

MATRIMONIAL CAUSES ORDINANCE 1932-1960.*

An Ordinance relating to Divorce and Matrimonial Causes.

PART I.—PRELIMINARY.

Short title.
Short title
amended;
N. 17, 1938,
s. 4.

Commence-
ment.

Repeal.

Parts.

Saving
provisions.

1. This Ordinance may be cited as the *Matrimonial Causes Ordinance* 1932-1960.*

2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *Gazette*.†

3. The *Matrimonial Causes Act*, 1867 of the State of South Australia shall, from the date of commencement of this Ordinance, cease to apply to the Northern Territory.

4. This Ordinance is divided into Parts, as follows:—

- Part I.—Preliminary.
- Part II.—Divorce, judicial separation and other relief.
- Part III.—Adulterers.
- Part IV.—Intervention.
- Part V.—Maintenance and children.
- Part VI.—Property, settlements and like matters.
- Part VII.—Transactions intended to defeat claims.
- Part VIII.—Miscellaneous.

5. This Ordinance shall not affect any proceedings pending at the commencement of this Ordinance under the *Matrimonial*

* The *Matrimonial Causes Ordinance* 1932-1960 comprises the *Matrimonial Causes Ordinance* 1932 as amended. Particulars of the Principal Ordinance and of the amending Ordinances are set out in the following table:—

Ordinance.	Number and Year.	Date notified in Commonwealth Gazette.	Date of Assent by Administrator.	Date of Commencement.
<i>Matrimonial Causes Ordinance</i> 1932	No. 15, 1932	30th June, 1932	..	1st August, 1932
<i>Matrimonial Causes Ordinance</i> 1934	No. 18, 1934	27th September, 1934	..	27th September, 1934
<i>Matrimonial Causes Ordinance</i> 1939	No. 22, 1939	12th October, 1939	..	12th October, 1939
<i>Matrimonial Causes Ordinance</i> 1947	No. 1, 1947	22nd May, 1947	..	22nd May, 1947
<i>Matrimonial Causes Ordinance</i> 1949	No. 3, 1949	..	21st April, 1949	21st April, 1949
<i>Matrimonial Causes Ordinance</i> 1957	No. 40, 1957	..	15th November, 1957	11th December, 1957
<i>Matrimonial Causes Ordinance</i> 1959	No. 14, 1959	..	19th June, 1959	19th June, 1959
<i>Matrimonial Causes Ordinance</i> 1960	No. 6, 1960	..	2nd September, 1960	2nd September, 1960

† The date fixed was 1st August, 1932—see table above.

Causes Act, 1867, of the State of South Australia in its application to the Territory, or any right or privilege acquired or duty imposed or liability incurred thereunder before the commencement of this Ordinance, and any such proceedings may be continued and completed as if this Ordinance had not been passed.

6. In this Ordinance, unless the contrary intention appears—

“ Claim ” includes a counter-claim;

“ Court ” means the Supreme Court of the Northern Territory and includes the Judge of the Northern Territory sitting as such Supreme Court;

“ Defendant ” includes a plaintiff against whom there is a counter-claim;

“ Order ” includes judgment;

“ Plaintiff ” includes a defendant counter-claiming;

“ The Master ” means the person for the time being performing the duties of the Master of the Supreme Court of the Northern Territory;

“ The Rules ” means the Rules of Court, 1913, of the Supreme Court of South Australia, as adopted and varied by Rules of Court made under the *Supreme Court Ordinance* 1911, or under that Ordinance as subsequently amended, and as amended by section forty of this Ordinance, or any Rules of Court made under the *Supreme Court Ordinance* 1911-1934 and substituted for the Rules of Court, 1913, of the Supreme Court of South Australia as so adopted, varied and amended.

Definitions.
Amended by
No. 18, 1934,
s. 2; and
No. 14, 1959,
s. 2.

7 —(1.) The Supreme Court, in addition to the jurisdiction conferred by this Ordinance and the Rules, shall have the jurisdiction in relation to all matrimonial matters (except marriage licences) which was vested in any Ecclesiastical Court or person in England immediately prior to the Imperial Matrimonial Causes Act, 1857.

Jurisdiction.

(2.) In all proceedings under this Ordinance other than proceedings for divorce, the Court shall, subject to this Ordinance and the Rules, proceed and act and give relief on principles and rules which in the opinion of the Court are as nearly as may be conformable to the principles and rules on which the Ecclesiastical Courts in England acted and gave relief immediately prior to the Imperial Matrimonial Causes Act, 1857.

Added by
No. 22, 1939,
s. 2.

PART II.—DIVORCE, JUDICIAL SEPARATION AND OTHER RELIEF.

Grounds for divorce.
Amended by No. 22, 1939, s. 3; No. 1, 1947, s. 2; No. 3, 1949 s. 2; and No. 40, 1957, s. 3.

8. Any married person domiciled in the Northern Territory may claim an order for divorce on any of the following grounds existing or occurring after the marriage:—

- (a) Adultery;
- (b) Habitual cruelty for one year;
- (c) Desertion continued, without just cause or excuse, for three years;
- (d) Habitual drunkenness for three years together with—
 - (i) if the husband is the defendant, habitually leaving his wife without sufficient means of support; or
 - (ii) if the wife is the defendant, habitual neglect of her domestic duties;
- (e) Imprisonment for the three years preceding the commencement of the action under a commuted sentence for a capital crime or under a sentence of at least seven years;
- (f) A conviction during the year preceding the commencement of the action for having attempted to murder, or having assaulted with intent to inflict grievous bodily harm or caused grievous bodily harm to, the other party;
- (g) If the husband is the defendant, frequent convictions within the five years preceding the commencement of the action, the sentences for which aggregate three years, together with habitually leaving his wife without means of support;
- (h) Sodomy, rape or bestiality;
- (i) Confinement under any law for the time being in force in the Northern Territory on the ground of lunacy in any institution for a period or periods aggregating five out of the six years preceding the commencement of the action, coupled with the improbability of recovery; or
- (j) If the husband is the defendant, habitual and wilful failure during the three years preceding the commencement of the action to pay the maintenance for his wife which he has been ordered to pay by an order of any Court or has agreed to pay

pursuant to any instrument providing for a separation between him and his wife.

9. Any married person ordinarily resident in the Northern Territory may claim an order for judicial separation on any of the following grounds existing or occurring after the marriage:—

Grounds for judicial separation.
Amended by No. 22, 1939, s. 4.

- (a) Adultery;
- (b) Cruelty;
- (c) Desertion for two years;
- (d) Failure to comply with an order for restitution of conjugal rights; or
- (e) Any ground on which a decree for divorce *a mensa et thoro* might have been pronounced prior to the Imperial Matrimonial Causes Act, 1857.

10. An order may be made under section eight or section nine of this Ordinance notwithstanding that the acts or circumstances constituting the grounds therefor commenced or took place before the commencement of this Ordinance, or outside the Northern Territory.

Retrospective provision.

11. Proceedings for restitution of conjugal rights and nullity of marriage, and all other proceedings invoking the jurisdiction of the Court mentioned in section seven of this Ordinance shall be brought by action under this Ordinance.

Restitution of conjugal rights and nullity.

12. Upon the hearing, the Court shall as far as possible satisfy itself that there is no reason why the order claimed should not be made.

Duty of Court at hearing.

13. An order shall not be made—

- (a) if the plaintiff has condoned, been accessory to, or connived at all the grounds proved; or
- (b) if there has been collusion by the plaintiff in bringing or prosecuting the action.

Absolute bars to relief.

14.—(1.) The Court may refuse to make an order if the plaintiff has been guilty of—

Discretionary bars of relief.

- (a) adultery not condoned;
- (b) unreasonable delay;
- (c) cruelty;
- (d) habits or conduct inducing or contributing to the existence of the ground relied upon;
- (e) desertion before the commencement or happening of the ground relied upon; or
- (f) wilful neglect or misconduct conducing to the existence of the ground relied upon.

(2.) Where an order for divorce is claimed on the ground set out in paragraph (i) of section eight of this Ordinance, the Court may refuse to make the order until the plaintiff has made such provision for the maintenance of the defendant as the Court thinks proper.

Duty of Court to make orders.
Amended by No. 22, 1939, s. 5.

15. Subject to this Ordinance, the Court, upon being satisfied as to the existence of any ground, shall make the order or the order *nisi* claimed, as the case may be.

Alteration of claim.

16. If, in an action for divorce, a ground is proved sufficient to justify an order for divorce, an order for judicial separation shall not be made.

Order *nisi*.

17. Every order for divorce or nullity of marriage shall in the first instance be an order *nisi* not to be made absolute until the expiration of six months or such shorter time as the order *nisi* directs.

Order absolute.
Amended by No. 18, 1934, s. 3.

18. An order *nisi* shall become absolute upon the expiration of six months or the time fixed therein or upon the dismissal of any appeal or intervention as regards such order *nisi*, whichever last happens, and, when an order *nisi* becomes absolute, the Clerk shall issue the order absolute as of course.

Section 19 repealed by No. 3, 1949, s. 3.

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Effect of judicial separation.

20. An order for judicial separation shall have the same force and effect as a decree for divorce *a mensa et thoro* prior to the Imperial Matrimonial Causes Act, 1857.

Abolition of attachment.

21. An order for restitution of conjugal rights shall not be enforceable by attachment, but failure to comply therewith shall constitute desertion as from the date of the order.

PART III.—ADULTERERS.

Claim for damages.

22. Either party to a marriage may in an action claiming an order for divorce or judicial separation, but not otherwise, claim damages from any person on the ground of adultery (not condoned) with the other party to the marriage.

Joinder of adulterer.

23. If there is a claim by either party to the marriage for damages or costs against an adulterer the latter shall be made a defendant in the action but not otherwise.

Notice to and intervention by adulterer.

24. In every other case, unless an order to the contrary is made, a person (other than a party to the marriage) charged with adultery shall be served with a notice, in the form prescribed by the Rules, that the charge has been made and that person shall be entitled to intervene in the action.

25. The action for criminal conversation is abolished, but the principles relating thereto shall be applicable to the claim for damages referred to in section twenty-two of this Ordinance.

Abolition of criminal conversation.

26. The Court may direct in what manner the damages awarded in pursuance of this Part shall be paid or applied and that they shall be settled as it thinks proper for the benefit of the wife or of any child of hers.

Application of damages.

PART IV.—INTERVENTION.

27. The Crown Law Officer, with the approval of the Attorney-General, shall be entitled to intervene and contest or argue any question arising in any action if the Court requests him to do so.

Intervention by Crown Law Officer on request from Court.

28. At any time prior to the making of a final order or order absolute, the Crown Law Officer, with the approval of the Attorney-General, shall be entitled to intervene in any action if he files an affidavit that he has that approval and has reason to believe that there are matters relevant to the action which have not been or may not be, but which ought to be, made known to the Court.

Intervention of Crown Law Officer in other cases.

29. At any time prior to the making of a final order or an order absolute, the Court may make an order entitling any person to intervene, if, in the opinion of the Court, he may be able to prove facts relevant in the action which have not been, or may not be, but which ought to be, made known to the Court.

Intervention by other persons.

30. Any person intervening under Part III. or this Part of this Ordinance shall be deemed a defendant in the action with all the rights, duties and liabilities of a defendant.

Procedure on intervention.

31. Subject to this Ordinance, the Crown Law Officer shall have the rights, duties and liabilities which the Crown Proctor had prior to the commencement of this Ordinance.

Powers of Crown Law Officer.

PART V.—MAINTENANCE AND CHILDREN.

32. In any action the Court may make such order as it thinks proper as regards the custody, education and maintenance of, and access to, the children of the marriage which is the subject of the action, and may direct proper proceedings to be taken for placing such children under the protection of the Court.

Custody.

33.—(1.) In any action the Court may make any order which it thinks proper for the maintenance of one party to the marriage by the other party and may make an order in favour of a guilty party.

Maintenance.

(2.) The Court shall have regard to the means of the husband and wife and to the conduct of the parties.

Powers of
Court as to
maintenance.

34. The Court in exercising its powers under this Part of this Ordinance may—

- (a) order that a gross or a weekly, monthly, yearly or any other periodic sum shall be paid or secured;
- (b) order that any necessary deed or instrument should be executed and that such documents of title should be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of any order;
- (c) order that payments should be made to the wife or to a trustee to be appointed or to any public body;
- (d) make a permanent order or an order pending the disposal of the action or for a fixed term or until some future event occurs, or for a life or during joint lives, or until further order;
- (e) impose terms and conditions and suspend any final order or order *nisi* until compliance with an order under this Part of this Ordinance;
- (f) discharge or modify any order under this Part of this Ordinance or suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event;
- (g) revive any order wholly or in part;
- (h) increase or decrease the amount payable under any order;
- (i) make any other order (whether of the same nature as those mentioned in the preceding paragraphs of this section or not, and whether or not it is in accordance with the practice prior to the commencement of this Ordinance) which it thinks is necessary to do justice;
- (j) in the same order deal with any two or more of the matters mentioned in this section; and
- (k) include its order under this Part of this Ordinance in an order *nisi*, order absolute or final order, or may make an order under this Part of this Ordinance at any time before or after the final order or order absolute.

35.—(1.) A copy, certified by the Master, of any order, whether made before or after the commencement of this Ordinance, which contains directions as to the maintenance of a wife or child, or of any further order of a like nature may be filed with the Clerk of Courts of Summary Jurisdiction sitting at Darwin.

Enforcement of order for maintenance. Sub-section (1.) amended by No. 18, 1934, s. 4; and No. 14, 1959, s. 3.

(2.) Upon the filing of the order those parts thereof which relate to maintenance and are in force for the time being may be enforced in the same manner as a maintenance order made under the *Married Women's Protection Ordinance 1939-1959*, and non-compliance therewith may be punished in the same manner as if those parts were a maintenance order made under that Ordinance.

Amended by No. 14, 1959, s. 3.

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Section 35A inserted by No. 14, 1959, s. 4; repealed by No. 6, 1960, s. 3.

PART VI.—PROPERTY, SETTLEMENTS AND LIKE MATTERS.

36.—(1.) Upon the making of an order for judicial separation and for so long as the separation continues—

Effect of judicial separation.

- (a) the wife shall be considered as a single woman for the purpose of contracts, wrongs and injuries, and with respect to any property which she acquires or which devolves upon her;
- (b) such property may be disposed of by her as a single woman, and shall upon intestacy devolve as if her husband had predeceased her; and
- (c) the husband shall not be liable in respect of any act or omission of the wife.

(2.) Subject to any arrangement in writing made between the wife and her husband while separate, any property to which the wife is entitled at the date of her return to cohabitation with her husband shall be her separate property.

(3.) Nothing in this section shall prevent the wife from joining at any time during the separation in the exercise of any joint power given to herself and her husband.

(4.) Where the order for judicial separation is obtained by the wife, any property to which she is entitled for an estate in remainder or reversion at the date of the order and any property to which she becomes entitled as executrix, administratrix or trustee after the date of the order shall be deemed to be property to which this section applies and for the purposes of this section the death of the testator or intestate shall be deemed to be the date when the wife became entitled as executrix or administratrix.

Protection to
third parties.

37.—(1.) The discharge or variation of an order for judicial separation shall not affect the position of a person who has had any transaction with the wife prior to the discharge or variation.

(2.) The discharge or variation of such an order, or the cessation of the separation shall not affect the position of a person who subsequently has any transaction with the wife in reliance upon the order and without notice of its discharge or variation or the cessation of separation.

Powers as to
variation of
settlements.

38. Upon the application of either party to the marriage, whether plaintiff or defendant, the Court, after final order or order absolute, may make such orders as it thinks proper with reference to the application of the whole or part of the property dealt with by ante-nuptial or post-nuptial settlements on the parties for the benefit of the children or of the parties or any of them, and in relation thereto may exercise any of the powers of the Court under Part V. of this Ordinance which are applicable.

PART VII.—TRANSACTIONS INTENDED TO DEFEAT CLAIMS.

Transactions
to defeat
claims.

39.—(1.) The Court may set aside or restrain the making of any instrument or sale by or on behalf of, or by direction, or in the interests of, a party, if it is made or intended to be made to defeat an existing or anticipated order for costs, damages or maintenance.

(2.) The Court may order that any money or real or personal property dealt with by such instrument or sale may be taken in execution or charged with the payment of such sums for costs, damages or maintenance, as the Court directs, or that the proceeds of a sale shall be paid into Court to abide its order.

(3.) The Court shall have regard to the interests of, and shall make any order proper for the protection of, a *bona fide* purchaser or other person interested.

(4.) A party or any one acting in collusion with a party may be ordered to pay the costs of any other party or of a *bona fide* purchaser of, and incidental to, such instrument or sale and of the setting aside or restraining thereof.

PART VIII.—MISCELLANEOUS.

Procedure.

40.—(1.) Proceedings under this Ordinance shall not be instituted by petition, but shall be commenced by writ of summons, and shall be conducted in accordance with the Rules.

(2.) Rule 7 of the preliminary part of the Rules of Court, 1913 of the Supreme Court of South Australia, in their application to the Northern Territory, is amended by striking out paragraph IV. thereof.

(3.) The Rules of Court, 1913 of the Supreme Court of South Australia, in their application to the Northern Territory, are amended by inserting therein Order LXVIII, as set out in the Schedule to this Ordinance.

41. In any proceedings under this Ordinance, either party to a marriage may give evidence proving or tending to prove that the parties did not have sexual relations with each other at any particular time notwithstanding that such evidence would show or tend to show that any child born to the wife during the marriage was illegitimate.

Evidence of non-access.

42. On the hearing of a claim for divorce on the ground of failure to pay maintenance, if it is proved that the husband has failed to pay the maintenance ordered or agreed to be paid, the onus shall be on the husband of proving that the failure was not wilful.

Proof of wilful failure to pay maintenance.

43. The Court may receive as evidence of the facts therein stated any document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place outside the Northern Territory.

Proof of births, deaths, and marriages.

44. For the purposes of this Ordinance, a deserted wife who was domiciled in the Northern Territory at the time of desertion shall be deemed to have retained her Northern Territory domicile although since the desertion her husband may have acquired another domicile, and the domicile of a wife, whose husband has been confined under any law for the time being in force in the Northern Territory on the ground of lunacy in any institution for a period or periods aggregating five out of the six years preceding the commencement of the action, shall be determined as if her status as a married person had not affected her domicile.

Retention of wife's domicile.

45. A minister of religion shall not be compelled to solemnise the marriage of any person whose former marriage has been dissolved.

Position of clergy as to re-marriage.

46. If, in the opinion of the Court, a witness might be adversely affected in giving evidence by the presence in the Court-room of members of the public, or if the Court has reason to believe that the evidence will be of such a nature that it is proper to do so, the Court may exclude the public during the whole or any part of the hearing.

Power to take evidence in private.

THE SCHEDULE.

ORDER LXVIII.

MATRIMONIAL ACTIONS.

Interpretation.

1.—(1.) This Order shall apply only to matrimonial actions.

(2.) In this Order, unless the contrary intention appears—

“Plaintiff” includes a defendant counter-claiming;

“Claim” and “Statement of claim” include counter-claim;

“Defendant” includes a plaintiff against whom there is a counter-claim;

“Form” means a form in the Schedule to this Order; and

“The Ordinance” means the *Matrimonial Causes Ordinance* 1932.

“The Public Trustee” means the Public Trustee appointed under the *Public Trustee Ordinance* 1920.

Writ of summons and statement of claim.

2. The writ of summons shall have annexed thereto a statement of claim which shall contain such of the following as is appropriate in the particular action:—

(a) The place and date of marriage;

(b) The names and ages of the children of the marriage living and under the age of eighteen years;

(c) The domicile of the parties and the ground thereof;

(d) The result of any previous proceedings relating to the marriage;

(e) The material facts upon which the plaintiff relies, with particulars thereof;

(f) The relief claimed;

(g) The amount of damages claimed;

(h) Whether costs are claimed;

(i) Whether maintenance will be claimed;

(j) The names of the children of whom custody is claimed; and

(k) The name and address of the plaintiff's solicitor and the address for service.

Memorandum to be attached to statement of claim.

3. At the end of every statement of claim shall appear in the same type as the body of the claim a memorandum in accordance with Form 1 and, if the claim states that maintenance will be claimed, a memorandum in accordance with Form 2 shall also be added.

Service outside the Northern Territory. Amended by No. 18, 1934, s. 5 and Schedule.

4. Service may be effected outside the Northern Territory without leave and, if service is so effected, the time for entering an appearance or intervention shall be such as the Judge in each case enters in the writ or notice prior to the issue of the writ.

Form of advertisement.

5. Where an order for substituted service directs advertisement, the advertisement shall be in accordance with Form 3 or 4 with any necessary modifications.

Writ, &c., not to be exhibit to affidavit of service.

6. It shall not be necessary to make any writ, statement of claim, notice or copy thereof an exhibit to the affidavit of service thereof.

Identity of person served.

7. An affidavit of service shall state the deponent's means of knowledge of the identity of the person served.

Service of order on solicitor.

8. Service of an order on the solicitor on the record for a party shall be good service for all purposes including attachment, unless, in the case of attachment, the Court has reason to believe that the order has not come to the notice of the party.

Service not necessary, where party has not entered appearance.

9. A party or person served who has not entered an appearance need not, unless the Ordinance or these Rules otherwise direct, be served with any document or given any notice.

Lunatics.

10. Without any order for the purpose the Public Trustee shall be the guardian, *ad litem*, of every person confined under any law for the time being in force in the Northern Territory on the ground of lunacy in an institution.

THE SCHEDULE—*continued.*

11. A party may enter a conditional appearance stating in the appearance his reasons for making it conditional and shall forthwith apply in Chambers to have the question so arising decided, and, unless he obtains an order in his favour, the appearance shall become unconditional. Appearance under protest.
12. The appearance may state that the party desires to be heard only on certain proceedings in the action to be specified in the appearance such as taxation of costs, maintenance or custody, and the other party need serve on the person filing such an appearance only the documents relating to the specified proceedings. Appearance may be limited to certain proceedings.
13. An appearance may be entered at any time by leave. Appearance by leave.
14. A party shall not plead an affirmative defence unless his counsel adds a certificate that on his instructions there are reasonable grounds for setting up the defence. Defence.
15. A person served with notice of a charge of adultery and who desires to intervene shall do so by filing an appearance and proceed as if originally a party to the action. Intervention.
- 16.—(1.) The Crown Law Officer or other person intervening under Part IV. of the Ordinance shall do so by filing his objection within eight days from the time when he becomes entitled to do so. Crown Law Officer to file objection.
- (2.) The Crown Law Officer shall set out in his objection the matters on which he relies, and the action shall proceed as though the objection were a defence filed by an original party.
17. If the plaintiff does not file any reply to such objection the party intervening may apply to the Judge to dismiss the claim and rescind any order made. Proceeding, where no reply filed.
Amended by No. 18, 1934, s. 5 and Schedule.
18. When any person intervenes in an action the title shall be altered by adding the name of the person intervening as "intervener". Alteration in title where person intervenes.
19. Any writ or other document filed or served may be amended at any time by leave, and the statement of claim may be so amended to include further material facts on which the plaintiff relies and a claim for further relief based thereon notwithstanding that those facts occurred after the issue of the writ. Amendment.
20. It shall not be necessary to serve notice of any application to amend or of any amendment on any party or person who has not appeared, unless the Judge directs such service on the ground that the party or person would, in his opinion, have entered an appearance and filed a defence if such amendment had been included in the documents served or that he will probably be prejudiced in some way by the amendment. Notice not necessary where party has not appeared.
Amended by No. 18, 1934, s. 5 and Schedule.
21. The costs of, and incidental to, any application and order for particulars shall, unless it is otherwise ordered, be borne by the party ordered to give them. Particulars.
22. No security for the costs of discovery need be given. Discovery, security for costs not necessary.
- 23.—(1.) An application for leave to deliver interrogatories shall be accompanied by the interrogatories intended to be delivered which shall be settled on the application. Interrogatories to accompany application.
- (2.) No interrogatory shall be allowed unless the Judge is satisfied that its purpose cannot be effected by admissions or other reasonable means. Amended by No. 18, 1934, s. 5 and Schedule.

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THE SCHEDULE—continued.

Leave to proceed. Amended by N. 18, 1934, s. 5 and Schedule.

24.—(1) If a party alleging adultery does not name, or having named does not serve notice of the charge upon, the person with whom the adultery is alleged to have been committed, that allegation of adultery shall not be inquired into by the Court unless the party obtains an order from the Judge granting him leave to proceed without naming, or, as the case may be, serving, the adulterer. Such an order may be obtained on any of the following grounds:—

- (a) because the person alleging adultery has no evidence or not sufficient evidence admissible against that other person;
(b) because that other person or his name is unknown and he cannot be found or his name ascertained on proper inquiry;
(c) on the ground of the difficulty of service; or
(d) on any other ground which appears to the Judge to be sufficient.

(2.) An application for leave under this rule may be made ex parte.

Setting down for hearing.

25. An action shall not be set down for hearing

- (a) unless service of a notice in accordance with Form 5 has been proved in the same way as service of the writ and until the time for appearance by a person served has elapsed; or
(b) unless service of the notice has been dispensed with under the last preceding rule.

Setting down by consent or where no appearance.

26. By consent, or if there has been no appearance as regards any matter which may be dealt with at the hearing, the action may be set down for hearing immediately after the time prescribed by the last preceding rule, and without any notice of trial.

Pleadings for use of Judge.

27. In undefended actions a copy of the pleadings for the use of the Judge need not be lodged.

Proceedings in Chambers.

Amended by No. 18, 1934, s. 5 and Schedule.

28. Unless the Ordinance, these Rules or the Judge in a particular case otherwise directs, all applications and proceedings other than the hearing of the action or appeals shall be made to the Judge in Chambers, and, unless otherwise directed, evidence on applications in Chambers shall be on affidavit.

Interlocutory summons need not be issued.

29. An interlocutory summons need not be issued, and all applications shall be made by notice served and filed. The provisions of Order L.III. of the Rules of Court, 1913, of the Supreme Court of South Australia in their application to the Northern Territory relating to default of attendance on an interlocutory summons shall apply in cases of default of appearance on an application on notice.

Rule 30 omitted by No. 18, 1934, s. 5 and Schedule.

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Rule 31 omitted by No. 18, 1934, s. 5 and Schedule.

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Rule 32 omitted by No. 18, 1934, s. 5 and Schedule.

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Sealed fiat to operate as order.

Amended by No. 18, 1934, s. 5 and Schedule.

33. If the Judge directs that no order need be drawn up, the fiat endorsed on the notice of application shall be sealed and shall operate as the order, and no notice of any order not drawn up need be given to any party attending on the application, and time shall run from the date of the fiat.

THE SCHEDULE—*continued.*

34. The order *nisi* shall be in accordance with Form 6 and, in relation to maintenance, custody and other matters therein mentioned except the dissolution of the marriage, shall operate as an interim order from the date of the order *nisi* until it is made absolute. Form of Order *nisi*.
35. The order *nisi* may include the costs to be incurred thereafter in the action. Order *nisi* may include costs.
- 36.—(1) On the application of any party to an action the Judge may direct that the order *nisi* shall become absolute in less than six months. Order *nisi*, when to become absolute.
- (2) An application for such a direction may be made either at the hearing or in Chambers after the hearing.
37. Any application for leave to discontinue an action shall be made to the Judge. Discontinuance of action. Amended by No. 18, 1934, s. 5 and Schedule.
38. At any stage of the action on the application of a wife, the Judge may order that the husband shall give security either by payment of money into Court or otherwise for the costs of the wife of the hearing or of any other proceedings in the action. Security for wife's costs. Amended by No. 18, 1934, s. 5 and Schedule.
39. An order shall not be made under the last preceding rule unless the Judge is satisfied—
- (a) that the absence of an order might result in hardship to the wife;
 - (b) on the affidavit of the solicitor that it is proper for the wife to proceed in the action; and
 - (c) that having regard to the assets and income of both the husband and wife it is proper to make the order.
- When order for security for wife's costs may be made. Amended by No. 18, 1934, s. 5 and Schedule.
40. The assets and income of both the husband and the wife shall be taken into account in deciding the amount for which security is to be given. Assets and income of husband and wife.
41. Unless otherwise ordered, costs shall not be payable to the wife until the particular proceeding in respect of which they are ordered or secured has been disposed of. Costs not payable until proceeding disposed of.
42. The Judge without taxing any bill shall order the amount for which, and the manner in which, security shall be given, and for that purpose may require the solicitor for any party to give any information which the Judge deems necessary. Amount of security. Amended by No. 18, 1934, s. 5 and Schedule.
43. The Judge in his order shall state the period which he estimates will be occupied in the hearing, and may direct therein whether and what further security shall be given at the beginning of each actual day's hearing after the expiration of that period, and such security shall be given by the husband accordingly. Particulars to be included in order. Amended by No. 18, 1934, s. 5 and Schedule.
44. The solicitor on the record for a wife may, in the action and in the name of the wife without any authority from, or expense to, his client, enforce an order for costs in her favour against the husband to the extent to which the wife is then indebted to the solicitor. Enforcement of order for costs.
45. When the Public Trustee is guardian *ad litem* for a lunatic, as provided in this Order, the Judge may, on the application of the Public Trustee, order that the opposite party shall pay in any event such amount as the Judge thinks proper for the Public Trustee's costs as such guardian and shall give such security for payment as the Judge thinks proper. Public Trustee's costs. Amended by No. 18, 1934, s. 5 and Schedule.

THE SCHEDULE—*continued*.

- Taxing of costs.** Amended by No. 18, 1934, s. 5 and Schedule; and No. 14, 1959, s. 5 and Schedule.
46. All bills of costs, whether between party and party or as between solicitor and client, shall be taxed by the Master without any reference or special order for that purpose.
- Costs reserved.**
47. All costs reserved to the hearing shall abide the event unless the Judge otherwise orders.
- Costs to be paid into Court.**
48. Costs ordered to be paid to a party by an order *nisi* shall be paid into Court, to the credit of that party, and shall not be paid out until the order becomes absolute or until further order.
- Subpœnas.**
49. The præcipe for a subpœna need not disclose the names of the witnesses, and a subpœna shall remain in force from the date of issue until the completion of the hearing of the action.
- Custody of children, to whom applications made.** Substituted by No. 18, 1934, s. 5 and Schedule.
50. Applications relating to the custody, education or maintenance of, or access to, children may be made at the hearing or to the Judge in Chambers.
- By whom applications made.**
51. Any such application may be made by any party to the action or by any guardian of an infant or by any person desiring to be appointed guardian or by any person having the custody or control of an infant as if that guardian or person were a party.
- Variation of order.** Amended by No. 18, 1934, s. 5 and Schedule.
52. The Judge may vary any order as to education and maintenance of, and access to, children at any time if he deems it proper to do so.
- Evidence given in previous application.** Amended by No. 18, 1934, s. 5 and Schedule.
53. In making any order relating to children the Judge may act upon evidence given in any previous application in the action or at the hearing or upon the reasons for judgment, without further proof.
- Maintenance, to whom applications made.** Amended by No. 18, 1934, s. 5 and Schedule.
54. Applications relating to maintenance shall be made to the Judge.
- Serving of notice, when unnecessary.**
55. If the claim states that maintenance will be asked for and an appearance has not been entered, notice of the application or of the order made need not be served, unless specially directed.
- Applications to be made by notice and sealed.**
56. If the claim does not state that maintenance will be asked for and an appearance has not been entered, the application either for an interim or for a permanent order or for a variation shall be made by notice signed by the applicant or the applicant's solicitor and sealed with the seal of the Court and served as if it were a writ, but any order made on the application need not be served, unless specially directed.
- Party not served may enter appearance.**
57. A party not served with notice of an application for maintenance and against whom an order for maintenance has been made in the party's absence may at any time without leave, enter an appearance limited to maintenance, and may thereupon apply for a variation of any order.

THE SCHEDULE—continued.

58. The notice of application shall state whether an interim or permanent order is claimed and the amount of maintenance and the facts on which the applicant relies and the applicant's income and assets.

Notice of application to furnish facts relied on.

59. An order for maintenance shall direct from what date maintenance shall be paid under it, but that date shall not be prior to the service or filing of the notice of application, whichever is the later.

Date of order.

60. The hearing of any application of which notice has been served shall, unless otherwise ordered, take place not earlier than fourteen days after service of notice of application.

Date of hearing.

61. Within ten days of the service of the notice of application the respondent to the application shall file an affidavit setting out his assets and income and the other matters relied on. If the respondent makes default in filing such an affidavit the hearing of the application may be proceeded with and an order made thereon.

Affidavit setting out assets, &c. to be filed.

62. The Judge may order any party to attend on the hearing and that party shall be liable to be examined by the other party. Such attendance may be enforced by subpoena.

Party may be ordered to attend.

Amended by No. 18, 1934, s. 5 and Schedule.

63. Matters disclosed on applications relating to maintenance shall not be made public.

Applications not to be made public.

64. On any application relating to maintenance the Judge may act upon the evidence given on any previous application in the action or at the hearing or upon the reasons for judgment without further proof of that evidence.

Evidence given in previous application.

Amended by No. 18, 1934, s. 5 and Schedule.

65. On the first day of hearing of an application for maintenance the Judge may order the payment of such weekly amount as without evidence and in his absolute discretion he thinks proper to be paid from week to week until the application is disposed of, and may, at any time, vary any such order, and such order and payment shall be without prejudice to any order to be made or to any right of either party.

Preliminary order may be made.

Amended by No. 18, 1934, s. 5 and Schedule.

66. In any application relating to maintenance, the Judge shall take into consideration any agreement or order in existence as regards the parties.

Judge to consider any agreement between parties.

Amended by No. 18, 1934, s. 5 and Schedule.

* * * * *

Rule 67 omitted by No. 14, 1959, s. 5 and Schedule.

68. Upon the expiration of the said period of three months all applications under Part V. of the Ordinance shall be upon notice signed by the applicant or the applicant's solicitor and sealed with the seal of the Court and served on the other party as if it were a writ.

Applications to be made on notice.

69. It shall not be necessary to file affidavits of search or non-appearance or non-intervention, but the Master shall not allow an action to be set down for hearing or issue an order absolute unless from the examination of the records of the Court he ascertains that it is then proper to do so.

Affidavits.

Amended by No. 18, 1934, s. 5 and Schedule; and No. 14, 1959, s. 5 and Schedule.

THE SCHEDULE—continued.

Exhibits to affidavit.

70. It shall not be necessary to make any document an exhibit to an affidavit, but the relevant portion of any document may be included in the body of the affidavit, and the party filing the affidavit shall produce the document whenever it is likely that the affidavit may be used.

Evidence on affidavit.

71. The Judge may order that any particular fact may be proved by affidavit either in a proceeding in Chambers or at the hearing.

Amended by No. 18, 1934, s. 5 and Schedule.

Settlements.

72. Applications relating to settlements shall be made to the Judge after and within three months of the final order or order absolute and shall be upon notice signed by the applicant or the applicant's solicitor and sealed with the seal of the Court and served on the other party as if it were a writ.

Amended by No. 18, 1934, s. 5 and Schedule.

Dum casta clause.

73. A *dum casta* or *dum sola et casta* clause or term, whichever is applicable, shall be a usual clause or term in any settlement in favour of or order relating to maintenance of a wife.

Transactions to defeat claims.

74. Every application under Part VII. of the Ordinance shall be to the Judge in Chambers. If notice of such an application is to be given to a person not a party the notice shall be signed by the applicant or his solicitor and sealed with a seal of the Court and served as if it were a writ.

Application for directions as to service.

75. Before filing notice of the application, the applicant may apply *ex parte* on affidavit for directions as to the persons to be served as to service and as to the date of hearing.

Applications in emergency.

76. If by proceeding in the ordinary way the applicant would or might be seriously prejudiced the Judge may make any order *ex parte*, and any person affected thereby may apply within a reasonable time to set it aside or vary it, but, until it is so set aside or varied, it shall be binding on all persons to whom it is directed and on whom it is served until so set aside or varied.

Amended by No. 18, 1934, s. 5 and Schedule.

Proceedings *in forma pauperis*.

77.—(1.) The Judge may at any time order that any person may proceed *in forma pauperis* if he is satisfied—

Amended by No. 18, 1934, s. 5 and Schedule.

(a) that the person has good cause for proceeding;

(b) that the person has not or will not have sufficient means to proceed; and

(c) that it is unlikely that the husband (if the applicant is the wife) will be ordered to give or be able to comply or will comply with any order for security for costs.

(2.) The Judge may make it a condition of an order under this rule that the applicant shall pay all fees fixed by the Rules and, in addition, any lump sum or periodical sum which the Judge thinks the applicant is able to pay.

When order ceases to operate.

78. The order shall cease to operate if the person fails to comply with the conditions thereof, and may be rescinded at any time if the person does not duly proceed or ceases to be entitled to an order or for any other proper reason.

Payment of costs by person proceeding *in forma pauperis*.

79. If the Court or Judge thinks proper it or he may order a person proceeding *in forma pauperis* to pay all or any part of the costs of an action though the person be not dispaupered.

Amended by No. 18, 1934, s. 5 and Schedule; and No. 14, 1959, s. 5 and Schedule.

Costs.

80. The Judge or the Court may order that the costs of a person proceeding *in forma pauperis* shall be paid by the other party as if the proceedings were not *in forma pauperis*. Costs so ordered shall be paid into Court and paid out to the solicitor on the record for the party in whose favour the order is made. An order for such costs may be enforced by the solicitor on the record in the name of, but without expense to, his client.

Amended by No. 18, 1934, s. 5 and Schedule.

THE SCHEDULE—continued.

81. The Judge may assign as solicitor to a person proceeding *in forma pauperis* some solicitor other than the Crown Law Officer.
- Solicitor may be assigned.
Amended by No. 18, 1934, s. 5 and Schedule.
82. The Court may stay an action for restitution of conjugal rights if it is satisfied that the defendant is willing to resume or return to co-habitation.
- Staying proceedings for restitution.
83. The Master may make such order as to costs of any proceedings dealt with by him as he thinks proper, and in making any order he may impose such terms as he thinks fit.
- Costs and terms of orders.
Amended by No. 18, 1934, s. 5 and Schedule; and No. 14, 1959, s. 5 and Schedule.
84. In addition to all other powers exercisable by him the Judge in Chambers or at the hearing may exercise all the powers by these Rules given to the Master.
- Powers of Judge.
Amended by No. 18, 1934, s. 5 and Schedule; and No. 14, 1959, s. 5 and Schedule.
85. Strict compliance with the forms contained in the Schedule to this Order shall not be necessary but such forms may be used where applicable with such alterations as are necessary in any particular case.
- Strict compliance with forms not necessary.
86. In any case not provided for in these Rules the Judge may give either a general direction or a direction limited to a particular case as to what forms are to be used.
- Judge may direct form to be used.
Amended by No. 18, 1934, s. 5 and Schedule.
87. The Master may direct that printed forms shall be used in relation to any proceedings in an action, and may make such charge in accordance with such scale as is approved by the Administrator for the sale of such forms.
- Use of printed forms.
Amended by No. 18, 1934, s. 5 and Schedule; and No. 14, 1959, s. 5 and Schedule.
88. If on any application or at the hearing notes of the evidence are taken by means of a typewriter any party may have a copy of the notes upon request and the solicitor for the party shall pay for the notes at the rate of One shilling a foolscap page, and the money so paid shall be allowed as costs in the action if all parties request copies or if it is so ordered.
- Notes of evidence.
Amended by No. 14, 1959, s. 5 and Schedule.
89. The Court or the Judge may dispense with compliance with any rule if it or he thinks it proper to do so, and may extend the time for making any application, although the extension is applied for after the said time has expired.
- Dispensation from rules.
Amended by No. 18, 1934, s. 5 and Schedule.
90. If any circumstances arise for which no provision is made by the Ordinance or these Rules, or if there is any doubt as to what is the correct procedure to be adopted, the Judge or the Master, as the case may be, may direct (and *ex parte* if he thinks fit) what shall be done in each particular instance or that the procedure which has been adopted shall be proper, and his direction shall be of the same validity as if specifically included in these Rules.
- Cases not provided for.
Amended by No. 18, 1934, s. 5 and Schedule; and No. 14, 1959, s. 5 and Schedule.

*Matrimonial Causes Ordinance 1932-1960.*THE SCHEDULE—*continued.*

Amended by
N . 18, 1934,
s. 5 and
Schedule; and
N . 14, 1959,
s. 5 and
Schedule.

FORM 1.

THE NORTHERN TERRITORY OF AUSTRALIA.

Matrimonial Causes Ordinance 1932.

MEMORANDUM TO BE INSERTED AT THE END OF STATEMENT OF CLAIM.

If a party wishes to be heard in denial of the above allegations or in any proceedings in the action relating to costs [*or damages or the children of the marriage, as the case may be*] an appearance by that party must be filed in the office of the Master of the Supreme Court within the time directed by the writ annexed hereto. The appearance must state a place within three miles of the Post Office, Darwin, at which notices may be served on the party appearing.

The appearance may be limited to any one or more of the above-mentioned matters and, if it is so limited, notice in connection with those proceedings only which relate to the specified matters will be given.

If an appearance is not filed by a party, further notice need not be given to him of any application and orders may be made in his absence.

Amended by
No. 18, 1934,
s. 5 and
Schedule; and
N . 14, 1959,
s. 5 and
Schedule.

FORM 2.

THE NORTHERN TERRITORY OF AUSTRALIA.

Matrimonial Causes Ordinance 1932.

MEMORANDUM TO BE INSERTED AT THE END OF A STATEMENT OF CLAIM WHICH STATES THAT MAINTENANCE WILL BE CLAIMED.

As the above claim gives notice that maintenance will be claimed from the husband by the wife, further notice need not be served of any application for such maintenance, and if the husband desires to be heard on the application for maintenance, either as to the amount of the order or as to whether any order should be made, an appearance (which may be limited to questions relating to maintenance) must be filed in the Office of the Master of the Supreme Court as directed by the writ, otherwise an order may be made in the absence of the husband.

Amended by
No. 18, 1934,
s. 5 and
Schedule; and
N . 14, 1959,
s. 5 and
Schedule.

FORM 3.

THE NORTHERN TERRITORY OF AUSTRALIA.

Matrimonial Causes Ordinance 1932.

FORM OF ADVERTISEMENT PURSUANT TO ORDER FOR SUBSTITUTED SERVICE.

[Number and Title of action.]

To A.B.

Notice is hereby given to A.B. whose last known address was at that a writ has been issued in the Supreme Court of the Northern Territory in an action in which his wife C.D. claims an order for divorce on the ground of his adultery and in such action his wife intends to ask for an order for custody of the children and for maintenance, and if A.B. desires to be heard in opposition to the claim for any of such orders he must file an appearance in the office of the Master of the Supreme Court of the Northern Territory within _____ days of the publication of this advertisement, otherwise orders may be made against him in his absence.

E.F.

(Address)

Solicitor for the Plaintiff.

THE SCHEDULE—continued.

THE NORTHERN TERRITORY OF AUSTRALIA.

FORM 4.

Amended by No. 18, 1934, s. 5 and Schedule; and No. 14, 1959, s. 5 and Schedule.

Matrimonial Causes Ordinance 1932.

FORM OF ADVERTISEMENT PURSUANT TO ORDER FOR SUBSTITUTED SERVICE.

[Number and Title of action.]

To A.B.

Notice is hereby given to A.B. whose last known address was at that C.D. of has issued a writ in the Supreme Court of the Northern Territory in an action in which C.D. claims an order for divorce from his wife on the ground of her adultery with A.B., but is not claiming damages or costs against him. If A.B. desires to be heard in opposition to the claim for the order, he must file an appearance in the office of the Master of the Supreme Court of the Northern Territory within days of the publication of this advertisement otherwise he may be found guilty of adultery in his absence, but no costs or damages will be awarded against him if he does not file an appearance.

E.F.

(Address)

Solicitor for the Plaintiff.

THE NORTHERN TERRITORY OF AUSTRALIA.

FORM 5.

Amended by No. 18, 1934, s. 5 and Schedule; and No. 14, 1959, s. 5 and Schedule.

Matrimonial Causes Ordinance 1932.

NOTICE TO PERSON CHARGED WITH ADULTERY.

[Number and Title of action.]

To A.B. of

Take notice that of is claiming an order for a divorce from his wife C.D. on the ground that she has been guilty of adultery with you and a copy of the writ and claim in the action is served on you herewith. If you wish to deny the adultery you must file an appearance in the office of the Master of the Supreme Court, Darwin, within days of the service upon you of this notice. The appearance must give an address within three miles of the Post Office, Darwin, at which all notices and proceedings in the action must be served on you and subsequently within eight days you must file your defence. You need not file an appearance or defence. If you do not do so you will not be liable for any costs or damages as none are claimed against you in the action but you may then be found guilty of adultery in your absence. If however you do file an appearance and defence you will become a defendant in the action and can be heard and shall be subject to the liability to be ordered to pay costs as any other party.

Matrimonial Causes Ordinance 1932-1960.

THE SCHEDULE—continued.

FORM 6.

Amended by No. 18, 1934, s. 5 and Schedule; and No. 14, 1959, s. 5 and Schedule.

THE NORTHERN TERRITORY OF AUSTRALIA.
Matrimonial Causes Ordinance 1932.
ORDER NISI FOR DIVORCE.

In the Supreme Court.

No. of 19 .
Before His Honour Judge

Plaintiff.
and
Defendant.
and
Intervener.

The day of 19 .
This action was heard on the day of , 19 ,

Mr. being counsel for the plaintiff, Mr.

for the defendant, and Mr. for person with whom adultery was alleged by the plaintiff and who intervened in the action. The Court was satisfied that the plaintiff was domiciled in the Territory and that the defendant and the intervener had committed adultery as alleged in the Statement of Claim and the Court ordered—

- 1. That the marriage between the plaintiff and defendant which was celebrated at on the day of , 19 , be dissolved upon the expiration of six calendar months from the date of this order unless sufficient cause to the contrary be shown within that period.
2. That the plaintiff have the custody of and children of the marriage.
3. That the plaintiff pay to the defendant her costs of the action, but not to exceed the amount for which security was ordered to be given.
4. That the intervener pay to the plaintiff his costs of action and the costs payable by the plaintiff to the defendant.

By the Court,

Master.

This order nisi does not enable either party to the marriage to re-marry.