

NOTICES.

No. 15.

COLONIAL SECRETARY'S DEPARTMENT.

With reference to Notifications Nos. 737 and 738 published in the Hong Kong Government Gazette of the 27th September, 1935, the following Rules made by the Secretary of State with the concurrence of the Lord Chancellor are published for general information.

W. T. SOUTHORN,
Colonial Secretary.

3rd January, 1936.

THE HONG KONG (NON-DOMICILED PARTIES)
DIVORCE RULES, 1936.

Dated January 1st, 1936.

In exercise of the powers conferred by the Indian and Colonial Divorce Jurisdiction Act, 1926, (16 and 17 Geo. 5, c. 40), and the Hong Kong Divorce Jurisdiction Order in Council, 1935, the Secretary of State for the Colonies with the concurrence of the Lord Chancellor hereby makes the following rules, namely:—

Short title and commencement.

1.—(1) These rules may be called the Hong Kong (Non-Domiciled Parties) Divorce Rules, 1936.

(2) They shall come into force on the 2nd day of January, 1936.

Appointment of Judges.

2.—(1) As soon as may be after the coming into force of these Rules, the Chief Justice of the Supreme Court of Hong Kong, shall submit to the Lord Chancellor through the Secretary of State for the Colonies the names of such number of the judges of the Court (including, if he thinks fit, the name of the Chief Justice himself) not exceeding four, as he may consider necessary for the purpose of exercising jurisdiction under the Act and these Rules.

(2) Upon the approval of the Lord Chancellor to any nomination so submitted being signified to the Chief Justice by the Secretary of State for the Colonies, the Chief Justice shall cause the names so approved to be notified in the Hong Kong Government Gazette as judges appointed to exercise jurisdiction under the Act, and the judges whose names shall have been so notified shall thereupon have power to exercise jurisdiction accordingly.

(3) At any time after the first nominations under these Rules have been approved, the Chief Justice may propose the names of a further judge or judges to take the place of, or to exercise jurisdiction in addition to, the judge or judges

for the time being having powers under the Act; and when such further nominations are approved they shall be notified as aforesaid.

3. Every petition under the Act shall be heard by a single judge nominated and approved as hereinbefore provided, sitting without a jury, and an appeal shall lie within *sixty* days or such time as the Court may order to a bench of two other judges who have been similarly nominated and approved against any decree or order which would be appealable if it had been made in proceedings under the Divorce Ordinances of Hong Kong (Ordinances No. 35 of 1932, and No. 9 of 1933), and shall be disposed of accordingly.

4. An appeal shall lie from a judgment given by a bench of two such judges to His Majesty in Council in any case where an appeal would lie in England from a similar decision of the Court of Appeal to the House of Lords.

Petition.

5. All proceedings under the Act shall be commenced by filing a petition to which shall be attached a certified copy of the certificate of the marriage.

6.—(1) In the body of a petition praying for the dissolution of a marriage shall be stated—

(i) the place and date of marriage, and the name, status and domicile of the wife before the marriage;

(ii) the status of the husband and his domicile at the time of the marriage and at the time when the petition is presented, and his occupation and the place or places of residence of the parties at the time of institution of the suit;

(iii) the principal permanent addresses where the parties have cohabited, including the addresses where they last resided together in the Colony of Hong Kong;

(iv) whether there is living issue of the marriage, and if so the names and dates of birth or ages of such issue;

(v) whether there have been in the Divorce Division of the High Court of Justice in England or in the Court of Session in Scotland or in the Supreme Court of Hong Kong any, and if so what, previous proceedings with reference to the marriage by or on behalf of either of the parties to the marriage, and the result of such proceedings;

(vi) the matrimonial offences charged set out in separate paragraphs with the times and places of their alleged commission;

(vii) the claim for damages, if any;

(viii) the grounds on which the petitioner claims that in the interests of justice it is desirable that the suit should be determined in the Colony of Hong Kong.

(2) The petition shall conclude with a prayer setting out particulars of the relief claimed, including the amount of any claim for damages and any order for custody of children which is sought, and shall be signed by the petitioner.

Verification of Petition.

7.—(1) The statements contained in every petition under these Rules shall be signed by the petitioner and in cases where the petitioner is seeking a decree of dissolution of marriage the petition shall include a declaration that no collusion or connivance exists between the petitioner and the other party to the marriage, and that neither the petitioner nor, within the knowledge of the petitioner, the other party to the marriage has instituted proceedings which are still pending for the dissolution of the marriage in England or Scotland.

(2) The petition shall be verified by affidavit.

Co-Respondents and Interveners.

8. In every petition presented by a husband for the dissolution of his marriage the petitioner shall make the alleged adulterers co-respondents in the suit, unless the Court shall otherwise direct.

9. Where a husband is charged with adultery with a named person, a certified copy of the pleading containing such charge shall, unless the Court for good cause shown otherwise directs, be served upon the person with whom adultery is alleged to have been committed, accompanied by a notice that such person is entitled, within the time therein specified, to apply for leave to intervene in the cause.

Service of Petitions and Notices.

10. Every petition or notice referred to in these Rules shall be served on the party to be affected thereby, either within or without the Colony of Hong Kong, in the manner prescribed by the Code of Civil Procedure (Ordinance No. 3 of 1901, of Hong Kong) for the service of summonses:

Provided that unless the Court for good cause shown otherwise directs, service of all such petitions and notices shall be effected by delivery of the same to the party to be affected thereby, and the Court shall record that it is satisfied that service has been so effected.

Appearance.

11. A petitioner cannot proceed to trial unless an appearance has been entered by or on behalf of each respondent or co-respondent or intervener, or it has been shown by affidavit filed in the Registry that any such person who has not appeared has been duly served.

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

13. If any respondent or co-respondent or intervener wishes to raise any question as to the jurisdiction of the Court, he (or she) must enter an appearance under protest and within eight days file in the Registry a written statement of his (or her) grounds of objection to the jurisdiction and within the same period deliver a copy of such statement to the petitioner. No further grounds of objection will be allowed at the hearing.

Answer and Subsequent Pleadings.

14. A respondent or co-respondent, or a woman to whom leave to intervene has been granted under Rule 9, may after entering appearance file in the Registry an answer to the petition.

15.—(1) Any answer which contains matter other than a simple denial of the facts stated in the petition shall be signed in respect of such matter by the respondent or co-respondent or intervener as the case may be in the manner required by these Rules for the signature of petitions, and when the respondent is husband or wife of the petitioner the answer shall contain a declaration that there is not any collusion or connivance between the parties.

(2) Where the answer of a husband alleges adultery and prays relief, a certified copy thereof shall be served upon the alleged adulterer, together with a notice to appear in like manner as a petition. When in such case no relief is claimed the alleged adulterer shall not be made a co-respondent, but a certified copy of the answer shall be served upon him together with a notice as under Rule 9 that he is entitled within the time therein specified to apply for leave to intervene in the suit, and upon such application he may be allowed to intervene, subject to such direction as shall then be given by the Court.

16. A petition originating proceedings under these Rules and an answer thereto shall be deemed to be synonymous with a statement of claim and a statement of defence respectively within the meaning of the Code of Civil Procedure (Ordinance No. 3 of 1901, of Hong Kong), and these and all the subsequent proceedings shall be regulated in accordance with the provisions of that Code, so far as they are applicable and are not inconsistent with these Rules.

17.—(1) If it appears to the Court that proceedings for the dissolution of the marriage have been instituted in England or Scotland before the date on which the petition was filed in Hong Kong, the Court shall either dismiss the petition or stay further proceedings thereon until the proceedings in England or Scotland have terminated, or until the Court shall otherwise direct.

(2) If it appears that such proceedings were instituted after the filing of the petition in Hong Kong, the Court may proceed, subject to the provisions of the Act, with the trial of the suit.

Showing cause against a Decree.

18. The Governor in Council shall appoint a person to exercise within the jurisdiction of the Supreme Court of Hong Kong the duties assigned to His Majesty's Proctor by sections 181 and 182 of the Supreme Court of Judicature (Consolidation) Act, 1925, (15 and 16 Geo. 5, c. 49) and the name of the person so appointed shall be notified in the Hong Kong Government Gazette by the designation of Proctor. Every Proctor so appointed, if not the Attorney General of Hong Kong, shall in the exercise of his functions act under the instructions of the Attorney General of Hong Kong.

19.—(1) If any person during the progress of the proceedings or before the decree *nisi* is made absolute gives information to the Proctor of any matter material to the due decision of the case, the Proctor may take such steps as he considers necessary or expedient.

(2) If in consequence of any such information or otherwise the Proctor suspects that any parties to the petition are or have been in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may after obtaining the leave of the Court intervene and produce evidence to prove the alleged collusion.

20.—(1) When the Proctor desires to show cause against making absolute a decree *nisi* he shall enter an appearance in the suit in which such decree *nisi* has been pronounced and shall within a time to be fixed by the Court file his plea setting forth the grounds upon which he desires to show cause as aforesaid, and a certified copy of his plea shall be served upon the petitioner or person in whose favour such decree has been pronounced or his solicitor. On entering an appearance the Proctor shall be made a party to the proceedings, and shall be entitled to appear in person or by counsel.

(2) Where such plea alleges a petitioner's adultery with any named person a certified copy of the plea shall be served upon each such person, omitting such part thereof as contains any allegation in which the person so served is not named.

(3) All subsequent pleadings and proceedings in respect of such plea shall be filed and carried on in the same manner as is hereinbefore directed in respect of an original petition except as hereinafter provided.

(4) If the charges contained in the plea of the Proctor are not denied or if no answer to the plea of the Proctor is filed within the time limited or if an answer is filed and withdrawn or not proceeded with the Proctor may apply forthwith for the rescission of the decree *nisi* and dismissal of the petition.

21. Where the Proctor intervenes or shows cause against a decree *nisi* in any proceedings for divorce, the Court may make such order as to the payment by other parties to the proceedings of the costs incurred by him in so doing, or as to the payment by him of any costs incurred by any of the said parties by reason of his so doing, as may seem just.

22. Any person other than the Proctor wishing to show cause against making absolute a decree *nisi* shall, if the Court so permits, enter an appearance in the suit in which such decree *nisi* has been pronounced, and at the same time file affidavits setting forth the facts upon which he relies. Certified copies of the affidavits shall be served upon the party or the solicitor of the party in whose favour the decree *nisi* has been pronounced.

23. The party in the suit in whose favour the decree *nisi* has been pronounced may within a time to be fixed by the Court file affidavits in answer, and the person showing cause against the decree *nisi* being made absolute may within a further time to be so fixed file affidavits in reply.

Decree Absolute.

24. No decree *nisi* for the dissolution of a marriage under the Act shall be made absolute till after the expiration of six months from the pronouncing thereof, if no appeal has been filed within that period, or if any appeal (including an appeal to His Majesty in Council) has been filed, until after the decision thereof.

25.—(1) Application to make absolute a decree *nisi* shall be made to the Court by filing a petition 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 said petition that no proceedings for the dissolution of the marriage have been instituted and are pending in England or Scotland, and that search has been made in the proper books at the Court up to within six days of the time appointed, and that at such time no person had intervened or obtained leave to intervene in the suit, and that no appearance has 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 had been obtained, or appearance entered or affidavits filed on behalf of such person, it must be shown by affidavits what proceedings, if any, have been taken thereon.

(2) If more than twelve calendar months have elapsed since the date of the decree *nisi*, an affidavit by the petitioner, giving reasons for the delay, shall be filed.

Alimony, Maintenance and Custody of Children.

26. Proceedings relating to alimony, maintenance, custody of children, and to the payment, application or settlement of damages assessed by the Court shall be conducted in accordance with the provisions of the Divorce Ordinances of Hong Kong (Ordinances No. 35 of 1932, and No. 9 of 1933), and of the Rules made thereunder :

Provided that when a decree is made for the dissolution of a marriage the parties to which are domiciled in Scotland the Court shall not make an order for the securing of a gross or annual sum of money :

Provided further that the Supreme Court of Hong Kong shall not entertain an application for the modification or discharge of an order for alimony, maintenance or the custody of children, unless the person on whose petition the decree for the dissolution of the marriage was pronounced is at the time the application is made resident in the Colony of Hong Kong.

Certifying Officer.

27. The certificate referred to in sub-section (3) of section 1 of the Act shall be in the form set out in the Schedule hereto and shall be signed by the Registrar of the Supreme Court of Hong Kong and sealed with the seal of the Court.

Procedure Generally.

28. Subject to the provisions of these Rules all proceedings under the Act between party and party shall be regulated by the Divorce Ordinances of Hong Kong (Ordinances No. 35 of 1932 and No. 9 of 1933) and the Rules made thereunder.

29. The forms set forth in the Schedule to Ordinance No. 35 of 1932, (as amended by Ordinance No. 9 of 1933) of Hong Kong with such variation as the circumstances of each case and these Rules may require, may be used for the respective purposes mentioned in the said Schedule.

SCHEDULE.

(SEE RULE 27).

I, A.B. (Registrar) of the Supreme Court of Hong Kong at the Courts of Justice, Hong Kong, hereby certify that the foregoing is a true copy of a $\frac{\text{decree}}{\text{order}}$ made by the aforesaid Supreme Court acting in exercise of the matrimonial jurisdiction conferred by the Indian and Colonial Divorce Jurisdiction Act, 1926, in Suit No of
in Appeal No. of from.....
.....
judgment and decree in Suit No. of.....
in which the above named C.D. was petitioner and the above-named E.F. was respondent and the above-named G.H. was $\frac{\text{co-respondent.}}{\text{intervener.}}$

Dated this day of 19.....

(Signed)
Registrar.