



ST. HELENA

## CHAPTER 81

### **MATRIMONIAL CAUSES ORDINANCE** and Subsidiary Legislation

#### **Non-authoritative Consolidated Text**

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown  
[Telephone (+290) 2270; Fax (+290) 2454; email [pa.lawofficers@legalandlands.gov.sh](mailto:pa.lawofficers@legalandlands.gov.sh)]<sup>1</sup>

Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

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<sup>1</sup> These contact details may change during 2011 or early in 2012. In case of difficulty, email [shgwebsite@sainthelena.gov.sh](mailto:shgwebsite@sainthelena.gov.sh) or telephone (+290) 2470.

**CHAPTER 81****MATRIMONIAL CAUSES ORDINANCE**

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This e-version of the text is not authoritative for use in court.

## CHAPTER 81

## MATRIMONIAL CAUSES ORDINANCE

*(Ordinances 1 of 1961, 8 of 1978 and 2 of 1989)*

AN ORDINANCE PROVIDING FOR DIVORCE, MAINTENANCE AND CUSTODY OF CHILDREN.

**Commencement***[10 February 1961]***Short title**

1. This Ordinance may be cited as the Matrimonial Causes Ordinance.

**Jurisdiction**

2.<sup>2</sup> (1) The Supreme Court of St. Helena (hereinafter called “the Court”) shall be a Court for divorce and matrimonial causes and shall have jurisdiction to make decrees of divorce, of nullity of marriage, of judicial separation and of presumption of death and dissolution of marriage in accordance with the provisions of this Ordinance.

(2) In proceedings for divorce, nullity of marriage, or presumption of death and dissolution of marriage, such jurisdiction shall extend to cases in which either of the parties to the marriage is domiciled in St. Helena at the time of commencement of the proceedings and remains so domiciled at the time of the hearing.

(3) In proceedings for judicial separation, such jurisdiction shall extend to cases in which either of the parties to the marriage is either domiciled or resident in St. Helena at the time of commencement of the proceedings and remains so domiciled or resident at the time of the hearing.

(4) In the exercise of such jurisdiction the Court shall, subject to the provisions of this Ordinance, act and give relief on principles which in the opinion of the Court are as nearly as may be conformable to the principles on which the High Court of Justice in England acts and gives relief in matrimonial causes.

## DIVORCE

**Restriction on petitions for divorce during first three years after marriage**

3. (1) No petition for divorce shall be presented to the Court unless at the date of the presentation of the petition three years have passed since the date of the marriage:

Provided that a judge of the Court may, upon application made to him, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case the Court may, if it pronounces a decree *nisi*, do so subject to the condition that no application to make the decree absolute shall be made until after the

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<sup>2</sup> Section 2 amended by Ord. 2 of 1989

expiration of three years from the date of the marriage, or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said three years upon the same or substantially the same facts as those proved in support of the petition so dismissed.

(2) In determining any application under this section for leave to present a petition before the expiration of three years from the date of the marriage, regard shall be had to the interests of any children of the marriage and to the question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said three years.

(3) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which have occurred before the expiration of three years from the date of the marriage.

### **Breakdown in marriage the sole ground for divorce**

4.<sup>3</sup> The only ground on which a petition for divorce may be presented to the court by either party to the marriage shall be that the marriage has broken down irretrievably.

### **Proof of breakdown**

5.<sup>4</sup> (1) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say—

- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) that the parties to the marriage have lived apart for a continuous period of at least one year immediately preceding the presentation of the petition and the respondent consents to a decree being granted;
- (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

(2) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.

(3) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (1), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to section 7 of this Ordinance, grant a decree *nisi* of divorce.

(4) For the purpose of subsection (1)(c) the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

(5) For the purposes of this Ordinance, a husband and wife shall be treated as living apart unless they are living with each other in the same household.

(6) Provision shall be made by rules of court for the purpose of ensuring that where in pursuance of subsection (1)(d) the petitioner alleges that the respondent consents to a decree

<sup>3</sup> Section 4 substituted by Ord. 8 of 1978

<sup>4</sup> Section 5 substituted by Ord. 8 of 1978

being granted, the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.

## Reconciliation

6.<sup>5</sup> (1) It shall be the duty of the court to inquire into the possibilities of reconciliation and if at any stage of proceedings for divorce it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation.

The power conferred by the foregoing provision is additional to any other power of the court to adjourn proceedings.

(2) Where the parties to the marriage have lived with each other for any period or periods after it became known to the petitioner that the respondent had, since the celebration of the marriage, committed adultery, then—

- (a) if the length of that period or of those periods together was six months or less, their living with each other during that period or those periods shall be disregarded in determining for the purposes of section 5(1)(a) of this Ordinance whether the petitioner finds it intolerable to live with the respondent; but
- (b) if the length of that period or of those periods together exceeded six months, the petitioner shall not be entitled to rely on that adultery for the purposes of section 5(1)(a).

(3) Where the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of section 5(1)(b) of this Ordinance whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.

(4) In considering for the purposes of section 5(1) of this Ordinance whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

(5) References in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

(6) In computing the period or periods aggregating to not more than 6 months during which the parties may attempt reconciliation as provided in this section, there shall not be counted any period during which either of the parties to a marriage is absent from St. Helena.

## Decree to be refused in certain circumstances

7.<sup>6</sup> (1) The respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in section 5(1)(e) may oppose the grant of a decree *nisi* on the ground

<sup>5</sup> Section 6 substituted by Ord. 8 of 1978

<sup>6</sup> Section 7 inserted by Ord. 8 of 1978

that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

- (2) Where the grant of a decree *nisi* is opposed by virtue of this section, then—
- (a) if the court is satisfied that the only fact mentioned in section 5(1) on which the petitioner is entitled to rely in support of his petition is that mentioned in paragraph (e); and
- (b) if apart from this section it would grant a decree *nisi*, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties, and of any children or other persons concerned, and if the court is of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(3) For the purposes of this section hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

### Power to rescind decree *nisi* in certain cases

8.<sup>7</sup> Where the court on granting a decree of divorce held that the only fact mentioned in section 5(1) of this Ordinance on which the petitioner was entitled to rely in support of his petition was that mentioned in paragraph (d), it may, on an application by the respondent at any time before the decree is made absolute, rescind the decree if it is satisfied that the petitioner misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to consent to the grant of a decree.

### Financial protection for respondent in certain cases

- 9.<sup>8</sup> (1) The following provisions of this section shall have effect where—
- (a) the respondent to a petition for divorce in which the petitioner alleged any such fact as is mentioned in section 5(1)(d) or (e) of this Ordinance, has applied to the court under this section for it to consider for the purposes of section 9(2) the financial position of the respondent after the divorce; and
- (b) a decree *nisi* of divorce has been granted on the petition and the court has held that the only fact mentioned in the said section 5(1) on which the petitioner was entitled to rely in support of his petition was that mentioned in paragraph (d) or (e).

(2) The court hearing an application by the respondent under this section shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and notwithstanding anything in the foregoing provisions of this Ordinance but subject to subsection (3), the court shall not make absolute the decree of divorce unless it is satisfied—

- (a) that the petitioner should not be required to make any financial provision for the respondent; or
- (b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.

(3) The court may if it thinks fit proceed without observing the requirements of subsection (2) if—

<sup>7</sup> Section 8 inserted by Ord. 8 of 1978

<sup>8</sup> Section 9 inserted by Ord. 8 of 1978

- (a) it appears that there are circumstances making it desirable that the decree should be made absolute without delay; and
- (b) the court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the court may approve.

### **Husband may claim damages from adulterer**

**10. (1)** Any husband may, either in a petition for divorce or for judicial separation or in a petition to the Court claiming damages only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

**(2)** Such petition shall be served on the alleged adulterer and the wife unless the Court dispenses with such service or directs some other service to be substituted.

**(3)** The damages to be recovered on any such petition shall be assessed by the Court although the respondents or either of them may not appear.

**(4)** The Court may direct in what manner the damages recovered on any such petition shall be paid or applied, and may direct the whole or any part of the damages to be settled for the benefit of the children of the marriage, if any, or as a provision for the maintenance of the wife.

### **Costs against co-respondent**

**11. (1)** Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceedings.

**(2)** The co-respondent shall not be ordered to pay the petitioner's costs—

- (a) if the respondent was at the time of the adultery living apart from her husband and leading the life of a prostitute; or
- (b) if the co-respondent had not at the time of the adultery reason to believe the respondent to be a married woman.

### **Dismissal of co-respondent or respondent from proceedings**

**12.** In any suit instituted for divorce in which on the petition of the husband the alleged adulterer is made a co-respondent, or in which on the petition of the wife the person with whom the husband is alleged to have committed adultery is made a respondent, the Court may after the close of the evidence for the petitioner direct the co-respondent or the respondent, as the case may be, to be dismissed from the proceedings if the Court is of opinion that there is not sufficient evidence against him or her.

### **Grant of relief to respondent if petition opposed**

**13.<sup>9</sup>** In any suit for divorce if the respondent alleges against the petitioner and proves any such fact as is mentioned in section 5(1), the Court may in such suit give the respondent on his or her application the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief.

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<sup>9</sup> Section 13 amended by Ord. 8 of 1978

## NULLITY OF MARRIAGE

**Petition for nullity of marriage**

**14.** Any husband or wife may present a petition to the Court praying that his or her marriage may be declared void.

**Grounds of decree of nullity**

**15. (1)** A decree of nullity of marriage may be made on any of the following grounds—

- (a) that the respondent was impotent at the time of the marriage and is impotent at the time of the institution of the suit;
- (b) that the parties are within the prohibited degrees of con-sanguinity or affinity;
- (c) that the former husband or wife of either party was living at the time of the marriage and the marriage with such former husband or wife was then in force;
- (d) that the consent of either party to the marriage was obtained by force or fraud in any case in which the marriage might be annulled on such grounds by a court of law in England;
- (e) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage;
- (f) that either party was of unsound mind at the time of the marriage;
- (g) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form;
- (h) that the respondent was at the time of the marriage pregnant by some person other than the petitioner;
- (i) that the marriage is invalid by the law of St. Helena and Ascension:

Provided that in the cases specified in paragraphs (f), (g) and (h) the Court shall not grant a decree unless it is satisfied—

- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (ii) that proceedings were instituted within a year of the date of the marriage;
- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the grounds for a decree.

**(2)** Any child born of a marriage avoided pursuant to subsection (1)(d), (f), or (g) shall be a legitimate child of the parties thereto notwithstanding that the marriage is so avoided, and any child born of a marriage avoided pursuant to subsection (1)(c) shall be a legitimate child of the parties, where it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, notwithstanding that the marriage is so avoided.

## DECREE ABSOLUTE OF DIVORCE OR NULLITY OF MARRIAGE

**When decree is to be made absolute**

**16.<sup>10</sup> (1)** A decree of divorce or nullity of marriage may be made absolute after the expiration of such time, not being less than three months from the making thereof, as may be

<sup>10</sup> Section 16 amended by Ord. 8 of 1978



prescribed by rules made in accordance with section 24 of this Ordinance, or as may be prescribed by the Court.

(2) During that period any person may, in such manner as may be prescribed by rules made in accordance with section 24 of this Ordinance, or as may be prescribed by the Court, show cause why the decree should not be made absolute by reason that material facts were not brought before the Court.

(3) On cause being so shown the Court shall make the decree absolute, or reverse the decree *nisi*, or require further inquiry, or otherwise deal with the case as justice demands.

(4) The Court may order the costs arising from such cause being shown to be paid by such parties, or such one or more of them including a wife if she has separate property, as it thinks fit.

(5) Where a decree *nisi* of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in subsection (3).

#### PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE

##### **Decree of presumption of death and dissolution of marriage**

17. (1) Any husband or wife who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the Court to have it presumed that the other party is dead and to have the marriage dissolved, and the Court if satisfied that such reasonable grounds exist may make a decree of presumption of death and of dissolution of the marriage.

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead unless the contrary be proved.

#### JUDICIAL SEPARATION

##### **Grounds for judicial separation**

18. The Court may make a decree of judicial separation on the petition of either the husband or the wife on any ground upon which it may make a decree of divorce.

##### **Property and acts of wife after judicial separation**

19. (1) In every case of a judicial separation, the wife shall from the date of the decree, and whilst the separation shall continue, be considered as a *feme sole* with respect to the property of every description which she may acquire or which may come to devolve upon her, and such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall in case she shall die intestate go as the same would have gone if her husband had been then dead:

Provided that if any such wife should again cohabit with her husband all such property as she may be entitled to when such cohabitation shall commence shall be held to her separate use, subject however to any agreement in writing made between herself and her husband whilst separate.

(2) In every case of a judicial separation, the wife shall whilst so separated be considered as a *feme sole* for the purposes of contract and wrongs and injuries and of suing and being sued in any civil proceeding, and her husband shall not be liable in respect of any engagement or contract which she may have entered into or for any wrongful act or omission by her or for any costs which she may have incurred as plaintiff or defendant:

Provided that where in any such judicial separation maintenance has been decreed or ordered to be paid to the wife and the same shall not be duly paid by the husband, he shall be liable for the necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining at any time during such separation in the exercise of any joint power given to herself and her husband.

### **Power to reverse a decree**

20. The Court shall have power on due cause being shown to reverse a decree of judicial separation.

## **MAINTENANCE**

### **Maintenance *pendente lite***

21. (1) In any suit under this Ordinance the wife may present a petition for maintenance pending the suit.

(2) Such petition shall be served on the husband and the Court may make such order on the husband for payment to the wife of maintenance as it deems just.

### **Permanent maintenance**

22. The Court may, if it shall see fit, on any decree absolute of divorce or nullity of marriage or on any decree of judicial separation obtained by the wife order that the husband shall secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her life, as, having regard to her fortune, to the ability of the husband and to the conduct of the parties, it shall deem reasonable or the Court may make an order on the husband for the payment to the wife during their joint lives of such monthly or weekly sum for her maintenance and support as the Court may think reasonable:

Provided that if the husband shall from any cause become unable to make such payment it shall be lawful for the Court to discharge or modify the order or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court shall seem fit.

## **CUSTODY AND MAINTENANCE OF CHILDREN**

### **Custody and maintenance of children**

23. The Court after a final decree of judicial separation, nullity of marriage or divorce may upon application by petition for this purpose make from time to time all such orders and provisions with respect to the custody, maintenance and education of the children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the Court, as to the Court shall seem fit:

Provided that the term for which any sum of money is secured for the benefit of a child shall not extend beyond the date when the child will attain 21 years of age.

## PROCEDURE

**Procedure**

**24.** The Chief Justice with the approval of the Governor may make such rules concerning practice and procedure under this Ordinance as he may from time to time consider expedient.

**Rules of evidence**

**25.** The rules of evidence observed in the High Court of Justice in England shall, subject to any law of evidence in force in St. Helena and Ascension, be applicable to and observed in the conduct of any suit under this Ordinance.

**Sittings *in camera***

**26.** The whole or any part of any proceedings under this Ordinance may be heard *in camera* if the Court thinks fit.

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**MATRIMONIAL CAUSES RULES****ARRANGEMENT OF RULES****PRELIMINARY****RULE**

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**MATRIMONIAL CAUSES RULES – SECTION 24**

*(Legal Notices 4 of 1973 and 6 of 1979)*

The following Rules are made by the Chief Justice with the approval of the Governor under the provisions of section 24 of the Matrimonial Causes Ordinance.

**PRELIMINARY****Short title**

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

**Interpretation**

2. (1) In these rules, unless the context otherwise requires—  
“**ancillary relief**” means and includes—

- (a) a lump sum order;
- (b) an order for maintenance pending suit;
- (c) a periodical payments order;
- (d) a maintenance of children order;

“**child of the family**”, in relation to the parties to a marriage, means—

- (a) a child of both those parties; and
- (b) any other child who has been treated by both of those parties as a child of their family;

“**court**” means a judge or the Registrar;

“**defended cause**” means a cause not being an undefended cause;

“**judge**” means the Chief Justice of St. Helena or the Acting Chief Justice;

“**matrimonial proceedings**” means any proceedings with respect to which rules may be made under section 24 of the Matrimonial Causes Ordinance;

“**Ordinance**” means the Matrimonial Causes Ordinance;

“**Registrar**” means the Registrar of the Supreme Court;

“**solicitor**” includes a person advocating the cause of another with consent of the Chief Justice;

“**Supreme Court**” means the Supreme Court of St. Helena;

“**undefended cause**” means—

- (a) in the case of an application under section 3 of the Ordinance a cause in which the respondent has not given notice of intention to defend within the time limited;
- (b) in any other case:—
  - (i) a cause in which no answer has been filed or any answer filed has been struck out;
- (c) a cause which is proceeding only on the respondent’s answer in which no reply or answer to the respondent’s answer has been filed or any such reply or answer has been struck out.

(2) Unless the context otherwise requires, any reference in these rules to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment.

### Application of other rules

3. Subject to the provisions of these rules the Civil Procedure Rules made under the Civil Procedure Ordinance<sup>11</sup> shall apply with the necessary modifications to the commencement of matrimonial proceedings and the practice and procedure in matrimonial proceedings pending in the Supreme Court.

#### COMMENCEMENT OF PROCEEDINGS

### Application under section 3

4. (1) An application under section 3 of the Ordinance for leave to present a petition for divorce before the expiration of 3 years from the date of the marriage shall be made by originating application.

(2) The application shall be filed with the Registrar together with—

- (a) an affidavit by the applicant exhibiting a copy of the proposed petition and stating—
  - (i) the grounds of the application;
  - (ii) particulars of the hardship or depravity alleged;
  - (iii) whether there has been any previous application under the said section 3;
  - (iv) whether any, and if so what, attempts at reconciliation have been made;
  - (v) particulars of any circumstances which may assist the Court in determining whether there is a reasonable probability of reconciliation between the parties;
  - (vi) the date of birth of each of the parties or, if it be the case, that he or she has attained 18 years;
- (b) a copy of the application and of the supporting affidavit for service on the respondent; and
- (c) unless otherwise directed on an application made *ex parte*, a certificate of the marriage.

(3) The Registrar shall annex to the copy of the application for service a copy of the supporting affidavit and a notice in Form 1 with Form 4 attached.

(4) The application shall be heard by the Chief Justice and shall, unless otherwise directed, be heard in Chambers.

### Discontinuance

5. Before a petition is served on any person, the petitioner may file a notice of discontinuance and the cause shall thereupon stand dismissed.

### Cause to be begun by Petition

6. (1) Every cause other than application under section 3 of the Ordinance shall be begun by petition.

(2) Unless otherwise directed, every petition shall contain the information required by Form 2 (as near as may be in the order there set out) and any further or other information required by such of the following subrules of this rule as may be applicable.

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<sup>11</sup> Cap. 32

(3) A petition for a decree of nullity under section 15(1) of the Ordinance shall state whether the petitioner was at the time of the marriage ignorant of the facts alleged and whether marital intercourse with the consent of the petitioner has taken place since the discovery by the petitioner of the existence of grounds for a decree.

(4) A petition for a decree of presumption of death and dissolution of marriage shall state—

- (a) the last place at which the parties to the marriage co-habited, the circumstances in which the parties ceased to cohabit, the date when and the place where the respondent was last seen or heard of, and the steps which have been taken to trace the respondent; and
- (b) the domicile, occupation and residence of the petitioner.

### Signing of Petition

7. Every petition shall be signed by counsel if settled by him and, if not, by the petitioner's solicitor in his own name or the name of his firm, or by the petitioner if he sues in person.

### Presentation of Petition

8. (1) A petition may be presented to the Registrar.

(2) Unless otherwise directed on an application made *ex parte*, a certificate of the marriage to which the cause relates shall be filed with the petition.

(3) Where there is before the Supreme Court a petition which has not been dismissed or otherwise disposed of by a final order, another petition by the same petitioner in respect of the same marriage shall not be presented without leave granted on an application made in the pending proceedings.

(4) The petition shall be presented by filing it in the Registry with as many copies of the petition as there are persons to be served.

(5) The Registrar shall enter the cause in the action book.

### Parties

9. (1) Unless otherwise directed—

(a) where a husband's petition alleges adultery, the alleged adulterer shall be made a co-respondent in the cause;

(b) where a wife's petition alleges adultery with a woman named, the alleged adulteress shall be made a respondent in the cause.

(2) Where a wife's petition alleges that the husband has been guilty of a sexual offence with another person the petitioner shall as soon as possible after the filing of the petition apply to the court for directions as to whether that person should be made a respondent in the cause.

(3) This rule does not apply where the alleged adulterer, adulteress or person named has died before the filing of the petition.

### SERVICE OF PETITION, ETC

### Service of Petition

10. (1) Subject to the provisions of this rule, a copy of every petition shall be served personally or by post on every respondent or co-respondent.

This e-version of the text is not authoritative for use in court.



- (2) Service may be effected—
    - (a) where the party to be served is a person under disability within the meaning of rule 54 through the petitioner; and
    - (b) in any other case, through the court, or if the petitioner so requests, through the petitioner.
  - (3) Personal service shall in no case be effected by the petitioner himself.
  - (4) A copy of any petition which is to be served through the court shall be served by an officer of the court.
  - (5) For the purposes of subrules (1) to (4), a copy of a petition shall be deemed to be duly served if—
    - (a) an acknowledgement of service in Form 4 is signed by the party to be served and is returned to the court office; and
    - (b) where the form purports to be signed by a respondent spouse, his signature is proved at the hearing.
  - (6) Where a copy of a petition has been sent to a party and no acknowledgement of service has been returned to the court office, the Registrar, if satisfied by affidavit or otherwise that the party has nevertheless received the document, may direct that the document shall be deemed to have been duly served on him.
  - (7) Where a copy of a petition has been served on a party personally and no acknowledgement of service has been returned to the court office, service shall be proved by filing an affidavit of service showing the server's means of knowledge of the identity of the party served.
  - (8) An application for leave to substitute some other mode of service for the modes of service prescribed by subrule (1), or to substitute notice of the proceedings by advertisement or otherwise, shall be made *ex parte* by lodging an affidavit setting out the grounds on which the application is made, and the form of any advertisement shall be settled by the Registrar.
  - (9) Where it appears necessary or expedient to do so—
    - (a) a judge may by order dispense with service of a copy of a petition on a respondent spouse; and
    - (b) the Registrar may by order dispense with service of a copy of a petition on any other person.
- An application to the Registrar for an order under paragraph (b) may, if no notice of intention to defend has been given, be made *ex parte* by lodging an affidavit setting out the grounds of the application.

### Notice of intention to defend

- 11. (1)** In these rules any reference to a notice of intention to defend is a reference to an acknowledgement of service in Form 4 containing a statement to the effect that the person by whom or on whose behalf it is signed intends to defend the proceedings to which the acknowledgement relates, and any reference to giving notice of intention to defend is a reference to returning such a notice to the Registry.
- (2) In relation to any person on whom there is served a document requiring or authorising an acknowledgement of service to be returned to the Registry, references in these rules to the time limited for giving notice of intention to defend are references to 8 days after service of the document, inclusive of the day of service, or such other time as may be fixed.
- (3) Notice of intention to defend a cause begun by petition may be given at any time before directions for trial are given, notwithstanding that the time limited for giving the notice has expired.

(4) Subject to subrules (2) and (3), a person may give notice of intention to defend notwithstanding that he has already returned to the court office an acknowledgement of service not constituting such a notice.

#### PLEADINGS AND AMENDMENT

### Supplemental Petition and amendment of Petition

12. (1) A supplemental petition may be filed only with leave.

(2) A petition may be amended without leave before it is served but only with leave after it has been served.

(3) Subject to subrule (4), an application for leave under this rule—

- (a) may, if every opposite party consents in writing to the supplemental petition being filed or the petition being amended, be made *ex parte* by lodging in the Registry the supplemental petition or a copy of the petition as proposed to be amended; and
- (b) shall, in any other case, be made by summons, to be served, unless otherwise directed, on every opposite party.

(4) An order granting leave shall—

- (a) where any party has given notice of intention to defend, fix the time within which the answer must be filed or amended;
- (b) where the order is made after directions for trial have been given, provide for a stay of the hearing until after the directions have been renewed.

(5) An amendment authorised to be made under this rule shall be made by filing a copy of the amended petition.

(6) Rules 7 and 9 shall apply to a supplemental or amended petition as they apply to the original petition.

### Service of supplemental or amended petition

13. (1) Unless otherwise directed, a copy of a supplemental or amended petition, together with a copy of the order (if any) made under rule 12, shall be served on every respondent and co-respondent named in the original petition or in the supplemental or amended petition.

(2) The petitioner shall file the documents required by subrule (1) to be served on any person and thereupon, unless otherwise directed, rules 10(5) (except paragraph (a)) shall apply in relation to a person required to be served with an original petition.

### Filing of answer to Petition

14. (1) Subject to subrule (2) and to rule 16 a respondent or co-respondent who—

- (a) wishes to defend the petition or to dispute any of the facts alleged in it;
- (b) being the respondent spouse, wishes to make in the proceedings any charge against the petitioner in respect of which the respondent spouse prays for relief, shall, within 21 days after the expiration of the time limited for giving notice of intention to defend, file an answer to the petition.

(2) An answer may be filed at any time before directions have been given for the trial of the cause, notwithstanding that the time for filing the answer has expired or that the person filing the answer has not given notice of intention to defend.

(3) Any reference in these rules to a person who has given notice of intention to defend shall be construed as including a reference to a person who has filed an answer without giving notice of intention to defend.

### **Filing of reply, etc.**

15. (1) A petitioner may file a reply to an answer within 14 days after he has received a copy of the answer pursuant to rule 19.

(2) If the petitioner does not file a reply to an answer, he shall, unless the answer prays for a decree, be deemed, on making a request for directions for trial, to have denied every material allegation of fact made in the answer.

(3) No pleading subsequent to a reply shall be filed without leave.

### **Filing of pleading after directions for trial**

16. No pleading shall be filed without leave after directions for trial have been given.

### **Contents of answer and subsequent pleadings**

17. (1) Where an answer, reply or subsequent pleading contains more than a simple denial of the facts stated in the petition, answer or reply, as the case may be, the pleading shall set out with sufficient particularity the facts relied on but not the evidence by which they are to be proved.

(2) Unless otherwise directed, an answer by a husband or wife who disputes any statement required to be included in the petition shall contain full particulars of the facts relied on.

(3) So much of Form 2 as requires the petition to conclude with a prayer giving details of the relief claimed shall, where appropriate, apply with the necessary modifications to a respondent spouse's answer as they apply to a petition:

Provided that it shall not be necessary to include in the answer any claim for costs against the petitioner.

(4) Rule 9 shall apply with the necessary modifications to a pleading other than a petition as it applies to a petition.

(5) Rule 7 shall apply with the necessary modifications to a pleading other than a petition as it applies to a petition.

### **Allegations against third parties in pleading**

18. (1) Rules 9 and 10 shall apply with the necessary modifications to a husband's or wife's pleading other than a petition as they apply to a petition, so however that for the references in those rules to a co-respondent or respondent there shall be substituted references to a party cited.

(2) Rule 14 shall apply with the necessary modifications to a party cited in a pleading as it applies to a respondent or co-respondent to a petition.

### **Service of pleading**

19. A party who files an answer, reply or subsequent pleading shall at the same time file a copy for service on every opposite party and thereupon the Registrar shall annex to every

copy for service on a party cited in the pleading a notice in Form 3 with Form 4 attached and shall send a copy to every other opposite party.

### **Supplemental answer and amendment of pleadings**

**20.** Rules 12 and 13 shall apply with the necessary modifications to the filing of a supplemental answer, and the amendment of a pleading or other document not being a petition, as they apply to the filing of a supplemental petition and the amendment of a petition.

### **Particulars of case**

**21. (1)** A party on whom a pleading has been served may in writing request the party whose pleading it is to give particulars of any allegation or other matter pleaded and, if the party fails to give the particulars within a reasonable time, the party requiring them may apply for an order that the particulars be given.

**(2)** The request or order in pursuance of which particulars are given shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

**(3)** A party giving particulars, whether in pursuance of an order or otherwise, shall at the same time file a copy of them.

## **PREPARATIONS FOR TRIAL**

### **Discovery of documents in defended cause**

**22.** The provisions of Order 15 rules 2, 3, 4, 5, 6, 7 and 8 of the Civil Procedure Rules shall apply to a defended cause begun by petition as they apply to an action together with such modifications and adaptations as may be necessary.

### **Discovery by interrogations in undefended cause**

**23.** The provisions of Order 15, rule 1 of the Civil Procedure Rules relating to the procedure for the delivery of interrogatories shall apply to a defended cause begun by petition subject to such modifications and adaptations as may be necessary.

### **Medical examination in proceedings for nullity**

**24. (1)** In proceedings for nullity on the ground of impotence or incapacity to consummate the marriage, the petitioner shall, subject to subrule (2), apply to the Registrar to determine whether a medical inspector should be appointed to examine the parties.

**(2)** An application under subrule (1) shall not be made in an undefended cause—

**(a)** if the husband is the petitioner; or

**(b)** if the wife is the petitioner and—

**(i)** it appears from the petition that she was either a widow or divorced at the time of marriage in question; or

**(ii)** it appears from the petition or otherwise that she has borne a child; or

**(iii)** a statement by the wife that she is not a virgin is filed,

unless in any such case, the petitioner is alleging his or her own impotence or incapacity.

(3) Reference in subrules (1) and (2) to the petitioner shall, where the cause is proceeding only on the respondent's answer or where the allegation of impotence or incapacity is made only in the respondent's answer, be construed as references to the respondent.

(4) An application under subrule (1) by the petitioner shall be made—

- (a) where the respondent has not given notice of intention to defend, after the time limited for giving the notice has expired;
- (b) where the respondent has given notice of intention to defend, after the expiration of the time allowed for filing his answer or, if he has filed an answer, after it has been filed;

and an application under subrule (1) by the respondent shall be made after he has filed an answer.

(5) Where the party required to make an application under subrule (1) fails to do so within a reasonable time, the other party may, if he is prosecuting or defending the cause, make an application under that subrule.

(6) In proceeding for nullity on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent, either party may apply to the Registrar for the appointment of a medical inspector to examine the parties.

(7) If the respondent has not given notice of intention to defend, an application by the petitioner under subrule (1) or (6) may be made *ex parte*.

(8) If the Registrar hearing an application under subrule (1) or (6) considered it expedient to do so, he shall appoint a medical inspector or, if he thinks it necessary, two medical inspectors to examine the parties and report to the court the result of the examination.

(9) At the hearing of any such proceedings as are referred to in subrule (1) the court may, if it thinks fit, appoint a medical inspector or two medical inspectors to examine any party who has not been examined or to examine further any party who has been examined.

(10) The party on whose application an order under subrule (8) is made or who has the conduct of proceedings in which an order under subrule (9) has been made for the examination of the other party, shall serve on the other party notice of the time and place appointed for his or her examination.

### Conduct of medical examination

25. (1) Every medical examination under rule 24 shall be held at the consulting room of the medical inspector or, as the case may be, of one of the medical inspectors appointed to conduct the examination.

(2) Every party presenting himself for examination shall sign, in the presence of the inspector or inspectors, a statement that he is the person referred to as the petitioner or respondent, as the case may be, in the order for the examination, and at the conclusion of the examination the inspector or inspectors shall certify on the statement that it was signed in his or their presence by the person who has been examined.

(3) Every report made in pursuance of rule 24 shall be filed and either party shall be entitled to be supplied with a copy on payment of the prescribed fee.

### Directions for trial

26. (1) On the written request of the petitioner or of any party who is defending a cause begun by petition, the Registrar shall give directions for the trial of the cause if he is satisfied—

- (a) that any application for directions required by rule 9(2) or by that rule as applied by rule 17, has been made;

- (b) that a copy of the petition (including any supplemental or amended petition) and any subsequent pleading has been duly served on every party required to be served and, where that party is a person under disability, that any document required by rule 54 has been filed;
- (c) if no notice of intention to defend has been given by any party entitled to give it, that the time limited for giving such notice has expired;
- (d) if notice of intention to defend has been given by any party, that the time allowed him for filing an answer has expired;
- (e) if an answer has been filed, that the time allowed for filing any subsequent pleading has expired;
- (f) in proceedings for nullity—
  - (i) that any application required by rule 24 has been made, and
  - (ii) where an order for the examination of the parties has been made on an application under rule 24 that the notice required by subrule (10) of that rule has been served and that the report of the inspector or inspectors has been filed.

(2) In any other case the Registrar shall give directions for trial by setting the cause down for trial and giving notice that he has done so to every party to the cause.

#### EVIDENCE

##### **Evidence generally to be taken orally**

27. Subject to the provisions of rules 28 and 29 and of the Civil Evidence Act 1968, and any other applicable enactment, any fact required to be proved by the evidence of witnesses at the trial of a cause begun by petition shall be proved by the examination of the witnesses orally and in open court.

##### **Evidence by affidavit etc.**

28. (1) The court may order—
- (a) that the affidavit of any witness may be read at the trial on such conditions as the court thinks reasonable;
  - (b) that the evidence of any particular fact shall be given at the trial in such manner as may be specified in the order and in particular—
    - (i) by statement on oath of information or belief; or
    - (ii) by the production of documents or entries in books.
- (2) An application to the Registrar for an order under subrule (1) shall—
- (a) if no notice of intention to defend has been given; or
  - (b) if the petitioner and every party who has given notice of intention to defend consents to the order sought, be made *ex parte* by filing an affidavit stating the grounds on which the application is made.

(3) Where an application is made before the trial for an order that the affidavit of a witness may be read at the trial or that evidence of a particular fact may be given at the trial by affidavit, the proposed affidavit or a draft thereof shall be submitted with the application; and where the affidavit is sworn before the hearing of the application and sufficiently states the grounds on which the application is made, no other affidavit shall be required under subrule (2).

(4) The court may, on the application of any party to a cause begun by petition, make an order under Order 27, rule 1, of the Civil Procedure Rules (which regulate the procedure

where evidence is to be taken by commission) for the examination on oath of any person, and it shall have effect accordingly with the appropriate modifications.

### **Evidence of marriage outside St. Helena**

**29.** The celebration of a marriage outside St. Helena and its validity under the law of the country where it is celebrated may, in any matrimonial proceedings in which the existence and validity of the marriage is not disputed, be proved by the evidence of one of the parties to the marriage and the production of a document purporting to be—

- (a) a marriage certificate or similar document issued under the law in force in that country; or
- (b) a certified copy of an entry in a register of marriages kept under the law in force in that country.

### **Saving for judge's powers**

**30.** Nothing in rule 28 or 29 shall affect the power of the judge at the trial to refuse to admit any evidence if in the interests of justice he thinks fit to do so.

#### TRIAL, ETC

### **Mode of trial**

**31.** Unless otherwise directed, every cause and any issue arising therein shall be tried by a judge without a jury.

### **Right to be heard on ancillary questions**

**32. (1)** A respondent spouse may, without filing an answer, be heard on any question of custody of, or access to, any child of the family.

**(2)** A respondent, co-respondent or party cited may, without filing an answer be heard on any question as to costs but no allegation shall be made against a party claiming costs unless the party making the allegation has filed an answer.

**(3)** A party shall be entitled to be heard on any question pursuant to subrule (1) or (2) whether or not he has returned to the Registry an acknowledgement of service stating his wish to be heard on that question.

**(4)** In proceedings after a decree *nisi* of divorce or a decree of judicial separation no order the effect of which would be to make a co-respondent or party cited liable for costs which are not directly referable to the decree, shall be made unless the co-respondent or party cited is a party to such proceedings or has been given notice of the intention to apply for such an order.

#### DECREES AND ORDERS

### **Decrees and orders**

**33.** Every decree, every order made in open court and every other order which is required to be drawn up shall be drawn up by the Registrar.

### Copies of decrees and orders

**34. (1)** A copy of every decree shall be sent by the Registrar to every party to the cause.

**(2)** A sealed or other copy of a decree or order made in open court shall be issued to any person requiring it on payment of the prescribed fee.

### Service of order

**35. (1)** Where an order made in matrimonial proceedings has been drawn up, the Registrar shall, unless otherwise directed, send a copy of the order to every party affected by it.

**(2)** Where a party against whom the order is made is acting by a solicitor, a copy may, if the Registrar thinks fit, be sent to that party as if he were acting in person, as well as to his solicitor.

**(3)** It shall not be necessary for the person in whose favour the order was made to prove that a copy of the order has reached any other party to whom it is required to be sent.

**(4)** This rule is without prejudice to any other rule or enactment for the purpose of which an order is required to be served in a particular way.

### Service of decree or order requiring act to be done

**36.** Where a decree or order requires a person to do or abstain from doing an act, service on such person may be made on him personally or delivered to his solicitor.

### Intervention by any person to show cause

**37. (1)** If any person wishes to show cause under section 16(2) of the Ordinance against a decree *nisi* being made absolute he shall file an affidavit stating the facts on which he relies and a copy shall be served on the party in whose favour the decree was pronounced and (in the case of a decree of nullity) if the affidavit alleges collusion, on the other party or parties to the alleged collusion.

**(2)** A party on whom a copy of an affidavit has been served under subrule (1) may, within 14 days after service, file an affidavit in answer and, if he does so, a copy thereof shall be served on the person showing cause.

**(3)** The person showing cause may file an affidavit in reply within 14 days after service of the affidavit in answer and, if he does so, a copy shall be served on each party who was served with a copy of his original affidavit.

**(4)** No affidavit after an affidavit in reply shall be filed without leave.

**(5)** Any person who files an affidavit under subrule (1), (2) or (3) shall at the same time file a copy for service on each person required to be served therewith and the Registrar shall thereupon serve the copy on that person.

**(6)** A person showing cause shall apply to the judge for directions within 14 days after expiry of the time allowed for filing an affidavit in reply or, where no affidavit in answer has been filed, within 14 days after expiry of the time allowed for filing such an affidavit.

**(7)** If the person showing cause does not apply under subrule (6) within the time limited, the person in whose favour the decree was pronounced may do so.



**Rescission of decree *nisi* by consent**

**38. (1)** Where, after a decree *nisi* has been pronounced but before it has been made absolute, a reconciliation has been effected between the petitioner and the respondent spouse either party may apply for an order rescinding the decree by consent.

**(2)** A copy of the summons by which the application is made shall be served on the other spouse and on any other person against whom costs have been awarded or who is otherwise affected by the decree.

**Decree absolute**

**39. (1)**<sup>12</sup> Subject to subrule (3), an application by a spouse to make absolute a decree *nisi* may be made after the expiration of 3 months from the making of the decree *nisi* by lodging with the Registrar a notice in Form 5.

**(2)** On the lodging of such a notice, the Registrar shall search the court minutes and if he is satisfied—

- (a)** that no appeal against the decree and no application for re-hearing of the cause or for rescission of the decree is pending;
- (b)** that no order has been made by the Court of Appeal of St. Helena extending the time for appealing against the decree or by a judge extending the time for making an application for re-hearing of the cause or, if any such order has been made, that the time so extended has expired;
- (c)** that no application for such an order as is mentioned in paragraph **(b)** is pending;
- (d)** that no intervention under rule 37 is pending;

the Registrar shall make the decree absolute:

Provided that if the notice is lodged more than 12 months after the decree *nisi* the Registrar shall require the applicant to file an affidavit accounting for the delay and shall refer the application to the Chief Justice.

**(3)** Where there are circumstances which ought to be brought to the notice of the court before a decree *nisi* is made absolute, an application for the decree to be made absolute shall be made to the Chief Justice.

Unless otherwise directed, the summons by which the application is made shall be served on every party to the cause and on any other person with whom adultery is alleged, and the application shall be heard in open court.

**(4)** An order granting an application under subrule (3) shall not take effect until the Registrar has searched the court minutes and is satisfied as to the matters mentioned in subrule (2).

**(5)** Where a decree *nisi* is made absolute, the Registrar shall make an endorsement to that effect on the decree, stating the precise time at which it was made absolute.

**Certificate of decree absolute**

**40. (1)** On a decree *nisi* being made absolute, the Registrar shall send to the petitioner and the respondent spouse a certificate in Form 6 or 7, whichever is appropriate, authenticated by the seal of the Supreme Court.

**(2)** A certificate in Form 6 or 7 that a decree *nisi* has been made absolute shall be issued to any person requiring it on payment of the prescribed fee.

<sup>12</sup> Rule 39(1) amended by L.N. 6/1979

### **Rescission of decree of judicial separation**

**41. (1)** A petition for the rescission of a decree of judicial separation shall set out particulars of the decree and the grounds for rescission relied on by the petitioner.

**(2)** The party in whose favour the decree was pronounced may file an answer within 14 days after service of a copy of the petition on him.

**(3)** Except as provided in subrule (2), all proceedings on the petition shall be carried on in the same manner, so far as practicable, as proceedings on a petition for judicial separation.

### **ANCILLARY RELIEF**

#### **Application by petitioner or respondent for ancillary relief**

**42. (1)** Any application by a petitioner, or by a respondent spouse who files an answer claiming relief for—

- (a)* an order for maintenance pending suit;
- (b)* a secured annual payments order;
- (c)* a lump sum order,

shall be made in the petition or answer, as the case may be.

**(2)** Notwithstanding anything in subrule (1), an application for ancillary relief which should have been made in the petition or answer may be made subsequently—

- (a)* by leave of the court, either by notice in Form 8 or at the trial; or
- (b)* where the parties are agreed upon the terms of the proposed order, without leave by notice in Form 8.

**(3)** An application by a petitioner or respondent spouse for ancillary relief, not being an application which is required to be made in the petition or answer, shall be made by notice in Form 8.

#### **Application for maintenance of children**

**43.** Any person in whose care a child of the family is and who has obtained leave to intervene in the cause for the purpose of applying for maintenance for that child may apply for an order for ancillary relief as respects that child by notice in Form 8.

#### **Application in Form 8**

**44.** Where an application for ancillary relief is made by notice in Form 8 the applicant shall serve a copy of the notice on the respondent to the application.

#### **General provisions as to evidence, etc, on application for ancillary relief**

**45. (1)** Where a respondent spouse or a petitioner is served with a notice in Form 8 or 9 in respect of an application for ancillary relief, then unless the parties are agreed upon the terms of the proposed order, he shall, within 14 days after service of the notice, file an affidavit in answer to the application containing full particulars of his property and income, and if he does not do so, the court may order him to file an affidavit containing such particulars.

**(2)** An affidavit in reply may be filed within 14 days after service of any affidavit under subrule (1) or within such other time as the court may fix.

**Evidence on application to discharge, etc., order for maintenance**

**46. (1)** An application to the court to discharge or modify or temporarily suspend an order for maintenance shall be supported by an affidavit by the applicant setting out full particulars of his property and income and the grounds on which the application is made.

**(2)** The respondent to the application may within 14 days after service of the affidavit file an affidavit in answer.

**Service of affidavit, or answer, or reply**

**47. (1)** A person who files an affidavit for use on an application under rules 45 and 46 shall at the same time serve a copy on the opposite party and, where the affidavit contains an allegation of adultery or of an improper association with a named person, then unless otherwise directed, it shall be endorsed with a notice in Form 11 and a copy of the affidavit or of such part thereof as the court may direct, endorsed as aforesaid, shall be served on that person by the person who files the affidavit, and the person against whom the allegation is made shall be entitled to intervene in the proceedings by applying for directions under rule 48(5) within 8 days of service of the affidavit on him, inclusive of the day of service.

**(2)** Rule 32(4) shall apply to a person served with an affidavit under subrule (1) as it applies to a co-respondent.

**Investigation by Registrar of application for ancillary relief**

**48. (1)** On or after the filing of a notice in Form 8 or 9 a date shall be fixed for the hearing of the application by the court.

**(2)** Notice of the date of hearing unless given in Form 8 or 9, as the case may be, shall be given by the Registrar to every party to the application.

**(3)** Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the Registrar for directions.

**(4)** At the hearing of an application for ancillary relief the court shall investigate the allegations made in support of and in answer to the application and may take evidence orally and may order the attendance of any person for the purpose of being examined or cross-examined, and may at any stage of the proceedings order the discovery and production of any document or require further affidavits.

**(5)** The court may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

**Hearing of applications**

**49.** The hearing of an application for ancillary relief and any question arising thereon shall take place in Chambers unless the Chief Justice otherwise directs.

**Request for periodical payments order at same rate as order for maintenance pending suit**

**50. (1)** Where at or after the date of a decree *nisi* of divorce or nullity of marriage an order for maintenance pending suit is in force, the party in whose favour the order was made may, if he has made an application for an order for periodical payments for himself in his petition or answer, as the case may be, request the court in writing to make such an order (in this rule referred to as a “corresponding order”) providing for payments at the same rate as those provided for by the order for maintenance pending suit.

**(2)** Where such a request is made, the court shall serve on the other spouse a notice in Form 10 requiring him, if he objects to the making of a corresponding order, to give notice to that effect to the court and to the applicant within 14 days after service of the notice in Form 10.

**(3)** If the other spouse does not give notice of objection within the time aforesaid, the court may make a corresponding order without further notice to that spouse and without requiring the attendance of the applicant or his solicitor, and shall in that case serve a copy of the order on the applicant as well as on the other spouse.

**APPLICATIONS RELATING TO CHILDREN****Custody, care and supervision of children**

**51.** The petitioner or the respondent or any person who has obtained leave to intervene in the suit for the purpose of applying for custody or who has the custody or control of any children of the family may after entering an appearance for such purpose apply to the court after a final decree of judicial separation, nullity of marriage or divorce for an order relating to the custody, maintenance and education of such children or for directions for placing such children under the protection of the court.

**Access to children**

**52.** A petitioner may at any time after filing a petition and a respondent may at any time after entering an appearance apply to the court for access to any children of the family.

**Removal of child out of St. Helena**

**53. (1)** An application for leave to remove a child permanently out of St. Helena may be made to the court.

**(2)** A petitioner may at any time after filing his petition apply *ex parte* to the Supreme Court for an injunction restraining the respondent or any other person from removing any child of the family under 18 years of age out of St. Helena or out of the custody, care or control of any person named in the application.

**DISABILITY****Person under disability must sue by next friend, etc.**

**54. (1)** In this rule—  
“patient” means a patient as defined in the Mental Health Ordinance;

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“person under disability” means a person who is a minor or a patient.

(2) A person under disability may begin and prosecute any matrimonial proceedings by his next friend and may defend any such proceedings by his guardian *ad litem* and, except as otherwise provided by this rule, it shall not be necessary for a guardian *ad litem* to be appointed by the court.

(3) No notice of intention to defend shall be given, or answer or affidavit in answer filed by or on behalf of a person under disability, unless the person giving the notice or filing the answer or affidavit has filed the following documents—

- (a) written consent to act as next friend or guardian *ad litem*;
- (b) a certificate under his hand certifying that he knows or believes that the person to whom the certificate relates is a minor or patient stating (in the case of a patient) the grounds of his knowledge or belief.

### Service on person under disability

55. Where a document to which rule 10 applied is to be served on a person under disability it shall be served—

- (a) in the case of a minor who is not also a patient, on his father or guardian, or if he has no father or guardian, the person with whom he resides or in whose care he is;
- (b) in the case of a patient, on the person with whom the patient resides or in whose care he is:

Provided that the court may order that a document which has been or is to be served on the person under disability or on a person other than one mentioned in paragraph (a) or (b) shall be deemed to be duly served on the person under disability.

### Petition for nullity on ground of insanity, etc

56. (1) Where a petition for nullity of marriage has been presented on the ground that the respondent at the time of the marriage was of unsound mind, then whether or not the respondent gives notice of intention to defend, the petitioner shall not proceed with the cause without the leave of the Registrar.

(2) The Registrar by whom an application for leave is heard may make it a condition of granting leave that some proper person be appointed to act as guardian *ad litem* of the respondent.

### Separate representation of children

57. (1) If in any matrimonial proceedings it appears to the court that any child ought to be separately represented, the court may appoint any proper person to be guardian *ad litem* of the child with authority to take part in the proceedings on the child's behalf.

(2) The applicant for an order under subrule (1) shall on making the application file a certificate under his hand certifying that he has no interest in the proceedings adverse to that of the child.

## FORM 1

## In the Supreme Court St. Helena

## NOTICE OF APPLICATION UNDER RULE 4

In the Supreme Court

No of .....

Matter .....

(SEAL)

In the Matter of a proposed petition for dissolution of marriage

Between ..... Applicant  
and ..... Respondent.

TAKE NOTICE that an application has been made by the above-named Applicant for leave to present a petition for dissolution of his (her) marriage with you before the expiration of the period of three years from the date of the said marriage. If the application is undefended, it will be heard at the Supreme Court on the ..... day of ....., 20....., at ..... o'clock, and if you do not attend at that time and place, such order will be made as the court thinks just.

A sealed copy of the application and of the affidavit to be used in support of the application is delivered with this notice.

You must complete and detach the acknowledgment of service and send it so as to reach the court within 8 days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs. If you intend to instruct a solicitor to act for you, you should at once give him all the documents which have been served on you, so that he may send the acknowledgment to the Court on your behalf.

Dated this ..... day of ....., 20.....

Registrar

To the Respondent

.....

\_\_\_\_\_

## FORM 2

## CONTENTS OF PETITION

(Unless otherwise directed under Rule 6, and see Rule 6 for specific requirements in certain cases).

1. Every petition shall state—

- (a) the names of the parties to the marriage and the date and place of the marriage;
- (b) the last address at which the parties to the marriage have lived together as husband and wife;
- (c) where it is alleged that the court has jurisdiction based on domicile—
  - (i) the country in which the petitioner is domiciled; and
  - (ii) if that country is not St. Helena, the country in which the respondent is domiciled;
- (d) where it is alleged that the court has jurisdiction based on residence—
  - (i) the country in which the petitioner has been resident throughout the period of three years ending with the date of the presentation of the petition; or
  - (ii) if the petitioner has not been ordinarily resident in St. Helena, the country in which the respondent has been ordinarily resident during that period,with details in either case, including the addresses of the places of residence and the length of residence at each place;
- (e) the occupation and residence of the petitioner and the respondent;
- (f) whether there are any living children of the family and, if so—
  - (i) the number of such children and full names (including surname) of each and his date of birth or (if it be the case) that he is over 18; and
  - (ii) in the case of each minor child over the age of 16, whether he is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation;
- (g) whether (to the knowledge of the petitioner in the case of a husband's petition) any other living child has been born to the wife during the marriage and, if so, the full names (including surname) of the child and his date of birth or, if it be the case, that he is over 18;
- (h) if it be the case, that there is a dispute whether a living child is a child of the family;
- (i) whether or not there are or have been any other proceedings in any court in St. Helena or elsewhere with reference to the marriage or to any children of the family or between the petitioner and the respondent with reference to any property of either or both of them and, if so—
  - (i) the nature of the proceedings;
  - (ii) the date and effect of any decree or order; and
  - (iii) in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the making of the decree or order;
- (j) whether there are any proceedings continuing in any country outside St. Helena which relate to the marriage or are capable of affecting its validity or subsistence and, if so—
  - (i) particulars of the proceedings, including the court in or tribunal or authority before which they were begun;
  - (ii) the date when they were begun;
  - (iii) the names of the parties;
  - (iv) the date or expected date of any trial in the proceedings; and
  - (v) such other facts as may be relevant to the question,

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and such proceedings shall include any which are not instituted in a court of law in that country, if they are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status, and shall be treated as continuing if they have been begun and have not been finally disposed of;

- (k) whether any, and if so what, agreement or arrangement has been made or is proposed to be made between the parties for the support of the respondent or, as the case may be, the petitioner or any child of the family;
- (l) in the case of a petition for divorce, that the marriage has broken down irretrievably;
- (m) the facts alleged by the petitioner for the purpose of section 5(1) of the Ordinance or, where the petition is not for divorce or judicial separation, the ground on which relief is sought, together in any case with brief particulars of the individual facts relied on but not the evidence by which they are to be proved;
- (n) any further or other information required by such of the following paragraphs as may be applicable.

2. A petition for a decree of nullity under section 14 of the Ordinance shall state whether the petitioner was at the time of the marriage ignorant of the facts alleged.

3. A petition for a decree of presumption of death and dissolution of marriage shall state—

- (a) the last place at which the parties to the marriage cohabited;
- (b) the circumstances in which the parties ceased to cohabit;
- (c) the date when and the place where the respondent was last seen or heard of; and
- (d) the steps which have been taken to trace the respondent.

4. A petition for jactitation of marriage shall state—

- (a) the residence and domicile of the petitioner and the respondent at the date of the institution of the cause;
- (b) the dates, times and places of the alleged boastings and assertions;
- (c) that the alleged boastings and assertions are false and that the petitioner has not acquiesced therein.

5. Every petition shall conclude with—

- (a) a prayer setting out particulars of relief claimed, including any claim for custody of a child of the family, any claim for costs and any application for ancillary relief which it is intended to claim;
- (b) the names and addresses of the persons who are to be served with the petition, indicating if any of them is a person under disability;
- (c) the petitioner's address for service, which, if the petitioner sues by a solicitor, shall be the solicitor's name or firm and address, or, if the petitioner sues in person, shall be his place of residence as given under paragraph 1(e) or, if no place of residence in St. Helena is given, the address of a place in St. Helena at or to which documents for him may be delivered or sent.



## FORM 3

## NOTICE OF PROCEEDINGS

In the Supreme Court St. Helena,  
20.....  
(Divorce)

No ..... of

Between ..... Petitioner  
and ..... Respondent  
and ..... Co-respondent.

To:—

TAKE NOTICE that a Petition for divorce has been presented to the Supreme Court of St. Helena by ..... A copy of it is delivered with this Notice.

You must complete the accompanying Form of Acknowledgment of Service and send it to ..... (the Solicitor for) (2) the Petitioner, at (address) .....

If you do not intend to answer the charges, nor to be heard on the other claims made in the Petition, and if you do not wish to make any application on your own account, you need not do anything more than send the Form of Acknowledgment of Service to the above address. The court may then, without further notice to you, proceed to hear the Petition and pronounce judgment, notwithstanding your absence.

If you wish to be heard on any matter in connection with the Petition you (or your solicitor) must complete the accompanying Memorandum of Appearance in duplicate and send or deliver both copies (without fee) so as to reach this Registry within eight days (3) after you receive this Notice. You (or your solicitor) will receive notice of the case being set down for hearing. When the case is heard, you must attend the hearing.

If you wish to defend the case at the hearing, you (or your solicitor) must, in addition to sending the Memorandum of Appearance, send or deliver an Answer in writing together with a fee of ..... so as to reach this Registry within fourteen days after the time allowed for sending the Memorandum of Appearance. You (or your solicitor) must at the same time send a copy of your Answer to (the solicitor for) (4) the Petitioner.

If you wish to claim custody of the children, you (or your solicitor) must, in addition to completing the Memorandum of Appearance, either—

- (i) include in your answer a statement of your own proposals for their support, care and upbringing; or
- (ii) if you do not intend to file an answer, include such a statement in the Memorandum of Appearance.

If you fail to do this, you will have to obtain leave to apply for custody.

(5) If you wish to oppose the claim for maintenance or other financial relief, you (or your solicitor) must, in addition to sending the Memorandum of Appearance, also send or deliver, so as to reach this Registry within fourteen days after the expiry of the time allowed for sending the Memorandum of Appearance, an affidavit (which must be sworn before a Justice of the Peace in St. Helena, or a Commissioner for Oaths or similar officer elsewhere) giving full particulars of your property and income, together with a fee of ..... You (or your solicitor) must at the same time send a copy of your affidavit to (the solicitor for) (6) the Petitioner. If you wish to allege that your wife has property or income you should say so in your affidavit.

**Note:**—If you intend to instruct a solicitor to act for you in these proceedings, you should at once complete and sign the Form of Acknowledgment of Service and then give him all the documents which have been served upon you, so that he may take the necessary steps on your behalf within the times specified.

Dated the ..... day of ....., 20.....

Registrar  
The Supreme Court of St. Helena.

- (2) Delete if not applicable.
- (3) Or as the case may be.
- (4) Delete if not applicable.
- (5) Delete or amend this paragraph as necessary.
- (6) Delete if not applicable.

**“Solicitor”** includes a person advocating the cause of another with the consent of the Chief Justice.

**Note:**—If this form is used, both copies must be completed and sent to the Registry.

FORM 4

#### ACKNOWLEDGMENT OF SERVICE

In the Supreme Court of St. Helena,  
(Divorce)

Between ..... Petitioner  
and ..... Respondent  
and ..... Co-respondent

I am the person named as ..... in the Petition (2)

I received on the ..... day of ....., 20.....,  
at (place of receipt) .....

1. A copy of the Petition (2) filed in this case.

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2. Notice of Petition/Proceedings (3).

3. Do you intend to defend the case at the hearing? (Answer “Yes” or “No”).

4. Even if you do not wish to defend the case—

A

B

Do you wish to be heard as to other claims made in the Petition namely—

Do you wish to make any application on your own account, namely—

(1) Costs

(1) Access to the children.

(2) Custody of the children.

(2) Custody of the children.

(3) Maintenance of the children.

(3) Maintenance of the children.

(4) Maintenance

(4) Maintenance.

(5) A secured provision.

*(Answer “Yes” or “No” against each item)*

**Note:**— (1) If you intend to file an Answer claiming any relief on your own account, you must include in it any claim you may wish to make for maintenance of the children or maintenance for yourself.

(2) If you wish to claim custody of any child, you must comply with the instructions in the accompanying Notice of Petition.

(3) If you wish (either in opposing any of the claims under A or in supporting any claim you may make under B) to make against the petitioner any charge which may be a defence to the petition, you must, even if you do not wish to defend the petition, file an Answer and support it at the hearing.

(4) What are your proposals for the support, care and upbringing of the children? (here set out full particulars of your proposals unless you intend to include them in your Answer or do not wish to claim custody).

(5) What is your address to which communications should be sent?

(6) (In the case of a petition alleging one years’ separation coupled with the respondent’s consent to a decree being granted) Do you consent to a decree being granted?

(7) (In the case of a petition asking for divorce and alleging five years’ separation) Do you intend to oppose the grant of a decree on the ground that the divorce will result in grave financial or other hardship to you and that in all the circumstances it would be wrong to dissolve the marriage?

(8) In the event of a decree *nisi* being granted on the basis of one years’ separation coupled with the respondent’s consent, or five years’ separation, do you intend to apply to the Court for it to consider your financial position as it will be after the divorce?

Dated the ..... day of ....., 20.....

(Signed)

\_\_\_\_\_

## FORM 5

**NOTICE OF APPLICATION FOR DECREE *NISI* TO BE MADE ABSOLUTE**

In the Supreme Court St. Helena,  
20.....

No ..... of

(Divorce).

Between ..... Petitioner

and ..... Respondent

and ..... Co-respondent.

TAKE NOTICE that the petitioner (or respondent) applies for the decree *nisi* pronounced in his (her) favour on the ..... day of ....., 20....., to be made absolute.

Dated this ..... day of ....., 20..... .

Signed .....  
(Solicitor for the Petitioner or Respondent)

\_\_\_\_\_

## FORM 6

**CERTIFICATE OF MAKING DECREE *Nisi* ABSOLUTE (DIVORCE)**

(SEAL)

In the Supreme Court St. Helena,  
20.....

No ..... of

(Divorce).

Between ..... Petitioner

and ..... Respondent

and ..... Co-respondent.

Referring to the decree made in this cause on the ..... day of .....  
20....., whereby it was decreed that the marriage solemnised on the ..... day  
of ....., 20..... at ..... between .....  
the petitioner and ..... the respondent be dissolved unless  
sufficient cause be shown to the court within ..... from  
the making thereof why the said decree should not be made absolute, and no such  
cause having been shown, it is hereby certified that the said decree was on  
the ..... day of ....., 20....., made final and absolute and  
that the said marriage was thereby dissolved.

Dated this ..... day of ....., 20..... .

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## FORM 7

**CERTIFICATE OF MAKING DECREE *Nisi* ABSOLUTE (NULLITY)**

(SEAL)

In the Supreme Court St. Helena,  
20.....

No ..... of

(Divorce).

Between ..... Petitioner

and ..... Respondent

and ..... Co-respondent.

Referring to the decree made in this cause on the ..... day of .....,  
 20....., whereby it was ordered that the marriage in fact solemnised on the .....  
 day of ....., 20....., at ..... between .....  
 the petitioner and ..... the respondent be pronounced and  
 declared to have been by law void and the said petitioner .....  
 to be pronounced to have been and to be free of all bond of marriage with the said  
 respondent ..... unless sufficient cause be shown to the  
 court within ..... from the making thereof why the said decree should  
 not be made absolute, and no such cause having been shown, it is hereby certified  
 that the said decree was on the ..... day of ....., 20..... made  
 final and absolute and that the said marriage was by law void and that the said  
 petitioner was and is free from all bond of marriage with the said respondent.

Dated this ..... day of ....., 20.....

\_\_\_\_\_

## FORM 8

**NOTICE OF APPLICATION FOR ANCILLARY RELIEF**

In the Supreme Court St. Helena,  
20.....

No ..... of

(Divorce).

Between ..... Petitioner

and ..... Respondent

and ..... Co-respondent.

TAKE NOTICE that the petitioner (or respondent) intends to apply to the court for (here set out the ancillary relief)

Notice will be given to you of the place and time fixed for the hearing of the application (or the application will be heard by the registrar in chambers at ..... on ..... day, the ..... day of ....., 20....., at ..... o'clock).

(Unless the parties are agreed upon the terms of the proposed order, add in the case of an application for an order for maintenance pending suit, periodical payments or a lump sum: TAKE NOTICE ALSO that you must send to the registrar, so as to reach him 14 days after you receive this notice; an affidavit giving full particulars of your property and income You must at the same time send a copy of your affidavit to the (solicitor for) the applicant.

(If you wish to allege that the petitioner has property or income, you should say so in your affidavit.)

Dated this ..... day of ....., 20.....

\_\_\_\_\_

## FORM 9

**NOTICE OF INTENTION TO PROCEED WITH APPLICATION  
FOR ANCILLARY RELIEF MADE IN PETITION OR ANSWER**

In the Supreme Court St. Helena,  
20.....

No ..... of

(Divorce).

Between ..... Petitioner

and ..... Respondent

and ..... Co-respondent.

The petitioner (or respondent) having applied in his (her) petition (or answer) for (here) set out the ancillary relief claimed, stating the terms of any agreement as to the order which the court is to be asked to make).

(Add where applicable TAKE NOTICE that the application will be heard by the registrar in chambers at ..... on ..... day, the ..... day of ....., 20....., at ..... o'clock).

TAKE NOTICE (also) that (Unless the parties are agreed upon the terms of the proposed order, add in the case of an application for an order for maintenance pending suit, periodical payments or a lump sum: TAKE NOTICE ALSO that you must send to the registrar, so as to reach him within 14 days after you receive this notice, an affidavit giving full particulars of your property and income. You must at the same time send a copy of your affidavit to the (solicitor for) the applicant.

(If you wish to allege that the petitioner has property or income, you should say so in your affidavit.)

Dated this ..... day of ....., 20..... .

\_\_\_\_\_



## FORM 10

**NOTICE OF REQUEST FOR PERIODICAL PAYMENTS ORDER  
AT SAME RATE AS ORDER FOR MAINTENANCE PENDING SUIT**

In the Supreme Court St. Helena,  
20.....

No ..... of

(Divorce).

Between ..... Petitioner

and ..... Respondent

and ..... Co-respondent.

to ..... of.....

The petitioner (or respondent) having on the ..... day of .....,  
20....., obtained an order for payment by you of maintenance pending suit at the  
rate of .....

AND the petitioner (or respondent) having applied in his (her) petition (or  
answer) for a periodical payments order for himself (or herself).

TAKE NOTICE that the petitioner (or respondent) has requested the court to  
make a periodical payments order for himself (or herself) providing for payments  
by you at the same rate as those mentioned above.

AND TAKE NOTICE that if you object to the making of such a periodical  
payments order, you must give notice to that effect to the registrar and the  
petitioner (or respondent) within 14 days after service of this notice on you, and if  
you do not do so, the registrar may make such a periodical payments order without  
further notice to you.

Dated this ..... day of ....., 20.....

\_\_\_\_\_

## FORM 11

**NOTICE OF ALLEGATION IN PROCEEDINGS FOR ANCILLARY RELIEF**

In the Supreme Court St. Helena,  
20.....

No ..... of

(Divorce).

Between ..... Petitioner

and ..... Respondent

and ..... Co-respondent.

TAKE NOTICE that this affidavit has been filed in proceedings for (state nature of application) and that if you wish to be heard on any matter affecting you in the proceedings you may intervene by applying to the court, within 8 days after you receive this notice, inclusive of the day of receipt, for directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

Dated this ..... day of ....., 20.....

Issued by .....

(Solicitor for the) Petitioner (or Respondent)

\_\_\_\_\_