



THE
CEYLON GOVERNMENT
GAZETTE

EXTRAORDINARY.

No. 8,231 – THURSDAY, JULY 2, 1936.

Published by Authority.

PART I.—GENERAL.

GOVERNMENT NOTIFICATION.

A, G./B 194/31

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

THE following rules made by the Secretary of State for the Colonies, with the concurrence of the Lord Chancellor, in pursuance of the powers conferred by the Indian and Colonial Divorce Jurisdiction Act, 1926, and the Ceylon Divorce Jurisdiction Order in Council, 1936, are hereby published for general information.

By His Excellency's command,

J. W. R. ILANGAKOON,

Colombo, July 2, 1936. Acting Attorney-General.

RULES REFERRED TO.

Short title and commencement.

1. (1) These Rules may be called the Ceylon (Non-Domiciled Parties) Divorce Rules, 1936.

(2) They shall come into force on the second day of July, 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 Ceylon shall submit to the Lord Chancellor through the Secretary of State for the Colonies the names of such number of 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 *Ceylon 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 were made in any matrimonial suit under the provisions of the Civil Procedure Code, 1889.

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 co-habited, including the addresses where they last resided together in Ceylon;
- (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 Ceylon 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 Ceylon.

(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 or on behalf of the petitioner in the manner hereinafter prescribed.

Verification of Petition.

7. The statements contained in every petition under these Rules shall be signed by the petitioner or some competent person in manner required by the Civil Procedure Code, 1889, and any Rules for the time being in force for the signing of complaints, 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.

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 Ceylon, in the manner prescribed by the Civil Procedure Code, 1889, or any Rules 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 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.

Answer and subsequent Pleadings.

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

12. (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 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 for damages, a certified copy thereof together with a notice to appear shall be served upon the alleged adulterer, in like manner as a petition and the alleged adulterer shall thereupon be added as co-respondent. When in such case no damages are 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 is proved to the satisfaction of 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 Ceylon, 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) But if such proceedings are proved to have been instituted after the filing of the petition in Ceylon, the Court may proceed, subject to the provisions of the Act, with the trial of the suit.

Showing cause against a Decree Nisi.

14. (1) At any stage before the decree nisi is entered in any proceedings, the Attorney-General may, if he considers it necessary or expedient to intervene, move for the leave of the Court so to do, and on such leave being granted enter an appearance and produce any evidence at his disposal to prove that there is or has been collusion between the parties for the purpose of obtaining a decree contrary to the justice of the case.

(2) On his obtaining the leave of the Court to enter an appearance, he shall be made a party to the proceedings and shall be entitled to appear in person or by advocate.

15. (1) The Attorney-General may in like manner with the like leave intervene in any proceedings after the decree nisi has been entered and show cause against the decree nisi being made absolute.

(2) He shall within the time allowed by the Court for the purpose, file a statement setting forth the grounds upon which he desires to show cause as aforesaid; and a certified copy of his statement, together with a notice specifying the date before which an answer to such statement may be filed, shall be served personally upon the party or upon the proctor of the party in whose favour the decree nisi has been entered.

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

(4) Except as hereinafter provided all subsequent pleadings and proceedings in respect of such statement shall be filed and carried on in the same manner as in respect of an original petition.

(5) If the charges contained in the statement of the Attorney-General are not denied, or if no answer to such statement is filed within the time limit specified in the notice, or if an answer is filed and withdrawn or not proceeded with, the Attorney-General may apply forthwith for the rescission of the decree nisi and dismissal of the petition.

16. Where the Attorney-General intervenes, under either of the foregoing rules 14 and 15, 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.

17. (1) Any person other than the Attorney-General wishing to show cause against a decree nisi being made absolute, shall apply for leave of Court by petition verified by affidavit, and shall enter an appearance in the suit only if such leave has been given.

(2) Leave to enter an appearance in a suit may be given by the Court in its discretion, on a perusal of the petition and affidavit or after such investigation as the Court shall consider necessary.

(3) Where such leave has been given, certified copies of the affidavit or affidavits filed by the applicant, shall be served forthwith upon the party or the proctor of the party in whose favour the decree nisi has been pronounced.

18. 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 rejoinder.

Decree Absolute.

19. 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.

20. (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.

21. 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 Civil Procedure Code, 1889:

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 Ceylon 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 Ceylon.

Certifying Officer.

22. A certificate referred to in sub-section (3) of section I of the Act shall be in the form set out in the Schedule and shall be signed by the Registrar of the Supreme Court of Ceylon and sealed with the seal of the Court.

Procedure Generally.

23. Subject to the provisions of these Rules all proceedings under the Act between party and party including proceedings in appeal shall be regulated by the Civil Procedure Code, 1889, and the Appeals (Privy Council) Ordinance, 1909, and the Rules and Orders made thereunder, and the Rules made under the provisions of section 53 of the Courts Ordinance, 1889.

24. (1) On proceedings before a single judge under these Rules, stamp duties shall be payable at the rates prescribed for matrimonial suits in District Courts, in Part II. of Schedule B to the Stamp Ordinance, 1909, as amended by the Stamp Ordinance, No. 16 of 1917.

(2) On proceedings before two judges, stamp duties shall be payable—

(a) where the amount of the damages claimed does not exceed Rs. 1,000 at the rates specified for Class 2 in the classification of suits in Civil Proceedings in the Supreme Court set out in Part II. of Schedule B aforesaid; and

(b) where the amount of the damages claimed exceeds Rs. 1,000, at the rates specified for such amount in the classification of suits aforesaid.

SCHEDULE.

(See Rule 22.)

I, *A.B.* (Registrar) of the Supreme Court of Ceylon at _____ hereby certify that the foregoing is a true copy

of a _____
decree
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 _____

Appeal No. of _____ from judgment and decree in suit

_____ in which the above-named *C.D.* was petitioner
No. of _____

and the above-named *E.F.* was respondent and the above-named *G.H.* was _____
co-respondent.
interventient.

Signed _____,
Registrar.