

PART C.—(A) RULES UNDER SECTION 1(4), INDIAN AND COLONIAL DIVORCE JURISDICTION ACT, 1926—MADE BY THE SECRETARY OF STATE IN COUNCIL FOR INDIA WITH THE CONCURRENCE OF THE LORD CHANCELLOR UNDER THE INDIAN AND COLONIAL DIVORCE JURISDICTION ACT, 1926 (16 AND 17 GEO. 5) (AS AMENDED BY THE INDIAN [NON-DOMICILED PARTIES) DIVORCE (AMENDMENT) RULES, 1940, AS PUBLISHED IN GOVERNMENT OF INDIA, HOME DEPARTMENT, NOTIFICATION NO. 106/36, DATED THE 14TH JANUARY, 1941.]

*Short title and Commencement*

Title and date of enforcement.

1. (1) These Rules may be called the Indian (Non-Domiciled Parties) Divorce Rules, 1927.

(2) They shall come into force on the 27th day of July, 1927.

*Appointment of Judges*

Chief Justice to submit to Lord Chancellor names of judges proposed for jurisdiction exercising

2. (1) As soon as may be after the coming into force of these Rules the Chief Justice of each of the High Courts referred to in sub-section (1) of section 1 of the Indian and Colonial Divorce Jurisdiction Act, 1926 (hereinafter called "the Act") shall submit to the Lord Chancellor through the Secretary of State for India the names of such number of Judges of the Court (including, if he thinks fit, the name of the Chief Justice himself) not exceeding six, as he may consider necessary for the purpose of exercising jurisdiction under the Act and these Rules.

Names of Judges approved to be published in Gazette.

(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 India, the Chief Justice shall cause the, names so approved to be notified in the official Gazette of State as Judges appointed to exercise jurisdiction under the

Act, and the Judges whose names shall have been 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.

Submission of further names.

3. Every petition under the Act shall be heard by a single Judge nominated and approved as herein before provided, sitting without a jury, and, subject to the provisions of the Indian Limitation Act, an appeal shall lie 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 passed in proceedings under the Indian Divorce Act, 1869, and shall be disposed of accordingly. Each such bench shall be constituted by the Chief Justice as occasion may arise.

Petition to be heard by a single Judge without jury. Appeal to be heard by a Bench.

4. Nothing in these Rules shall be deemed to prevent the exercise of any ultimate right to appeal to his Majesty in Council.

Appeal to his Majesty in Council.

#### *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.

Mode of proceeding.

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

Contents of petition and form of relief.

- (i) the place and date of the 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 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 address where they last resided together in India ;
- (iv) whether, there is living issue of the marriage, and, if so, the names and dates of birth of 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 any Court in India 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 alleged or other grounds on which a decree of dissolution is sought set out in separate paragraphs with the times and places and all other relevant particulars ;
- (a) if at the date of institution of a cause of a wife the husband has deserted the wife, and there is reason to believe that he has changed his domicile since the date of the desertion, the domicile of the husband immediately before the desertion, the date when and the circumstances in which the alleged desertion began;
- (b) in the case of a petition for presumption of death and dissolution of the marriage, the last place of co-habitation of the parties, the circumstances in which the parties ceased to co-habit, and the date when and the place where the respondent was last seen or heard of;

- (vii) the claim for damages, if any ;
- (viii) the grounds on which the petitioner claims that in the interest of justice it is desirable that the suit should be determined in India.

(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. The statements contained in every petition under these Rules shall be verified by the petitioner or some other competent person in manner required by the Code of Civil Procedure for the time being in force for the verification of plaints, and in case where the petitioner is seeking a decree of dissolution of marriage, the verification shall include a declaration authenticated in like manner 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.

Mode and contents of verification.

#### *Co-respondents and Interveners*

8. In every petition presented by a husband for the dissolution of his marriage on the grounds of adultery the petitioner shall make the alleged adulterers co-respondent in the suits, unless the court shall otherwise direct.

Alleged adulterers of wife to be made co-respondents.

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.

Where husband charged with adultery with some person, copy of charge with notice to intervene to be sent to that person.

*Service of Petitions and Notices*

Manner of service of petition 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 India, in the manner prescribed by the Code of Civil Procedure for the time being in force 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 affected 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.

*Answer and subsequent pleadings*

Filing answers.

11. A respondent or co-respondent, or a woman to whom leave to intervene has been granted under Rule 9 may file in the Court an answer to the petition.

Verification of answers.

12. (1) Any answer which contains matters other than simple denial of the facts stated in the petition shall be verified in respect of such matter by the respondent or co-respondent as the case may be, in the manner required by these Rules for the verification 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.

Action to be taken when the answer of a husband alleges adultery and prays relief.

(2) Where the answer of the 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 on 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,

13. (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 India, 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.

Action to be taken when proceedings for dissolution of marriage are pending in United Kingdom.

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

*Showing Cause against a Decree Nisi*

14. The State Government of the State in which the principal seat of the Court is situate shall appoint an officer to exercise, within the jurisdiction for the purpose of the Act of the several High Courts referred to in section 1 thereof, the duties assigned to His Majesty's Proctor by sections 181 and 182 of the Supreme Court of Judicature Consideration Act, 1925, and the Officer so appointed shall be notified in the official gazette of the State. Every Proctor so appointed shall in the exercise of his functions, act under the instructions of the Advocate-General for the State.

Proctor to be appointed and notified in the Gazette.

15. (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.

Proctor may intervene on receipt of material information.

(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.

16. (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 being

Procedure when proctor desires to show cause against a decree *nisi* being made absolute. Proctor to made party.

certified copy of his plea shall be served upon the petitioner or person in whose favour such decree has been pronounced or his advocate. On entering an appearance the Proctor shall be made a party to the proceedings, and shall be entitled to appear in person or by advocate.

(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 allegations in which the person so served is not named.

(3) All subsequent pleading's 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.

17. 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.

18. 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 Certified copies of the affidavits shall be served upon the party or the advocate of the party in whose favour the decree *nisi* has been pronounced.

19. 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

Proctor may apply for rescission of the decree *nisi* if his pleas are not controverted.

Costs of proceedings when Proctor intervenes.

Procedure when any person other than the Proctor desires to show cause against a decree *nisi* being made absolute.

Affidavits and counter affidavits in the above case.

made absolute may within a further time to be so fixed file affidavits on reply.

20. Every decree for the dissolution of a marriage under the Act shall in the first instance be a decree nisi not to be made absolute until after the expiration of six months from the pronouncing thereof unless the Court *by* general or special order from time to time fixes a shorter time :

Provided that no decree nisi against which an appeal has been filed, including an appeal to His Majesty in Council shall be made absolute until after the decision of the appeal.

21. (1) Application to make absolute a decree Affidavit to *nisi* shall be made to the Court by filing a petition setting forth that application is made for such decree make an absolute, which will thereupon be pronounced in Court at a time appointed for that purpose. In support of such application it must be shown by affidavit tiled 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.

Affidavit to accompany petition to make a decree *nisi* absolute.

(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*

22. Proceedings relating to alimony, maintenance custody of children and to the payment, application proceedings.

Mode of conducting proceedings.

or settlement of damages assessed by the Court shall be conducted in accordance with the provisions of the Indian Divorce Act, 1969, and of the rules made thereunder :

Provided that in any case where a petition for the dissolution of her marriage is presented by the wife on the grounds of her husband's insanity the relevant provisions of the said Act and Rules shall apply as if for the references to the husbands there were substituted reference to the wife and for the reference to the wife there were substituted reference to the husband, and in any such case and in any case where a petition for the dissolution of his marriage is presented by the husband on the ground of his wife's insanity the Court may order the payments of alimony or maintenance under the said Act to be made to such persons having charge of the respondent as the Court may direct :

Powers delegated to Registrar under the Act.

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

Provided further that no Court in India shall 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 India.

#### *Procedure Generally*

General procedure.

23. Subject to the provisions of these Rules all proceedings under the Act between party and party shall be regulated by the Indian Divorce Act and the rules made thereunder.

Forms.

24. The forms set forth in the Schedule to the Indian Divorce Act, with such variation as the circumstances of each case and these Rules may require, may be used for the respective purposes mentioned in the Schedule.

*(b) Powers delegated to the Registrar under The Indian and Colonial Divorce Jurisdiction Act, 1926—*

In accordance with the powers vested in them by Article 35 of the Letters Patent, the Honourable the Chief Justice and Judges of the High Court of Punjab at Chandigarh are pleased to delegate to the Registrar the following powers in cases under the Indian and Colonial Divorce Jurisdiction Act, 1926

Power delegated  
to Registrar  
under the Act.

- (1) Power to tax bill of costs between party and party, subject to an appeal to one of the Judges appointed to exercise jurisdiction under the Act.
- (2) On order by a Judge, power to frame issues before trial.

*(High Court notification No. 614/8870-G, dated the 26th December, 1928).*