SUPREME COURT, ENGLAND

1952 No. 2209 (L. 21)

The Matrimonial Causes (Judgment Summons) Rules, 1952

Made - - - -	18*th December*, 1952
Laid before Parliament	19*th December*, 1952
Coming into Operation	12*th January*, 1953

I, Gavin Turnbull, Baron Simonds, Lord High Chancellor of Great Britain, with the concurrence of the President of the Board of Trade and in exercise of the powers conferred upon me by section 107 (5) and section 132 of the Bankruptcy Act, 1914(**a**), and of all other powers enabling me in that behalf, hereby make the following Rules:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Matrimonial Causes (Judgment Summons) Rules, 1952, and shall come into operation on the twelfth day of January, 1953.

(2) The Interpretation Act, 1889(**b**), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(3) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

"Judgment" means any judgment or order for the payment of money given or made in a matrimonial cause; "debtor" means a person liable under a judgment; and "judgment creditor" means a person entitled to enforce a judgment;

"Judgment summons" means a summons under section 5 of the Debtors Act, 1869(**c**), requiring the debtor to appear and be examined on oath as to his means;

"Matrimonial cause" means any proceedings for divorce, nullity of marriage, judicial separation, jactitation of marriage, or restitution of conjugal rights, or any proceedings under section 23 of the Matrimonial Causes Act, 1950(**d**);

"Registrar" means a registrar of the Divorce Registry or of a district registry;

The expressions "Judge", "Divorce Registry" and "district registry" have the meanings respectively assigned to them by the Matrimonial Causes Rules, 1950(**e**).

(4) A form referred to by number means the form so numbered in the Appendix to these Rules.

(**a**) 4 & 5 Geo. 5. c. 59. (**b**) 52 & 53 Vict. c. 63. (**c**) 32 & 33 Vict. c. 62.
(**d**) 14 Geo. 6. c. 25. (**e**) S.I. 1950/1940; 1950 II, p. 929.

Application for issue of judgment summons

2.—(1) A judgment creditor may apply *ex parte* in Form 1 to a registrar in the Divorce Registry or a district registry, whichever in the opinion of the judgment creditor is most convenient in relation to the place where the debtor resides or carries on business, and irrespective of the registry in which the cause is proceeding, for leave to issue a judgment summons against the debtor.

(2) A judgment summons shall not be issued—

(*a*) where the application relates to an order to lodge money in court or to an order containing any form of undertaking in respect of the amount which it is sought to recover ; or

(*b*) without the leave of the judge, where the debtor is in default under an order of commitment made on a previous judgment summons in respect of the same judgment.

Transfer of file of proceedings

3. Where an application is made to issue a judgment summons in a registry other than that in which the cause is proceeding, the file of proceedings shall, if required by the registrar to whom such application is made, be sent to him for the purpose of the application and of the hearing of the summons.

Service of judgment summons

4.—(1) A judgment summons shall be in Form 2 and shall, unless otherwise directed, be served personally upon the debtor not less than five clear days before the day fixed for the hearing, together with a sum reasonably sufficient to cover the debtor's expenses in travelling to and from the court.

(2) An application for leave to substitute for personal service some other mode of service shall be made *ex parte* by lodging with the registrar an affidavit setting out the grounds on which the application is made.

(3) Where a judgment summons has not been served in due time it may by leave of the registrar be re-issued and, if necessary, amended from time to time within six months of leave to issue being granted, notwithstanding that the debtor has ceased to reside or carry on business at the address designated in Form 1.

Evidence and witnesses

5.—(1) The judgment creditor shall, not less than four clear days before the hearing, file an affidavit setting out such facts relevant to the means of the debtor as are known to the creditor and such affidavit shall be admissible in evidence.

(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 matrimonial cause, and subpoenas may issue out of the registry in which the judgment summons has been issued.

(3) Where the debtor appears at the hearing, the travelling expenses paid to him may, if the judge so directs, be allowed as expenses of a witness, but if the debtor appears at the hearing and an order of commitment is not made the judge 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 a trial in court.

Commitment orders etc.

6.—(1) On the hearing of a judgment summons the judge may make an order of commitment or may—

(*a*) where the judgment is for damages or costs ; or

(*b*) where the judgment is for alimony, maintenance or other periodical payment and it appears to the judge that the judgment would have been varied or suspended if an application had been made by the debtor for that purpose,

make an order for payment, either at a specified time or by instalments, of the amount due under the judgment and the costs of the judgment summons.

(2) If an order of commitment is made, the judge may direct execution of the order to be suspended on terms that the debtor pays the amount due, together with the costs of the judgment summons, either at a specified time or by instalments, in addition to any sums from time to time accruing due under the judgment.

(3) If an order of commitment is suspended on such terms as are mentioned in the last foregoing paragraph, all payments thereafter made under the order shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the judgment 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.

Notice of order

7.—(1) The judgment creditor shall serve notice by registered post on the debtor of the terms of any order made, whether or not the debtor has attended at the hearing.

(2) A copy of the order shall be placed upon the file of proceedings and if the judgment summons was issued in a registry other than that in which the cause is proceeding, the registrar who gave leave to issue the summons shall send a copy of the order to the registry in which the cause is proceeding.

Issue of commitment order

8.—(1) Where an order of commitment has been made but execution of the order is suspended, then, unless the judge by whom the order was made has otherwise directed, application for leave to issue the order shall be made to the registrar, supported by an affidavit in Form 3, and leave shall be granted on the registrar's being satisfied as to service of the terms of the order and of default on the part of the debtor and without further notice to him.

(2) Where an order of commitment is issued, it shall be directed to the tipstaff for execution by him, or to the registrar of the county court within whose district the debtor is to be found for execution by a deputy tipstaff.

Dated the eighteenth day of December, 1952.

Simonds, C.

I concur.

Peter Thorneycroft.

APPENDIX

Rule 2. **FORM 1.**

Application for issue of judgment summons

In the High Court of Justice,
Probate, Divorce and Admiralty Division,
(Divorce)

(1) If appropriate.

(District Registry)[1]

Between A B, petitioner,
and C D, respondent.

Ex parte the said

Applicant's (*petitioner, respondent, or as the case may be*) full name and address

Defendant's (*see above*) full name

Defendant's full address and occupation

I/We apply for the issue of a judgment summons against the (*petitioner, respondent, or as the case may be*) in this suit, hereinafter called "the defendant", in respect of an order dated the day of 19 , for (*here state whether the order is for damages, costs, maintenance, permanent alimony, alimony pendente lite, or as the case may be*) made in the Probate, Divorce and Admiralty Division of the High Court of Justice. (A true copy of)[2] The said order is annexed[3].

(2) If original not available.

(3) Omit where application made at Registry in which cause is proceeding.

I/We undertake to prove to the satisfaction of the Court at the hearing that the defendant 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/We will file an affidavit of the defendant's means four days prior to the hearing. I am/We are aware that if I/we do not prove the facts mentioned above, I/we shall have to pay the costs of this summons.

I/We certify that I/we have filed an affidavit of service of the said order in compliance with Rule 62 (2) of the Matrimonial Causes Rules, 1950, and that (*if the debtor has made any payments pursuant to the order, this, and the extent of such payments, should be stated.*)

I/We further certify that there is no order of commitment in this matter which remains unsatisfied and that the said order dated the day of 19 , has not been modified or discharged.

I/We further certify that (*if execution has issued on the order in respect of which a judgment summons is sought, the facts must be stated, and the sheriff's return to the writ of execution must be lodged; otherwise this paragraph should be deleted.*)

Applicant.

Solicitor to Applicant.

	£	s.	d.
Amount remaining due in respect of order and costs ...			
Cost of this summons			
Total sum due ...			

FORM 2. Rule 4.

Judgment summons

In the High Court of Justice,
Probate, Divorce and Admiralty Division,
(Divorce)

(District Registry)[1]

(1) If appropriate.

Between A B, petitioner.
and C D, respondent.

Ex parte the said

Whereas the obtained an order for (*here describe nature of order*) against the above-named (*name the defendant against whom the summons is issued*) (hereinafter called "the defendant") in the Probate, Divorce and Admiralty Division of the High Court of Justice on the day of 19 , for the sum of £ ,[2] and there is now due and payable under the said order the sum of £ .

(2) Where order is for alimony, maintenance, etc., set out terms of order.

And Whereas the has required this judgment summons to be issued against you the said defendant (*name the defendant against whom the summons is issued*)
You are therefore hereby summoned to appear personally before one of the Judges sitting in this Division at the Royal Courts of Justice, Strand, London, W.C.2,[3] on the day of 19 , at o'clock in the noon, to be examined on oath by the Court 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.

(3) Or as the case may be.

Dated this day of , 19 .

	£	s.	d.
Amount remaining due in respect of order and costs ...			
Costs of this summons			
Total sum due ...			

To the Defendant.

NOTE.—*The name and address of the applicant's solicitor must be endorsed on this summons.*

Rule 8. FORM 3.

Affidavit on application for issue of commitment order

In the High Court of Justice,

Probate, Divorce and Admiralty Division,
(Divorce)

(1) If applicable. (District Registry)[1]

Between A B, petitioner,
and C D, respondent.

I, X Y, of , solicitor for the (*petitioner*) make oath and say as follows:—

(1) An order for commitment against the respondent (*or as the case may be*) herein was made by this Court on the day of , 19 , for non-payment of the sum of £ due under an order of this Court in respect of which he has made default, the said order for commitment being suspended on the terms therein specified.

(2) I did on the day of , 19 , send by registered post (the receipt for such registration being attached hereto) to the said respondent at his last known address, a notice of the said order of commitment, of which the following is a true copy. (*Here set out copy of notice sent*).

(3) (*Here set out facts which it is alleged constitute a breach of the terms of suspension*).

(4) I hereby apply for leave to issue the said order of commitment.

Sworn, etc.

EXPLANATORY NOTE

(*This Note is not part of the Rules, but is intended to indicate their general purport.*)

These Rules prescribe the procedure in regard to the enforcement, by way of judgment summons in the High Court, of orders for the payment of money made in matrimonial causes. The Rules enable a judgment creditor to apply for the issue of a judgment summons to a registrar of the Divorce Registry or of a district registry of the High Court possessing divorce jurisdiction, whichever is most convenient in relation to the place where the debtor resides or carries on business, and clarify the circumstances in which a commitment order may be made against the debtor.