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STATUTORY INSTRUMENTS

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**1991 No. 1247**

**The Family Proceedings Rules 1991**

**PART II**

**MATRIMONIAL CAUSES**

*Evidence*

**Evidence at trial of cause**

**2.28.**—(1) Subject to the provisions of this rule and rules 2.29, 2.36 and 10. 14 and of the Civil Evidence Act 1968(1) and any other enactment, any fact required to be proved by the evidence of witnesses at the trial of a cause begun by petition shall be proved by the examination of the witnesses orally and in open court.

(2) Nothing in this rule and rules 2.29 and 10. 14 shall affect the power of the judge at the trial to refuse to admit any evidence if in the interest of justice he thinks fit to do so.

(3) 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.

(4) An application to the district judge for an order under paragraph (3) 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, or
- (c) if the cause is undefended and directions for trial have been given, be made ex parte by filing an affidavit stating the grounds on which the application is made.

(5) 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 ground on which the application is made, no other affidavit shall be required under paragraph (4).

### **Evidence by deposition**

**2.29** The court may, on the application of any party to a cause begun by petition, make an order under CCR Order 20, rule 18, or (if the cause is pending in the High Court) under RSC Order 39, rule 1, for the examination on oath of any person; and CCR Order 20, rule 18 or (if the cause is pending in the High Court) RSC Order 38, rule 9, and Order 39, rules I to 14 (which regulate the procedure where evidence is to be taken by deposition) shall have effect accordingly with the appropriate modifications.

### **Issue of witness summons or subpoena**

**2.30.**—(1) A witness summons in a cause pending in a divorce county court may be issued in that court or in the court of trial at which the cause is to be tried.

(2) A writ of subpoena in a cause pending in the High Court may issue out of—

- (a) the registry in which the cause is proceeding, or
- (b) if the cause is to be tried at the Royal Courts of Justice, the principal registry; or
- (c) if the cause is to be tried at a divorce town, the registry for that town.

### **Hearsay and expert evidence in High Court**

**2.31** RSC Order 38, rule 2(1), shall have effect in relation to a defended cause in the High Court as if—

- (a) for the reference in paragraph (4) to Order 38, rule 3, there were substituted a reference to rules 2.28, 2.29 and 10.12 of these rules; and
- (b) paragraph (5) were omitted.