MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

CHAPTER 45:51

Act
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Amended by
39 of 1973
52 of 1976
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†14 of 1988
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UPDATED TO DECEMBER 31ST 2007

Index of Subsidiary Legislation

N.B. These Rules, though made under the Supreme Court of Judicature Act, Ch. 4:01, have been published herein since they relate to the subject matter of this Chapter.

Note on Amendment

This Act has been amended by—

(a) the Land Registration Act, 1981 (Act No. 24 of 1981); and

(b) the Succession Act, 1981 (Act No. 27 of 1981),

but these Acts had not, up to the date of the last revision of this Act, been brought into operation.

Note on Act No. 14 of 1988

See paragraph 1 of Schedule 1 to the Attachment of Earnings (Amendment) Act, 1988 with respect to Maintenance Orders.

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MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

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CHAPTER 45:51

MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

An Act to amend the grounds of divorce, nullity and judicial separation, to facilitate reconciliation in matrimonial causes; to regulate matrimonial proceedings, to amend the law relating to the property of married, divorced and separated persons, and for purposes connected with the matters aforesaid. 2 of 1972.

[15TH NOVEMBER 1973] Commencement. 183/1973.

1. This Act may be cited as the Matrimonial Proceedings and Property Act. Short title.

PRELIMINARY

2. (1) In this Act— Interpretation.

"child", in relation to one or both of the parties to a marriage, includes a child born out of wedlock or an adopted child of that party or, as the case may be, of both parties;

"child of the family", in relation to the parties to a marriage, means—

(a) a child of both of those parties; and

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

"the Court" means the High Court of Justice;

"custody", in relation to a child, includes access to the child;

"education" includes training;

"mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind;

"remarriage" includes a marriage which is by law void or voidable.

(2) Subject to sections 63(1) and 64, this Act (including repeals and amendments made by it) shall not have effect in relation to any petition for divorce or judicial separation pending at the commencement of this Act, unless it is herein otherwise expressly provided.

Jurisdiction of Court. [20 of 1982].

2A. (1) Subsections (2) to (5) shall have effect with respect to the jurisdiction of the Court to entertain—

(a) proceedings for divorce, judicial separation or nullity of marriage; and

(b) proceedings for death to be presumed and a marriage to be dissolved pursuant to section 16.

(2) The Court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) either of the parties to the marriage—

(a) is domiciled in Trinidad and Tobago on the date when the proceedings are begun; or

(b) was habitually resident in Trinidad and Tobago throughout the period of one year ending with that date.

(3) The Court shall have jurisdiction to entertain proceedings for nullity of marriage if (and only if) either of the parties to the marriage—

(a) is domiciled in Trinidad and Tobago on the date when the proceedings are begun; or

(b) was habitually resident in Trinidad and Tobago throughout the period of one year ending with that date; or

(c) died before that date and either—

(i) was at death domiciled in Trinidad and Tobago; or

(ii) had been habitually resident in Trinidad and Tobago throughout the period of one year ending with the date of death.

(4) The Court shall have jurisdiction to entertain proceedings for death to be presumed and a marriage to be dissolved if (and only if) the petitioner—

(a) is domiciled in Trinidad and Tobago on the date when the proceedings are begun; or

(b) was habitually resident in Trinidad and Tobago throughout the period of one year ending with that date.

(5) The Court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of subsection (2) or (3) (or of this subsection), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under subsection (2) or (3).

(6) The Schedule shall have effect as to the cases in which matrimonial proceedings in Trinidad and Tobago are to be, or may be, stayed by the Court where there are concurrent proceedings elsewhere in respect of the same marriage, and as to the other matters dealt with in the Schedule, but nothing in the Schedule— Schedule.

(a) requires or authorises a stay of proceedings which are pending when this section comes into force; or

(b) prejudices any power to stay proceedings which is exercisable by the Court apart from the Schedule.

PART I

DIVORCE, NULLITY AND OTHER MATRIMONIAL SUITS

DIVORCE

Breakdown of marriage to be sole ground for divorce.

3. After the commencement of this Act the sole ground on which a petition for divorce may be presented to the Court by either party to a marriage shall be that the marriage has broken down irretrievably.

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Proof of breakdown.

4. (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:

(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 two years 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 sections 5(4) and 9, 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 Act 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 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.

Restriction on petitions for divorce. [13 of 1988].

5. (1) Subject to subsection (2), no petition for divorce shall be presented to the Court before the expiration of the period of one year from the date of the marriage (hereafter in this section referred to as "the specified period").

(2) A Judge of the Court may, on an application made to him, allow the presentation of a petition for divorce within the specified period 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 in determining the application the Judge shall have regard to the interests of any child of the family and to the question whether there is reasonable probability of a reconciliation between the parties during the specified period.

(3) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which occurred before the expiration of the specified period.

(4) If it appears to the Court, at the hearing of a petition for divorce presented in pursuance of leave granted under subsection (2), that the leave was obtained by the petitioner by any misrepresentation or concealment of the nature of the case, the Court may—

(a) dismiss the petition, without prejudice to any petition which may be brought after the expiration of the period of three years from the date of the marriage upon the same facts, or substantially the same facts, as those proved in support of the dismissed petition; or

(b) if it grants a decree, direct that no application to make the decree absolute shall be made during that period.

(5) If in any proceedings for divorce the respondent alleges against the petitioner and proves any such fact as is mentioned in section 4(1), the Court may give to the respondent the relief to which the respondent would have been entitled if the respondent had presented a petition seeking that relief.

13 of 1988.

(6) Where at the commencement of the Matrimonial Proceedings and Property (Amendment) Act, 1988 (i.e. 16th May 1988)—

(a) proceedings on an application for leave under subsection (2) are pending; and

(b) the specified period has expired,

the proceedings shall abate but without prejudice to the powers of the Court as to costs.

Divorce not precluded by previous judicial separation. [15 of 1981].

6. (1) A person shall not be prevented from presenting a petition for divorce, or the Court from granting a decree of divorce, by reason only that the petitioner or respondent has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation or an order under (or having effect as if made under) the Family Law (Guardianship of Minors, Domicile and Maintenance) Act.

Ch. 46:08.

(2) On a petition for divorce in such a case as is mentioned in subsection (1), the Court may treat the decree of judicial separation or the said order as sufficient proof of the adultery, desertion or other ground on which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner

(3) For the purposes of a petition for divorce in such a case, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation or for such an order as aforesaid (having the effect of a decree of judicial separation) shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

Alleged adulterer as a party.

7. (1) On a petition for divorce presented by the husband in which adultery is alleged, or in the answer of a husband praying for divorce and alleging adultery, the husband shall make the alleged adulterer a co-respondent unless excused by the Court on special grounds from doing so.

(2) On a petition for divorce presented by the wife in which adultery is alleged, the Court may, if it thinks fit, direct that the alleged adulteress be made a respondent.

(3) Where an alleged adulterer is made a co-respondent on such a petition as is mentioned in subsection (1) or an alleged adulteress is made a respondent on such a petition as is mentioned in subsection (2), the Court may, after the close of the evidence on the part of the petitioner, direct that the co-respondent or, as the case may be, the respondent [referred to in subsection (2)] be dismissed from the suit, if the Court is of opinion that there is not sufficient evidence against him or her.

Provisions designed to effect reconciliation.

8. (1) Provision shall be made by Rules of Court for requiring the Attorney-at-law acting for a petitioner for divorce to certify whether he has discussed with the petitioner the possibility of a reconciliation and given him the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged.

(2) 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.

(3) 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 purpose of

section 4(1)*(a)* 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 4(1)(*a*).

(4) 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 4(1)*(b)* 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.

(5) In considering for the purposes of section 4(1) 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.

(6) 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.

Decree to be refused in certain circumstances.

9. (1) The respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in section 4(1)*(e)* may oppose the grant of a *decree nisi* on the ground 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 4(1) on which the petitioner is entitled to rely in support of his petition is that mentioned in the said 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.

10. Where the Court on granting a decree of divorce held that the only fact mentioned in section 4(1) on which the petitioner was entitled to rely in support of his petition was that mentioned in paragraph *(d)* thereof, it may, on an application made 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.

11. (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 paragraph *(d)* or *(e)* of section 4(1) has applied to the Court under this section for it to consider for the purposes of subsection (2) of this section 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 section 4(1) on which the petitioner was entitled to rely in support of his petition was that mentioned in paragraph *(d)* or *(e)* of section 4(1).

(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 Act, 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—

(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.

Rules may enable certain agreements or arrangements to be referred to the Court.

12. Provisions may be made by Rules of Court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the Court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings

for divorce which are contemplated or, as the case may be, have begun, and for enabling the Court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

NULLITY, JUDICIAL SEPARATION AND PRESUMPTION OF DEATH

Grounds on which a marriage is void or voidable. Ch. 45:01. Ch. 45:03. Ch. 45:02.

13. (1) A marriage which takes place after the commencement of this Act shall be void on the following grounds only:

(a) that it is not a valid marriage under the Marriage Act, the Hindu Marriage Act or the Muslim Marriage and Divorce Act (that is to say) where—

(i) the parties are within the prohibited degrees of relationship;

(ii) either party is under the age at which he is capable of contracting the marriage;

(iii) the parties have intermarried in disregard of certain requirements as to the formation of the marriage;

(b) that at the time of the marriage either party was already lawfully married; or

(c) that the parties are not respectively male and female.

(2) A marriage which takes place after the commencement of this Act shall be voidable on the following grounds only:

(a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;

(b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;

(c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;

(d) that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder of such a kind or to such an extent as to be unfitted for marriage;

(e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;

(f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.

(3) Where, apart from this Act, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside Trinidad and Tobago, nothing in subsection (1) or (2) or in section 14(1) shall—

(a) preclude the determination of that matter as aforesaid; or

(b) require the application to the marriage of the grounds or bar there mentioned, except so far as applicable in accordance with those rules.

(4) In the case of a marriage which purports to have been celebrated under any written law relating to foreign marriages or has taken place outside Trinidad and Tobago and purports to be a marriage under common law, subsection (1) is without prejudice to any ground on which the marriage may be void under that written law or, as the case may be, by virtue of the rules governing the celebration of marriages outside Trinidad and Tobago under common law.

Ancillary provisions concerning voidable marriage.

14. (1) The Court shall not, on proceedings after the commencement of this Act, grant a decree of nullity on the ground that a marriage is voidable (whether the marriage took place before or after the commencement of this Act) if the respondent satisfies the Court—

(a) that the petitioner, with knowledge that it was open to him to have the marriage avoided, so

conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and

(b) that it would be unjust to the respondent to grant the decree.

(2) Without prejudice to subsection (1), the Court shall not grant a decree of nullity by virtue of section 13(2) on the grounds mentioned in subparagraph *(c)*, *(d)*, *(e)*, or *(f)* thereof unless it is satisfied that proceedings were instituted within three years from the date of the marriage.

(3) Without prejudice to subsections (1) and (2), the Court shall not grant a decree of nullity by virtue of section 13(2) on the grounds mentioned in paragraph *(e)* or *(f)* of that subsection unless it is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.

(4) Subsection (1) replaces in relation to any decree to which it applies, any rule of law whereby a decree may be refused by reason of approbation, ratification or lack of sincerity on the part of the petitioner or on similar grounds.

(5) A decree of nullity granted after the commencement of this Act on the ground that a marriage is voidable shall operate to annul the marriage only as respects any time after the coming into operation of the decree, and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time.

(6) Where a decree of nullity is granted in respect of a voidable marriage, the relationship between any child [other than a child born in the circumstances referred to in section 13(2)*(f)*] and the parties to the marriage shall be such as if at the date of the decree it had been dissolved instead of being annulled.

Judicial separation.

15. (1) After the commencement of this Act the existence of any such fact as is mentioned in section 4(1) shall be a ground on which either party to a marriage may present a petition for judicial separation; and the ground of failure to comply with a decree for

restitution of conjugal rights and any ground on which a decree of divorce *a mensa et thoro* might have been pronounced immediately before the commencement of the Matrimonial Causes Act 1857, of the United Kingdom, shall cease to be a ground on which such a petition may be presented.

20 & 21 Vict. c. 85 (U.K.).

(2) A petition for judicial separation may be presented to the Court by either party to a marriage on the ground that any such fact as is mentioned in section 4(1) exists, and sections 4(2), (4), (5) and (6), 8 and 11 shall, with the necessary modifications, apply in relation to such a petition as they apply in relation to a petition for divorce.

(3) The Court hearing a petition for judicial separation shall not be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in section 4(1), it shall, subject to section 47, grant a decree of judicial separation.

(4) Where the Court grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(5) A decree of judicial separation that has been obtained in the absence of the respondent may at any time be reversed by the Court on the petition of the respondent, if the Court is satisfied that the decree ought not to have been made.

Presumption of death and dissolution of marriage. [20 of 1982].

16. (1) Any married person 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 may, if satisfied that such reasonable grounds exist, make a decree of presumption of death and dissolution of the marriage.

(2) ***(Repealed by Act No. 20 of 1982).***

(3) In any proceedings under this section the fact that for a period of seven years or more 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 until the contrary is proved.

(4) ***(Repealed by Act No. 20 of 1982).***

Decree nisi, decree absolute and remarriage. [39 of 1973].

17. (1) Every decree of divorce, of nullity, of marriage or of presumption of death and dissolution of marriage (in this section and in section 18(1)*(b)* referred to as a *"decree nisi")* shall in the first instance be a *decree nisi* and shall not be made absolute before the expiration from its grant of a period of three months or such other period as may be fixed by Rules of Court, unless the Court by special order fixes a shorter period in any particular case.

(2) Where a *decree nisi* has been granted but not made absolute, then, without prejudice to subsection (1), any person (excluding a party to the proceedings, other than the Attorney General) may show cause why the decree should not be made absolute by reason of material facts not having been brought before the Court.

(3) In such a case as is mentioned in subsection (2) the Court may—

(a) notwithstanding anything in subsection (1), make the decree absolute; or

(b) rescind the *decree nisi;* or

(c) require further inquiry; or

(d) otherwise deal with the case as it thinks fit.

(4) Where a *decree nisi* 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)*(a)* to *(d)*.

(5) Where a *decree nisi* other than a decree of nullity of marriage has been made absolute and either—

(a) there is no right of appeal against the decree absolute; or

(b) the time for appealing against the decree absolute has expired without an appeal having been brought; or

(c) an appeal against the decree absolute has been dismissed,

either party to the former marriage may marry again.

Intervention of Attorney General and power of Court to allow intervention on terms.

18. (1) In the case of any petition for divorce or for nullity of marriage or for presumption of death and dissolution of marriage—

(a) the Court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Attorney General who may instruct an Attorney-at-law to argue before the Court any question in relation to the matter which the Court deems to be necessary or expedient to have fully argued; and all reasonable costs and expenses incurred by the Attorney General in the matter shall be a charge on the Consolidated Fund;

(b) any person may at any time during the progress of the proceedings or before the *decree nisi* is made absolute give information to the Attorney General of any matter material to the due decision of the case, and the Attorney General may thereupon take such steps as he may consider necessary or expedient;

(c) the Court may order the costs or any part thereof arising from such intervention to be paid by any of the parties, including a wife if she has separate property, or by the Attorney General;

(d) all reasonable costs which the Attorney General may have incurred arising from any such intervention after deducting any costs which may have been paid to him by either of the parties to the petition shall be a charge on the Consolidated Fund.

(2) In every case in which adultery is alleged or in which the Court may consider, in the interest of any person not already a party to the suit, that that person should be made a party to the suit, the Court may if it thinks fit allow the alleged adulterer or that other person to intervene upon such terms, if any, as the Court thinks just.

Abolition of bars to divorce and judicial separation, of rights to claim restitution of conjugal rights and of damages for adultery.

19. (1) Without prejudice to any provision of this Act which empowers or requires the Court to dismiss a petition for divorce, nullity of marriage or judicial separation, or for presumption of death and dissolution of marriage or to dismiss an application for a *decree nisi* of divorce, nullity of marriage or of presumption of death and dissolution of marriage to be made absolute, nothing in sections 14 and 37 of the Supreme Court of Judicature Act, or in any other rule of law shall be taken as empowering or requiring the Court to dismiss such a petition or application on the ground of collusion between the parties in connection with the presentation or prosecution of the petition or the obtaining of the *decree nisi* or on the ground of any misconduct on the part of the petitioner.

Ch. 4:01.

(2) No person shall after the commencement of this Act be entitled to petition the Court for—

(a) restitution of conjugal rights; or

(b) damages from any other person on the ground of adultery with the wife of the first-mentioned person, or to include in a petition a claim for any such damages.

20. ***(Repealed by Act No. 20 of 1982).***

Evidence and hearing *in camera*. [39 of 1973].

21. (1) The evidence of a husband or wife shall be admissible in any proceedings under this Act to prove that marital intercourse did or did not take place between them during any period.

(2) The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings.

(3) In any proceedings for nullity of marriages, evidence on the question of sexual capacity shall be heard *in camera* unless in any case the Judge is satisfied that in the interests of justice any such evidence ought to be heard in open Court.

(4) Subject to subsection (3), the Court, on the application of any party to any proceedings under this Act or at its discretion, if it thinks it proper in the interests of public morals, may hear and try the whole or any part of such proceedings *in camera*.

(5) An application under subsection (4) shall be heard *in camera* unless the Court otherwise directs.

Restriction on publication of reports of judicial proceedings.

22. (1) The Court may at all times in any proceedings under this Act, whether heard and tried in Chambers, *in camera* or in open Court, make an order forbidding the publication of any report or account of the evidence or other proceedings therein, either as to the whole or any portion thereof; and the breach of any such order, or any colourable or attempted evasion thereof, may be dealt with as contempt of Court.

(2) No person shall print or publish or cause or procure to be printed or published any particulars in relation to any proceedings under this Act, except the following particulars:

(a) the names, addresses, and occupations of the parties and witnesses and any persons intervening and the names of the Judge and of the Attorneys-at-law engaged;

(b) the ground of the petition or application, and a concise statement of the charges, defences and counter-charges in support of which evidence has been given;

(c) submissions on any point of law arising in the course of the proceedings, and the decision of the Court on the submissions;

(d) the summing-up of the Judge, the decision of the Court and any observations made by the Court in giving it,

but the Court may, if it thinks fit, authorise the publication of any other particulars, subject to such conditions relating to any matter to be published as it thinks fit.

(3) Any person who acts in contravention of subsection (2), and any printer, publisher and editor of a document in which particulars are printed or published in contravention of subsection (2), is liable on summary conviction—

(a) in the case of an individual to a fine of one thousand dollars and to imprisonment for a term of three months;

(b) in the case of a body corporate, to a fine of five thousand dollars.

(4) No prosecution for an offence against subsection (3) shall be commenced except with the leave of the Director of Public Prosecutions.

(5) Nothing in this section shall apply to the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the Court; or to the printing or publishing of any matter in any separate volume or part of any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in Courts of law, or in any publication of a technical character *bona fide* intended for circulation among members of the legal or medical professions, psychologists, advisers in the sphere of marriage counselling, or other social welfare workers.

(6) Nothing in this section shall be construed to limit the provisions of any other written law relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings.

PART II

MAINTENANCE AND RELATED MATTERS

Maintenance pending suit in cases of divorce, etc.

23. On a petition for divorce, nullity of marriage or judicial separation, the Court may order either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the Court thinks reasonable.

Financial provision for party to a marriage.

24. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the Court may, subject to the provisions of section 34(1), make any one or more of the following orders:

(a) an order that either party to the marriage shall make to the other such periodical payments and for such term as may be specified in the order;

(b) an order that either party to the marriage shall secure to the other, to the satisfaction of the Court, such periodical payments and for such term as may be so specified;

(c) an order that either party to the marriage shall pay to the other such lump sum as may be so specified.

(2) Without prejudice to the generality of subsection (1)*(c)*, an order under this section that a party to a marriage shall pay a lump sum to the other party—

(a) may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section;

(b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the Court.

Financial provision for child of the family.

25. (1) Subject to the provisions of section 30, in proceedings for divorce, nullity of marriage or judicial separation, the Court may make any one or more of the orders mentioned in subsection (2)—

(a) before or on granting the decree of divorce, of nullity of marriage or of judicial separation, as the case may be, or at any time thereafter;

(b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(2) The orders referred to in subsection (1) are—

(a) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments and for such term as may be so specified;

(b) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the Court, such periodical payments and for such term as may be so specified;

(c) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified.

(3) Without prejudice to the generality of subsection (2)*(c)*, an order under this section for the payment of a lump sum to any person for the benefit of a child of the family, or to such a child,

may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section to be met.

(4) An order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the Court.

(5) Where the Court has power to make an order in any proceedings by virtue of subsection (1)*(a),* it may exercise that power from time to time; and where the Court makes an order by virtue of subsection (1)*(b)* in relation to a child it may from time to time make a further order under this section in relation to him.

Orders for transfer and settlement of property and for variation of settlements.

26. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the Court may, subject to the provisions of sections 30 and 34(1), make any one or more of the following orders:

(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;

(b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the Court for the benefit of the other party to the marriage and of the children of the family or either or any of them;

(c) an order varying for the benefit of the parties to the marriage and of the children of the family or

either or any of them any antenuptial or postnuptial settlement (including such a settlement made by Will or codicil) made on the parties to the marriage;

(d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement,

and the Court may make an order under paragraph *(c)* notwithstanding that there are no children of the family.

(2) The fact that a settlement or transfer of property had to be made in order to comply with an order of the Court under this section shall not prevent that settlement or transfer from being a settlement of property to which section 46(1) of the Bankruptcy Act (avoidance of certain settlements) applies. Ch. 9:70.

Matters to which Court is to have regard in deciding what orders to make under sections 24 and 26.

27. (1) In deciding whether to exercise its powers under section 24 or 26 in relation to a party to the marriage and, if so, in what manner, the Court shall have regard to all the circumstances of the case including the following matters:

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) any order made under section 53;

(h) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring,

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

(2) Without prejudice to subsection (3), it shall be the duty of the Court in deciding whether to exercise its powers under section 25 or 26 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters:

(a) the financial needs of the child;

(b) the income, earning capacity (if any), property and other financial resources of the child;

(c) any physical or mental disability of the child;

(d) the standard of living enjoyed by the family before the breakdown of the marriage;

(e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained,

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in subsection (1)*(a)* and *(b)*, just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

(3) In deciding whether to exercise its powers under section 25 or 26 against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, the Court shall have regard (among the circumstances of the case)—

(a) to whether that party had assumed any responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

(b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;

(c) to the liability of any other person to maintain the child.

Neglect by party to marriage to maintain other party or child of the family. [20 of 1982].

28. (1) Either party to a marriage may apply to the Court for an order under this section on the ground that the other party to the marriage (in this section referred to as "the respondent")—

(a) being the husband, has wilfully neglected—

(i) to provide reasonable maintenance for the applicant; or

(ii) to provide, or to make a proper contribution towards reasonable maintenance for any child of the family to whom this section applies;

(b) being the wife, has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance—

(i) for the applicant in a case where, by reason of the impairment of the applicant's earning capacity through age, illness or disability of mind or body, and having regard to any resources of the applicant and the respondent respectively which are, or should properly be made, available for the

purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute; or

(ii) for any child of the family to whom this section applies.

(2) The Court shall not entertain an application under this section unless—

(a) the applicant or the respondent is domiciled in Trinidad and Tobago on the date of the application; or

(b) the applicant has been habitually resident in Trinidad and Tobago throughout the period of one year ending with that date; or

(c) the respondent is resident in Trinidad and Tobago on that date.

(3) This section applies to any child of the family for whose maintenance it is reasonable in all the circumstances to expect the respondent to provide or towards whose maintenance it is reasonable in all the circumstances to expect the respondent to make a proper contribution.

(4) Where the child of the family to whom the application under this section relates is not the child of the respondent, then, in deciding—

(a) whether the respondent has been guilty of wilful neglect to provide, or to make a proper contribution towards, reasonable maintenance for the child; and

(b) what order, if any, to make under this section in favour or for the benefit of the child,

the Court shall have regard to the matters mentioned in section 27(3).

(5) Where on an application under this section it appears to the Court that the applicant or any child of the family to whom the application relates is in immediate need of financial assistance, but it is not yet possible to determine what order, if any, should be made on the application, the Court may order the respondent to

make to the applicant until the determination of the application such periodical payments as the Court thinks reasonable.

(6) Where on an application under this section the applicant satisfies the Court of any ground mentioned in subsection (1), then, subject to section 30, the Court may make such one or more of the following orders as it thinks just:

(a) an order that the respondent shall make to the applicant such periodical payments and for such term as may be specified in the order;

(b) an order that the respondent shall secure to the applicant, to the satisfaction of the Court, such periodical payments and for such term as may be so specified;

(c) an order that the respondent shall pay to the applicant such lump sum as may be so specified;

(d) an order that the respondent shall make to such person as may be specified in the order for the benefit of the child to whom the application relates, or to that child, such periodical payments and for such term as may be so specified;

(e) an order that the respondent shall secure to such person as may be so specified for the benefit of that child, or to that child, to the satisfaction of the Court, such periodical payments and for such term as may be so specified;

(f) an order that the respondent shall pay to such person as may be so specified for the benefit of that child, or to that child, such lump sum as may be so specified.

(7) Without prejudice to the generality of subsection (6)*(c)* and *(f)*, an order under this section that the respondent shall pay a lump sum—

(a) may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application to be met;

(b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the Court.

Duration of certain orders made in favour of party to marriage and effect of remarriage.

29. (1) The term to be specified in any order made by virtue of section 24(1)*(a)* or *(b)* or section 28(6)*(a)* or *(b)* shall be such term, being a term beginning not earlier than the date of the making of an application for the order in question and lasting not longer than the maximum term, as the Court thinks fit.

(2) In subsection (1) "the maximum term" means—

(a) in the case of an order made by virtue of section 24(1)*(a)* in proceedings for divorce or nullity of marriage, the joint lives of the parties to the marriage or a term ending with the date of the remarriage of the party in whose favour the order is made, whichever is the shorter;

(b) in the case of an order made by virtue of section 24(1)*(b)* in any such proceedings, the life of that party or a term ending with the date of the remarriage of that party whichever is the shorter;

(c) in the case of an order made by virtue of section 24(1)*(a)* in proceedings for judicial separation or made by virtue of section 28(6)*(a),* the joint lives of the parties to the marriage;

(d) in the case of an order made by virtue of section 24(1)*(b)* in proceedings for judicial separation or made by virtue of section 28(6)*(b),* the life of the party in whose favour the order is made.

(3) Where an order is made by virtue of section 24 (1)*(a)* or *(b)* in proceedings for judicial separation or by virtue of section 28(6)*(a)* or *(b)* and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it,

cease to have effect on the remarriage of the party in whose favour it was made except in relation to any arrears due under it on the date of such remarriage.

(4) If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply for an order under section 24 or 26 against the person to whom he or she was married immediately before the grant of that decree unless the remarriage is with that person and that marriage is also dissolved or annulled or a decree of judicial separation is made on a petition presented by either party to that marriage.

Provisions as to powers of Court to make orders in favour of children and duration of such orders.

30. (1) Subject to subsection (3)—

(a) no order under section 25, 26*(a)* or 28 shall be made in favour of a child who has attained the age of eighteen; and

(b) the term for which by virtue of an order under section 25 or 28 any payments are to be made or secured to or for the benefit of a child may begin with the date of the making of an application for the order in question or any later date but shall not extend beyond the date when the child will attain the age of eighteen.

(2) The term for which by virtue of an order under section 25 or 28 any payments are to be made or secured to or for the benefit of a child shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age unless the Court which makes the order thinks it right in the circumstances of the case to specify a later date therein.

For the purposes of this subsection the upper limit of the compulsory school age means the age of sixteen years or any greater age that is for the time being that limit by virtue of any order made under section 76(2) of the Education Act. Ch. 39:01.

(3) The Court may make such an order as is mentioned in subsection (1)*(a)* in favour of a child who has attained the age of

eighteen, and may include in an order made under section 25 or 28 in relation to a child who has not attained that age a provision extending beyond the date when the child will attain that age, the term for which by virtue of the order any payments are to be made or secured to or for the benefit of that child, if it appears to the Court that—

(a) that child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also or will also be, in gainful employment; or

(b) there are special circumstances which justify the making of the order or provision.

(4) Any order made by virtue of section 25(2)*(a)* or section 28(6)*(d)* shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of such death.

Variation, discharge, etc., of orders for financial provision. [39 of 1973]. Ch. 4:01.

31. (1) Where the Court has made or is by virtue of section 10 of the Supreme Court of Judicature Act, deemed to have made an order to which this section applies, then, subject to this section, the Court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This section applies to the following orders, that is to say:

(a) any order under section 23;

(b) any order made by virtue of section 24(1)*(a) or (b)* or 24(2)*(b)*;

(c) any order made by virtue of section 25(2)*(a)* or *(b)* or 25(4);

(d) any order made by virtue of section 26(1)*(b), (c)* or *(d)* on or after granting a decree of judicial separation;

(e) any order made by virtue of section 28(5), 28(6)*(a), (b), (d)* or *(e)* or 28(7)*(b);* and

(f) any order made by virtue of section 17 of the Muslim Marriage and Divorce Act. Ch. 45:02.

(3) The powers exercisable by the Court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(4) The Court shall not exercise the powers conferred by this section in relation to any order made by virtue of section 26*(b), (c)* or *(d)* on or after granting a decree of judicial separation, except on an application made in proceedings—

(a) for the rescission of that decree; or

(b) for the dissolution of the marriage of the parties to the proceedings in which that decree was made.

(5) No such order as is mentioned in section 24 shall be made on an application for the variation of an order made by virtue of section 24(1)*(a)* or *(b)* or section 25(2)*(a)* or *(b),* and no order for the payment of a lump sum shall be made on an application for the variation of an order made by virtue of section 24(1)*(a)* or *(b)* or of section 28(6)*(a)* or *(b).*

(6) Where the person liable to make payments under an order made by virtue of section 24(1)*(b),* section 25(2)*(b)* or section 28(6)*(b)* or *(e)* has died, an application under this section relating to that order may be made by the person entitled to payments under the order or by the personal representatives of the deceased person, but no such application shall, except with the permission of the Court, be made after the end of the period of six months from the date on which representation in regard to the estate of that person is first taken.

(7) In exercising the powers conferred by this section the Court shall have regard to all the circumstances of the case, including any change in any of the matters to which the Court was required to have regard when making the order to which the application relates and, where the party against whom that order was made has died, the changed circumstances resulting from his or her death.

(8) The personal representatives of a deceased person against whom any such order as is referred to in subsection (6) was made shall not be liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in that subsection on the ground that they ought to have taken into account the possibility that the Court might permit an application under this section to be made after that period by the person entitled to payments under the order; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(9) In considering for the purposes of subsection (6) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

Payment of certain arrears unenforceable without the leave of the Court.

32. (1) A person shall not be entitled to enforce the payment of any arrears due under an order made by virtue of section 23, 24(1), 25(2), 28(5) or 28(6) without the leave of the Court, if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.

(2) On an application for the grant of leave under this section the Court may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as the Court thinks proper, or may remit the payment of such arrears or of any part thereof.

(3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by Rules of Court.

Power of Court to order such sums paid under certain orders to be repaid in certain cases.

33. (1) Where on an application made under this section in relation to an order to which this section applies it appears to the Court that by reason of—

(a) a change in the circumstances of the person entitled to, or liable to make, payments under the order since the order was made; or

(b) the changed circumstances resulting from the death of the person so liable,

the amount received by the person entitled to payments under the order in respect of a period after those circumstances changed or after the death of the person liable to make payments under the order, as the case may be, exceeds the amount which the person so liable or his or her personal representatives should have been required to pay, the Court may order the respondent to the application to pay to the applicant such sum, not exceeding the amount of the excess, as the Court thinks just.

This section applies to an order made by virtue of section 23, 24(1)*(a)* or *(b),* 25(2)*(a)* or *(b),* 28(5) or 28(6)*(a), (b), (d)* or *(e).*

(2) An application under this section may be made by the person liable to make payments under an order to which this section applies or his or her personal representatives and may be made against the person entitled to payments under the order or his or her personal representatives.

(3) An application under this section may be made in proceedings for—

(a) the variation or discharge of the order to which this section applies; or

(b) leave to enforce, or the enforcement of the payment of arrears under that order.

(4) An order under this section for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

Commencement of proceedings for financial provision orders, etc.

34. (1) Where a petition for divorce, nullity of marriage or judicial separation has been presented then, subject to subsection (2), proceedings under section 23, 24, 25 or 26 may be begun subject to and in accordance with Rules of Court, at any time after the presentation of the petition save that—

(a) no order under section 24 or 26 shall be made unless a *decree nisi* of divorce or of nullity of marriage or a decree of judicial separation, as the case may be, has been granted;

(b) without prejudice to the power to give a direction under section 35, no such order made on or after granting a *decree nisi* of divorce or of nullity of marriage, and no settlement made in pursuance of such an order, shall take effect unless the decree has been made absolute.

(2) Rules of Court may provide, in such cases as may be prescribed by the Rules—

(a) that applications for ancillary relief shall be made in the petition or answer; and

(b) that applications for ancillary relief which are not so made or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the Court.

In this subsection "ancillary relief" means relief under section 23, 24, 25 or 26.

Direction for instrument to be settled by an Attorney-at-law.

35. Where the Court decides to make an order under this Part requiring any payments to be secured or an order under section 26—

(a) it may direct that the matter be referred to an Attorney-at-law approved, or designated by the Court for him to settle a proper instrument to be executed by all necessary parties; and

(b) in the case of an order under section 24, 25 or 26, it may, if it thinks fit, defer the grant of the decree in question until the instrument has been duly executed.

Payments, etc., under order made in favour of person suffering from mental disorder.

36. Where the Court makes an order under this Part requiring payments (including a lump sum payment) to be made, or property to be transferred, to a party to a marriage and the Court is satisfied that the person in whose favour the order is made is incapable, by reason of mental disorder of managing and administering his or her property and affairs, then, subject to any order, direction or authority made or given in relation to that person under section 11

of the Supreme Court of Judicature Act, or under the Mental Health Act, the Court may order the payments to be made, or, as the case may be, the property to be transferred, to such persons having charge of that person as the Court may direct. Ch. 4:01. Ch. 28:02.

Application of Maintenance Orders. Ch. 45:53.

37. Any order made by virtue of section 23, 24, 25 or 28 shall be a maintenance order within the meaning of the Maintenance Orders (Facilities for Enforcement) Act.

Validity of maintenance agreements.

38. (1) Where a maintenance agreement includes a provision purporting to restrict any right to apply to a Court for an order containing financial arrangements, then that provision shall be void; but other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to sections 39 and 40), be binding on the parties to the agreement.

(2) In this section—

"maintenance agreement" means any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage, being—

(a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or

(b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

"financial arrangements" means provisions governing the rights and liabilities towards one another, when living separately, of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family.

Alteration of agreements by Court during lives of parties.

39. (1) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in Trinidad and Tobago, then, subject to subsection (3), either party may apply to the Court for an order under this section.

(2) If the Court is satisfied either—

(a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different, or, as the case may be, so as to contain, financial arrangements; or

(b) that the agreement does not contain proper financial arrangements with respect to any child of the family,

then, subject to subsections (3), (4) and (5), that Court may by order make such alterations in the agreement—

(i) by varying or revoking any financial arrangements contained in it; or

(ii) by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the family,

as may appear to that Court to be just having regard to all the circumstances, including, if relevant, the matters mentioned in section 27(3); and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) Where the Court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the other party or by increasing the rate of the periodical payments that the agreement provides

are to be made by one of the parties for the maintenance of the other, the term for which the payments, or, as the case may be, so much of the payments as is attributable to the increase, are or is to be made under the agreement as altered by the order shall be such term as the Court may specify, but that term shall not exceed—

(a) where the payments will not be secured, the joint lives of the parties to the agreement or a term ending with the remarriage of the party to whom the payments are to be made, whichever is the shorter;

(b) where the payments will be secured, the life of the party to whom the payments are to be made, or a term ending with the remarriage of that party, whichever is the shorter.

(4) Where the Court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments that the agreement provides are to be made or secured by one of the parties for the maintenance of such a child, then, in deciding the term for which under the agreement as altered by the order the payments or, as the case may be, so much of the payments as is attributable to the increase are or is to be made or secured for the benefit of the child, the Court shall apply the provision of section 30(1), (2) and (3) as if the order to which this subsection relates were an order under section 25.

(5) For the avoidance of doubt it is hereby declared that nothing in this section or in section 38 affects any power of the Court before which any proceedings between the parties to a maintenance agreement are brought under any other written law (including a provision of this Act) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

(6) In this section, the expressions "maintenance agreement" and "financial arrangements" have the meanings assigned to them in section 38.

Alteration of agreements by Court after death of one party.

40. (1) Where a maintenance agreement within the meaning of section 38 provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in Trinidad and Tobago, the surviving party or the personal representatives of the deceased party may, subject to subsections (2) and (3), apply to the Court for an order under section 39.

(2) An application under this section shall not, except with the permission of the Court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.

(3) Where a maintenance agreement is altered by the Court on an application made in pursuance of subsection (1), the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

(4) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that a Court might permit an application by virtue of this section to be made by the surviving party after that period; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

(5) Section 31(9) shall apply for the purposes of subsection (2) as it applies for the purposes of section 31(6).

Orders for maintenance from deceased's estate.

41. (1) Where after the commencement of this Act a person dies domiciled in Trinidad and Tobago and is survived by a former spouse of his or hers (hereinafter in this section referred to as "the survivor") who has not remarried, the survivor may apply to the Court for an order under this section on the ground that the deceased has not made reasonable provision for the survivor's maintenance after the deceased's death.

(2) An application under this section shall not, except with the permission of the Court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.

(3) If on an application under this section the Court is satisfied—

(a) that it would have been reasonable for the deceased to make provision for the survivor's maintenance; and

(b) that the deceased has made no provision, or has not made reasonable provision, for the survivor's maintenance,

the Court may order that such reasonable provision for the survivor's maintenance as the Court thinks fit shall be made out of the net estate of the deceased, subject to such conditions or restrictions (if any) as the Court may impose.

(4) Where the Court makes an order under this section requiring provision to be made for the maintenance of the survivor, the order shall require that provision to be made by way of periodical payments terminating not later than the survivor's death and, if the survivor remarries, not later than the remarriage; but, if the Court thinks fit, the order may require that provision to be made wholly or in part by way of a lump sum payment.

(5) On an application under this section the Court shall have regard—

(a) to the past, present or future capital of the survivor and to any income of the survivor from any source;

(b) to the survivor's conduct in relation to the deceased and otherwise;

(c) to any application made or deemed to be made by the survivor during the lifetime of the deceased—

(i) where the survivor is a former wife or husband of the deceased, for such an order as is mentioned in the statutory provisions

repealed by this Act [that is, sections 176 to 198 of the Supreme Court of Judicature (Consolidation) Act 1925 of the United Kingdom (15 and 16 Geo. 5, c. 49) as applied to Trinidad and Tobago by section 9 of the Supreme Court of Judicature Act]; or

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(ii) where the survivor is a former husband of the deceased, for an order under section 24 or 26,

and to the order (if any) made on any such application, or (if no such application was made by the survivor, or such an application was made by the survivor and no order was made on the application) to the circumstances appearing to the Court to be the reasons why no such application was made, or no such order was made, as the case may be; and

(d) to any other matter or thing which, in the circumstances of the case, the Court may consider relevant or material in relation to the survivor, to persons interested in the estate of the deceased, or otherwise.

(6) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order under this section, the Court shall have regard to the nature of the property representing the net estate of the deceased and shall not order any such provision to be made as would necessitate a realisation that would be imprudent having regard to the interests of the dependants of the deceased, of the survivor, and of the persons who apart from the order would be entitled to that property.

(7) In this section—

"former spouse", in relation to a deceased person, means a person whose marriage with the deceased was during the deceased's lifetime dissolved or annulled by a decree made or deemed to be made under this Act, and "former wife" and "former husband" shall be construed accordingly;

"net estate" and "dependant" have the same meanings as in Part III of the Wills and Probate Act; and Ch. 9:03.

"property" means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not.

(8) In considering for the purposes of subsection (2) the question when representation was first taken out, a grant limited to settled property or to trust property shall be left out of account, and a grant limited to real estate or to personal estate shall be left out of account, unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

Discharge and variation of orders under section 41.

42. (1) Subject to the following provisions of this section, where an order (in this section referred to as "the original order") has been made under section 41, the Court, on an application under this section, shall have power by order to discharge or vary the original order or to suspend any provision of it temporarily and to revive the operation of any provision so suspended.

(2) An application under this section may be made by any of the following persons:

(a) the former spouse on whose application the original order was made;

(b) any other former spouse of the deceased;

(c) any dependant of the deceased;

(d) the trustees of any relevant property;

(e) any person, who, under the Will or codicil of the deceased or under the law relating to intestacy, is beneficially interested in any relevant property.

(3) An order under this section varying the original order, reviving any suspended provision of it, shall not be made so as to affect any property which, at the time of the application for the order under this section, is not relevant property.

(4) In exercising the powers conferred by this section, the Court shall have regard to all the circumstances of the case, including any change in the circumstances to which the Court was required to have regard in determining the application for the original order.

(5) In this section, the expressions "former spouse", "dependant" and "property" have the meanings assigned to them in section 41(7); and "relevant property" means property the income of which, in accordance with the original order or any consequential directions given by the Court in connection with it, is applicable wholly or in part for the maintenance of the former spouse on whose application the original order was made.

Interim orders and additional provisions as to orders to be made under sections 41 and 42.

43. (1) Where on an application for maintenance under section 41 it appears to the Court—

(a) that the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (if any) should be made on the application for the provision of maintenance for the applicant; and

(b) that property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant,

the Court may order that, subject to such conditions or restrictions, if any, as the Court may impose and to any further order of the Court, there shall be paid to or for the benefit of the applicant out of the deceased's net estate such sum or sums and (if more than one) at such intervals as the Court thinks reasonable.

(2) In determining what order, if any, should be made under this section the Court shall, so far as the urgency of the case admits, take account of the same considerations as would be relevant in determining what order should be made on the application for the provision of maintenance for the applicant; and any subsequent order for the provision of maintenance may provide that sums paid to or for the benefit of the applicant by virtue of

this section shall be treated to such extent, if any, and in such manner as may be provided by that order as having been paid on account of the maintenance provided for by that order.

(3) Where the deceased's personal representative pays any sum directed by an order under this section to be paid out of the deceased's net estate, he shall not be under any liability by reason of that estate not being sufficient to make the payment, unless at the time of making the payment he has reasonable cause to believe that the estate is not sufficient.

(4) The provisions of sections 41 and 42 shall not render the personal representatives of a deceased person liable for having distributed any part of the estate of the deceased after the end of the period mentioned in section 41(3) on the ground that they ought to have taken into account the possibility that the Court might permit an application under that section after the end of that period, or that an order under the section might be varied under section 42; but this subsection shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order under section 41 or 42.

(5) Section 92 of the Wills and Probate Act (which relates to the effect and form of orders under that Act) shall have effect in relation to orders under subsection (1) and under sections 41 and 42 as it has effect in relation to orders under Part III of that Act. Ch. 9:03.

(6) In this section, the expressions "net estate" and "property" have the meanings assigned to them in section 41(7).

Avoidance of transactions intended to defeat certain claims.

44. (1) Where proceedings for relief under any of the relevant provisions of this Act (hereafter in this section referred to as "financial provision") are brought by a person (hereafter in this section referred to as "the applicant") against any other person (hereafter in this section referred to as "the other party"), the Court may, on an application by the applicant—

(a) if it is satisfied that the other party is, with the intention of defeating the claim for financial

provision about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;

(b) if it is satisfied that the other party has, with the intention mentioned in paragraph *(a),* made a disposition to which this paragraph applies and that if the disposition were set aside financial provision or different financial provision would be granted to the applicant, make an order setting aside the disposition and give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payment or the disposal of any property);

(c) if it is satisfied, in a case where an order under the relevant provisions of this Act has been obtained by the applicant against the other party, that the other party has, with the intention mentioned in paragraph *(a),* made a disposition to which this paragraph applies, make such an order and give such directions as are mentioned in paragraph *(b),*

and an application for the purposes of paragraph *(b)* shall be made in the proceedings for the financial provision in question.

(2) Subsection (1)*(b)* and *(c)* apply respectively to any disposition made by the other party (whether before or after the commencement of the proceedings for financial provision), not being a disposition made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any such intention as is mentioned in subsection (1)*(a)* on the part of the other party.

(3) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or to a disposition or other dealing with property which is about to take place and the Court is satisfied—

(a) in a case falling within subsection (1)*(a)* or *(b)*, that the disposition or other dealing would (apart from this section) have the consequence; or

(b) in a case falling within subsection (1)*(c)* that the disposition has had the consequence,

of defeating the applicant's claim for financial provision, it shall be presumed, unless the contrary is shown, that the other party disposed of the property with the intention mentioned in subsection (1)*(a)* or, as the case may be, with that intention, about to dispose of or deal with the property.

(4) In this section—

"disposition" does not include any provision contained in a Will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise;

"property" has the meaning assigned to it in section 41(7);

"the relevant provisions of this Act" means any of the provisions of sections 23, 24, 25, 26, 27, 31 [except subsection (6) thereof] and 39,

and any reference to defeating an applicant's claim for financial provision is a reference to preventing financial provision from being granted to the applicant, or to the applicant for the benefit of a child of the family, or reducing the amount of any financial provision which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at the instance of the applicant under the relevant provisions of this Act.

(5) The provisions of this section shall not apply to a disposition made more than three years before the commencement of this Act.

Existing orders for alimony, etc., of party to marriage to cease to have effect on remarriage of that other party.

45. (1) An order for alimony made, or deemed to have been made, under any of the statutory provisions specified in subsection (2) (and repealed by this Act) shall, notwithstanding anything in section 63(1) or in the order, cease to have effect on the remarriage after the commencement of this Act of the person in whose favour the order was made, except in relation to any arrears due under it on the date of such remarriage.

(2) The statutory provisions referred to in subsection (1) are the former section 10 of the Supreme Court of Judicature Act 1962 (12 of 1962 now Ch. 4:01) and sections 176 to 198 of the Supreme Court of Judicature (Consolidation) Act 1925 of the United Kingdom (15 and 16 Geo. 5, c. 49) as applied to Trinidad and Tobago by section 9 of the Supreme Court of Judicature Act.

Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage.

46. (1) Where—

(a) an order to which this section applies has ceased to have effect by reason of the remarriage of the person entitled to payments under the order; and

(b) the person liable to make payments under the order or his or her personal representatives made payments in accordance with it in respect of a period after the date of such remarriage in the mistaken belief that the order was still subsisting,

no proceedings in respect of a cause of action arising out of the circumstances mentioned in paragraph *(a)* and *(b)* shall be maintainable by the person so liable or his or her personal representatives against the person so entitled or her or his personal representatives; but on an application made under this section the Court may exercise the powers conferred on it by subsection (2).

This section applies to an order made by virtue of section 24(1)*(a)* or *(b)* or 28(6)*(a)* or *(b)* and to any such order as is referred to in section 45.

(2) The Court may order the respondent to an application made under this section to pay to the applicant a sum equal to the

amount of the payments made in respect of the period mentioned in subsection (1)*(b)* or, if it appears to the Court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) Section 33(2), (3) and (4) shall apply to an application made under this section and to an order made on such an application as they apply to an application made under that section and to an order made on the last mentioned application.

(4) The collecting officer under an Attachment of Earnings Order made to secure payments made under an order to which this section applies shall not be liable for any act done by him after the date on which that order ceased to have effect by reason of the remarriage of the person entitled to payments under it in accordance with any written law or Rule of Court specifying how payments made to him in compliance with the Attachment of Earnings Order are to be dealt with, if, but only if, the act was one which he would have been under a duty to do had the order to which this section applies not ceased to have effect as aforesaid and the act was done before notice in writing of the fact that the person so entitled had remarried was given to him by or on behalf of that person, the person liable to make payments under the order to which this section applies, or the personal representatives of either of those persons.

(5) In this section "collecting officer", in relation to an Attachment of Earnings Order, means the officer of the Court to whom a person makes payments in compliance with the Order.

PART III

PROTECTION AND CUSTODY OF CHILDREN

Restrictions on decrees for dissolution, annulment or separation affecting children.

47. (1) The Court shall not make absolute a decree of divorce or of nullity of marriage, or make a decree of judicial separation, unless the Court, by order, has declared that it is satisfied—

(a) that for the purposes of this section there are no children of the family to whom this section applies; or

(b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—

(i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or

(ii) it is impracticable for the party or parties appearing before the Court to make any such arrangements; or

(c) that there are circumstances making it desirable that the decree should be made absolute or should be made, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the Court is unable to make a declaration in accordance with paragraph *(b)* above.

(2) The Court shall not make an order declaring that it is satisfied as mentioned in subsection (1)*(c)* unless it has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children named in the order before the Court within a specified time.

(3) Where the Court makes absolute a *decree nisi* of divorce or of nullity of marriage, or makes a decree of judicial separation, without having made an order under subsection (1) the decree shall be void; but where such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by subsections (1) and (2) were not fulfilled.

(4) Where the Court refuses to make an order under subsection (1) in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on an application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that subsection.

(5) This section applies to the following children of the family:

(a) any infant child of the family who at the date of the order under subsection (1) is—

(i) under the age of sixteen; or

(ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and

(b) any other child of the family to whom the Court by an order under that subsection directs that this section shall apply,

and the Court may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this section should apply to it.

(6) In this section "welfare", in relation to a child, includes the custody and education of the child and financial provision for him.

Orders for custody and education of children affected by matrimonial suits.

48. (1) The Court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen —

(a) in any proceedings for divorce, nullity of marriage or judicial separation, before, by or after the final decree;

(b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal,

and in any case in which the Court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a Ward of Court.

(2) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in

question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.

(3) Where the Court makes or makes absolute a decree of divorce or makes a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.

(4) Where a decree of divorce or of judicial separation contains such a declaration as is mentioned in subsection (3), then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

(5) Where the Court has power to make an order in any proceedings by virtue of subsection (1)*(a)*, it may exercise that power from time to time, and where the Court makes an order by virtue of subsection (1)*(b)* with respect to a child it may from time to time until that child attains the age of eighteen make a further order with respect to his custody and education.

(6) The Court shall have power to discharge or vary an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

Order for custody of children in cases of neglect to maintain. [39 of 1973].

49. (1) Where the Court makes an order under section 28, the Court shall also have power from time to time to make such orders as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this section and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.

(2) Section 48(2) and (6) shall apply in relation to an order made under this section as they apply in relation to an order made under that section.

Power to provide for supervision of children. [39 of 1973].

50. (1) Where the Court has jurisdiction by virtue of this Part to make an order for the custody of a child and it appears to the Court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the Court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of a welfare officer (probation) designated by the Court.

(2) Where a child is under the supervision of any person in pursuance of this section the jurisdiction possessed by the Court to vary any order made with respect to the child's custody, maintenance or education under this Part shall, subject to any Rules of Court, be exercisable at the instance of the Court itself.

(3) The Court shall have power from time to time by an order under this section to vary or discharge any provision made in pursuance of this section.

PART IV

THE MATRIMONIAL HOME

Interpretation.

51. In this Part—

"dwelling" or "dwelling house" means a building used or intended to be used mainly as a separate dwelling or place of residence, and includes a flat;

"flat" means a separate and self-contained set of premises constructed for use as a dwelling and forming part of a building from some other part of which it is divided;

"furniture" includes household appliances and effects; and also includes furniture and household appliances and effects that are the subject of a hire-purchase agreement;

"matrimonial home" or "homes" means any dwelling being used exclusively or principally as a home by one or both of the parties to a marriage in respect of which a decree of divorce is or has been granted, in any case where—

(a) either or both of the parties or the personal representative of one of them—

(i) owns the dwelling; or

(ii) owns a specified share of any estate or interest in the land on which the dwelling is situated and by reason of reciprocal agreements with the owners of the other shares is entitled to the exclusive occupation of the dwelling; or

(iii) holds shares in a company which owns any estate or interest in the land on which the dwelling is situated, and by reason of holding those shares is entitled to the exclusive occupation of the dwelling; and

(b) either or both of the parties owned the dwelling or the specified share in land or held the shares, as the case may be, at the date of the decree.

Rights of mortgagee, etc., not affected by order under this Part.

52. (1) Subject to subsection (2) the rights conferred on the husband or wife by any order made under this Part shall be subject to the rights of the person entitled to the benefit of any mortgage, security, charge, or encumbrance affecting the property in respect of which the order is made, if it was registered before the date of the making of the order or if the rights of that person arise under an instrument executed before that date.

(2) Notwithstanding anything in any written law or in any instrument, no money payable under any such mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of any such order, not being an order under section 54 directing the sale of a matrimonial home.

Court may make order for occupation of matrimonial home. [39 of 1973].

53. (1) The Court may, if it thinks fit, on granting a decree of divorce or at any subsequent time, instead of or in addition to making any order under Part II, make an order against the husband or the wife, or his or her personal representative, granting to the wife or husband, as the case may be, for such period and on such terms and subject to such conditions as the Court thinks fit, the right personally to occupy the matrimonial home.

(2) Where an order is made under subsection (1) the wife or husband, as the case may be, shall be entitled personally to occupy the land on which the matrimonial home is situated or which is appurtenant to the matrimonial home, or such part of that land as is specified in the order.

(3) The Court may make such other orders and give such directions as may be necessary or desirable to give effect to any order made under subsection (1).

(4) An order made under subsection (1) against the husband or wife shall be enforceable against the personal representative of the person against whom it is made, unless the Court otherwise directs.

(5) Before any order is made under subsection (1), such notice as the Court directs shall be given to any person having an interest in the matrimonial home, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(6) The Court may at any time, if it thinks fit, cancel any order made under subsection (1).

(7) The Court may from time to time vary or extend any order made under subsection (1) in such manner as the Court thinks fit, whether as to the period of the order or as to the terms and conditions on which or subject to which it is made.

(8) An application under subsection (6) or subsection (7) to cancel, vary, or extend any order may be made by either of the parties to the marriage, or by the personal representative against whom it was made, or by any person having an interest in the matrimonial home.

(9) Where an order made under this section in respect of any matrimonial home relates to any estate or interest in land, a copy of the order sealed with the seal of the Court shall, upon application by either of the parties, or in the case of an order under subsection (6) or (7), by the person upon whose application the order was made, and upon payment of the prescribed fee, be deemed

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for the purposes of the Registration of Deeds Act to be a deed and shall be registered under the said Act, but where the estate or interest in the land is registered under the Real Property Act, section 98 of the said Act shall apply to such an order as it applies to dower.

(10) An order made under subsection (1) shall cease to have effect where—

(a) the order is cancelled by the Court under subsection (6); or

(b) the period for which the order was made has expired; or

(c) the Court so directs in any other case, including in particular where the person in whose favour and the person against whom the order is made so agree in writing.

(11) Where the Registrar General is satisfied that an order made in respect of a matrimonial home and registered under subsection (9) has ceased to have effect pursuant to subsection (10), he shall, on application in that behalf, endorse the fact in the appropriate register accordingly.

Court may direct sale of home or direct payment. [39 of 1973].

54. (1) The Court, on granting a decree of divorce, if it is satisfied that both parties to the marriage have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever), may, if it thinks fit, on the application of either party made before the decree of divorce is made, make an order—

(a) subject to subsection (2) directing the sale of the home (including the land on which it is situated and such other land appurtenant thereto as the Court directs) and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the Court thinks fit; or

(b) directing that either party pay to the other such sum, either in one sum or in instalments and either forthwith or at a future date and either with or without security, as the Court thinks fair and reasonable in return for the contributions made by that other party.

(2) Where the home comprises part of a building that is not used exclusively or principally as the home of the parties, or where the land appurtenant to the home is not used exclusively or principally for the purposes of a home, the Court shall not make an order under this paragraph, unless in the special circumstances of the case the Court considers it is fair and equitable.

(3) In any case to which the definition of the term "matrimonial home" in section 51*(a)*(iii) applies, an order made under subsection (1)*(a),* shall direct the sale of the shares held in relation to the matrimonial home, and the succeeding provisions of this section shall be modified and construed accordingly.

(4) Where the Court makes an order under subsection (1), it may make such other orders and may give such directions as may be necessary or desirable to give effect to the order.

(5) Before any order is made under subsection (1), such notice as the Court directs shall be given to any person having an interest in the property that would be affected by the order, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(6) Where the Court directs the sale of the matrimonial home pursuant to subsection (1), it may, if it thinks fit, instead of directing division of the proceeds between the parties to the marriage, direct that the whole or any part of the proceeds be paid or applied for the benefit of the children of the family or any of them, and may give such other directions as may be necessary or desirable to give effect to that direction.

(7) The amount payable to either party to the marriage under any order made pursuant to subsection (1)*(b)* shall constitute

a debt owing to that party by the other and shall be recoverable accordingly, and, in the case of an order made in respect of any estate or interest in land, shall also constitute a charge against that estate or interest; and such an order shall for the purposes of the Registration of Deeds Act be deemed to be a deed and may be registered under the said Act; but where the estate or interest in land is registered under the Real Property Act, section 98 of the said Act shall apply to such an order as it applies to dower.

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(8) Where an order is made under subsection (1) and a party to the marriage who has an estate or interest in the matrimonial home dies before the order has been complied with, the order shall be binding on and be complied with by the personal representative of that party.

(9) Without limiting the provisions of subsection (4), where the Court, under subsection (1), directs the sale of the matrimonial home and the division of the proceeds pursuant to subsection (1)*(a)* or the application of the proceeds pursuant to subsection (6), the Court may appoint a person to sell the matrimonial home and divide or apply the proceeds accordingly.

(10) The execution of any instrument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the matrimonial home is vested.

(11) The Court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of any such instrument and its execution by the person so appointed.

Court may vest matrimonial home in parties in common.

55. (1) Where—

(a) the matrimonial home is owned by the petitioner or the respondent or by both of them as joint owners; and

(b) the Court is satisfied that both parties have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever),

the Court, on granting a decree of divorce, may, if it thinks fit, on the application of either party made before the decree is made, make an order vesting the home (including the land on which it is situated and such other land appurtenant thereto as the Court directs) in the parties as owners in common in such shares as the Court thinks fit.

(2) In any case to which paragraph *(a)*(iii) of the definition of the term "matrimonial home" in section 51 applies, an order made under subsection (1) shall vest the shares held in relation to the matrimonial home, and the provisions of this section shall be modified and construed accordingly.

(3) Before any order is made under subsection (1), such notice as the Court directs shall be given to any person having an interest in the matrimonial home, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(4) Where any order made under this section in respect of any matrimonial home relates to any estate or interest in land which is registered under the Registration of Deeds Act a copy of the order sealed with the seal of the Court shall, upon application by either of the parties and upon payment of the prescribed fee, be deemed for the purposes of the Registration of Deeds Act to be a deed and shall be registered under the said Act; but, where the estate or interest in the land is registered under the Real Property Act, section 98 of the said Act shall apply to such an order as it applies to dower. Ch. 19:06. Ch. 56:02.

(5) The provisions of this section and of any order thereunder shall have effect notwithstanding any prohibition or restrictions in the articles of association of any company relating to the transfer or ownership of shares.

Court may vest tenancy of dwelling house in petitioner or respondent.

56. (1) Where the Court grants a decree of divorce, it may at the same or any subsequent time, if it thinks fit, make an order vesting in the petitioner or the respondent (in this section referred to as the applicant) the tenancy of any dwelling house—

(a) of which at the time of the making of the decree the applicant's wife or husband (in this section

referred to as the other party) is or was either the sole tenant or a tenant holding jointly or in common with the applicant;

(b) of which at the time of the making of the order under this subsection the other party is a tenant as aforesaid; and

(c) in which the applicant or the other party resides at the time of the order under this subsection.

(2) On the taking effect of an order made under subsection (1), unless the tenancy is sooner lawfully determined, the applicant shall become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force at the time of the making of the order, and the other party shall cease to be the tenant.

(3) Nothing in this section or in any order made thereunder shall be construed to limit or affect the operation of any law for the time being applicable to any tenancy to which this section applies or to the dwelling house held under the tenancy, or to authorise the Court to vary, except by vesting or revesting the tenancy pursuant to this section, any express or implied term or condition of the tenancy.

(4) On the application of the other party in any case in which an order is made under subsection (1), the Court may, if the tenant has died and the tenancy has not been determined by reason thereof, or if in the opinion of the Court the circumstances have so changed since the making of the order that the tenancy should be revested in the person or any of the persons in whom it was vested before the making of that order, make an order cancelling the first-mentioned order and revesting the tenancy accordingly.

(5) On the taking effect of any revesting order under subsection (4), unless the tenancy is sooner lawfully determined, the person in whose favour it is made shall become the tenant of the dwelling house upon and subject to the terms and conditions of the tenancy in force at the time of the making of the revesting order.

(6) Any order under this section may be made upon and subject to such terms and conditions, not inconsistent with this Act, as the Court thinks fit.

(7) Every order under this section shall take effect on such date as may be specified in that behalf in the order, but, if an appeal is lodged, the operation of the order shall be suspended until the appeal is determined.

(8) The Registrar of the Court shall, on the taking effect of the order, send a copy of the order, sealed with the seal of the Court, to the Registrar General, who shall upon payment of the prescribed registration fee, register it in the prescribed manner under the Registration of Deeds Act or the Real Property Act, as the case may be. The said registration fee shall be payable by the person in whose favour the order is made.

Ch. 19:02.
Ch. 56:02.

(9) For the purposes of this section, the term "tenant", in relation to any dwelling house, includes any person whose tenancy has expired or been determined and who is for the time being deemed under or by virtue of any law to continue to be the tenant of the dwelling house; and "tenancy" has a corresponding meaning.

Landlord to have right to appear and be heard.

57. Notice in the prescribed form of any application for an order under section 56 shall be served in the prescribed manner on the landlord of the dwelling house, who shall be entitled to appear and be heard as a party to the application.

Order in respect of furniture.

58. (1) Where the Court makes an order for occupation of the matrimonial home under section 53 or an order vesting the tenancy of a dwelling house under section 56, it may, if it thinks fit, by the same or any subsequent order, grant possession of the furniture or any specified articles of furniture in the matrimonial home or, as the case may be, in the dwelling house to the party in whose favour the order is made for such period and on such terms and subject to such conditions as the Court thinks fit.

(2) The Court, on making a decree of divorce and whether or not it makes any other order under this Part, may make an order

vesting the furniture or any specified articles of furniture owned by one or both of the parties to the marriage in the other party, or, as the case may be, in one of the parties, if the Court thinks it reasonable to do so having regard to the contribution made to the home (whether a matrimonial home or not) by the party in whose favour the order is made (whether in the form of money payments, or services, or prudent management, or otherwise howsoever).

(3) Before any order is made under subsection (1) or (2), such notice as the Court directs shall be given to any person having an interest in the furniture that would be affected by the order, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(4) In any case where any furniture is in the possession of one or both of the parties to the marriage under a hire-purchase agreement within the meaning of the Hire Purchase Act, the Court, on making a decree of divorce, may, if it thinks fit, make an order vesting the rights under the hire-purchase agreement in respect of all or any of the articles that are subject to the agreement in the other party, or, as the case may be, in one of the parties, and any such order shall have effect notwithstanding anything in any such agreement.

Ch. 82:33.

(5) The owner of any furniture to which any such hire-purchase agreement relates shall be entitled to appear and be heard as a party to the application for an order under subsection (4).

(6) The Court may make an order under this section in respect of any specified article of furniture, notwithstanding that the article is by law affixed to the realty, save that where any such order is made under subsection (2) the article shall thereupon cease for all purposes to be part of the realty and shall become personal property owned by the person in whose favour the order is made.

(7) The Court may at any time, if it thinks fit, cancel any order made under subsection (1).

(8) The Court may from time to time vary or extend any order made under subsection (1) in such manner as the Court thinks fit, whether as to the period of the order or as to the terms and conditions on which or subject to which it was made.

(9) An application under subsection (7) or (8) to cancel, vary, or extend any order may be made by either of the parties to the marriage, or by the personal representative against whom it was made, or by the personal representative of the person against whom it was made, or by any person having any interest in the furniture affected by the order.

Exclusion of common law rights.

59. Notwithstanding any rule of law to the contrary, a party to a marriage in respect of which a decree has been made under this Act who has no interest in the matrimonial home as owner or under any deed, written agreement, or instrument shall have no right, licence, or equity to occupy or to be or remain in possession of the matrimonial home otherwise than in accordance with this Part.

Power of the Court under Married Persons Act, unaffected. [52 of 1976]. Ch. 45:50.

60. (1) Nothing in this Part shall affect the powers of the Court under section 12 of the Married Persons Act (which relates to the settlement of disputes between husband and wife as to property).

(2) Where at the time when a petition for divorce is filed proceedings under section 12 of the Married Persons Act are pending in the Court between the parties to the petition or such proceedings are commenced before the making of the decree absolute, the Court may hear and determine those proceedings in conjunction with any proceedings between the parties under this Act.

Application of this Part to nullity and other proceedings.

61. The provisions of this Part, as far as they are applicable and with any necessary modifications, shall apply with respect to a petition for and a decree of nullity or judicial separation as they apply with respect to a petition for and a decree of divorce.

PART V

OVERSEAS NULLITY DECREES, DIVORCES AND LEGAL SEPARATIONS

Recognition of overseas nullity decrees. [20 of 1982].

62. (1) The validity of any decree or order or written law for nullity of marriage made (whether before or after the commencement of this Act) by a Court or legislature of any country outside Trinidad and Tobago shall, by virtue of this section, be recognised in all Trinidad and Tobago Courts, if—

(a) one or both of the parties were domiciled in that country at the time of the decree, order or written law; or

(b) that Court or legislature has exercised jurisdiction—

(i) on the basis of the residence of one or both of the parties to the marriage in that country if at the commencement of the proceedings any such party had in fact been resident in that country for a continuous period of not less than two years; or

(ii) on the basis that one or both of the parties to the marriage are nationals or citizens of that country or of the sovereign State of which that country forms part; or

(iii)
(iv) } ***(Repealed by Act No. 20 of 1982);***

(v) on any ground existing at the time of the marriage, on the basis of the celebration of the marriage in that country; or

(c) the decree or order or written law is recognised as valid in the Courts of a country in which at least one of the parties to the marriage is domiciled.

(2) Nothing in this section shall affect the validity of any decree or order or written law for nullity of marriage otherwise than by judicial process, that would be recognised in the Courts of Trinidad and Tobago apart from this section.

Recognition of overseas divorces and legal separations. [20 of 1982].

62A. Sections 62B to 62D shall have effect, subject to section 62H as respects the recognition in Trinidad and Tobago of the validity of overseas divorces and legal separations which—

(a) have been obtained by means of judicial or other proceedings in any country outside of Trinidad and Tobago, and

(b) are effective under the law of that country.

Grounds for recognition. [20 of 1982].

62B. (1) The validity of an overseas divorce or legal separation shall be recognised if, at the date of the institution of the proceedings in the country in which it was obtained—

(a) either spouse was habitually resident in that country; or

(b) either spouse was a national of that country.

(2) In relation to a country the law of which uses the concept of domicile as a ground of jurisdiction in matters of divorce or legal separation, subsection (1)*(a)* shall have effect as if the reference to habitual residence included a reference to domicile within the meaning of that law.

(3) In relation to a country comprising territories in which different systems of law are in force in matters of divorce or legal separation, the provisions of this section, other than those relating to nationality, shall have effect as if each territory were a separate country.

Cross-proceedings. [20 of 1982].

62C. (1) Where there have been cross-proceedings, the validity of an overseas divorce or legal separation obtained either in the original proceedings or in the cross-proceedings shall be recognised if the requirements of paragraph *(a)* or *(b)* of section 62B are satisfied in relation to the date of the institution either of the original proceedings or of the cross-proceedings.

(2) Where a legal separation the validity of which is entitled to recognition under the provisions of section 62B or of subsection (1) of this section is converted, in the country in which it was obtained, into a divorce, the validity of the divorce shall be recognised whether or not it would itself be entitled to recognition by virtue of those provisions.

Proof of facts relevant to recognition. [20 of 1982].

62D. (1) For the purpose of deciding whether an overseas divorce or legal separation is entitled to recognition under this Part, any finding of fact made (whether expressly or by implication) in the proceedings by means of which the divorce or legal separation was obtained and on the basis of which jurisdiction was assumed in those proceedings shall—

(a) if both spouses took part in the proceedings be conclusive evidence of the fact found; and

(b) in any other case, be sufficient proof of that fact unless the contrary is shown.

(2) In this section "finding of fact" includes a finding that either spouse was habitually resident or domiciled in, or a national of, the country in which the divorce or legal separation was obtained; and for the purposes of subsection (1)*(a)* a spouse who has appeared in judicial proceedings shall be treated as having taken part in them.

Existing common law and statutory rules. [20 of 1982].

62E. (1) In this section "the common law rules" means the rules of law relating to the recognition of divorces or legal separations obtained in the country of the spouses' domicile or obtained elsewhere and recognised as valid in that country.

(2) In any circumstances in which the validity of a divorce or legal separation obtained in a country outside Trinidad and Tobago would be recognised by virtue only of the common law rules if either—

(a) the spouses had at the material time both been domiciled in that country; or

(b) the divorce or separation were recognised as valid under the law of the spouses' domicile,

its validity shall be recognised if subsection (3) is satisfied in relation to it.

(3) This subsection is satisfied in relation to a divorce or legal separation obtained in a country outside Trinidad and Tobago if either—

(a) one of the spouses was at the material time domiciled in that country and the divorce or separation was recognised as valid under the law of the domicile of the other spouse; or

(b) neither of the spouses having been domiciled in that country at the material time the divorce or separation was recognised as valid under the law of the domicile of each of the spouses respectively.

(4) For any purpose of subsection (2) or subsection (3) "the material time", in relation to a divorce or legal separation, means the time of the institution of proceedings in the country in which it was obtained.

(5) Sections 62A to 62D are without prejudice to the recognition of the validity of divorces and legal separations obtained outside Trinidad and Tobago and recognised by virtue of the common law rules, as extended by this section, or of any written law other than this Act; but subject to this section, no divorce or legal separation so obtained shall be recognised as valid in Trinidad and Tobago except as provided by those sections.

Non-judicial divorces. [20 of 1982].

62F. (1) No proceeding in Trinidad and Tobago, except a proceeding relating to a dissolution or annulment of a marriage between Muslims which dissolution or annulment is effected or decreed and registered in accordance with the provisions of the Muslim Marriage and Divorce Act, shall be regarded as validly dissolving a marriage unless instituted in the Court.

Ch. 45:02.

(2) Notwithstanding anything in section 62E a divorce which—

(a) has been obtained elsewhere than in Trinidad and Tobago and so obtained by means of a proceeding other than a proceeding instituted in a Court of law; and

(b) is not required by any of the provisions of sections 62A to 62D to be recognised as valid,

shall not be regarded as validly dissolving a marriage if both parties to the marriage have throughout the period of one year immediately preceding the institution of the proceeding been habitually resident in Trinidad and Tobago.

(3) This section does not affect the validity of any divorce obtained before its coming into operation and recognised as valid under rules of law formerly applicable.

Non-recognition of divorce by third country no bar to remarriage. [20 of 1982].

62G. Where the validity of a divorce obtained in any country is entitled to recognition by virtue of sections 62A to 62D or section 62E(2) or by virtue of any rule or written law preserved by section 62E(5) neither spouse shall be precluded from remarrying in Trinidad and Tobago on the ground that the validity of the divorce would not be recognised in any other country.

Exceptions from recognition. [20 of 1982].

62H. (1) The validity of a decree of divorce or judicial separation obtained outside Trinidad and Tobago shall not be recognised in Trinidad and Tobago if it was obtained at a time when, according to the law of Trinidad and Tobago, there was no subsisting marriage between the parties.

(2) Subject to subsection (1), recognition by virtue of sections 62A to 62D or section 62E(2) or of any rule preserved by section 62E(5) of the validity of a divorce or legal separation obtained outside Trinidad and Tobago may be refused if (and only if)—

(a) it was obtained by one spouse—

(i) without such steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or

(ii) without the other spouse having been given, for any reason other than lack of notice, such opportunity to take part in the proceedings as, having regard to the matters aforesaid, he should reasonably have been given; or

(b) its recognition would manifestly be contrary to public policy.

(3) Nothing in sections 62A to 62H shall be construed as requiring the recognition of any findings of fault made in any proceedings for divorce or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

PART VI

SAVINGS AND TRANSITIONAL PROVISIONS

Savings. [39 of 1973].

63. (1) Every decree for divorce, nullity of marriage or judicial separation made or continuing in force under the statutory provisions (repealed by this Act) specified in subsection (3) and in force at the commencement of this Act shall continue in force as if made under this Act.

(2) All proceedings for divorce, nullity of marriage or judicial separation pending in the Court at the commencement of this Act shall be heard and determined in accordance with the statutory provisions (repealed by this Act) specified in subsection (3) as if this Act had not been passed, and the provisions of subsection (1) shall apply accordingly as if every decree made in any such proceedings was in force at the commencement of this Act.

(3) The statutory provisions referred to in subsections (1) and (2) are sections 176 to 198 of the Supreme Court of Judicature (Consolidation) Act 1925 of the United Kingdom, as applied to Trinidad and Tobago by section 9 of the Supreme Court of Judicature Act.

15 and 16 Geo. 5, c. 49.

Ch. 4:01.

Transitional provisions. [20 of 1982].

64. (1) The provisions of Part II and IV as far as they are applicable and with any necessary modifications, shall apply with respect to every decree or order made under the statutory provisions specified in section 63(3), as if it had been made under this Act.

(2) The provisions of this Act relating to overseas divorces and legal separations and other divorces and legal separations obtained outside Trinidad and Tobago apply to a divorce or legal separation obtained before the 1st March 1983 as well as to one obtained on or after that date and, in the case of a divorce of legal separation obtained before that date—

(a) require, or, as the case may be, preclude the recognition of its validity in relation to any time before that date as well as in relation to any subsequent time; but

(b) do not affect any property rights to which any person became entitled before that date.

[20 of 1982].

SCHEDULE

STAYING OF MATRIMONIAL PROCEEDINGS

INTERPRETATION

1. (1) In this Schedule—

"another jurisdiction" means any country outside of Trinidad and Tobago;

"matrimonial proceedings" means any proceedings so far as they are one or more of the five following kinds, namely, proceedings for:

divorce,

judicial separation,

nullity of marriage,

a declaration as to the validity of a marriage of the petitioner, and

a declaration as to the subsistence of such a marriage;

"prescribed" means prescribed by Rules of Court.

(2) References to the trial or first trial in any proceedings do not include references to the separate trial of an issue as to jurisdiction only.

(3) For purposes of this Schedule, proceedings in the Court are continuing if they are pending and not stayed.

(4) Any reference in this Schedule to proceedings in another jurisdiction is to proceedings in a Court of that jurisdiction, and to any other proceedings in that jurisdiction, which are of a description prescribed for the purposes of this subparagraph; and provision may be made by Rules of Court as to when proceedings of any description in another jurisdiction are continuing for the purpose of this Schedule.

DUTY TO FURNISH PARTICULARS OF CONCURRENT PROCEEDINGS IN ANOTHER JURISDICTION

2. While matrimonial proceedings are pending in the Court in respect of a marriage and the trial or first trial in those proceedings has not begun, it shall be the duty of any person who is a petitioner in the proceedings, or is a respondent and has in his answer included a prayer for relief, to furnish, in such a manner and to such persons and on such occasions as may be prescribed, such particulars as may be prescribed of any proceedings which—

(a) he knows to be continuing in another jurisdiction; and

(b) are in respect of that marriage or capable of affecting its validity or subsistence.

Discretionary stays.

3. (1) Where before the beginning of the trial or first trial in any matrimonial proceedings which are continuing in the Court it appears to the Court—

(a) that any proceedings in respect of the marriage in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and

(b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings in the Court or in those proceedings so far as they consist of a particular kind of matrimonial proceedings,

the Court may then, if it thinks fit, order that the proceedings in the Court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.

(2) In considering the balance of fairness and convenience for the purposes of subparagraph (1)*(b)*, the Court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed.

(3) If, at any time after the beginning of the trial or first trial in any matrimonial proceedings which are pending in the Court, the Court declares by order that it is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by paragraph 2, subparagraph (1) of this paragraph shall have effect in relation to those proceedings and to the other proceedings by reference to which the declaration is made as if the words "before the beginning of the trial or first trial" were omitted; but no action shall lie in respect of the failure of a person to perform such a duty.

Supplementary.

4. Where an order staying any proceedings is in force in pursuance of paragraph 3 the Court may, if it thinks fit, on the application of a party to the proceedings, discharge the order if it appears to the Court that the other proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them.

SUBSIDIARY LEGISLATION

MATRIMONIAL CAUSES RULES

ARRANGEMENT OF RULES

ARRANGEMENT OF RULES—*Continued*

RULE

L.R.O. 1/2006

190/1973.

MATRIMONIAL CAUSES RULES

made under sections 77 to 81 of the Supreme Court of Judicature Act (Ch. 4:01)

Citation.

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

PRELIMINARY

Interpretation. [37/1981. 108/1989. 71/1991].

2. (1) In these Rules—

"adopted" shall be construed in the same way as any grammatical derivative of "adoptor" as defined by section 2 of the Adoption of Children Act;

Ch. 46:03.

"ancillary relief" means—

(a) an avoidance of disposition order;

(b) a lump sum order;

(c) an order for maintenance pending suit;

(d) a periodical payments order;

(e) a secured periodical payments order;

(f) a settlement of property order;

(g) a transfer of property order;

(h) a variation of settlement order; or

(i) a variation order;

"avoidance of disposition order" means an order under section 44(1)*(b)* or *(c)* of the Act;

"cause" has the same meaning as "matrimonial proceedings" and includes an application under section 5 of the Act;

"certificate of marriage" means a certificate of marriage certified by the Registrar General;

"Court" means the High Court or a Judge thereof;

"defended cause" means a cause not being an undefended cause;

"directions for trial" means directions for trial given under rule 28;

"financial provision" has the same meaning as in section 44 of the Act;

"lump sum order" means an order under section 24(1)*(c)* or section 25(2)*(c)* of the Act in respect of a party or a child of the family respectively;

"matrimonial proceedings" means any proceedings under the Act for a decree of divorce, or of nullity, or of judicial separation, or of presumption of death and dissolution of marriage, or of jactitation of marriage;

"notice of intention to defend" has the meaning assigned to it by rule 13;

"order for maintenance pending suit" means an order under section 23 of the Act;

"periodical payments order" means an order under section 24(1)*(a)* or section 25(2)*(a)* of the Act in respect of a party or a child of the family respectively;

"person named" includes a person described as "passing under the name of A.B.";

"Registrar" means the Registrar of the Supreme Court of Judicature and includes the Deputy Registrar and an Assistant Registrar;

"Registry" means the Registry of the High Court in Port-of-Spain and includes, where the context so requires, the sub-registries in San Fernando and Scarborough;

"secured periodical payments order" means an order under section 24(1)*(b)* or section 25(2)*(b)* of the Act in respect of a party or a child of the family respectively;

"settlement of property order" means an order under section 26(1)*(b)* of the Act;

"special procedure list" has the meaning assigned to it by rule 28A;

"transfer of property order" means an order under section 26(1)*(a)* of the Act;

"undefended cause" means—

(a) in the case of an application under section 5 of the Act, 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; or

(ii) a cause which is proceeding only on the respondent's answer and in which no reply or answer to the respondent's answer has been filed or any such reply or answer has been struck out; or

(iii) a cause to which rule 16(4) applies and in which no notice has been given under that rule or any notice so given has been withdrawn;

"variation of settlement order" means an order under section 26(1)*(c)* or *(d)* of the Act;

"variation order" means an order under section 31 of the Act;

"welfare" has the same meaning as in section 47(6) of the Act;

(2) Unless the context otherwise requires, a cause begun by petition shall be treated as pending for the purposes of these Rules notwithstanding that a final decree or order has been made on the petition.

First Schedule.

(3) In these Rules a form referred to by number means the form so numbered in the First Schedule, or a form substantially to First Schedule the like effect, with such variations as the circumstances of the particular case may require.

(4) In these Rules any reference to an Order and rule is, if prefixed by the letters "R.S.C.", a reference to that Order and rule in the Rules of the Supreme Court.

(5) Unless the context otherwise requires, any reference in these Rules to any rule or written law shall be construed as a reference to that rule or written law as amended, extended or applied by any other rule or written law.

Application of other rules. [37/1981].

3. (1) Subject to the provisions of these and of any written law, the Rules of the Supreme Court, shall apply with the necessary modifications to the commencement of matrimonial proceedings in, and to the practice and procedure in matrimonial proceedings pending in the Court.

(2) For the purposes of subrule (1) any provision of these Rules authorising or requiring anything to be done in matrimonial proceedings shall be treated as if it were a provision of the Rules of the Supreme Court.

COMMENCEMENT, ETC., OF PROCEEDINGS

Application under section 5 of the Act. [37/1981 108/1989 71/1991].

4. (1) An application under section 5 of the Act for leave to present a petition for divorce before the expiration of one year from the date of the marriage shall be made by originating summons.

(2) The application shall be filed in the Registry 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 5;

(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 the age of majority;

(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) R.S.C. Order 10 (which deals with the service of originating process) shall not apply but 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 6 attached.

Form 1. Form 6.

(4) The provisions of rule 12 shall apply for the purpose of service of an originating summons under this rule.

Application to Court to consider agreement made in contemplation, etc., of divorce or judicial separation. [37/1981].

5. (1) On application made either before or after the presentation of a petition for divorce or judicial separation, the parties to the marriage or either of them may refer to the Court any agreement or arrangement made or proposed to be made between them which relates to, arises out of or is connected with, the proceedings which are contemplated or have begun.

(2) Unless otherwise directed on an application made *ex parte*, every party to the agreement or arrangement, other than the applicant or applicants, and any other party to the proceedings or, where application is made before the presentation of the petition, any person whom it is intended to make a party to those proceedings, shall be made a respondent to the application.

(3) Where an application is made before the presentation of a petition—

(a) it shall be made by originating summons;

(b) there shall be filed with the originating summons a copy thereof and a copy of the affidavit mentioned in subrule (5) for service on each respondent;

(c) R.S.C. Order 10 (which deals with the service of originating process), shall apply;

(d) the provisions of rule 12 shall apply for the purpose of service of an originating summons under this rule.

(4) An application made after the presentation of a petition shall be made by summons in the proceedings.

(5) At the time of the filing of an originating summons or the issue of a summons under this rule, there shall be filed an affidavit by the applicant or applicants setting out particulars of the agreement or arrangement in question and the grounds on which the application is made, and a copy of the affidavit shall accompany every copy of the originating summons or summons for service.

(6) On the hearing of an application under this rule the Judge may express an opinion, should he think it desirable to do so, as to the reasonableness of the agreement or arrangement and may give such directions, if any, in the matter as he thinks fit.

(7) A respondent to an application under this rule may be heard without filing an affidavit in answer to the application.

Cause to be begun by petition.

6. (1) Every cause, other than an application under section 5 of the Act, shall be begun by petition.

(2) Where a petition for divorce, nullity or judicial separation discloses that there is a minor child of the family who is under sixteen years or who is over that age and is receiving instruction at an educational establishment or undergoing training for a trade or profession, the petition shall be accompanied by a separate written statement containing the information required by Form 4, to which shall be attached a copy of any medical report mentioned therein.

Form 4.

(3) Where a petition for divorce alleging any such fact as is mentioned in section 4(1)*(e)* of the Act contains a proposal by the petitioner (not being a proposal agreed between the petitioner and the respondent) to make financial provision for the respondent, the petition shall be accompanied by an affidavit by the petitioner giving brief particulars of his means and commitments.

Contents of petition. Form 2. First Schedule. [29/1983].

7. The heading of the general form of petition shall be as in Form 2 in the First Schedule and every petition, other than a petition for jactitation of marriage, shall unless otherwise directed, contain the following information:

(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 Trinidad and Tobago, the country in which the respondent is domiciled;

(d) where it is alleged that the Court has jurisdiction based on habitual residence—

(i) the country in which the petitioner has been habitually resident throughout the period of one year ending with the date of the presentation of the petition, or

(ii) if the petitioner has not been habitually resident in Trinidad and Tobago, the country in which the respondent has been habitually 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 the full names, including surname, of each and his date of birth or, if it be the case, that he is over eighteen years, and

(ii) in the case of each minor child over sixteen years, 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 child now living 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 eighteen years;

(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 Trinidad and Tobago 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 Trinidad and Tobago 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 the 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 whether the proceedings on the petition should be stayed under the Schedule to the Act;

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 fact alleged by the petitioner for the purposes of section 4(1) of the Act 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 rules 7A, 7B, 7C, 8 and 9 as may be applicable.

Petition for nullity. [29/1983].

7A. A petition for a decree of nullity under section 13(2)*(e)* or *(f)* of the Act shall state whether the petitioner was at the time of the marriage ignorant of the facts alleged.

Petition for decree of presumption of death and dissolution of marriage. [29/1983].

7B. 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.

Petitioner relying on section 45 of the Evidence Act. Ch. 7:02. [29/1983].

7C. A petitioner who, in reliance on section 45 of the Evidence Act, intends to adduce evidence that a person was found to have committed adultery in matrimonial proceedings or was adjudged to be the father of a child in proceedings before a Court in Trinidad and Tobago, must include in his petition a statement of his intention with particulars of—

(a) the finding or adjudication and the date thereof;

(b) the Court which made the finding or adjudication and the proceedings in which it was made; and

(c) the issue in the proceedings to which the finding or adjudication is relevant.

Petition for jactitation of marriage.

8. 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.

Conclusion and signing of petition. [29/1983].

9. (1) Every petition shall conclude with—

(a) a prayer setting out particulars of the relief claimed, including any claim for custody of a child of the family and any application for a declaration under section 48(3) of the Act, 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 an Attorney-at-law, shall be the Attorney's-at-law name or firm and address, or, if the petitioner sues in person, shall be the petitioner's place of residence as given under rule 7*(e)* or, if no place of residence in Trinidad and Tobago is given, the address of a place in Trinidad and Tobago at or to which documents for him may be delivered or sent.

(2) Every petition shall be signed by an Attorney-at-law if settled by him or, if not, by the petitioner's Attorney-at-law in his own name or the name of his firm, or by the petitioner if he sues in person.

Presentation of petition. [37/1981].

10. (1) 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.

Form 3.

(2) Where an Attorney-at-law is acting for a petitioner for divorce or judicial separation, a certificate in Form 3 shall be filed with the petition, unless otherwise directed on an application made *ex parte*.

(3) Subject to subrule (4) where there is before the 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) No such leave shall be required where it is proposed, after the expiration of the period of three years from the date of the marriage, to present a petition for divorce alleging such of the facts mentioned in section 4(1) of the Act as were alleged in a petition for judicial separation presented before the expiration of that period.

(5) The petition shall be presented by filing it in the Registry together with any statement, report and affidavit required by rule 6(2) and (3), with as many copies of the petition as there are persons to be served and a copy of the statement, report and affidavit required by rule 6(2) and (3), for service on the respondent spouse.

(6) R.S.C. Order 10 (which deals with the service of originating process), shall not apply but on the filing of the petition the Registrar shall annex to every copy of the petition for service a notice in Form 5 with Form 7 attached and shall also annex to the copy of the petition for service on a respondent spouse the copy of any statement, report and affidavit filed pursuant to subrule (5). Form 5. Form 7.

11. (1) Unless otherwise directed— Parties.

(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 petition alleges that the other party to the marriage has been guilty of an improper association (other than adultery) with a person named or of rape upon a person named, the petitioner shall, as soon as practicable after the filing of the petition, apply to the Court for directions as to whether that person shall be made a respondent in the cause.

(3) An application for directions under subrule (1) or (2) may be made *ex parte* if no notice of intention to defend has been given.

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

SERVICE OF PETITION

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

(2) The party filing the petition shall at the same time leave at the Registry as many copies to be sealed with the seal of the Court as there are respondents or co-respondents.

(3) Service of the petition shall be effected by the Marshal, or by anyone deputed by him in writing to do so, by delivering to every respondent or co-respondent personally a copy sealed as aforesaid.

(4) Personal service shall in no case be effected by the petitioner, but the petitioner may be present when service is effected.

(5) For the purposes of the foregoing subrules, a copy of a petition shall be deemed to be duly served if—

Form 7.

(a) an acknowledgment of service in Form 7 is signed by the party to be served and is returned to the Registry; and

(b) in an undefended cause 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 served on a party personally and no acknowledgment of service has been returned to the Registry, service shall be proved by filing an affidavit of service showing, in the case of a respondent spouse, the server's means of knowledge of the identity of the party served.

(7) Where an acknowledgment of service is returned to the Registry, the Registrar shall send a photographic copy thereof to the petitioner.

(8) When personal service under the foregoing rules cannot be effected, an application to a Judge for leave to substitute some other mode of service for the mode 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 Judge may make such order as may be just; and the form of any advertisement shall be settled by the Registrar.

(9) Where it appears necessary or expedient to do so the Judge may by order dispense with service of a copy of a petition—

(a) on a respondent spouse; or

(b) on any other person.

(10) An application for an order under subrule (9) 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. Form 6 or 7.

13. (1) In these Rules any reference to a notice of intention to defend is a reference to an acknowledgment of service in Form 6 or 7 containing a statement to the effect that the person by whom it is signed intends to oppose the application or to defend the proceedings, as the case may be, 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 eight 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 Registry an acknowledgement of service not containing such a notice.

Notice of absence or withdrawal of consent.

14. (1) A respondent to a petition which alleges any such fact as is mentioned in section 4(1)*(d)* of the Act may give notice to the Court either that he does not consent to a decree being granted or that he withdraws any consent which he has already given.

(2) Where any such notice is given and none of the other facts mentioned in section 4(1) of the Act is alleged, the proceedings on the petition shall be stayed and the Registrar shall thereupon give notice of the stay to all parties.

PLEADINGS AND AMENDMENT

Supplemental petition and amendment of petition.

15. (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) The Court may, if it thinks fit, require an application for leave to be supported by an affidavit.

(5) An order granting leave shall—

(a) where any party has given notice of intention to defend, fix the time within which his 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.

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

(7) Rules 9 and 11 shall apply to a supplemental or amended petition as they apply to the original petition.

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

(9) The petitioner shall file the documents required by subrule (8) to be served on any person and thereupon, unless otherwise directed, rules 10(6) and 12 shall apply in relation to that person as they apply in relation to a person required to be served with an original petition.

Filing of answer to petition.

16. (1) Subject to subrule (2) and to rules 14, 18 and 36, 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; or

(c) being the respondent to a petition to which section 9(1) of the Act applies, wishes to oppose the grant of a *decree nisi* on the ground mentioned in that subsection,

shall, within twenty-one 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.

(4) Where in a cause in which relief is sought under section 13(2)*(c)* (in so far as it relates to unsoundness of mind) and *(d)* of the Act the respondent files an answer containing no more than a simple denial of the facts stated in the petition, he shall, if he intends to rebut the charges in the petition, give the Registrar notice to that effect when filing his answer.

Filing of reply and subsequent pleadings.

17. (1) A petitioner may file a reply to an answer within fourteen days after he has received a copy of the answer pursuant to rule 21.

(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 pleadings subsequent to a reply shall be filed without leave.

Filing of pleading after directions for trial.

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

Contents of answer and subsequent pleadings. [29/1983].

19. (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 and, if the pleading is filed by the husband or wife it shall, in relation to those facts, contain the information required in the case of a petition by rule 7*(k)*.

(2) An answer by a husband or wife who disputes any statement required by 7*(f)*, *(g)* and *(h)* to be included in the petition shall contain full particulars of the facts relied on, unless otherwise directed.

(3) Where an answer to any petition contains a prayer for relief, it shall contain the information required by rule 7*(j)* in the case of a petition in so far as it has not been given by the petitioner; and rule 9(1)*(a)* shall, where appropriate, apply, with the necessary

modifications, to a respondent's answer as it applies to a petition, save that it shall not be necessary to include in the answer any claim for costs against the petitioner.

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

(5) Where a party's pleading includes such a statement as is mentioned in rule 7*(c)*, then if the opposite party—

(a) denies the finding or adjudication to which the statement relates; or

(b) alleges that the finding or adjudication was erroneous; or

(c) denies that the finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

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

Allegation against third person in pleading.

20. (1) Rules 11 and 12 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 16 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 pleadings.

21. 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 5 with Form 7 attached and shall send a copy to every other opposite party.

Form 5.
Form 7.

Supplemental answer and amendment of pleadings.

22. Rule 15 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.

Service and amendment of pleadings in Long Vacation. [37/1981].

23. R.S.C. Order 18 rule 5 (which restricts the service and amendment of pleadings in the Long Vacation) and Order 20 rule 6 (which restricts the amendments of pleadings in the Long Vacation) shall not apply to matrimonial proceedings.

Particulars.

24. (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 that 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 and inspection of documents in defended cause. [37/1981].

25. (1) R.S.C. Order 24, except rule 16 thereof, shall apply to a defended cause begun by petition as it applies to an action begun by writ.

(2) If any party fails to comply with an order to answer interrogatories or for discovery or inspection of documents—

(a) the Court may make such order as it thinks just;

(b) without prejudice to paragraph *(a)* such party shall be liable to attachment or committal.

(3) The petitioner and any party who has filed an answer shall be entitled to have a copy of any affidavit of documents filed or list of documents delivered to the other party under R.S.C. Order 24, and such copy shall on request, be supplied to him on payment of the prescribed fee by the party who filed the affidavit or delivered the list.

Medical examination in proceedings for nullity.

26. (1) In proceedings for nullity on the ground of incapacity to consummate the marriage the petitioner shall, subject to subrule (2), apply to the Court to determine whether medical inspectors should be appointed to examine the parties.

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

(a) where the husband is the petitioner; or

(b) where the wife is the petitioner and—

(i) it appears from the petition that she was either a widow or divorced at the time of the 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 incapacity.

(3) References 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 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 proceedings 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 Court for the appointment of medical inspectors 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 Court hearing an application under subrule (1) or (6) considers it expedient to do so, it shall appoint a medical inspector or, if it 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.

27. (1) Every medical examination under rule 26 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, but so however that the Court may, on the application of a party, direct that the examination of that party shall be held at such other place as the Court thinks convenient.

(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 26 shall be filed and either party shall be entitled to be supplied with a copy on payment of the prescribed fee.

(4) In an undefended cause it shall not be necessary for the inspector or inspectors to attend and give evidence at the trial unless so directed.

(5) In a defended cause, if the report made in pursuance of rule 26 is accepted by both parties, notice to that effect shall be given by the parties to the Registrar and to the inspector or inspectors not less than seven clear days before the date fixed for the trial; and where such notice is given, it shall not be necessary for the inspector or inspectors to attend and give evidence at the trial.

(6) Where pursuant to subrule (4) or (5) the evidence of the inspector or inspectors is not given at the trial, his or their report shall be treated as information furnished to the Court by a Court expert and be given such weight as the Court thinks fit.

Directions and setting down for trial.

28. (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 11(2), or by that rule as applied by rule 15(7) or 20(1), 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 affidavit required by rule 79(2) 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; and

(f) in proceedings for nullity—

(i) that any application required by rule 27(1) has been made; and

(ii) where an order for the examination of the parties has been made on an application under rule 26, 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) The Registrar shall give directions for trial by fixing the date, place and, as nearly as may be, the time of the trial and shall give notice thereof to every party to the cause and set down the cause for trial accordingly.

Directions and setting down for trial. 71/1991].

Form 7.

28A. (1) Where the cause is an undefended cause for divorce or judicial separation and, in a case to which section 4(1)*(d)* of the Act applies, the respondent has given the Registrar the requisite notice by Form 7 that he consents to the grant of a decree, then, unless otherwise directed—

(i) there shall be filed with the request for directions for trial in Form 7A an affidavit by the petitioner containing the information required by Form 7B, 7C, 7D, 7E or 7F (whichever is appropriate), as near as may be in the order there set out, together with any corroborative evidence on which the petitioner intends to rely; and

(ii) the Registrar shall give directions for hearing by entering the cause in a list to be known as the Special Procedure List.

(2) In the case of an undefended cause proceeding on the respondent's answer, subrule (1) shall have effect as if for the references to the petitioner and the respondent there were substituted references to the respondent and the petitioner respectively.

Directions as to allegations under section 4(1)*(b)* of the Act.

29. (1) Where in a defended cause the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent, the Registrar may, of his own motion on giving directions for trial or on the application of any party made at any time before the trial, order or authorise the party who has made the request for or obtained such directions to file a schedule of the allegations and counter-allegations made in the pleadings or particulars.

(2) Where such an order is made or authority given, the allegations and counter-allegations shall, unless otherwise directed, be listed concisely in chronological order, each counter-allegation being set out against the allegation to which it relates, and the party filing the schedule shall serve a copy of it on any other party to the cause who has filed a pleading.

Security for costs. [37/1981].

30. R.S.C. Order 23 rule 1(1) (under which a person bringing proceedings may be ordered to give security for costs if he is ordinarily resident outside of Trinidad and Tobago) shall not apply to matrimonial proceedings.

Stay of proceedings under Schedule to the Act. [29/1983].

30A. (1) An application by the petitioner or respondent for an order under paragraph 3 of the Schedule to the Act shall be made to a Judge.

(2) Where, on giving directions for trial, it appears to the Registrar from information given pursuant to rule 7*(j)* or rule 19(3) or subrule (3) of this rule that any proceedings which are in respect of the marriage in question or which are capable of affecting its validity or subsistence are continuing in any country outside Trinidad and Tobago, and he considers that the question whether the proceedings on the petition should be stayed under paragraph 3 of the Schedule to the Act ought to be determined by the Court, he shall fix a date and time for the consideration of that question by a Judge and give notice thereof to all parties.

In this paragraph "proceedings continuing in any country outside Trinidad and Tobago" has the same meaning as in rule 7*(j)*.

(3) Any party who makes a request for directions for trial in matrimonial proceedings within the meaning of paragraph 1(1) of the Schedule to the Act shall, if there has been a change in the information given pursuant to rule 7*(j)* and rule 19(3), file a statement giving particulars of the change.

(4) An application by a party to the proceedings for an order under paragraph 4 of the Schedule to the Act, or any question arising thereon shall be made to a Judge.

EVIDENCE

Evidence generally to be taken orally. Ch. 7:02.

31. Subject to the provisions of rules 32 and 33 and of Part V of the Evidence Act and any other written law, 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. [37/1981].

32. (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; or

(iii) by copies of documents or entries in books; or

(iv) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper containing a statement of that fact; and

(c) that not more than a specified number of expert witnesses may be called.

(2) An application to the Court 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 R.S.C. Order 39 rule 1 for the examination on oath of any person, and R.S.C. Order 38 rule 9 and Order 39 rules 1 to 14 (which regulate the procedure where evidence is to be taken by deposition) shall have effect accordingly with the appropriate modifications.

(5) On any application made by originating summons, summons or motion, evidence may be given by affidavit unless these Rules otherwise provide or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit; and where, after such an order has been made that person does not attend, his affidavit shall not be used as evidence without the leave of the Court.

(6) R.S.C. Order 38 rule 2(3) (which enables the opposite party by notice to require the attendance of a deponent), shall not apply to an affidavit made in matrimonial proceedings.

Evidence of marriage outside Trinidad and Tobago.

33. (1) The celebration of a marriage outside Trinidad and Tobago and its validity under the law of the country where it was 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

(2) Where a document produced by virtue of subrule (1) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(3) This rule shall not be construed as precluding the proof of a marriage in any other manner authorised by law.

Saving for Judge's powers.

34. Nothing in rule 32 or 33 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.

Hearsay evidence. [37/1981].

35. (1) R.S.C. Order 38 rules 20 to 33, shall apply in relation to a defended cause as if in rule 21 for the reference in subparagraph (4) to Order 41, rule 5 there were substituted a reference to rule 32 of these rules.

(2) Unless in any particular case the Court otherwise directs R.S.C. Order 38, rule 21(1) shall not apply in relation to an undefended cause pending in the Court.

Disposal of causes in the Special Procedure List. [71/1991].

35A. (1) As soon as practicable after a cause has been entered in the Special Procedure List, the Registrar shall consider the evidence filed by the petitioner and—

(i) if he is satisfied that the petitioner has sufficiently proved the contents of the

petition and is entitled to a decree, the Registrar shall make and file a Certificate in Form 7G;

(ii) if he is not so satisfied he may either give the petitioner an opportunity of filing further evidence or remove the cause from the Special Procedure List whereupon rule 28A shall cease to apply and rule 28 shall apply.

(2) On the filing of a Certificate under subrule (1), a day shall be fixed for the pronouncement of a decree by a Judge in open Court and in such event the Registrar shall send to each party a notice of the time and place so fixed together with a copy of the Certificate whereupon the party seeking the decree shall appear on the day so fixed.

(3) Within 14 days after the pronouncement of a decree in accordance with a Certificate under subrule (1), any person may inspect the Certificate and the evidence filed under rule 28A and may request copies on payment of the prescribed fee.

Right to be heard on ancillary questions.

36. (1) A respondent spouse may, without filing an answer, be heard on—

(a) any question of custody of, or access to, any child of the family;

(b) any question whether a supervision order should be made as respects any such child under section 50 of the Act; and

(c) any question of ancillary relief.

(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 Registrar 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.

Respondent's statement as to arrangements for children.

37. A respondent spouse on whom there is served a statement in accordance with rule 6(2) may, at any time before the Judge makes an order under section 47(1) of the Act, file in the Registry a written statement of his views on the present and proposed arrangements for the children, and on receipt of such a statement from the respondent the Registrar shall send a copy to the petitioner.

Order as to arrangements for children to be drawn up.

38. Any order made pursuant to section 47(1) or (4) of the Act shall be drawn up.

Shorthand note, etc., of proceedings of trial.

39. (1) Official shorthand writers may be designated by the Chief Justice for the purpose of trials of causes and where any such designation is made the following provisions of this rule shall have effect.

(2) Where the Court so directs a shorthand note shall be taken of the proceedings at the trial of any cause in open Court.

(3) The shorthand writer shall sign the note and certify it to be a correct shorthand note of the proceedings and shall forward it to the Registrar at the end of the trial.

(4) On being so directed the shorthand writer shall furnish the Registrar with a transcript of the whole or such part as may be directed of the shorthand note.

(5) Any party, any person who has intervened in a cause or the Attorney General shall be entitled to obtain from the Registrar a transcript of the whole or any part of the note on payment of a fee at such rate as may be prescribed.

(6) Except as aforesaid, the shorthand writer shall not, without the permission of the Court furnish the shorthand note or a transcript of the whole or any part thereof to anyone.

(7) In these Rules references to a shorthand note include references to a record of the proceedings made by mechanical means and in relation to such a record references to the shorthand writer shall have effect as if they were references to the person responsible for transcribing the record.

Application for rehearing.

40. (1) An application for rehearing of a cause tried by a Judge alone where no error of the Court at the hearing is alleged, shall be made to a Judge.

(2) Unless otherwise directed, the application shall be made to the Judge by whom the cause was tried and shall be heard in open Court.

(3) The application shall be made by a notice to attend before the Judge on a day specified in the notice, and the notice shall state the grounds of the application.

(4) Unless otherwise directed, the notice must be issued within six weeks after the judgment and served on every other party to the cause not less than fourteen days before the day fixed for the hearing of the application.

(5) The applicant shall file a certificate that the notice has been duly served on each person required to be served therewith.

(6) The application shall be supported by an affidavit setting out the allegations on which the applicant relies or exhibiting a copy of any pleading which he proposes to file if the application is granted, and a copy of the affidavit shall be served on every other party to the cause.

(7) Where a shorthand note has been taken under rule 39, then not less than seven days before the application is heard the applicant shall file a copy of a transcript of so much as is relevant of the official shorthand note of the proceedings at the trial.

(8) Any other application for rehearing shall be made by way of appeal to the Court of Appeal.

DECREES AND ORDERS

Decrees and orders.

41. (1) 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.

(2) Where a *decree nisi* is pronounced on a petition in which any such fact as is mentioned in section 4(1)*(d)* or *(e)* of the Act is alleged, the decree shall state whether that fact was the only fact mentioned in the said section 4(1) on which the petitioner was entitled to rely in support of his petition.

Forms 8 to 10.

(3) A *decree nisi* shall be in Forms 8, 9 and 10, as the case may be.

Form 11.

(4) A decree of judicial separation shall be in Form 11.

Application for rescission of decree.

42. (1) An application by a respondent under section 10 of the Act for the rescission of a decree of divorce shall be made to a Judge and shall be heard in open Court.

(2) Subrules 40(3) and (5) shall apply to an application under this rule as they apply to an application under that rule.

(3) Unless otherwise directed, the notice of the application shall be served on the petitioner not less than fourteen days before the day fixed for the hearing of the application.

(4) The application shall be supported by an affidavit setting out the allegations on which the applicant relies and a copy of the affidavit shall be served on the petitioner.

Application under section 11 of the Act.

43. (1) An application by the respondent to a petition for divorce for the Court to consider the financial position of the respondent after the divorce shall be made by notice in Form 12.

Form 12.

(2) The application shall be made to a Judge.

(3) On the hearing of the application the Judge may determine the application or may refer it to the Registrar for him to investigate any matter arising on the application.

(4) Where an application is referred to the Registrar under subrule (3) he shall fix an appointment for the hearing of the application and rule 61(3) to (5) shall apply to the application as if it were an application for ancillary relief referred to the Registrar for investigation and report.

(5) A statement of any of the matters mentioned in section 11(2) of the Act with respect to which the Judge is satisfied, or, where the Judge has proceeded under subsection (3) of the said section, a statement that the conditions for which that subsection provides have been fulfilled, shall be entered in the Court Minutes.

Copies of decrees and orders.

44. (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. [37/1981].

45. (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 an Attorney-at-law, 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 Attorney-at-law.

(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 R.S.C. Order 45 rule 7(4) and any other rule or written law for the purposes of which an order is required to be served in a particular way.

Intervention to show cause by Attorney General.

46. (1) If the Attorney General wishes to show cause against a *decree nisi* being made absolute, he shall give notice to that effect to the Registrar and to the party in whose favour it was pronounced.

(2) Within twenty-one days after giving notice under subrule (1) the Attorney General shall file his plea setting out the grounds on which he desires to show cause, together with a copy for service on the party in whose favour the decree was pronounced and every other party affected by the decree.

(3) The Registrar shall serve a copy of the plea on each of the persons mentioned in subrule (2).

(4) Subject to the following provisions of this rule these Rules shall apply to all subsequent pleadings and proceedings in respect of the plea as if it were a petition by which a cause is begun.

(5) If no answer to the plea is filed within the time limited or if an answer is filed and struck out or not proceeded with, the Attorney General may apply forthwith by motion for an order rescinding the decree and dismissing the petition.

(6) Rule 28 shall apply to proceedings in respect of a plea by the Attorney General as it applies to the trial of a cause. However, if all the charges in the plea are denied in the answer, the application for directions shall be made by the Attorney General and in any other case it shall be made by the party in whose favour the *decree nisi* has been pronounced.

Intervention to show cause by person other than Attorney General.

47. (1) If any person other than the Attorney General wishes to show cause under section 17 of the Act 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.

(2) A party on whom a copy of an affidavit has been served under subrule (1) may, within fourteen 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 fourteen 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) A 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 fourteen days after expiry of the time allowed for filing an affidavit in reply or, where no affidavit in answer has been filed, within fourteen days after expiry of the time allowed for filing such an affidavit.

(7) Where 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.

48. (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 party against whom costs have been awarded or who is otherwise affected by the decree.

(3) The application shall be made to a Judge and may be heard in Chambers.

Decree absolute.

49. (1) The period of three months specified in section 17(1) of the Act is hereby reduced to six weeks; and accordingly a *decree nisi* shall not be made absolute until the expiration of six weeks from the pronouncing thereof, unless the Court by special order fixes a shorter period in any particular case.

(2) Subject to subrules (4) and (5), an application by a spouse to make absolute a *decree nisi* pronounced in his favour may be made by filing in the Registry a notice in Form 13.

Form 13.

(3) On the filing 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 rehearing of the cause or for rescission of the decree is pending;

(b) that the time for appealing to the Court of Appeal has expired and that no order has been made by the Court of Appeal extending the time for appealing against the decree or by a Judge extending the time for making an application for rehearing 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 46 or 47 is pending;

(e) that the Judge has made an order under section 47(1) of the Act;

(f) that the provisions of section 11 of the Act do not apply or have been complied with,

he shall make the decree absolute, but so however that—

(i) he may in any case he considers it proper so to do, refer the application to a Judge;

(ii) if the notice is lodged more than twelve months after the *decree nisi*, he may require the applicant to file an affidavit accounting for the delay and may make such order on the application as he thinks fit.

(4) 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 a Judge.

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

(6) An application by a spouse for a *decree nisi* pronounced against him to be made absolute may be made to a Judge or the Registrar, and the summons by which the application is made shall be served on the other spouse not less than four clear days before the day on which the application is heard.

(7) An order granting an application under subrules (4) and (5) or subrule (6) shall not take effect until the Registrar has searched the Court Minutes and is satisfied as to the matters mentioned in subrule (3).

(8) 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.

50. (1) On a *decree nisi* being made absolute, the Registrar shall send to the petitioner and the respondent spouse a certificate in Form 14 or 15 whichever is appropriate, authenticated by the seal of the Court.

Form 14, 15.

(2) A central index of decrees absolute shall be kept by the Registrar and any person shall be entitled to require a search to be made therein, and to be furnished with a certificate of the result of the search, on payment of the prescribed fee.

(3) A certificate in Form 14 or 15 that a *decree nisi* has been made absolute shall be issued to any person requiring it on payment of the prescribed fee.

Form 14, 15.

Rescission of decree of judicial separation.

51. (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 fourteen 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.

52. (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 periodical payments order;

(c) a secured periodical payments order;

(d) a lump sum order;

(e) a settlement of property order;

(f) a transfer of property order;

(g) a variation of settlement 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—

Form 16.

(a) by leave of the Court, either by notice in Form 16 or at the trial; or

(b) where the parties are agreed upon the terms of the proposed order, without leave by notice in Form 16.

Form 16.

(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 16.

Form 16.

Application by guardian, etc., for maintenance of children.

53. Any of the following persons, namely:

(a) the guardian of any child of the family;

(b) any person who has the custody or the care and control of a child of the family under an order of the Court;

(c) any person who has obtained leave to intervene in the cause for the purpose of applying for the custody of a child of the family;

(d) the Chief State Solicitor, if appointed the guardian *ad litem* of a child of the family under rule 81; and

(e) any other 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 16. Form 16.

Application in Form 16 or 12.

54. Where an application for ancillary relief is made by notice in Form 16 or an application under rule 43 is made by notice in Form 12, the notice shall be filed in the Registry, and the applicant shall serve a copy of the notice on the respondent to the application.

Application for ancillary relief after order of Magistrates' Court.

55. Where an application for ancillary relief is made while there is in force an order of a Magistrates' Court for maintenance of a spouse or child, the applicant shall file a copy of the order on or before the hearing of the application.

Children to be separately represented on certain applications.

56. (1) Where an application is made to the Court for a variation of settlement order, the Court shall, unless it is satisfied that the proposed variation does not adversely affect the rights or interests of any children concerned, direct that the children be separately represented on the application, by an Attorney-at-law, and may appoint the Chief State Solicitor or other fit person to be guardian *ad litem* of the children for the purpose of the application.

(2) On any other application for ancillary relief the Court may give such a direction or make such appointment as it is empowered to give or make by subrule (1).

(3) Before a person other than the Chief State Solicitor is appointed guardian *ad litem* under this rule there shall be filed a certificate by the Attorney-at-law acting for the children that the person proposed as guardian has no interest in the matter adverse to that of the children and that he is a proper person to be such guardian.

General provisions as to evidence, etc., on application for ancillary relief. Form 17.

57. (1) A petitioner or respondent spouse who has applied for ancillary relief in his petition or answer shall, subject to rule 62, file a notice in Form 17 and serve a copy on the other spouse.

Form 16 or 17.

(2) Where a respondent spouse or a petitioner is served with a notice in Form 16 or 17 in respect of an application for ancillary relief, not being an application to which rule 58 or 59 applies, then, unless the parties are agreed upon the terms of the proposed order, he shall, within fourteen 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.

(3) An affidavit in reply may be filed within fourteen days after service of any affidavit under subrule (2) or within such other time as the Court may fix.

Evidence on application for settlement of property, etc. Form 16 or 17.

58. (1) Where an application is made for a settlement of property order, a variation of settlement order, a transfer of property order or an avoidance of disposition order, the application shall state briefly the nature of the settlement, variation or transfer proposed or the disposition to be set aside and the notice in Form 16 or 17 as the case may be shall, unless otherwise directed, be supported by an affidavit by the applicant stating the facts relied on in support of the application.

(2) The affidavit in support of an application for a settlement of property order or a transfer of property order shall contain full particulars of the property in respect of which the application is made and shall contain full particulars, so far as they are known to the applicant, of the property to which the party against whom the application is made is entitled either in possession

or reversion; and the affidavit in support of an application for a variation of settlement order shall contain full particulars of all settlements, whether ante-nuptial or post-nuptial, made on the spouses and of the funds brought into settlement by each spouse.

(3) A copy of Form 16 or 17, as the case may be, together with a copy of the supporting affidavit, shall be served on the following persons as well as on the respondent to the application, that is to say: Form 16 or 17.

(a) in the case of an application for a variation of settlement order the trustees of the settlement and the settlor if living;

(b) in the case of an application for an avoidance of disposition order, the person in whose favour the disposition is alleged to have been made and such other persons, if any, as the Court may direct.

(4) Any person served with notice of an application to which this rule applies may, within fourteen days after service, file an affidavit in answer.

59. (1) An application for a variation of settlement order 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. Evidence on application for variation order.

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

60. (1) A person who files an affidavit for use on an application under rule 57, 58 or 59 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 18 and a copy of the affidavit or of such part thereof as the Court may direct, indorsed 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 Service of affidavit in answer or reply. Form 18.

in the proceedings by applying for directions under rule 61(6) within eight days of service of the affidavit on him, inclusive of the day of service.

(2) Rule 36(4) shall apply to a person served with an affidavit under subrule (1) of this rule as it applies to a co-respondent.

Hearing of application for ancillary relief. Form 16, 17.

61. (1) On or after the filing of a notice in Form 16 or 17, a date shall be fixed by the Registrar for the hearing of the application.

(2) An application for an avoidance of disposition order shall, if practicable, be heard at the same time as any related application for financial provision.

Form 16, 17.

(3) Notice of the date, unless given in Form 16 or 17, as the case may be, shall be given by the Registrar to every party to the application.

(4) 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 documents, and may, in default of compliance by such other party, apply to the Court for directions.

(5) The hearing shall, unless otherwise directed, take place in chambers.

(6) 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.

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

62. (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, apply to the Court 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 an application is made, the Registrar shall serve on the other spouse a notice in Form 19 requiring him, if he objects to the making of a corresponding order, to give notice to that effect to the Registrar and to the applicant within fourteen days after service of the notice. Form 19.

(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 Attorney-at-law, and the Registrar shall in that case serve a copy of the order on the applicant as well as on the other spouse.

63. (1) An application under section 44(1)*(a)* of the Act for an order restraining any person from attempting to defeat a claim for financial provision or otherwise for protecting the claim shall be made by summons. Application for order under section 44(1)*(a)* of the Act.

(2) Rule 61 shall apply with the necessary modifications to the application as if it were an application for ancillary relief.

ENFORCEMENT OF ORDERS

64. (1) Before any process is issued for the enforcement of an order made in matrimonial proceedings for the payment of money to any person, an affidavit shall be filed verifying the amount due under the order and showing how that amount is arrived at. Enforcement of order for payment of money, etc.

(2) Where an application for a variation order is pending no writ of *fieri facias* or warrant of execution shall be issued to enforce payment of any sum due under an order for ancillary relief or an order made under the provisions of section 28 of the Act, except with the leave of the Court.

65. (1) In this rule and in rule 66— Judgment summonses: general provisions. Ch. 6:52.

"commissioner" means a Commissioner of Affidavits appointed under the Commissioners of Affidavits Act;

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"debtor" means a person liable under an order;

"judgment creditor" means a person entitled to enforce an order for the payment of money;

"judgment summons" means a summons requiring a debtor to appear and be examined on oath as to his means;

"order" means an order made in matrimonial proceedings for the payment of money;

"order of committal" includes a writ of attachment.

(2) An application for the issue of a judgment summons shall be made by filing a *praecipe* in Form 20 together with the affidavit required by rule 64(1) and, except where the application is filed in the Registry concerned with the order, a copy of such order shall be exhibited to the affidavit.

Form 20.

(3) A judgment summons shall not be issued without leave of a Judge if the debtor is in default under an order of committal made on a previous judgment summons in respect of the same order.

(4) Every judgment summons shall be in Form 21 and shall be served on the debtor personally not less than ten clear days before the hearing and at the time of service there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the Court House at which he is summoned to appear.

Form 21.

(5) On the hearing of the judgment summons the Court may—

(a) where the order is for the payment of a lump sum or costs; or

(b) where the order is for maintenance pending suit or other periodical payments and it appears to the Court that the order would have been varied or suspended if the debtor had made an application for that purpose,

make a new order for payment of the amount due under the original order, together with the costs of the judgment summons, either at a specified time or by instalments.

(6) If the Court makes an order of committal, it may direct the execution thereof to be suspended on terms that the debtor pay to the judgment creditor the amount due, together with the costs of the judgment summons, either at a specified time or by instalments, in addition to any sums accruing due under the original order.

(7) All payments under a new order or an order of committal shall be made to the judgment creditor unless the Court otherwise directs.

(8) Where an order of committal is suspended on such terms as are mentioned in subrule (6)—

(a) all payments thereafter made under the said order shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the original order and, secondly, in or towards the discharge of the debt in respect of which the judgment summons was issued and the costs of the summons;

(b) the said order shall not be issued until the judgment creditor has filed an affidavit of default on the part of the debtor.

Special provisions as to judgment summonses. [37/1981].

66. (1) R.S.C. Order 38, rule 2(3) (which enables evidence to be given by affidavit in certain cases) shall apply to a judgment summons as if it were a summons.

(2) Witnesses may be summoned to prove the means of the debtor in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may for that purpose be issued out of the registry in which the judgment summons is issued.

(3) Where the debtor appears at the hearing, the travelling expenses paid to him may, if the Court so directs, be allowed as expenses of a witness, but if the debtor appears at the hearing and no order of committal is made, the Court may allow to the debtor, by way of set-off or otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at the trial in Court.

(4) Where a new order or an order of committal is made, the Registrar shall send notice of the order to the debtor.

(5) An order of committal shall be directed to the Marshal for execution by him.

(6) Unless the Court otherwise directs, the judgment creditor's costs of and incidental to the judgment summons shall be fixed without taxation in accordance with the following provisions:

(a) subject to paragraph *(c),* where the amount in respect of which the judgment summons is issued is paid before the hearing, there may be allowed—

(i) the Court fees paid by the judgment creditor;

(ii) any travelling expenses paid to the judgment debtor;

(iii) the fee paid to the Commissioner on the affidavit filed under rule 64(1); and

(iv) if the judgment creditor is represented by an instructing Attorney-at-law, fifteen dollars in respect of the Instructing Attorney's-at-law charges;

(b) where an order is made on the hearing and the judgment creditor is awarded costs, there may be allowed—

(i) the Court fees paid by the judgment creditor;

(ii) subject to subrule (3), any travelling expenses paid to the judgment debtor;

(iii) the fees paid to the Commissioner on any necessary affidavit;

(iv) if the judgment creditor is represented by an Instructing Attorney-at-law without Advocate Attorney-at-law, forty dollars in respect of the Instructing Attorney's-at-law charges; and

(v) if the judgment creditor is represented by Instructing Attorney-at-law and Advocate

Attorney-at-law thirty dollars in respect of Instucting Attorney's-at-law charges and forty-five dollars in respect of Advocate Attorney's-at-law fees;

(c) where the amount in respect of which the judgment summons issued is paid too late to prevent the attendance of the judgment creditor or, as the case may be, his Instructing Attorney-at-law or his Advocate Attorney-at-law, at the hearing, the sums specified in paragraph *(b)* may, if the Court so orders, be allowed instead of the sums specified in paragraph *(a)*;

(d) where the costs of and incidental to a judgment summons are directed to be taxed, R.S.C. Order 62 (which deals generally with the costs of proceedings in the Court) shall have effect in relation to those costs with such modifications as may be necessary.

Attachment or committal. [37/1981].

67. Notwithstanding anything in the R.S.C. Order 52 (which require an application for writ of attachment to be made by motion), but subject to the rule whereby except in certain cases such an application is required to be heard in open Court, an application for an order of committal in matrimonial proceedings pending in the Court shall be made by summons.

APPLICATIONS RELATING TO CHILDREN

Custody, care and supervision of children. [37/1981].

68. (1) An application for an order relating to the custody or education of a child, or providing for his supervision under section 50 of the Act shall be made by summons.

(2) Without prejudice to the right of any other person entitled to apply for an order as respects a child, the guardian of any child of the family and any other person who, by virtue of an order of a Court, has the custody or control of such a child or his care or supervision in pursuance of section 50 of the Act may, without obtaining leave to intervene in the cause, apply by summons for such an order as is mentioned in subrule (1).

(3) If on any application to the Court relating to a child there is a dispute as to the care and control of, or access to, the child, then, without prejudice to its powers under rules 32(5) and 34, the Court may refuse to admit any affidavit unless the party by whom or on whose behalf it was made is available at the hearing to give oral evidence, and a writ of subpoena to compel the attendance of a witness for the purpose of the application may issue in accordance with R.S.C. Order 38 rules 14 to 18.

(4) Where an affidavit filed for use in proceedings to which this rule applies contains an allegation of adultery or of an improper association with a named person, then, unless otherwise directed, it shall be indorsed with a notice in Form 18 and a copy of the affidavit, or of such part thereof as the Court may direct, indorsed 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 subrule (6) within eight days of service of the affidavit on him, inclusive of the day of service.

Form 18.

(5) Rule 36(4) shall apply to a person served with an affidavit under subrule (4) of this rule as it applies to a co-respondent.

(6) 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.

(7) An application by a Welfare Officer (Probation) designated by the Court under section 50 of the Act for the variation or discharge of an order made under section 50 of the Act or for directions as to the exercise of the powers of the probation officer under the order may, in case of urgency or where the application is unlikely to be opposed, be made by letter addressed to the Court and the probation officer shall, if practicable, notify any interested party of the intention to make the application.

Removal of child out of Trinidad and Tobago, etc.

69. (1) An application for leave to remove a child permanently out of Trinidad and Tobago shall be made by summons.

(2) A petitioner may, at any time after filing his petition and notwithstanding that it has not been served, apply *ex parte* to a Judge for an injunction restraining the respondent or any other person from removing any child of the family who has not attained the age of majority out of Trinidad and Tobago or out of the custody, care, or control of any person named in the application.

Reference to Welfare Officer (Probation).

70. (1) The Court may at any time refer to a Welfare Officer (Probation) for investigation and report any matter arising in matrimonial proceedings which concerns the welfare of a child.

(2) Without prejudice to subrule (1), any party to an application to which rule 68 applies may, before the application is heard, request the Registrar to call for a report from a Welfare Officer (Probation) on any matter arising on the application, and if the Registrar is satisfied that the other parties to the application consent and that sufficient information is available to enable the Welfare Officer (Probation) to carry out the investigation, the Registrar may refer the matter to a Welfare Officer (Probation) for investigation and report before the hearing.

(3) Where a reference is made under this rule—

(a) the Welfare Officer (Probation) may inspect the proceedings;

(b) after completing his investigation, the Welfare Officer (Probation) shall file his report and the Registrar shall thereupon notify the parties that they may inspect it and may bespeak copies on payment of the prescribed fee;

(c) the Registrar shall give notice to the Welfare Officer (Probation) of the date of hearing of the application or other proceeding.

Statement of other proceedings on application relating to child.

71. If, at the time when an application relating to a child is made in any cause, any proceedings relating to the same child and brought after the cause was begun are pending in the Court, or a Magistrate's Court, the applicant shall file a statement of the nature of these proceedings when he makes his application.

OTHER APPLICATIONS

Application in case of wilful neglect to maintain. Form 22.

72. (1) Every application under section 28 of the Act shall be made by originating summons in Form 22.

Form 23.

(2) There shall be filed with the application an affidavit containing the information required in Form 23, and also a copy of the application and of the affidavit for service on the respondent.

(3) There shall be annexed to the copy of the application for service a copy of the affidavit referred to in subrule (2) and a notice in Form 24 with Form 6 attached.

Form 24, 6.

(4) If the Registrar does not consider it practicable to fix a date for the hearing of the application at the time when it is issued, he may do so subsequently and in that case he shall forthwith give notice of the date to all parties.

(5) Within fourteen days after the time limited for giving notice of intention to defend, the respondent shall, if he intends to contest the application, file an answer setting out the grounds on which he relies (including any allegation which he wishes to make against the applicant), and shall in any case, unless otherwise directed, file an affidavit containing full particulars of his property and income, and the Registrar shall serve a copy of the answer, if any, and of the affidavit on the applicant.

(6) Where an answer is filed alleging adultery, the alleged adulterer shall be made a party cited and shall be served with a copy of the answer, and rules 10(6) and 12 shall apply with the necessary modifications as if the answer were a petition and the party cited were a co-respondent.

(7) A party cited who wishes to defend all or any of the charges made against him shall, within twenty-one days after the time limited for giving notice of intention to defend, file an answer and the Registrar shall serve a copy of the answer on the respondent.

(8) Where the respondent does not file an affidavit in accordance with subrule (5), the Court may order him to file an affidavit containing full particulars of his property and income and the Registrar shall serve a copy of any such affidavit on the applicant.

(9) Within fourteen days after being served with a copy of any answer filed by the respondent the applicant may file a reply, and in that case the Registrar shall serve a copy on the respondent and on any party cited in the respondent's answer.

(10) Within fourteen days after being served with a copy of the respondent's affidavit the applicant may file a further affidavit as to means and as to any fact stated in the respondent's affidavit which he wishes to dispute, and in that case the Registrar shall serve a copy on the respondent. No further affidavit shall be filed without leave.

(11) An applicant, respondent or party cited who files an answer, affidavit or reply under any of the preceding subrules of this rule shall at the same time file a copy for service on every party required to be served therewith.

(12) On the hearing of the application the Court may make such order as it thinks just.

(13) Subject to the provisions of this rule, rule 12 shall apply for the purpose of service of an originating summons under this rule.

Application for alteration of maintenance agreement during lifetime of parties. Form 25. [37/1981].

73. (1) An application under section 39 of the Act for the alteration of a maintenance agreement shall be made by originating summons in Form 25.

(2) There shall be filed with the application—

(a) an affidavit containing the information required in Form 26 exhibiting a copy of the agreement; and Form 26.

(b) a copy of the application and of the affidavit for service on the respondent.

(3) R.S.C. Order 12 (which deals with the service of originating process) shall apply and there shall be annexed to the copy of the application for service a copy of the affidavit referred to in subrule (2) and a notice in Form 24 with Form 6 attached. Form 24, 6.

(4) The respondent shall, within fourteen days after the time limited for giving notice of intention to defend, 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.

(5) A respondent who files an affidavit under subrule (4) shall at the same time file a copy which the Registrar shall serve on the applicant.

(6) Rules 60 and 61(4) to (6), shall apply with the necessary modifications to an application under section 39 of the Act as if it were an application for ancillary relief.

(7) Subject to the provisions of this rule, rule 12 shall apply for the purpose of service of an originating summons under this rule.

Application for alteration of maintenance agreement after death of one party.
Form 27.

74. (1) An application to the Court under section 40 of the Act for the alteration of a maintenance agreement after the death of one of the parties shall be made by originating summons in Form 27.

(2) There shall be filed in support of the summons an affidavit by the applicant exhibiting a copy of the agreement and an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof and stating—

(a) whether the deceased died domiciled in Trinidad and Tobago;

(b) the place and date of the marriage between the parties to the agreement and the name and status of the wife before the marriage;

(c) the name of every child of the family and of any other child for whom the agreement makes financial arrangements, and—

(i) the date of birth of each such child who is still living (or, if it be the case, that he has attained the age of majority), and the place where and the person with whom any such minor child is residing;

(ii) the date of death of any such child who has died since the agreement was made;

(d) whether there have been in any Court any, and if so what, previous proceedings with reference to the agreement or to the marriage or to the children of the family or to any other children for whom the agreement makes financial arrangement and the date and effect of any order or decree made in such proceedings;

(e) whether there have been in any Court any proceedings by the applicant against the deceased's estate under Part III of the Wills and Probate Act, and the date and effect of any order made in such proceedings; Ch. 9:03.

(f) in the case of an application by the surviving party, the applicant's means;

(g) in the case of an application by the personal representative of the deceased, the surviving party's means, so far as they are known to the applicant and the information mentioned in rule 75(3)*(a), (b)* and *(c)*;

(h) the facts alleged by the applicant as justifying an alteration in the agreement and the nature of the alteration sought;

(i) if the application is made after the end of the period of six months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the Court's permission to entertain the application is sought.

(3) There shall be lodged in the Registry a copy of the summons and of the affidavit for service on every respondent.

(4) The Registrar shall annex to every copy of the summons for service a copy of the affidavit in support and an acknowledgment of service in Form 6. Form 6.

Further proceedings on application under rule 74. [37/1981].

75. (1) Without prejudice to its powers under R.S.C. Order 15 (which deals with parties and other matters), the Court may at any stage of the proceedings direct that any person be added as a respondent to an application under rule 74.

(2) R.S.C. Order 15, rules 13 to 15 (which enables the Court to make representation orders in certain cases), shall apply to the proceedings.

(3) A respondent who is a personal representative of the deceased shall, within fourteen days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application stating—

(a) full particulars of the value of the deceased's estate for probate, after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout, including the amount of the estate duty and interest thereon;

(b) the person or classes of persons beneficially interested in the estate (giving the names and addresses of all living beneficiaries) and the value of their interests so far as ascertained; and

(c) if such be the case, that any living beneficiary (naming him) is a minor or a patient within the meaning of rule 78.

(4) If a respondent who is a personal representative of the deceased does not file an affidavit stating the matters mentioned in subrule (3), the Court may order him to do so.

(5) A respondent who is not a personal representative of the deceased may, within fourteen days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application.

(6) Every respondent who files an affidavit in answer to the application shall at the same time lodge a copy, which the Registrar shall serve on the applicant.

(7) Rules 60 and 61(4) to (6), shall apply with the necessary modifications to an application under section 40 of the Act as if it were an application for ancillary relief.

(8) Subject to the provisions of this rule, rule 12 shall apply for the purpose of service of the affidavit under this rule.

Application for maintenance from deceased's estate.

76. (1) An application under section 41 of the Act by the former spouse of a deceased person for an order that reasonable provision for his or her maintenance be made out of the net estate of the deceased shall be made by originating summons in Form 28.

Form 28.

(2) There shall be filed in support of the summons an affidavit by the applicant exhibiting an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof and stating—

(a) the residence of the applicant;

(b) the place and date of the marriage and the name and status of the wife before the marriage;

(c) the name of any child of the family and—

(i) the date of birth of each such child who is still living (or, if such be the case, that he has attained the age of majority), and the place where and the person with whom any such minor child is residing;

(ii) the date of death of any such child who has died since the marriage was dissolved or annulled;

(d) particulars of all previous proceedings with reference to the marriage or the children of the family, and the date and effect of any order or decree made in those proceedings;

(e) whether any application was made or deemed to be made by the applicant during the lifetime of the deceased where the survivor is a former wife

15 and 16. Geo. 5, c. 49.

or a former husband of the deceased, for such an order as is mentioned in section 190 of the Supreme Court of Judicature (Consolidation) Act 1925, of the United Kingdom and, if so, the date and effect of the order (if any) made on any such application, or (if no such application was made by the applicant or such an application was made by the applicant and no order was made on the application) the reasons why no such application or order was made, in so far as they are within the applicant's knowledge or belief;

(f) the date of the deceased's death and whether he died domiciled in Trinidad and Tobago;

(g) the applicant's means;

(h) the nature of the provision which the applicant desires to be made for his or her maintenance out of the deceased's estate;

(i) that the applicant has not remarried;

(j) if the application is made after the end of the period of six months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the Court's permission to entertain the application is sought.

(3) The procedure on an application to which this rule applies shall be the same as on an application to which rule 74 applies and subrules (3) and (4) of that rule and rule 75 shall apply accordingly, with any necessary modifications.

(4) On the hearing of the application the personal representatives shall produce to the Court the grant of representation to the deceased's estate and, if an order is made, the grant shall remain in the custody of the Court until a memorandum of the order has been indorsed thereon or permanently affixed thereto.

Application for matrimonial home order.

77. (1) An application for an order under Part IV of the Act (herein referred to as a "matrimonial home order") shall be made by summons.

(2) There shall be filed with the application an affidavit by the applicant verifying the statements in the application and also a copy of the application and of the affidavit for service on the respondent.

(3) There shall be annexed to the copy of the application for service a copy of the affidavit referred to in subrule (2) and a notice in Form 29 with Form 6 attached. Form 29, 6.

(4) Where application is made for an order under section 56 of the Act, notice of the application in Form 28 with Form 6 attached, together with a copy of the application, shall be served on the landlord of the dwelling house to which the application relates. Form 28, 6.

DISABILITY

Person under disability must sue by next friend, etc.

78. (1) In this rule—

"patient" means a person who, by reason of mental disorder, is incapable of managing and administering his property and affairs;

"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 person's name shall be used in any proceedings as next friend of a person under disability unless he is the Chief State Solicitor or the documents mentioned in subrule (8) have been filed.

(4) Where a person is authorised by law to conduct legal proceedings in the name of a patient or on his behalf, that person

shall, subject to subrule (3), be entitled to be next friend or guardian *ad litem* of the patient in any matrimonial proceedings to which his authority extends.

(5) Where a person entitled to defend any matrimonial proceedings is a patient and there is no person authorised by law to defend the proceedings in his name or on his behalf, then—

(a) the Chief State Solicitor shall, if he consents, be the patient's guardian *ad litem,* but at any stage of the proceedings an application may be made on not less than four days' notice to the Chief State Solicitor, for the appointment of some other person as guardian *ad litem;*

(b) in any other case, an application may be made on behalf of the patient for the appointment of a guardian *ad litem,*

and there shall be filed in support of any application under this subrule the documents mentioned in subrule (8).

(6) Where a petition, answer, or originating summons has been served on a person whom there is reasonable ground for believing to be a person under disability and no notice of intention to defend has been given, or answer or affidavit in answer filed, on his behalf, the party at whose instance the document was served shall, before taking any further step in the proceedings, apply to the Court for directions as to whether a guardian *ad litem* should be appointed to act for that person in the cause, and on any such application the Court may, if it considers it necessary in order to protect the interests of the person served, order that some proper person be appointed his guardian *ad litem*.

(7) 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—

(a) is the Chief State Solicitor or has been appointed by the Court to be guardian *ad litem;* or

(b) has filed the documents mentioned in subrule (8).

(8) The documents referred to in subrules (3), (5) and (7) are—

(a) a written consent to act by the proposed next friend or guardian *ad litem;*

(b) where the person under disability is a patient and the proposed next friend or guardian *ad litem* is authorised by law to conduct the proceedings in his name or on his behalf, an office copy, sealed with the seal of the Court, of the order or other authorisation made or given under any rule of law; and

(c) except where the proposed next friend or guardian *ad litem* is authorised as mentioned in paragraph *(b)*, a certificate by the Attorney-at-law acting for the person under disability—

(i) 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 and, where the person under disability is a patient, that there is no person authorised as aforesaid; and

(ii) that the person named in the certificate as next friend or guardian *ad litem* has no interest in the cause or matter in question adverse to that of the person under disability and that he is a proper person to be next friend or guardian *ad litem*.

Service on person under disability.

79. (1) Where a document to which rule 5(3)*(b)* or 12 applies is required to be served on a person under disability within the meaning of rule 78, 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, on the person with whom he resides or in whose care he is;

(b) in the case of a patient—

(i) on the person (if any) who is authorised by law to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served; or

(ii) if there is no person so authorised, on the Chief State Solicitor if he has consented under rule 78 (5) to be the guardian *ad litem* of the patient; or

(iii) in any other case, on the person with whom the patient resides or in whose care he is,

but 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.

(2) Where a document to which rule 12 applies is served in accordance with subrule (1), it shall be indorsed with a notice in Form 30; and after service has been effected the person at whose instance the document was served shall, unless the Chief State Solicitor is the guardian *ad litem* of the person under disability or the Court otherwise directs, file an affidavit by the person on whom the document was served stating whether the contents of the document were, or its purport was, communicated to the person under disability and, if not, the reasons for not doing so.

Form 30.

Petition for nullity on ground of mental disorder.

80. (1) Where a petition for nullity of marriage has been presented on the ground that at the time of the marriage the respondent was suffering from mental disorder of such a kind or to such an extent as to be unfitted for marriage 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 Court.

(2) The Court on the hearing of an application for leave 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.

81. (1) Without prejudice to rule 56 if in any matrimonial proceedings it appears to the Court that any child ought to be separately represented, the Court may—

(a) of its own motion, appoint the Chief State Solicitor if he consents; or

(b) on the application of any other proper person, appoint that 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)*(b)* shall, on making the application, file a certificate by an Attorney-at-law certifying that the person named in the certificate as the proposed guardian *ad litem* has no interest in the proceedings adverse to that of the child and that he is a proper person to be such guardian.

PROCEDURE: GENERAL

Service out of Trinidad and Tobago. [37/1981].

82. (1) Any document in matrimonial proceedings may be served out of Trinidad and Tobago without leave either in the manner prescribed by these Rules or where the proceedings are pending in the Court, in accordance with R.S.C. Order 11 (which relates to the service of a writ abroad).

(2) Where the document is served in accordance with R.S.C. Order 11, that Order shall have effect in relation to service of the document as it has effect in relation to service of notice of a writ, except that the affidavit of service shall, if the document was served personally, show the server's means of knowledge of the identity of the person served.

(3) Where a petition is to be served on a person out of Trinidad and Tobago, then—

(a) the time within which that person must give notice of intention to defend shall be determined having regard to the practice adopted under R.S.C. Order 11 rule 2(3) (which requires an order for

leave to serve a writ out of the jurisdiction to limit the time for appearance) and the notice in Form 5 shall be amended accordingly;

Form 5.

(b) if the petition is to be served otherwise than in accordance with R.S.C. Order 11 and there is reasonable ground for believing that the person to be served does not understand English, the petition shall be accompanied by a translation, approved by the Registrar, of the notice in Form 5, in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place where service is to be effected: Save that this paragraph shall not apply in relation to a document which is to be served in a country in which the official language, or one of the official languages, is English.

Form 5.

(4) Where a document specifying the date of hearing of any proceedings is to be served out of Trinidad and Tobago, the date shall be fixed having regard to the time which would be limited under subrule (3)*(a)* for giving notice of intention to defend if the document were a petition.

Service by post.

83. Where a document is required by these Rules to be sent to any person, it may, unless otherwise directed, be sent by post or delivered to—

(a) if an Attorney-at-law is acting for him, the Attorney's-at-law address;

(b) if he is acting in person, the address for service given by him or, if he has not given an address for service, his last known address, but if in the opinion of the Registrar the document would be unlikely to reach him if sent to that address, the Registrar may dispense with sending the document to him.

Service of documents where no special mode of service prescribed.

84. Unless otherwise directed, service of any document in matrimonial proceedings shall, if no other mode of service is prescribed or ordered, be effected—

(a) if an Attorney-at-law is acting for the person to be served, by leaving the document at, or sending it by post to, the Attorney's address;

(b) if the person to be served is acting in person, by delivering the document to him or by leaving it at, or sending it by post to, the address for service given by him or, if he has not given an address for service, his last known address,

but where, in a case to which paragraph *(b)* applies, it appears to the Registrar that it is impracticable to deliver the document to the person to be served and that, if the document were left at, or sent by post to, the address specified in that paragraph, it would be unlikely to reach him, the Registrar may dispense with service of the document.

Advertisements to be filed.

85. Where the Court has authorised notice by advertisement to be substituted for service and the advertisement has been inserted by some person other than the Registrar, that person shall file copies of the newspapers containing the advertisement.

Mode of making applications.

86. Except where these Rules, or any rules applied by these Rules, otherwise provide, every application in matrimonial proceedings shall be made by summons.

Non-application of certain rules of Order 3 of the R.S.C. [37/1981 126/1996].

87. R.S.C. Order 3 rules 6, 6A, 6B, 6C, 6D and 7, shall not apply to matrimonial proceedings.

Mode of giving notice.

88. Unless otherwise directed, any notice which is required by these Rules to be given to any person shall be in writing and, if it is to be given by the Registrar, shall be given in such manner as he considers appropriate.

COURT FEES

Court fees. Second Schedule.

89. (1) The fees specified in the Second Schedule shall be taken in all matrimonial proceedings.

(2) The same fees as in actions and other proceedings under the Rules of the Supreme Court for the time being in force shall be taken for any other act or matter not provided for in the Second Schedule.

Second Schedule.

Scale of costs.

90. (1) Subject to rules 91(2) and (4) the costs of matrimonial proceedings shall be fixed by the Registrar by analogy to the scale of costs for the time being in force under the Rules of the Supreme Court.

(2) The Court may, if it thinks fit, allow to the wife against the husband, Attorney-at-law and client costs to be taxed.

Fixed costs. [125/1996].

91. (1) In this rule—

"consent order for maintenance" means an order for maintenance pending suit, a periodical payments order or a lump sum order, made or to be made in terms agreed upon by the parties or under rule 62;

"higher rate case" means a cause in which the petitioner alleges any such fact as is mentioned in section 4(1)*(b)* or *(e)* of the Act, or alleges any such facts as are mentioned in two or more paragraphs of the said section 4(1), or prays for a decree of nullity.

(2) Where in an undefended cause for divorce, judicial separation or nullity of marriage the petitioner is granted a decree with costs, whether as between party and party or not, the costs shall, if his Attorney-at-law so elects, be fixed in accordance with this rule instead of being taxed.

(3) Where costs are fixed there shall be allowed as between party and party such of the following items as are applicable:

(a) in respect of Instructing Attorneys' charges—

(i) $1,500.00 or, in a higher rate case, $1,800.00;

(ii) if the petitioner's Attorney so requests, $220.00 in respect of any ancillary

application on which a consent order for maintenance has been made;

(iii) $75.00 in respect of any statement as to the arrangements for the children filed under rule 6(2);

(iv) where an affidavit of means has been filed under rule 6(3), $100.00; and

(v) $35.00 in respect of any certificate as to reconciliation filed under rule 10(2);

(b) in respect of Attorney's-at-law fees—

(i) for settling the petition, $200.00 or, in a higher rate case, $250.00;

(ii) for settling an affidavit of means filed under rule 6(3), $125.00;

(iii) for giving written advice on evidence $175.00;

(iv) with brief on hearing $1,000.00; and

(v) on conference, $125.00;

(c) in respect of other disbursements—

(i) the Court fees paid on the petitioner's behalf;

(ii) such sums in respect of witnesses' allowances, medical reports and the other disbursements as would have been allowed if the costs had been taxed, not exceeding, in the case of inquiry agents' fees, the sum of $1,000.00.

(4) A petitioner's Attorney-at-law who elects to have his costs fixed under subrule (2) shall give notice to that effect to the Registrar, stating the sums which he claims should be allowed.

MISCELLANEOUS

Inspection, etc., of documents retained in Court.

92. (1) A party to any matrimonial proceedings or his Attorney-at-law or the Attorney General may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the Registry in those proceedings.

(2) Except as provided by rule 70(3) and subrule (1) of this rule, no document filed in the Registry other than a decree or order made in open Court, shall be open to inspection by any person without the leave of the Registrar, and no copy of any such document, or of an extract from any such document, shall be taken by, or issued to, any person without such leave.

Revocation and savings.

93. The Divorce and Matrimonial Causes Rules 1932, are revoked, but the provisions of those Rules shall continue to apply to all proceedings for divorce, nullity of marriage or judicial separation pending at the commencement of the Act for the purpose of the hearing and determination thereof in accordance with section 63(2) of the Act.

FIRST SCHEDULE

FORM 1

Rule 4(3).
[13 of 1988].

NOTICE OF APPLICATION UNDER RULE 4

In the High Court of Justice

No. of Matter.....
(Seal)

In the Matter of a proposed petition for dissolution of marriage

Between ..... Applicant

and ..... Respondent

TAKE NOTICE that the application 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 one year from the date of the said marriage will be heard by the Court in Port-of-Spain/San Fernando/Tobago* 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 fit.

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 eight (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 an Attorney-at-law to act for you, you should at once give him all the documents which have been served on you, so that he may sign the relevant statement appearing therein.

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

.....
Registrar of the Supreme Court

To the Respondent.

(Here set out Form 6)

*Delete whichever is inapplicable.

Rule 7.
[29/1983].

FORM 2

GENERAL FORM OF PETITION

In the High Court of Justice

No. of Matter .....

Between ..... Petitioner

and ..... Respondent

(and ..... Co-Respondent)

THE PETITION OF ..... SHOWS THAT—

1. On the ..... day of .....20..... the petitioner ..... was lawfully married to ..... *(hereinafter called the respondent)* at ..... .

2. The petitioner and the respondent have cohabited at *(state the last address at which they have cohabited in Trinidad and Tobago)* (*or* The petitioner and the respondent have not cohabited in Trinidad and Tobago).

3. Both the petitioner and the respondent are domiciled in Trinidad and Tobago *(or as the case may be);* the petitioner is a *(state occupation)* and resides at ....., and the respondent is a..... *(state occupation)* and resides at ..... .

4. There is (are) (no) *(or state number)* children of the family now living (namely) *(state the name of each child and his date of birth or, if it be the case, that he is over eighteen years and in the case of each minor child over the age of sixteen years, whether he is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation).*

5. *(In the case of a husband's petition)* No other child now living has been born to the respondent during the marriage so far as is known to the petitioner *(or in the case of a wife's petition)* No other child now living has been born to the petitioner during the marriage [except *(state the name of any such child and his date of birth, or if it be the case, that he is over eighteen years)*].

6. *(Where there is a dispute whether a child is a child of the family]* The petitioner alleges that ..... is [not] a child of the family because *[give full particulars of the facts relied on by the petitioner in support of his or her allegation that the child is or, as the case may be, is not, a child of the family).*

7. *(Where appropriate in the case of a child who is under eighteen years)* The said ..... was, on the ..... day of .....20 ..... , received into the care of ..... .

8. *(Where an application is made in the petition for an order for the support of a child of whom the respondent is not a parent)* The respondent assumed responsibility for the maintenance of the said ..... to the following extent and for the following time namely *(give details)*. There is no other person liable to maintain the said child (except .....).

9. There have been no previous proceedings in any Court in Trinidad and Tobago or elsewhere with reference to the marriage (or to any children of the family) [except (*state the nature of the proceedings, the date and effect of any decree or order and, 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*)].

10. The following (*or* No) agreement or arrangement has been made or is proposed to be made between the parties for the support of the respondent (*or* the petitioner) (and the said children) [namely *(state details)*].

11. *[In the case of a petition for divorce alleging only any such fact as is mentioned in section* 4(1)*(e) of the Matrimonial Proceedings and Property Act]* The petitioner proposes, if a *decree nisi* is granted, to make the following financial provision for the respondent *(give details of any proposal not mentioned in paragraph 10)* (*or* The petitioner makes no proposals for financial provision for the respondent in the event of a *decree nisi* being granted).

12. (*In the case of a petition for divorce*) The said marriage has broken down irretrievably.

13. The respondent has committed adultery with ..... and the petitioner finds it intolerable to live with the respondent (*or* The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent) (*or* The respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of this petition) (*or* The parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and the respondent consents to a decree being granted) (*or* The parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition) (*or, where the petition is not for divorce or judicial separation, set out the ground on which relief is sought, and in any case state with sufficient particularity the facts relied on but not the evidence by which they are to be proved*).

The petitioner therefore prays—

(1) That the said marriage may be dissolved (*or as the case may be*).

(2) That he (she) may be granted the custody of [*state name*[*s*] *of the child (ren) and add any application for a declaration under section* 48(3) *of the Act]*.

(3) (*Where appropriate*) That ..... may be ordered to pay the costs of this suit.

(4) That he (she) may be granted the following ancillary relief, namely (*state particulars of any application for ancillary relief which it is intended to claim*).

The names and addresses of the persons who are to be served with this petition are *(give particulars, stating if any of them is a person under disability).*

The petitioner's address for service is *[Where the petitioner sues by an Attorney-at-law, state the Attorney's name or firm and address, or, where the petitioner sues in person, state his place of residence as given in paragraph 3 of the petition or, if no place of residence in Trinidad and Tobago is given, the address of a place in Trinidad and Tobago at or to which documents for him may be delivered or sent].*

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

NOTE: *Under the Matrimonial Causes Rules further information is required in certain cases.*

Rule 10(2).

FORM 3

CERTIFICATE WITH REGARD TO RECONCILIATION

(Heading as in Form 5)

I,..... the Attorney-at-law acting for the petitioner in the above cause do hereby certify that I have (*or* have not) discussed with the petitioner the possibility of a reconciliation and that I have (*or* have not) given to the petitioner the names and addresses of persons qualified to help effect a reconciliation.

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

Signed .....
Attorney-at-law for the Petitioner

Rule 6(2).

FORM 4

STATEMENT AS TO ARRANGEMENTS FOR CHILDREN

(Heading as in Form 5)

The present arrangements for the minor children of the family under sixteen years and those over sixteen years who are receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation are as follows:

(State in respect of each child)

(a) residence *(state where the child is living, particulars of accommodation, who looks after the child and who is at present responsible for his care and upbringing)*;

(b) education, etc. *(state the school or other educational establishment which the child is attending or, if he is working, his place of employment, the nature of his work and details of any training he is receiving)*;

(c) financial provision *(state who is supporting the child or contributing to his support and the extent thereof);*

(d) access *(state any arrangements which have been agreed for access by either of the parties and the extent to which access is and has been afforded).*

The arrangements proposed for the children in the event of a decree being granted are as follows:

(a) residence;

(b) education, etc.;

(c) financial provision;

(d) access.

(In each of these paragraphs state whether the grant of a decree will affect the present arrangements set out above, whether it is proposed that those arrangements should continue, and if not, and to the extent that they are likely to alter, state what alteration is anticipated and what proposals in substitution are proposed. In the case of residence, where it is proposed that for any period a child should be in the immediate care of a person other than the petitioner, give details of that person's willingness and ability to care for the child . In the case of education state, if possible, any long-term proposals for further education or training. In the case of financial provision give details of any application which will be made for ancillary relief in respect of the children and, where applicable, state the object of any application which is other than for the day-to-day support of the child].

The said child(ren) is (are) (not) suffering from (any) serious disability or chronic illness or from the effects of (any) serious illness [namely *(state in respect of each child so suffering, the nature of the disability or illness and attach a copy of any up-to-date medical report which is available)*] .

The said child(ren) is (are) (not) under the supervision of a probation officer or organisation [namely *(state the date of any order, for supervision and the circumstances which gave rise to its being made)*] ..... .

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

Signed .....
Petitioner

Rule 10(6).

FORM 5

NOTICE OF PROCEEDINGS

In the High Court of Justice

No. of Matter .....
(Seal)

[1]Or as the case may be.

Between .....Petitioner
and .....Respondent
(and ..... Co-Respondent)

TAKE NOTICE that a petition (for divorce) ([1]) has been presented to this Court. A sealed copy of it (and a copy of the petitioner's proposals regarding the children) (is) [are] delivered with this notice.

1. You must complete and detach the acknowledgment of service and send it so as to reach the Court within eight days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs.

[2]Delete if inapplicable.

2. ([2]) If you wish to do so, you may send to the Court a statement setting out your views on the proposals regarding the children. If you send a statement it will be placed before the Judge dealing with the arrangements for the child[ren] and a copy of your statement will be sent to the petitioner.

3. If the reply to Question 4 (or 6) ([2]) in the acknowledgment is Yes, you must, within twenty-nine days after you receive this notice, inclusive of the day of receipt, file in the Registry an answer to the petition ([2]) together with a copy for every other party to the proceedings.

4. ([2]) If the reply to Question 5 in the acknowledgment is Yes, the consequences to you are that—

(a) provided the petitioner establishes the fact that the parties to the marriage have lived apart for two years immediately preceding the presentation of the petition and that you consent, a decree will be granted unless, in the case of a petition for divorce, the Court is satisfied that the marriage has not broken down irretrievably;

(b) your right to inherit from the petitioner if he or she dies without having made a Will ceases on the grant of a decree of judicial separation or on a *decree nisi* of divorce being made absolute;

(c) in the case of divorce the making absolute of the decree will end the marriage thereby affecting any right to a pension which depends upon the marriage continuing or upon your being left a widow; the State widow's pension will not be payable to you when the petitioner dies,

and any rights of occupation you may have in the matrimonial home under Part IV of the Act will cease unless the Court directs otherwise during the subsistence of the marriage;

(d) apart from the consequences listed above there may be others applicable to you depending on your particular circumstances. About these you should obtain legal advice from an Attorney-at-law.

5. ([2]) If after consenting you wish to withdraw your consent you must immediately inform the Court and give notice to the petitioner.

6. ([2]) The only fact on which the petitioner relies in support of the petition is that the parties to the marriage have lived apart for at least five years. Section 11 of the Matrimonial Proceedings and Property Act, provides that if in such a case the respondent applies to the Court for it to consider the respondent's financial position after the divorce, the *decree nisi* cannot be made absolute unless the Court is satisfied that the petitioner has made or will make proper financial provision for the respondent, or else that the petitioner should not be required to make any financial provision for the respondent. Paragraph 11 of the petition will tell you whether the petitioner proposes to make any financial provision for you. It is important that you should consider this information carefully before answering Question 7 in the acknowledgment.

7. ([2]) If the reply to Question 7 in the acknowledgment is Yes, you must, before the decree is made absolute, make application to the Court by filing and serving on the petitioner a notice in Form 12.

8. If you intend to instruct an Attorney-at-law 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. If you do not intend to instruct an Attorney-at-law, you should nevertheless give an address for service in the acknowledgment so that any documents affecting your interests which are sent to you will in fact reach you. Change of address should be notified to the Court.

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

.....
Registrar of the Supreme Court

To .....

[Here set out Form 6]

Rule 4(3).

FORM 6

ACKNOWLEDGEMENT OF SERVICE

If you intend to instruct an Attorney-at-law to act for you, give him this form immediately.

(*Heading as in Form* 5)

1. Have you received the originating summons (and copy of the supporting affidavit) delivered with this form?

2. On what date and at what address did you receive it?

3. Are you the person named as the Respondent in the application?

4. Do you intend to oppose the application?

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

Signed .....

Address for service (Unless you intend to instruct an Attorney-at-law, give your place of residence or if you do not reside in Trinidad and Tobago the address of a place in Trinidad and Tobago to which documents may be sent to you. If you subsequently wish to change your address for service, you must notify the Court).

If an Attorney-at-law is instructed he must sign the following statement:

I am (We are) acting for the Respondent (or the above-named) in this matter.

Signed .....

Address for Service: .....

Rule 10(6), 12(5)*(a)*, 13(1).

FORM 7

ACKNOWLEDGEMENT OF SERVICE

If you intend to instruct an Attorney-at-law to act for you, give him this form immediately.

(Heading as in Form 5)

[(2)]Or as the case may be.

1. Have you received the petition for (divorce) ([2]) delivered with this form?

2. On what date and at what address did you receive it?

3. Are you the person named as the Respondent in the petition?

4. Do you intend to defend the case?

5. ([3]) *In the case of a petition alleging any such fact as is mentioned in section* 4(1)*(d) of the Matrimonial Proceedings and Property Act (two years' separation and consent of respondent):* Do you consent to a decree being granted?

[3]Delete if inapplicable.

6. ([3]) *[In the case of a petition asking for divorce and alleging any such fact as is mentioned in section* 4(1)*(e) of the Act (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?

7. ([3]) In the event of the grant of a *decree nisi* and the Court holding that the only fact on which the petitioner was entitled to rely in support of the petition was any such fact as is mentioned in section 4(1)*(d)* or *(e)* of the said Act (two years' separation and the consent of the respondent 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?

8. Even if you do not intend to defend the case do you wish to be heard on the claim[s] in the petition for ([4])—

[4]Insert whichever of the following items is applicable.

(a) costs .....
(b) custody of the children .....
(c) periodical payments .....
(d) maintenance pending suit .....
(e) secured periodical payments .....
(f) a lump sum .....
(g) a settlement or transfer of property .....
(h) variation of a settlement .....

9. ([5]) Do you wish to make any application on your own account for—

[5]Delete Question 9 (except in the case of a respondent spouse in proceedings begun by petition).

(a) access to the children .....
(b) custody of the children .....
(c) periodical payments for the children .....
(d) maintenance pending suit .....
(e) periodical payments for yourself .....
(f) a lump sum .....
(g) secured periodical payments .....
(h) settlement or transfer of property .....
(i) variation of a settlement .....

[If possible answer YES or NO against each item in Question(s) 8 (and 9). If you are uncertain leave a blank].

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

Signed .....

L.R.O. 1/2006

Address for service (Unless you intend to instruct an Attorney-at-law, give your place of residence or if you do not reside in Trinidad and Tobago the address of a place in Trinidad and Tobago to which documents may be sent to you. If you subsequently wish to change your address for service, you must notify the Court).

If an Attorney-at-law is instructed he must sign the following statement:

I am [We are] acting for the Respondent [*or* the above-named] in this matter.

Signed .....

Address for service: .....

Rule 28A. [71/1991].

FORM 7A

In the High Court of Justice
(Matrimonial)

No.

REQUEST FOR DIRECTIONS FOR TRIAL

Between

Petitioner

And

Respondent

The above-named Petitioner ..... hereby applies to the Registrar for directions for trial of this undefended cause by entering it in the Special Procedure List. The Petitioner's affidavit of evidence is lodged herewith, and marked "A".

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

.....
Attorney-at-law for the Petitioner

DIRECTIONS FOR TRIAL

I am satisfied that the requirements of rule 28A(1) of the Matrimonial Causes Rules have been complied with, and I direct that the cause be heard as undefended at the High Court, ...

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

.....
Registrar,
Supreme Court

FORM 7B

Rule 28A.

In the High Court of Justice
(Matrimonial)

No.

AFFIDAVIT BY PETITIONER IN SUPPORT OF PETITION UNDER SECTION 4(1)*(a)* OF THE MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

(Heading as in Form 2)

Question	Answer
1. Have you read the petition filed in this case?	
2. Do you wish to alter or add to any statement in the petition? If so, state the alterations or additions.	
3. Subject to these alterations and additions (if any), is everything stated in your petition true? If any statement is not within your own knowledge, indicate this and say whether it is true to the best of your information and belief.	
4. State briefly your reasons for saying that the Respondent has committed the adultery alleged.	
5. On what date did it first became known to you that the Respondent had committed the adultery alleged?	
6. Do you find it intolerable to live with the Respondent?	
7. Since the date given in the answer to Question 5, have you ever lived with the Respondent in the same household? If so, state the addresses and the period or periods, giving dates.	

I, ...
(full name)

of .....
(full residential address)

.....
(occupation)

make oath and say as follows:

1. I am the Petitioner in this cause.
2. The answers to Questions 1 to 7 above are true.
3. (1)* I identify the signature .....

   (2)* appearing on the copy acknowledgement of service now produced to me and marked "A" as the signature of my husband/wife, the Respondent in this cause.

L.R.O. 1/2006

4. (3)* I identify the signature .....
   (2)* appearing at the foot of the document now produced to me and marked "B" as the signature of the Respondent.
5. (4)*
6. I ask the Court to grant a decree dissolving my marriage with the Respondent (5)* on the grounds stated in my petition [and to order the Respondent/Co-respondent to pay the costs of this suit] (6)*.

Sworn at .....

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

Before me, ...
Commissioner of Affidavits

**See* instructions below:

(1)* Delete if the acknowledgement is signed by an Attorney-at-law.
(2)* Insert name.
(3)* Insert where confession exhibited.
(4)* Exhibit any other document on which the Petitioner wishes to rely.
(5)* If the Petitioner seeks a judicial separation, amend accordingly.
(6)* Amend or delete as appropriate.

Rule 28A.

FORM 7C

In the High Court of Justice
(Matrimonial)

No.

AFFIDAVIT BY PETITIONER IN SUPPORT OF PETITION UNDER SECTION 4(1)*(b)* OF THE MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

(Heading as in Form 2)

Question	Answer
1. Have you read your petition in this case including what is said about the behaviour of the Respondent?	
2. Do you wish to alter or add to any statement in the petition or the particulars? If so, state the alterations or additions.	
3. Are all the statements in the petition and the particulars, including any alterations or additions, true?	

4. If you consider that the Respondent's behaviour has affected your health, state the effect that it has had.
5. Since the date of the last instance of the Respondent's behaviour set out in the petition or the particulars have you lived in the same household as the Respondent? If so, state the address(es) and the period or periods, giving dates.

I, ...
(full name)

of .....
(full residential address)

.....
(occupation)

make oath and say as follows:

1. I am the Petitioner in this cause.
2. The answers to Questions 1 to 5 above are true.
3. (1)* I identify the signature, ...
   (2)* appearing on the copy acknowledgement of service now produced to me and marked "A" as the signature of my husband/wife, the Respondent in this cause.
4. I exhibit marked "B" a certificate/report of Dr. ..... (3)*.
5. I ask the Court to grant a decree dissolving my marriage with the Respondent (4)* on the grounds stated in my petition [and to order the Respondent to pay the costs of this suit] (5)*.

Sworn at .....

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

Before me, ...
Commissioner of Affidavits

See instructions below:

(1)* Delete if the acknowledgement is signed by an Attorney-at-law.

(2)* Insert name.

(3)* Exhibit any medical report or documents on which the Petitioner wishes to rely.

(4)* If the Petitioner seeks a judicial separation, amend accordingly.

(5)* Delete if costs are not sought.

L.R.O. 1/2006

Rule 28A.

FORM 7D

In the High Court of Justice
(Matrimonial)

No.

AFFIDAVIT BY PETITIONER IN SUPPORT OF PETITION UNDER 4(1)*(c)* OF THE MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

[Heading as in Form 2]

Question	Answer
1. Have you read the petition filed in this case?	
2. Do you wish to alter or add to any statement in the petition? If so, state the alterations or additions.	
3. Subject to these alterations and additions (if any), is everything stated in your petition true? If any statement is not within your own knowledge indicate this and say whether it is true to the best of your information and belief.	
4. State the date on which you and the Respondent separated, and, if different, the date on which the alleged desertion began. Did you agree to the separation?	
5. State briefly the facts you rely on in support of the allegation that the Respondent deserted you, and your reason for saying that the desertion continued up to the presentation of the petition.	
6. Did the Respondent ever offer to resume cohabitation?	
7. State as far as you know the various addresses at which you and the Respondent have respectively lived since the last date given in the answer to Question 4, and the periods of residence at each address—	

Petitioner's Address	*Respondent's Address*
From	From
To	To

Question	Answer
8. Since the last date given in the answer to Question 4, have you ever lived with the Respondent in the same household? If so, state the address(es) and the period or periods, giving dates.	

I, ...
(full name)

of .....
(full residential address)

.....
(occupation)

make oath and say as follows:

1. I am the Petitioner in this cause.
2. The answers to Questions 1 to 8 above are true.
3. (1)* I identify the signature, ...
   (2)* appearing on the copy acknowledgement of service now produced to me and marked "A" as the signature of my husband/wife, the Respondent in this cause.
4. (3)*
5. I ask the Court to grant a decree dissolving my marriage with the Respondent (4)* on the grounds stated in my petition (and to order the Respondent to pay the costs of this suit) (5)*.

Sworn at .....

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

Before me, ...
Commissioner of Affidavits

**See* instructions below:

(1)* Delete if the acknowledgement is signed by an Attorney-at-law.

(2)* Insert name.

(3)* Exhibit any other documents on which the Petitioner wishes to rely.

(4)* If the Petitioner seeks a judicial separation, amend accordingly.

(5)* Delete if costs are not sought.

L.R.O. 1/2006

Rule 28A.

FORM 7E

In the High Court of Justice
(Matrimonial)

No.

AFFIDAVIT BY PETITIONER IN SUPPORT OF PETITION UNDER 4(1)*(d)* OF THE MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

(Heading as in Form 2)

Question	Answer
1. Have you read the petition filed in this case?	
2. Do you wish to alter or add to any statement in the petition? If so, state the alterations or additions.	
3. Subject to these alterations and additions (if any) is everything stated in your petition true? If any statement is not within your own knowledge, indicate this and say whether it is true to the best of your information and belief.	
4. State the date on which you and the Respondent separated.	
5. State briefly the reason or main reason for the separation.	
6. State the date when and the circumstances in which you came to the the conclusion that the marriage was in fact at an end.	
7. State as far as you know the various addresses at which you and the Respondent have respectively lived since the date given in the answer to Question 4, and the periods of residence at each address:	

Petitioner's Address	*Respondent's Address*
From	From
To	To

Question	Answer
8. Since the last date given in the answer to Question 4, have you ever lived with the Respondent in the same household? If so, state the address(es) and the period or periods, giving dates.	

I, ...
(full name)

of, ...
(full residential address)

.....
(occupation)

make oath and say as follows:

1. I am the Petitioner in this cause.
2. The answers to Questions 1 to 8 above are true.
3. (1)* I identify the signature, ...

(2)* appearing on the copy acknowledgement of service now produced to me and marked "A" as the signature of my husband/wife, the Respondent in this cause.

4. (3)*

5. I ask the Court to grant a decree dissolving my marriage with the Respondent (4)* on the grounds stated in my petition [and to order the Respondent to pay the costs of this suit] (5)*.

Sworn at .....

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

Before me, ...
Commissioner of Affidavits

**See* instructions below:

(1)* Delete if the acknowledgement is signed by an Attorney-at-law.

(2)* Insert name.

(3)* Exhibit any other documents on which the Petitioner wishes to rely.

(4)* If the Petitioner seeks a judicial separation, amend accordingly.

(5)* Delete if costs are not sought.

FORM 7F Rule 28A.

In the High Court of Justice
(Matrimonial)

No.

AFFIDAVIT BY PETITIONER IN SUPPORT OF PETITION UNDER SECTION 4(1)*(e)* OF THE MATRIMONIAL PROCEEDINGS AND PROPERTY ACT

(Heading as in Form 2)

Question	Answer
1. Have you read the petition filed in this case?	
2. Do you wish to alter or add to any statement in the petition? If so, state the alterations or additions.	
3. Subject to these alterations and addition (if any) is everything stated in your petition true? If any statement is not within your own knowledge, indicate this and say whether it is true to the best of your information and belief.	
4. State the date on which you and the Respondent separated.	
5. State briefly the reason or main reason for the separation.	
6. State the date when and the circumstances in which you came to the conclusion that the marriage was in fact at an end.	

L.R.O. 1/2006

7. State as far as you know the various addresses at which you and the Respondent have respectively lived since the date given in the answer to Question 4, and the periods of residence at each address:

Petitioner's Address	*Respondent's Address*
From	From
To	To

Question	Answer
8. Since the last date given in the answer to Question 4, have you ever lived with the Respondent in the same household? If so, state the address(es) and the period or periods, giving dates.	

I, ...
(full name)

of .....
(full residential address)

.....
(occupation)

make oath and say as follows:

1. I am the Petitioner in this cause.
2. The answers to Questions 1 to 8 above are true.
3. (1)* I identify the signature, ...
   (2)* appearing on the copy acknowledgement of service now produced to me and marked "A" as the signature of my husband/wife, the Respondent in this cause.
4. (3)*
5. I ask the Court to grant a decree dissolving my marriage with the Respondent (4)* on the grounds stated in my petition [and to order the Respondent to pay the costs of this suit] (5)*.

Sworn at .....

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

Before me, ...
Commissioner of Affidavits

**See* instructions below:

(1)* Delete if the acknowledgement is signed by an Attorney-at-law.
(2)* Insert name.
(3)* Exhibit any other documents on which the Petitioner wishes to rely.
(4)* If the Petitioner seeks a judicial separation, amend accordingly.
(5)* Delete if costs are not sought.

FORM 7G

Rule 35A(1).

In the High Court of Justice
(Matrimonial)

REGISTRAR'S CERTIFICATE

Between ..... Petitioner

and ..... Respondent

I , ...Registrar of the Supreme Court certify that the above-named Petitioner has sufficiently proved the contents of the petition filed herein for a decree of divorce/judicial separation on the following facts*:

*(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 two years 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.

I further certify that—

(i) There are no children of the family to whom section 47 of the Matrimonial Proceedings and Property Act applies; or

(ii) There are children of the family to whom section 47 of the Matrimonial Proceedings and Property Act applies. [Upon the pronouncement of the decree the Registrar will fix a date for the hearing of ancillary matters].

.....
Registrar, Supreme Court

To:
To:
To:

*Delete whichever is not applicable.

Rule 41(3).

FORM 8

DECREE NISI—DISSOLUTION

(Heading as in Form 5)

Before the Honourable Mr. Justice .....

The ..... day of ....., 20.....

UPON READING the petition filed herein and UPON HEARING the Attorney-at-law for the Petitioner (and the Attorney-at-law for the Respondent) (and the Attorney-at-law for the Co-Respondent)

THIS COURT HOLDS that the Respondent—

*has committed adultery with ..... and finds it intolerable to live with the Respondent;

*has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;

*has deserted the Petitioner for a continuous period of at least (two) (five) years immediately preceding the presentation of the petition (that the respondent consents to a decree being granted) and that that is the only fact mentioned in section 4(1) of the Matrimonial Proceedings and Property Act, in which the petitioner is entitled to rely in support of the petition;

that the marriage solemnised on the ..... day of ..... at ..... between the petitioner and the respondent has broken down irretrievably.

†AND THIS COURT DECREES that the said marriage be dissolved unless sufficient cause be shown to the Court within (six weeks) from the making of this decree why such decree should not be made absolute.

†AND THIS COURT ORDERS that the Respondent do pay the costs incurred and to be incurred on behalf of the Petitioner in the cause.

†AND THIS ORDER DECLARES that it is satisfied that, for the purpose of section 47 of the Matrimonial Proceedings and Property Act, there are no children of the family to whom the said section applied.

†AND THIS COURT FURTHER ORDERS that the children do remain in the custody of the ..... until further order of the Court, and it is directed that the children be not removed from Trinidad and Tobago without leave until ..... attain the age of ..... years but provided that if either parent do give a general written undertaking to the Court to return the said children to Trinidad and Tobago when called upon to do so and unless otherwise directed with the written consent of the other parent, that parent may remove the said children from Trinidad and Tobago for any period specified in such written consent.

†THIS COURT DECLARES that the Court is satisfied that the only child/children who is/are may be a child/children of the family to whom section 47 of the Matrimonial Proceedings and Property Act, applies is/are the following:

and that arrangements for the welfare of the said child/children has/have been made and are satisfactory;

and are the best that can be devised in the circumstances and that it is impracticable for the party or parties to appear before the Court to make arrangements for the welfare of the said child/children;

that there are circumstances making it desirable that the decree should be made absolute without delay notwithstanding that there is/are or may be a child/children of the family to whom section 47 of the Matrimonial Proceedings and Property Act, applies and the Court is unable to make a declaration in accordance with subsection (1)*(b)* of the said section 47.

By the Court

.....
Registrar, Supreme Court

* Delete where necessary.

† Insert where necessary.

FORM 9

Rule 41(3).

DECREE NISI—NULLITY

(Heading as in Form 5)

Before the Honourable Mr. Justice .....

The ..... day of ....., 20.....

UPON READING the petition filed herein and UPON HEARING the Attorney-at-law for the Petitioner (and the Attorney-at-law for the Respondent)

THIS COURT DECREES 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 by reason of .....

and that the Petitioner be pronounced to have been and to be free of all bond of marriage with the said Respondent

*be annulled by reason of.....

unless sufficient cause be shown to the Court within (six weeks) from the making of the decree why such decree should not be made absolute.

(Here insert other parts of Form 8 as may be appropriate).

*Delete whichever is inapplicable.

L.R.O. 1/2006

Rule 41(3).

FORM 10

DECREE NISI—PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE

(Heading as in Form 5)

Before the Honourable Mr. Justice .....

The ..... day of ..... , 20.....

UPON READING the petition filed herein and UPON HEARING the Attorney-at-law for the Petitioner (and the Attorney-at-law for the Respondent)

THIS COURT DECREES that the Respondent be presumed to be dead and that the marriage solemnised on the .....day of ..... at ..... between the Petitioner and the Respondent be dissolved unless sufficient cause be shown to the Court within (six weeks) from the making of this decree why such decree should not be made absolute.

(Here insert other parts of Form 8 as may be appropriate).

By the Court

.....
Registrar, Supreme Court

Rule 41(4).

FORM 11

JUDICIAL SEPARATION

(Heading as in Form 5)

Before the Honourable Mr. Justice .....

The ..... day of ..... , 20.....

UPON READING the petition filed herein and UPON HEARING the Attorney-at-law for the Petitioner (and the Attorney-at-law for the Respondent)

THIS COURT HOLDS that the Respondent

(Here specify the fact mentioned in section 4(1) of the Act that is relied upon)

AND THIS COURT DECREES a judicial separation between the Petitioner and the Respondent

(Here insert other parts of Form 8 as may be appropriate).

By the Court

.....
Registrar, Supreme Court

FORM 12

Rules 43 & 54.

NOTICE OF APPLICATION UNDER RULE 43

(Heading as in Form 5)

TAKE NOTICE that the Respondent applies to the Court under section 11 of the Matrimonial Proceedings and Property Act, for the Court to consider the financial position of the Respondent after the divorce.

The application will be heard immediately after a *decree nisi* is granted [*or if application is made after a decree nisi has been granted* 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 Judge in Chambers at ..... on ..... day, the ..... day of ..... 20 ..... , at ..... o'clock)].

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

Signed .....
(Attorney-at-law for the) Respondent

FORM 13

Rule 49(2).

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

(Heading as in Form 5)

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 .....
(Attorney-at-law for the) Petitioner (or Respondent)

L.R.O. 1/2006

Rule 50(1).

FORM 14

CERTIFICATE OF MAKING *DECREE NISI* ABSOLUTE (DIVORCE)

(Seal)

(Heading as in Form 5)

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.....

.....
Registrar, Supreme Court

Rule 50(1).

FORM 15

CERTIFICATE OF MAKING *DECREE NISI* ABSOLUTE (NULLITY)

(Heading as in Form 5)

Referring to the decree made in this cause on the ..... day of ..... 20..... whereby it was decreed that the marriage in fact solemnised on the ..... day of ..... 20 ....., at ..... between ..... the Petitioner and ..... the Respondent (*in the case of a void marriage* be pronounced and declared to have been by law void and the said Petitioner ..... be pronounced to have been and to be free of all bond of marriage with the said Respondent .....) (*in case of a voidable marriage* be annulled) 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 (*in the case of a void marriage* 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) (*in the case of a voidable marriage* and that the said Petitioner was from that date and is free from all bond of marriage with the said Respondent).

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

.....
Registrar, Supreme Court

FORM 16

Rule 52(2)*(b)* and (3).

NOTICE OF APPLICATION FOR ANCILLARY RELIEF

(Heading as in Form 5)

TAKE NOTICE that the Petitioner (*or* Respondent) intends to apply to the Court 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 and, in the case of an application for a settlement of property order, a variation of settlement order, a transfer of property order or an avoidance of disposition order, stating briefly, the nature of the settlement, variation or transfer proposed or the disposition to be set aside).*

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 Judge in Chambers at ..... on ..... day, the ..... day of ..... 20..... at ..... o'clock).

(Unless the parties are agreed upon the terms of the proposed order, and 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 fourteen 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 (Attorney-at-law for) the applicant.

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

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

Signed .....
(Attorney-at-law for) the Petitioner (or Respondent)

FORM 17

Rule 57(1).

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

(Heading as in Form 5)

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 Judge in Chambers, on such date and at such place as is notified to you or at ..... on ..... day, the ..... day of ..... , 20 ..... at ..... o'clock].

TAKE NOTICE (ALSO) that *(continue as in third paragraph of Form 16).*

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

L.R.O. 1/2006

Rule 60, 68(4).

FORM 18

NOTICE OF ALLEGATION IN PROCEEDINGS FOR ANCILLARY RELIEF

(Heading as in Form 5)

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 eight 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 .....
[Attorney-at-law for the] Petitioner [or Respondent]

Rule 62(2).

FORM 19

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

(Heading as in Form 5)

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 fourteen days after service of this notice on you, and if you do not do so, the Court may make such a periodical payments order without further notice to you.

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

.....
Registrar, Supreme Court

FORM 20

Rule 65(2).

PRAECIPE FOR ISSUE OF JUDGMENT SUMMONS

In the High Court of Justice

(.....Registry)

No. of { Matter / Judgment Summons

Between ..... Petitioner (*or* Applicant)
and .....Respondent
(and .....Co-Respondent)
Judgment creditors's full name and address .....
Debtor's full name and address .....

I apply for the issue of a judgment summons against the above-named debtor in respect of an order made in this Court (*or as the case may be*) on the ..... day of ....., 20 ....., for (*state nature of order*).

(*If it be the case* I intend to apply to the Court at the hearing of the proposed judgment summons for leave to enforce arrears which became due more than twelve months before the date of the proposed summons).

I am aware that, if I do not prove to the satisfaction of the Court at the hearing that the debtor has, or has had since the date of the said order, the means to pay the sum in respect of which he has made default and that he has refused or neglected, or refuses or neglects, to pay it I may have to pay the costs of the summons.

I certify that the said order has not been modified or discharged and that there is no order of committal in this matter which remains unsatisfied.

I further certify that no (writ or) warrant of execution has been issued to enforce the said order (*or, if a writ or warrant has been issued, give details and state what return to it has been made*).

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

(Attorney-at-law for the) Judgment Creditor

	$
Amount due and unpaid in respect of the order and costs … …	
Costs of this summons … … … … …	
Travelling expenses to be paid to debtor … … …	

L.R.O. 1/2006

Rule 65(4).

FORM 21

JUDGMENT SUMMONS

(Seal)

[Heading as in Form 20]

WHEREAS the above-named ..... (hereinafter called "the judgment creditor") obtained an order in this Court (*or as the case may be*) on the ..... day of ....., 20....., against ..... (hereinafter called "the debtor") for (*state nature of order).*

AND WHEREAS default has been made in payment of the sum of $ ..... payable under the said order and the judgment creditor has required this judgment summons to be issued against you, the said debtor.

YOU ARE HEREBY SUMMONED to appear personally before the Judge sitting at ..... on the ..... day of ....., 20..... at ..... o'clock, to be examined on oath touching the means you have or have had since the date of the said order to pay the said sum in payment of which you have made default and also to show cause why you should not be committed to prison for such default.

(AND TAKE NOTICE that the judgment creditor intends to apply to the Court at the hearing of this judgment summons for leave to enforce arrears which became due more than twelve months before the date of this summons).

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

	$
Amount due and unpaid in respect of order and costs … …	
Costs of this summons … … … … …	
Travelling expenses to be paid to the debtor … … …	
Sum on payment of which this summons will be discharged …	

Note: If payment is made too late to prevent the judgment creditor's attendance on the day of hearing, you may be liable for further costs,

(The judgment creditor's Attorney-at-law is).

Rule 72(1).

FORM 22

ORIGINATING SUMMONS— WILFUL NEGLECT TO MAINTAIN

In the High Court of Justice

(Seal)

In the Matter of an Application under section 28 of the Matrimonial Proceedings and Property Act

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

Let ..... of [address] attend before the Judge in Chambers at ..... on the ..... day of .....20..... , on the hearing of an application by ..... who claims that *he/she the said ..... being the lawful husband/wife* of the Applicant (*in the case of a wife's application* has wilfully neglected to provide reasonable maintenance for her) [*in the case of a husband's application* has wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance for him] [and the infant child(ren) of the marriage *naming them*] and prays that (*in the case of a wife's application* he be ordered to make to her such payments for her maintenance) (*in the case of a husband's application* she be ordered to so provide or contribute) [and the maintenance of the said infant child(ren) as may be just] (and that *he/she be further ordered to secure such payments) [and that *he/she be given the custody of the said infant child(ren)].

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

This summons was taken out by .....

(Attorney(s)-at-law for) the above-named applicant.

*Delete whichever is inapplicable.

To the Respondent.

L.R.O. 1/2006

Rule 72(2).
[29/1983].

FORM 23

AFFIDAVIT IN SUPPORT OF APPLICATION ON GROUND OF WILFUL NEGLECT TO MAINTAIN

In the High Court of Justice

(Seal)

In the Matter of an Application under section 28 of the Matrimonial Proceedings and Property Act

Between ..... Applicant

and ..... Respondent

I, ... of ..... the wife (or husband) of ..... (hereinafter called the Respondent), made oath and say as follows:

1. The Respondent (*in the case of a wife's application*) has wilfully neglected to provide reasonable maintenance for me (*or in the case of a husband's application*) has wilfully neglected to provide (*or* make proper contribution towards) reasonable maintenance for me [and the child(ren) of our family].

2. On the ..... day of ..... , 20..... I *(in the case of an application by a wife)* being then *(state full name and status before the marriage*) was lawfully married to the Respondent *(in the case of an application by a husband)* who was then *(state respondent's full name and status before marriage)* at .....

3. There is (are) [no (*or state number*) children of the family now living] [namely (*state the name of each child and his date of birth, or, if it be the case, that he is over eighteen years and, in the case of each minor child over the age of sixteen years whether, he is, or will be, or if an order or provision made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation*) who is now residing at (*state the place*) with (*state the person*)].

4. There have been no previous proceedings in any Court in Trinidad and Tobago or elsewhere with reference to the marriage [or the children of the family] [except *state the nature of the proceedings, the date and effect of any decree or order and, 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].*

5. (*Where appropriate in the case of a child who is under the age of majority*) The said ..... was, on the ..... day of ..... 20 ....., received into the care of .....

6. The following are particulars of the wilful neglect by the Respondent to provide reasonable maintenance for me [*or in the case of a husband's application* to provide reasonable maintenance (*or* to make proper contribution towards reasonable maintenance) for me] [and for the said child(ren) (*state names*) *give particulars adding in the case of a husband's application in respect of himself the matters set out in section* 28(1)*(b)* (i) of the Act on *which he relies*].

7. The respondent has not made any payments to me by way of maintenance for myself [or the said child(ren) except (*give particulars*).

8. My means are as follows:

9. To the best of my knowledge and belief the respondent's means are as follows:

10. I apply for an order that the respondent do make provision by way of [periodical payments, secured periodical payments, a lump sum *delete as appropriate*] for me [and (*such of the said provisions as may be claimed*) for [*state name*[*s*] *of child*[*ren*] *in respect of whom such claim is made*]].

11. I ask that I may be granted the custody of the said [*state name*(*s*) *of the child(ren)*].

12. This Court has jurisdiction to entertain these proceedings by reason of the fact that [in the case of an application based on domicile I am (or the respondent is) (or the Respondent and I are) domiciled in Trinidad and Tobago (or in the case of an application based on residence) I have been habitually resident in Trinidad and Tobago throughout the period of one year ending with the date of this application (or the Respondent is now resident in Trinidad and Tobago).

My address for service is (*Where the applicant sues by an Attorney-at-law, state the Attorney's name or firm and address or, where the applicant sues in person, state her place of residence as given in paragraph 1 or, if no place of residence in Trinidad and Tobago is given, the address of a place in Trinidad and Tobago at or to which documents for her may be delivered or sent*).

Sworn, etc.

FORM 24

Rule 72(3), 73(3).

NOTICE OF APPLICATION UNDER RULE 72 OR 73

(Heading as in Form 22)

TAKE NOTICE that this application will be heard by the Court in Port-of-Spain/San Fernando/or Tobago (*delete whichever is inapplicable*) on the ..... day of....., 20..... , at ..... o'clock (*or* on a day to be fixed) and if you do not attend at that place and time, such order will be made as the Court thinks just.

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

You must complete and detach the acknowledgement of service and send it so as to reach the Court within eight days after you receive this notice inclusive of the day of receipt. Delay in returning the form may add to the costs.

(*Where the application is under rule* 72) If you intend to contest the application you must file an answer setting out the grounds on which you rely [including any allegation which you wish to make against the applicant] and in any case, unless otherwise directed,

you must file an affidavit containing full particulars of your property and income. The affidavit and any answer you wish to file must be sent, together with a copy for the applicant, so as to reach the Court within fourteen days after the time allowed for sending the acknowledgment of service. If you file an answer alleging adultery it must be accompanied by a copy for the alleged adulterer.

(*Where the application is under rule* 73) You must also swear to an affidavit in answer to the application, setting out any grounds on which you intend to contest the application and containing full particulars of your property and income and send the affidavit, together with a copy for the applicant, so as to reach the Court within fourteen days after the time allowed for sending the acknowledgement of service.

If you intend to instruct an Attorney-at-law to act for you, you should at once give him all the documents which have been served on you, so that he may take the necessary steps on your behalf.

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

.....
Registrar

To the Respondent .....

(Here set out Form 6)

Rule 73(1).

FORM 25

ORIGINATING SUMMONS FOR ALTERATION OF MAINTENANCE AGREEMENT DURING PARTIES' LIFETIME

In the High Court of Justice

(Seal)

In the Matter of an Application under section 39 *of the Matrimonial Proceedings and Property Act*

Between ..... Applicant

and ..... Respondent

Let ..... of ..... attend before the Judge in Chambers at ..... on the ..... day of ..... 20..... , on the hearing of an application by ..... that the agreement made on the ..... day of ..... 20..... , between the applicant and the Respondent should be altered as shown in the affidavit accompanying this summons so as to make different (or contain) financial arrangements.

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

This Summons was taken out by .....

[Attorney(s)-at-law for] the above-named applicant.

FORM 26

Rule 73(2).

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ALTERATION OF MAINTENANCE AGREEMENT DURING PARTIES' LIFETIME

In the High Court of Justice

(Seal)

In the Matter of an Application under section 39 of the Matrimonial Proceedings and Property Act

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

I, ... of ..... the wife (or husband) of ..... (hereinafter called the Respondent) make oath and say as follows:

1. I apply for an order altering the maintenance agreement made between me and the Respondent on the ..... day of ....., 20.....

2. I reside at ..... , and the Respondent resides at ..... [*Add unless both parties are resident in Trinidad and Tobago* We are both domiciled in Trinidad and Tobago (*or as the case may be*)].

3. On the ..... day of ....., 20..... , I was lawfully married to the Respondent at .....
I (*or in the case of an application by the husband* The Respondent) was then (*state full name and status of wife before marriage*).

4. There is (are) (*or state number*) child(ren) of the family [namely (*state the name of each child now living and his date of birth or, if it be the case, that he is over eighteen years and, in the case of each minor child over the age of sixteen years, whether he is, or will be, or if an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation*) who is now residing at (*state the place*) with (*state the person*) and (*state the name of any child who has died since the date of the agreement)* who died on the ..... day of ....., 20.....) (The agreement also *makes* financial arrangements for *(give similar particulars of any other child for whom the agreement makes such arrangements*)].

5. There have been no previous proceedings in any Court with reference to the agreement or to the marriage [or to the child(ren) of the family] [or to the other child[ren] for whom the agreement makes financial arrangements] (except state *the nature of the proceedings and the date and effect of any order or decree*).

6. My means are as follows:

7. I ask for the following alteration(s) to be made in the agreement:

8. The facts on which I rely to justify the alteration[s] are:

My address for service is *(Where the applicant sues by an* attorney-at-law, *state the Attorney's-at-law name or firm and address, or, where the applicant sues in person, state his or her place of residence as given in paragraph* 2 *or, if no place or residence in Trinidad and Tobago is given, the address of a place in Trinidad and Tobago at or to which documents for him or her may be delivered or sent).*

Sworn, etc.

L.R.O. 1/2006

Rule 74(1).

FORM 27

ORIGINATING SUMMONS FOR ALTERATION OF MAINTENANCE AGREEMENT AFTER DEATH OF ONE OF THE PARTIES

In the High Court of Justice

In the Matter of an Application by ..... *under section 40 of the Matrimonial Proceedings and Property Act*

Between ..... Applicant[s]

and ..... Respondent[s]

Let ..... of ..... attend before the Judge in Chambers at ..... on..... day the ..... day of .....,20....., at .....o'clock, on the hearing of an application by ..... that the agreement made on the ..... day of ....., 20....., between (the applicant and) ..... who died on the ..... day of .....,20 ....., (and the Respondent) should be altered as shown in the affidavit accompanying this summons so as to make different (*or* contain) financial arrangements.

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

This summons was taken out by .....

[Attorney-at-law for] the above-named applicant[s]

To the Respondent.

TAKE NOTICE THAT—

1. A copy of the affidavit to be used in support of the application is delivered herewith.

2. You must complete the accompanying acknowledgement of service and send it so as to reach the Court within eight days after you receive this summons.

3. [If the Respondent is a personal representative of the deceased: You must also file an affidavit in answer to the applicant's application containing full particulars of the value of the deceased's estate for probate after, providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities, including the amount of the estate duty and interest thereon, and the persons or classes of persons beneficially interested in the estate, with the names and addresses of all living beneficiaries and stating whether any beneficiary is a minor or incapable by reason of mental disorder, of managing and administering his property and affairs.]

(Or, if the Respondent is not a personal representative of the deceased: You may also file an affidavit in answer to the application)

[Add, in either case: The affidavit must be filed by sending or delivering it so as to reach the Court within fourteen days after the time allowed for sending the acknowledgement of service. At the same time you must send a copy of the affidavit to the (Attorney-at-law for the) applicant].

4. If you intend to instruct an Attorney-at-law to act for you, you should at once give him all the documents which have been served on you, so that he may take the necessary steps on your behalf.

FORM 28

Rule 76(1).

ORIGINATING SUMMONS FOR MAINTENANCE OUT OF ESTATE OF DECEASED FORMER SPOUSE

In the High Court of Justice

In the Matter of an Application by ..... *under section 41 of the Matrimonial Proceedings and Property Act*

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

Let ..... of ..... attend before the Judge in Chambers at ..... on ..... day, the ..... day of ..... 20 ....., at ..... o'clock, on the hearing of an application by ..... that provision for her maintenance be made out of the estate of ..... of ..... who died on the ..... day of ....., 20....., on the ground that he has not made reasonable provision for her maintenance after his death.

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

This summons was taken out by .....
[Attorney-at-law for] the above-named applicant.

To the Respondent.

TAKE NOTICE THAT—

[Continue as in Form 25]

FORM 29

Rule 77(3).

NOTICE OF APPLICATION FOR MATRIMONIAL HOME ORDER

In the High Court of Justice

No. of Matter
(Seal)

In the Matter of an Application for a Matrimonial Home Order

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

TAKE NOTICE that the annexed application made by the above-named applicant for a Matrimonial Home Order. If the application is undefended, it will be heard by the Court in Port-of-Spain/San Fernando/or Tobago (delete whichever is inapplicable) on the ..... day of ..... , 20....., at ..... o'clock, or as may be notified by the Registrar 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 acknowledgement of service and send it so as to reach the Court within eight (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 an Attorney-at-law to act for you, you should at once give him all the documents which have been served on you so that he may sign the relevant statement appearing thereon.

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

.....
Registrar of the Supreme Court

Rule 79(2).

FORM 30

NOTICE TO BE INDORSED ON DOCUMENT SERVED IN ACCORDANCE WITH RULE 79(2)

To ..... of .....

*Delete these words if the document is served on the responsible medical officer or medical attendant.

TAKE NOTICE that the contents or purport of this document are to be communicated to the Respondent (*or as the case may be*), the said ..... if he is over sixteen years [*add, if the person to be served by reason of mental disorder within the meaning of section 2(1) of the Matrimonial Proceedings and Property Act, incapable of managing and administering his property and affairs* unless you are satisfied (after consultation with the responsible medical officer or, if the said ..... is not liable to be detained or subject to guardianship under any enactment, his medical attendant)* that communication will be detrimental to his mental condition].

SECOND SCHEDULE

Rule 89.
[125/1996].

(COURT FEES)

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1.	On filing an originating summons … … …	35.00
2.	On filing a petition except in cases to which rule 10(3) applies (including sealing, certifying and copying) … …	50.00
3.	On filing an answer, reply or other pleading (including sealing, certifying and copying) … … …	35.00
4.	On the issue of a notice under rule 40 … … …	35.00
5.	On filing any other summons, application or notice, except where the terms of any agreement as to the order which the Court is to be asked to make are set out in the notice … …	10.00
6.	On filing an affidavit … … … … …	10.00
7.	On filing a certificate, request in writing, or any other document	5.00
8.	Copy of a medical report filed under rule 27(3), per page or part thereof. … … … … …	1.25
9.	Copy of a report of a Welfare Officer (Probation) filed under rule 70(3) per page or part thereof … … …	1.25
10.	Sealed or office or photographic copy of a decree or order made in open Court [rule 44(2)] … … … …	10.00
11.	On a search in the index of decrees absolute kept under rule 50(2)	5.00
12.	Certificate that a *decree nisi* has been made absolute [rule 50(3)]	10.00
13.	Any other certificate under the hand of a Judge or the Registrar	10.00