service on that person or any of those persons.

44. (1) The husband or wife, and the other person or persons (if any) served with the petition may, within ten days after service, file an answer on oath thereto, and shall on the same day deliver a copy thereof to the opposite party or his solicitor.

(2) Any person served with the petition, not being a party to the principal cause, must enter an appearance before filing an answer thereto.

45. Within ten days from filing the answer, the opposite party may file a reply thereto, and the same time is allowed for filing any further pleading by way of rejoinder.

46. Within four days after the filing of the reply or rejoinder thereto (if any), the petitioner shall set down the petition for hearing.

47. The costs of a wife of and incidental to the petition or answer shall not be allowed on taxation of costs against the husband before the final decree in the principal cause without direction of the Court.

#### CUSTODY OF AND ACCESS TO CHILDREN.

48. Before the hearing of a cause, a husband or wife who are parties to it may apply to the Court on summons for an order relating to the custody, maintenance or education of, or for access to, children the issue of the marriage.

#### GUARDIANS OF MINORS.

49. (1) A minor above the age of seven years may elect any one or more of his or her next of kin, or next friends, as guardian or guardians for the purpose of proceeding on his or her behalf as petitioner, respondent, or intervener in a cause.

(2) The instrument of election must be filed in the registry before the guardian elected can extract a citation or enter an appearance on behalf of the minor.

(3) When a minor elects some person or persons other than his or her next of kin as guardian for the purposes of a suit, application for assignment of the guardian must be made to the Court on summons founded on affidavit.

(4) It shall not be necessary for a minor who is made a co-respondent in a suit or an alleged adulterer to elect or have assigned to him a guardian for the purpose of conducting his defence.



## PERSONS OF UNSOUND MIND.

50. (1) A committee duly appointed of a person of unsound mind may take out a citation and prosecute a suit on behalf of that person as a petitioner, or enter an appearance, intervene, or proceed with the defence, on behalf of the person as a respondent.

(2) If no committee has been appointed, application is to be made to the Court by summons for assignment of a guardian to the person of unsound mind for the purpose of prosecuting, intervening in, or defending the suit, on his or her behalf.

(3) If the opposite party is already before the Court when the application for assignment is made, he or she shall be served with notice of the application.

## PROTECTION ORDERS.

51. (1) Applications on the part of a wife deserted by a husband for an order to protect her earnings and property acquired since the commencement of the desertion shall be made in writing in judges' chambers and supported by affidavit in which the applicant must state whether she has any knowledge of the residence of her husband.

(2) If the husband is known to be residing within the jurisdiction the application must be made by summons to him to show cause why an order should not be made, with which he must be personally served.

52. Applications for the discharge of a protection order are to be made by motion supported by affidavit, and notice of the motion and copies of any affidavit, or other document to be read or used in support thereof, must be personally served on the wife eight clear days before the motion is heard.

## APPLICATIONS TO THE COURT.

53. Applications to the Court shall be made—

- (a) if by motion, to a judge in Court;
- (b) If on summons, to a judge in chambers.

54. Except where any order or rule may be made absolute *ex parte* in the first instance, no motion shall be made without notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and

subject to such undertaking, if any, as the Court may think just, and any party affected by the order may move to set it aside.

55. Subject to the provisions of these rules, unless the Court gives special leave to the contrary, there must be at least four clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

56. (1) The party giving the notice of motion shall on the same day file in the registry a copy thereof and any affidavit to be read in support of the motion, and deliver a copy of the affidavit to the opposite parties to the suit who are entitled to be heard in opposition to the motion.

(2) Any party so entitled may file affidavits in reply and shall deliver copies thereof to the party giving the notice two clear days before the day named therein for hearing the motion.

57. If on the hearing of a notice or other application the Court is of opinion that any person to whom notice has not been given ought to have or to have had notice, the Court may either dismiss the motion or application, or adjourn the hearing thereof in order that the notice may be given, upon such terms, if any, as the Court may think fit to impose.

58. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court thinks fit.

59. (1) The petitioner shall, without any special leave, be at liberty to serve any notice of motion, or other notice, or any petition or summons, upon any respondent who, having been duly served with a citation, has not appeared within the time limited for appearance.

(2) The petitioner may, by leave of the court to be obtained *ex parte*, serve any notice of motion upon any respondent together with the citation, or at any time after service of the citation and before the time limited for the appearance of that respondent.

60. Every summons shall be served two clear days before the return thereof, unless in any case it is otherwise ordered. Provided that, in case of summons for time only, the summons may be served on the day previous to the return thereof.



61. (1) Where any of the parties to a summons fail to attend, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the judge may proceed *ex parte* if, in view of the nature of the case, he thinks it expedient to do so. No affidavit of non-attendance shall be required or allowed, but the judge may require such evidence of service as he may think just.

(2) Where the judge has proceeded *ex parte*, the proceeding shall not in any manner be reconsidered in the judge's chambers, unless the judge is satisfied that the party failing to attend was not guilty of wilful delay or negligence, and in that case the costs occasioned by his non-attendance shall be in the discretion of the judge, who may fix the same at the time and direct them to be paid by the party or his solicitor before he shall be permitted to have the proceeding reconsidered, or make such other order as to the costs as the judge may think just.

(3) Where a proceeding in chambers fails by reason of the non-attendance of any party, and the judge does not think it expedient to proceed *ex parte*, the judge may order such amount of costs, if any, as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally.

62. (1) Every order, if and when drawn up, shall be dated the day of the week, month and year on which the same was made, unless the Court otherwise directs.

(2) An order shall be sealed and shall be marked with the name of the judge by whom it is made.

#### WIFE'S COSTS.

63. (1) After a cause has been set down for hearing, or at an earlier stage of a cause by order of Court to be obtained on summons, a wife who is petitioner, or who has entered an appearance as respondent, in the cause, may file her bill or bills of costs for taxation against her husband.

(2) The Registrar, when the cause has been set down for hearing, shall ascertain what is a sufficient sum of money to be paid into the registry, or what is a sufficient security to be given by the husband, to cover the costs of the wife of and incidental to the hearing of the cause, and shall thereupon issue an order upon the husband to pay or secure the said sum within a time to be fixed by the Registrar.

(3) If the husband, by reason of his wife having separate property, or for other reasons, disputes her right to recover against him any costs pending suit, the Registrar may suspend

the order to pay the wife's costs, or to pay or secure the sum ascertained to be sufficient to cover the costs of and incidental to the hearing of the cause, for such time as seems to him necessary to enable the husband to obtain the Court's decision as to his liability.

(4) The bond taken to secure the costs of a wife of and incidental to the hearing of a cause shall be filed in the registry and shall not be delivered out or be sued upon without the order of the Court.

64. When on the hearing of a cause the decision is against the wife, no costs of the wife of and incidental to that hearing shall be allowed against the husband except those applied for, and ordered to be allowed by the Court, at the time of the hearing.

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

(2) A wife who is unsuccessful in a cause, and who at the hearing thereof has, in pursuance of rule 64, obtained an order of the Court that her costs of and incidental to the hearing shall be allowed against her husband to the extent of the sum paid or secured by him to cover those costs, may nevertheless proceed at once to obtain them after allowance thereof on taxation.

#### COSTS GENERALLY.

66. (1) In all cases in which the Court at the hearing of a cause condemns any party to the suit in costs, the solicitor of the party to whom the costs are to be paid may forthwith file his bill of costs in the registry and obtain an appointment for taxation, but the taxation shall not take place before the time allowed for appeal has expired, or, if a rule nisi has been granted, until the rule is disposed of, unless the Court, for cause shown, directs a more speedy taxation.

(2) The party who has obtained an appointment to tax a bill of costs shall give the other party or parties to be heard on the taxation thereof two clear days' notice of the appointment and, at or before the same time, deliver to him or them a copy of the bill to be taxed.



(3) When an appointment has been made for taxation of any bill of costs, and any parties to be heard on the taxation do not attend at the time appointed, the taxing officer may nevertheless proceed to tax the bill after the expiration of a quarter of an hour, upon being satisfied by affidavit that the parties not in attendance had due notice of the time appointed.

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

67. The bill of costs of any solicitor will be taxed on his application as against his client, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of that person or those persons after sufficient notice given to the solicitor.

68. If an order for payment of costs is required, the same may be obtained by summons, on the amount of those costs being certified by the Registrar.

69. (1) On every taxation the taxing officer shall allow all such costs, charges, and expenses as appear to him to have been necessary or proper for the attainment of justice, or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing officer to have been incurred or increased through over-caution, negligence, or mistake, or by payment of special fees to counsel, or special charges or expenses to witnesses or other persons, or by other unusual expenses.

(2) Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer in his discretion thinks just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer in his discretion thinks proper to be settled by counsel, are to be allowed; but as to affidavits, a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

(3) Allowances to witnesses are to be made according to the condition of witness and scale of allowance given in Rules of Court, 1900, Appendix I., Part I. (d):

Provided always that as to evidence, such just and reasonable charges and expenses as appear to have been properly and necessarily incurred in procuring evidence and by the witnesses themselves in giving their attendance, are to be allowed.

70. Subject to the provisions of these rules, upon the taxing officer's certificate of costs being signed and a copy thereof served upon the party liable to pay the costs, execution may issue thereunder upon an affidavit of the service and of non-payment.

#### SOLICITORS' FEES AND FEES OF COURT.

71. In divorce and other matrimonial causes and matters solicitors shall be entitled to charge and be allowed the fees set forth in the first schedule to these rules.

72. (1) The fees and percentages contained in the second schedule to these rules shall be taken in the registry in proceedings under the Ordinance.

(2) The provisions of this rule shall not apply to or affect any fees or percentages which have become due and payable in respect of any proceedings under the Ordinance taken before these rules come into operation:

(3) A folio is to comprise 72 words, every figure comprised in a column, or authorised to be used, being counted as one word.

#### TIME.

73. (1) The provisions of Order XLV. (except the last paragraph of rule 2 thereof) shall apply to proceedings under the Ordinance.

(2) When the time for delivering any pleading or document or filing any affidavit, answer, or document, or doing any act, is or has been fixed or limited by any of these rules, or by any order of the Court, the costs of any application to extend that time and of any order made thereon shall be borne by the party making the application unless the Court otherwise orders.

(3) In any case in which any particular number of days, not expressed to be clear days, is prescribed by these rules, the same shall be reckoned exclusively of the first day and inclusively of the last day.

#### NOTICES, PAPER, ETC.; SERVICE.

74. The provisions of Order XLVII, and of rules 1 to 8 of Order XLVIII. shall apply to proceedings under the Ordinance.

#### PROCEEDINGS BY POOR PERSONS.

75. The provisions of Order L. shall apply to proceedings by poor persons under the Ordinance.



EFFECT OF NON-COMPLIANCE.

76. (1) The provisions of Order LI. shall apply to proceedings under the Ordinance.

(2) Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

(3) When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

FORMS.

77. Forms to be used in proceedings under these rules shall be those in general use in the Probate, Divorce and Admiralty Division of the High Court of Justice in England, for divorce and matrimonial causes and matters therein, with such variations as local circumstances may require.

PROCEEDINGS UNDER PART II. OF THE ORDINANCE.

78. The above rules, so far as the same may be applicable, shall extend to applications and proceedings under Part II. of the Ordinance.

THE FIRST SCHEDULE.

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SOLICITORS' FEES.

CITATIONS, SUBPOENAS, WRITS, SUMMONSES, NOTICES, AND SERVICE OF SAME.

	\$	c.
1. Citation ... ..	5	00
2. Citation to see proceedings ... ..	5	00
3. Writ of subpoena ad testificandum or duces tecum ... ..	2	40
4. And if of more than 3 folios for each folio beyond 3 ... ..	0	24
5. Writ of execution, or other writ to enforce any decree or order...	5	00
6. And if more than 3 folios, for each folio beyond 3 ... ..	0	24
7. Any writ not included in above ... ..	5	00
8. These fees include all endorsements and copies, praecipes for the officers sealing them, and attendances to issue or seal, except where otherwise provided, but not the Court fees.		

	\$ c.
9. Summons to attend at judge's chambers ... ..	2 00
10. Each copy summons for service ... ..	0 60
11. Or per folio ... ..	0 08
12. For preparing notice of motion ... ..	2 00
13. Or per folio ... ..	0 24
14. For preparing notice to produce on the hearing, or notice to admit ... ..	1 20
15. If necessarily long, per folio ... ..	0 12
16. And for each copy, such allowance as the taxing officer shall think proper, not exceeding per folio ... ..	0 08
17. For preparing any other notice ... ..	1 20
18. If necessarily exceeding 3 folios, for each folio beyond 3 ... ..	0 12
19. Service, where an appearance has been entered, on the solicitor or party ... ..	1 00

INSTRUCTIONS.

20. For petitions, citations, answers, or other pleadings, or amendment of pleadings, for interrogatories, special affidavits, or applications for an order for protection of a wife's earnings and property ... ..	4 00
21. To defend suit ... ..	4 00
22. To appeal against order of Court or judge and to appear thereon ... ..	5 00
23. For brief on hearing ... ..	10 00
24. If there are several witnesses examined and the brief or case is necessarily long, an additional fee will be allowed.	
25. For counsel to make any application to the Court or a judge, where no other brief ... ..	5 00

DRAWING PLEADINGS AND OTHER DOCUMENTS; PERUSALS.

26. Drawing and engrossing petition or answer ... ..	5 00
27. And if of more than 10 folios, for every folio beyond 10 ... ..	0 50
28. Drawing and engrossing reply or other subsequent pleadings... ..	2 50
29. Or per folio ... ..	0 50
30. Drawing particulars, per folio ... ..	0 24
31. Drawing brief on hearing of cause, issues of fact, examination of witnesses, when necessary and proper in addition to pleadings, including necessary and proper observations, per folio ... ..	0 48
32. For every necessary letter to an opposite party or his solicitor during the dependence of the cause ... ..	1 20
33. Drawing bill of costs per folio, including copy for taxation ... ..	0 24
34. Drawing any instrument to be filed in or issued by the registry for which no other fee is herein allowed, per folio ... ..	0 24
35. Perusing pleadings, affidavits, exhibits, and other documents... ..	2 40
36. Or per folio ... ..	0 24

COPIES.

37. Copies of petition, answer, and other pleadings, of exhibits, briefs, bills of costs, or other documents, where no other provision is made, at per folio ... ..	0 16
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## ATTENDANCES.

	\$ c.
38. To search for appearance to citation ... ..	2 00
39. To enter appearance ... ..	2 00
40. To amend petition, answer, or other pleading filed in the registry ... ..	2 00
41. On examination of witnesses before any examiner, commissioner, officer, or other person, each day ... ..	4 00
42. Or, if without counsel, not to exceed for each day ... ..	6 00
43. On counsel with brief or other papers—	
44. If counsel's fee one guinea ... ..	2 00
45. If more and under five guineas... ..	4 00
46. If five guineas and under twenty guineas ... ..	6 00
47. If twenty guineas ... ..	10 00
48. If forty guineas or more ... ..	20 00
49. On consultation or conference with counsel ... ..	5 00
50. To enter or set down cause, or appeal, for hearing ... ..	2 00
51. In court on motion of course, and on counsel, and for order ...	2 00
52. In court on every special motion, each day ... ..	4 00
53. On the hearing of any cause, when in the paper ... ..	3 00
54. When heard, each day ... ..	5 00
55. To hear judgment when same adjourned ... ..	5 00
56. On taxation of costs ... ..	2 00
57. Unless the same shall necessarily occupy so much time that the taxing officer shall consider that amount inadequate, when he may allow such further fee as he thinks proper.	
58. For every necessary attendance in chambers, in the registry, before a commissioner, on counsel, or on the adverse parties or solicitor, for which no other fee is herein allowed... ..	2 00

## AFFIDAVITS.

59. Drawing and engrossing affidavit of service, or of search ...	1 20
60. If more than 3 folios, for every folio beyond 3 ... ..	0 16
61. Drawing and engrossing any other affidavit, per folio ... ..	0 32
62. For preparing each exhibit ... ..	0 24

## COUNSEL'S FEES.

63. Fees to counsel for advice and to settle allowed under rule 69, sub-rule (2), are not to exceed five guineas.
64. The fee to counsel allowed for appearance on an application to the Court on motion is not to exceed ten guineas.
65. The fee to counsel, when the judge has certified for counsel, allowed for appearance on an application to the Court on summons, is not to exceed five guineas.
66. The fee to counsel allowed for appearance on the hearing of a cause shall be, for the first day, from ten guineas upward, for the second and any subsequent day, three guineas to seven guineas.

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## THE SECOND SCHEDULE.

## TABLE OF FEES TO BE TAKEN IN THE SUPREME COURT FOR DIVORCE AND MATRIMONIAL CAUSES.

		CITATION.	\$ c.
1.	On sealing citation ... ..		2 00
2.	For settling citation, or an abstract thereof for advertisement or other advertisement: If of 5 folios or under... ..		1 20
	If above 5 folios, for each additional folio or part of a folio		0 12
3.	For serving citation, the same fees as for service of a writ of summons.		
4.	For certificate of service ... ..		1 20
APPEARANCE.			
5.	On entering appearance, for each person ... ..		0 48
6.	On amending appearance ... ..		0 48
PLEADINGS.			
7.	Filing petition, answer, reply and any subsequent pleading, each ... ..		0 60
8.	On any amendment of pleadings ... ..		0 60
EVIDENCE.			
9.	Filing interrogatories (each set) ... ..		0 60
10.	Filing deposition of each witness ... ..		0 60
PROTECTION ORDERS.			
11.	Filing application for an order for the protection of a wife's earnings and property ... ..		0 60
12.	For entering order on the application ... ..		0 60
13.	For the order under seal of the Court ... ..		1 20
SETTING DOWN.			
14.	Setting a cause down for hearing... ..		2 40
WITHDRAWAL.			
15.	On withdrawal of a cause after same is set down for hearing, to be paid by party at whose instance it is withdrawn ... ..		1 20
SUBPOENA.			
16.	On every subpoena... ..		1 00
HEARING.			
17.	On the hearing of a cause; from the party setting down the cause for hearing and when setting down ... ..		5 00



ENTERING DECREE OR ORDER.

	\$ c.
18. Entering final decree in a cause, to be paid by the successful party ... ..	2 40
19. Entering order for examination of witness or witnesses, or decree or order for alimony, or order directing how damages shall be applied, or order providing for custody, maintenance or education of children, or any order made under rule 43 ...	1 20
20. If any of the above orders exceed 5 folios, for every additional folio or part of a folio ... ..	0 24
21. Entering any minute, order, or decree in the cause book other than minutes, orders, or decrees specified ... ..	0 72

MOTIONS AND SUMMONSES.

22. Filing notice of motion ... ..	0 60
23. Filing summons ... ..	0 60
24. Entering minute or order on motion or summons, other than orders specified ... ..	0 60
25. If a final order in a cause ... ..	2 40

TAKING EVIDENCE.

26. For taking the evidence of one or more witnesses before the Registrar or Commissioner, and within three miles of the general post office, for each day ... ..	15 00
27. If beyond that distance, for each day, in addition to travelling expenses ... ..	25 00
28. If for part of a day only, such smaller fee as the Registrar shall in his discretion think proper.	

REFERENCES TO REGISTRAR.

29. On each reference for any inquiry before the Registrar ...	2 40
30. For every hour or part of an hour after the first hour...	1 20
31. For Registrar's report, if 5 folios or under ... ..	1 20
32. If exceeding 5 folios, for every additional folio or part of a folio	0 48

WRITS.

33. Writ of attachment ... ..	2 40
34. Writ of sequestration or fieri facias ...	1 20
35. Other and additional fees for process in any execution to be as taken under Rules of Court, 1900.	

CERTIFICATE.

36. For every certificate under the hand of the Registrar ... ..	1 00
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FILING.

37. Filing every affidavit or other document brought into Court or deposited in the registry, for filing which no fee is before specified ... ..	0 48
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SEARCHES.

38. Search in each Court book, if within the last five years ...	0 48
39. If at an earlier period than within the last five years ...	1 00

OFFICE COPIES AND EXTRACTS.

	\$	c.
40. For every office copy or extract of a minute, order, or decree entered in a cause, or of any document filed in a cause or deposited in the registry:		
If 5 folios	0	60
If exceeding 5 folios, per folio	0	12
41. For the seal of the Court affixed to any minute, order, or decree or to any office copy	0	60

OATHS.

42. For administering an oath to each deponent	0	36
43. For marking every exhibit	0	24

TAXING COSTS.

44. Taxing every bill of costs, where the amount allowed does not exceed \$20	0	48
45. Where the amount exceeds \$20, for every \$10 allowed or a fraction thereof	0	24

These fees, unless otherwise provided, shall be taken on signing the certificate, or on the allowance of the bill of costs as taxed; but the fees shall be due and payable, if no certificate or allocatur is required, on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed.

The taxing officer may require a deposit on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer on taking that deposit shall make a memorandum thereof on the bill of costs.