

No. 261.—The following Order in Council, and certain Rules of Court made in order to carry the Order in Council into effect, are published for general information.

CLAUD SEVERN,  
*Colonial Secretary.*

10th June, 1921.

AT THE COURT AT BUCKINGHAM PALACE,

THE 9TH DAY OF NOVEMBER, 1920.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by treaty, grant, usage, sufferance, and other lawful means, His Majesty the KING has jurisdiction in China :

Now, therefore, His Majesty, by virtue and in exercise of the powers in that behalf by "The Foreign Jurisdiction Act, 1890," or otherwise, in His Majesty vested, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows :

1. This Order may be cited as "The China (Amendment No. 2) Order in Council, 1920," and shall be read as one with "The China Order in Council, 1904" (hereafter called the "Principal Order"), and with any Order amending the same.

2. The words in Article 101 of the Principal Order "except the jurisdiction relative to dissolution, or nullity, or jactitation of marriage" are hereby repealed.

3. This Order shall take effect on the day on which it is first exhibited in the Public Office of the Supreme Court at Shanghai.

And the Right Honourable George Nathaniel, Earl Curzon of Kedleston, one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein.

ALMERIC FITZROY.

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RULES OF COURT UNDER THE CHINA ORDER IN COUNCIL 1904.

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ARTICLE 119.

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No. 2 of 1921.

1. In the construction of these Rules :—

"The Court" means a Judge of the Supreme Court.

"Registrar" means the Registrar of the Supreme Court.

"Registry" means the Registry of the Supreme Court.

"King's Proctor" means the person appointed to act as such by the Secretary of State.

2. Proceedings before the Court for Divorce and Matrimonial causes shall <sup>Petition.</sup> be commenced by a petition.

3. Every petition shall contain a statement of the following matters as they stand at the time of the institution of the cause :—(1) the description of the husband ; (2) the place of residence of each of the parties to the marriage and (3) the domicile of the parties to the marriage ; but, unless the petitioner is asserting a domicile for the wife different from that of the husband, it shall be sufficient if the domicile of the husband is stated. The petition shall also state

whether or no there have been any, and if so what, proceedings previous thereto with reference to the marriage, by and on behalf of either of the parties to the marriage.

4. Every petition shall be accompanied by an affidavit made by the petitioner, verifying the facts of which he or she has personal cognizance and deposing as to belief in the truth of the other facts alleged in the petition and such affidavits shall be filed with the petition.

5. In cases where the petitioner is seeking a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the petitioner's affidavit filed with his or her petition shall further state that no collusion or connivance exists between the petitioner and the other party to the marriage or alleged marriage.

6. In proceedings for restitution of conjugal rights, the affidavits filed with the petition as required by Rule 4, shall further state sufficient facts to satisfy the Registrar that a written demand for cohabitation and restitution of conjugal rights has been made by the petitioner upon the party to be served, and that after a reasonable opportunity for compliance therewith such cohabitation and restitution of conjugal rights have been withheld.

Co-respondents.

7. Upon a husband filing a petition for dissolution of marriage on the ground of adultery, the alleged adulterers shall be made co-respondents, unless the Court shall otherwise direct. Application for such direction shall be made by motion founded on affidavit.

8. Where an alleged adulterer is not subject to the jurisdiction of the Court, application must be made to the Court by motion founded on affidavit for leave to proceed without serving him with a writ of summons; but notice of the proceedings must in every such case be given to him.

9. If the names of the alleged adulterers or either of them should be unknown to the petitioner at the time of filing his petition, the same must be supplied as soon as known and application must be made forthwith to the Court by Summons to amend the petition by inserting such name therein, and the Court shall give directions as to such amendment and such further directions as may seem fit as to service of the amended petition.

10. The term "respondent" where the same is hereinafter used shall include all co-respondents so far as the same is applicable to them.

Writ.

11. Every petitioner who files a petition and affidavit shall forthwith take out a writ of summons under seal of the Court for service on each respondent in the cause.

12. The Writ shall be in the form of an ordinary writ of summons of the Court and shall contain an address for service not more than two miles from the Registry.

Service.

13. Writs shall be served personally when that can be done.

14. Service of a writ shall be effected by personally delivering a true copy, also under the seal of the Court, to the respondent, and producing the original if required.

15. To every person served with a writ shall be delivered a certified copy of the petition under the seal of the Court.

16. In cases where personal service cannot be effected, application may be made by motion to the court, to substitute some other mode of service.

17. After service has been effected the writ of summons with a certificate of service endorsed thereon shall be forthwith returned into and filed in the registry.

18. When it is ordered that a writ be advertised, the newspapers containing the advertisement are to be filed in the registry with the writ.

19. The above Rules so far as they relate to the service of writs, are to apply to the service of all other instruments requiring personal service.

20. Before a petitioner can proceed, after having taken out a writ of summons, an appearance must have been entered by or on behalf of the respondents, or it must be shown by affidavit, filed in the registry, that they have been duly served and have not appeared.

21. The affidavit of service of a writ required to be filed under Rule 19 shall show the means of knowledge of the deponent as to the identity of the person served, and the writ referred to in the affidavit must be annexed to it and marked by the person before whom the affidavit is sworn.

22. All appearances to writs are to be entered in the registry in a book Appearance. provided for that purpose.

23. An appearance may be entered at any time before a proceeding has been taken by default, or afterwards by the leave of the Court to be applied for by summons founded on affidavit.

24. Every entry of an appearance must be accompanied by an address for service not more than two miles from the Registry.

25. Application for leave to intervene in any cause must be made to the Intervene. Court by motion supported by affidavit.

26. Every party intervening must join in the proceedings at the stage in which he finds them, unless it is otherwise ordered by the Court.

27. Every respondent who has entered an appearance may within twenty- Answer. one days after the service of the writ upon him or her file in the Registry an answer to the petition.

28. Each respondent shall on the day he or she files an answer deliver a copy thereof to the petitioner, or to his or her legal practitioner.

29. Every answer which contains matter other than a simple denial of the facts stated in the petition shall be accompanied by an affidavit made by the respondent, verifying such other or additional matter, so far as he or she has personal cognizance thereof and deposing as to his or her belief in the truth of the rest of such other or additional matter and such affidavit shall be filed with the answer.

30. In cases involving a decree of nullity of marriage or of judicial separation, or of dissolution of marriage, or a decree of jactitation of marriage, the respondent who is husband or wife of the petitioner shall in the affidavit filed with the answer further state that there is not any collusion or connivance between the deponent and the petitioner.

31. Within fifteen days from the filing and delivery of the answer the Further petitioner may file a reply thereto, and the same time shall be allowed for pleadings. filing any further pleading by way of rejoinder or any subsequent pleading.

32. A copy of every reply and subsequent pleading shall on the day the same is filed be delivered to the opposite parties or to their legal practitioner.

33. It shall be sufficient to leave all pleadings and other instruments, Service of personal service of which is not required by these rules, at the respective pleadings. addresses furnished by or on behalf of the several parties to the cause.

Setting  
down for  
Hearing.

34. When the pleadings are concluded the petitioner shall set the cause down for hearing, and on the same day give notice of his having done so to each party in the cause for whom an appearance has been entered.

35. If the petitioner fail to set down the cause for hearing for the space of one month after the pleadings have been concluded, either of the respondents entitled to be heard at such hearing may set the cause down for hearing, and shall on the same day give notice of his having done so to the petitioner and to each of the other parties to the cause for whom an appearance has been entered.

Hearing.

36.—(1.) In cases in which damages are not claimed the cause shall be heard by oral evidence before the Court itself without a jury.

(2.) In cases in which damages are claimed the cause shall be heard by oral evidence before the Court with a jury.

Any party to a cause may apply by summons for a direction that the cause may be heard otherwise than is hereby provided.

37. No cause shall be called on for hearing until after the expiration of Ten days from the day when the same has been set down for hearing, and notice thereof has been given, save with the consent of all parties to the cause.

38. Before a cause is set down for hearing the pleadings and proceedings in the cause shall be referred to the Registrar, who shall certify that the same are correct and in order: and the Registrar shall cause any irregularity in such pleadings or proceedings to be corrected or refer any question arising therefrom to the Court for its direction: any party to the cause objecting to such direction of the Registrar may (subject to any order as to costs) apply to the Court on summons to rescind or vary the same.

Access to  
children.

39. Before the hearing of a cause a husband or wife who are parties to it may apply for an order with respect to the custody, maintenance, or education of or for access to children, issue of their marriage, to the Court by motion founded on affidavit.

Decree  
absolute.

40. All applications to make absolute a decree nisi for dissolution of a marriage shall be made by filing in the Registry a notice in writing setting forth that application is made for such decree absolute, which will thereupon be pronounced in open Court at a time appointed for that purpose. In support of such application it must be shown by affidavit filed with the notice that search has been made in the proper books at the Registry up to within Two days of the affidavit being filed, and that at such time no person had obtained leave to intervene in the cause and that no appearance had been entered nor any affidavits filed on behalf of any person wishing to show cause against the decree nisi being made absolute; and in case leave to intervene has been obtained or appearance entered or affidavits filed on behalf of any such person, it must be shown by affidavit what proceedings if any had been taken thereon but it shall not be necessary to file a copy of the decree nisi.

Intervention  
by King's  
Proctor.

41. When the King's Proctor desires to show cause against making absolute a decree nisi for nullity or dissolution of marriage, he shall enter an appearance in the cause in which such decree nisi has been pronounced, and shall within fifteen days after entering appearance file his plea in the Registry setting forth the grounds upon which he desires to show cause as aforesaid, and on the day he files his plea in the Registry, shall deliver a copy thereof to the person in whose favour such decree has been pronounced or to his or her legal practitioner. All subsequent pleadings and proceedings in respect to the King's Proctor's intervention in a cause shall be filed and carried on in the same manner as before directed in respect of the pleadings and proceedings of the original parties to the cause.

Intervention  
by other  
parties.

42. Any person, other than the King's Proctor, wishing to show cause against making absolute a decree nisi for dissolution of a marriage, shall enter an appearance in the cause in which such decree nisi has been pronounced.

43. Every such person shall, at the time of entering an appearance or within four days thereafter, file affidavits setting forth the facts upon which he relies, and upon the same day shall deliver a copy of the same to the party in the cause in whose favour the decree nisi has been pronounced.

44. The party in the cause in whose favour a decree nisi has been pronounced may, within eight days after delivery of the affidavits, file affidavits in answer and shall upon the day such affidavits are filed deliver a copy thereof to the person showing cause against the decree being made absolute.

45. The person showing cause against the decree nisi being made absolute may within eight days file affidavits in reply and shall upon the same day deliver copies thereof to the party supporting the decree nisi.

46. No further affidavits shall be filed without permission of the Court.

47. The question raised on such affidavits shall be argued in such manner and at such time as the Court on application by motion may direct.

48. Any party to a cause who has entered an appearance may apply by summons to the Court to be heard touching any collateral question that may arise in the cause. In the event of leave being given to be so heard, the Court shall give such further directions as to the disposal of the matter as may seem just.

49. The wife being petitioner in a cause may file her petition for alimony pending suit at any time after the writ has been duly served on the husband, or after order made by the Court to dispense with such service, provided the factum of marriage between the parties is established by affidavit previously filed.

50. The wife being respondent in a cause after having entered an appearance may also file her petition for alimony pending suit.

51. The husband shall within eight days after the filing and delivery of the petition for alimony, file his answer thereto upon oath.

52. The husband being respondent in the cause must enter an appearance before he can file an answer to a petition for alimony.

53. The wife if not satisfied with the husband's answer may object to the same as insufficient and apply to the Court by summons to order him to give a further and better answer or to order his attendance on the hearing of the petition for the purpose of being examined thereon.

54. In case the answer of the husband alleges that the wife has property of her own, she may (within eight days) file a reply on oath to that allegation; but the husband is not at liberty to file a rejoinder to such reply without permission of the Court. A copy of every petition for alimony, answer and reply must be delivered to the opposite party or to his legal practitioner on the day the same is filed.

55. After the husband has filed his answer to the petition for alimony, or if no answer is filed, at the expiration of the time allowed for filing an answer, the wife may proceed to examine witnesses in support of her petition and apply by summons for an allotment of alimony pending suit, notice of the summons and of the intention to examine witnesses, being given to the husband or to his legal practitioner, four days previously to the summons being heard and the witnesses examined unless the Court shall dispense with such notice.

56. A wife who has obtained a final decree of judicial separation in her favour may apply to the Court by motion for an allotment of permanent alimony, though no alimony shall have been allotted her pending suit, and the Rules of this Court relating to petitions for alimony pending suit shall so far as the same are applicable be observed in respect to the proceedings upon such petitions for permanent alimony.

57. A wife may at any time after alimony has been allotted to her, whether alimony pending suit or permanent alimony file her petition for an increase of the alimony allotted by reason of the increased faculties of the husband, or the husband may file a petition for a diminution of the alimony allotted by reason of reduced faculties; and the course of proceedings in such cases shall be the same as required by these rules in respect of the original petition for alimony and the allotment thereof, so far as the same are applicable. Permanent alimony shall unless otherwise ordered commence and be computed from the date of the final decree of the Court.

58. Alimony pending suit and also permanent alimony shall be paid to the wife or to some person to be nominated in writing by her and approved by the Court, as Trustee on her behalf.

Registry.

59. There shall be kept in the Registry a book to be called the Minute Book, in which shall be entered in order of date under the head of each cause, and on a page numbered with the number of the cause, a record of the commencement of the cause, of all appearances entered, all documents issued or filed, all acts done and all orders and decrees of the Court, whether made by the Court or by consent of the parties to the cause.

Procedure.

60. Subject to the provisions of the China (Amendment No. 2) Order in Council 1920 and the provisions of these Rules, the Rules of procedure and practice of the Court in ordinary civil proceedings shall in so far as they are applicable, be followed. When such Rules do not provide the practice, the practice of the Divorce Division of the High Court of Justice in England shall be followed.

61. The above Rules, so far as the same may be applicable, shall extend to the applications and proceedings under "The Legitimacy Declaration Act, 1858."

62. The forms in use in the Divorce Division of the High Court of Justice in England shall be followed with such variations as the circumstances may require.

Fees.

63. The fees set forth in the Table of Fees for ordinary civil proceedings in the Court shall be levied in all Matrimonial proceedings: provided that, where damages are claimed, an ad valorem fee based on the amount of such claim shall be charged in addition to the ordinary fees on sealing a writ of summons and on setting the cause down for trial.

Appeals.

64. The provisions of the China (Full Court) Rules of Court, 1910, shall apply to appeals against decisions of the Court in its Matrimonial jurisdiction.

65. These Rules may be cited as "The China (Divorce) Rules of Court 1921," and may be cited with "The China Rules of Court, 1905 to 1916" as "The China Rules of Court, 1905 to 1921."

66. These Rules shall come into force on the 7th day of May, 1921.

SKINNER TURNER,  
*Acting Judge.*

May 7th, 1921.