

**1927.**  
**ASSAM SECRETARIAT.**

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**GENERAL & JUDICIAL DEPARTMENT.**

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**JUDICIAL—A.**

---

**September 1927.**

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**Nos. 1-6.**

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Rules under Section 1(4), Indian and Colonial Divorce Jurisdiction Act, 1926.

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REFERENCES TO FORMER CASES.

Department, date and Nos. or File No. and year.	Brief Title of File.
Nil.	

REFERENCES TO LATER CASES.

Department, date and Nos.	Brief Title of File.

(To be continued on back, if necessary.)

PAPERS OTHER THAN PROCEEDINGS.

I.—Printed.

Notes and orders.

II.—Not printed.

Nil.

1927.

ASSAM SECRETARIAT.  
GENERAL AND JUDICIAL DEPARTMENT.

JUDICIAL—A.

SEPTEMBER.

Nos. 1-6.

Rules under Section 1(4), Indian and Colonial Divorce Jurisdiction Act, 1926.

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# NOTES.

*JUDICIAL—A, SEPTEMBER 1927.*

Nos. 1-6.

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Rules under Section 1(4), Indian and Colonial Divorce Jurisdiction Act, 1926.

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FROM THE SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT, NO. F.-922—  
25JUDL., DATED THE 6TH AUGUST 1927.

Chief Secretary,

We are not concerned. We may await the rules.

20th August 1927.

20th August 1927.

C. S. MULLAN.

G. E. SOAMES.

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FROM THE ASSISTANT SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT, NO.  
F.-922—25JUDL., DATED THE 16TH AUGUST 1927.

Under-Secretary,

For perusal.

Copies of the rules may perhaps be forwarded to the Commissioners, Deputy Commissioners, Districts and Sessions Judges and Legal Remembrancer. The rules may also be republished in our Gazette.

Satish—29th August 1927.

Dinesh—29th August 1927.

Chief Secretary,

3rd September 1927.

Hon'ble Member, Judicial,

3rd September 1927.

4th September 1927.

His Excellency,

5th September 1927.

5th September 1927.

C. S. MULLAN.

G. E. SOAMES.

K. A[HMAD].

G. E. SOAMES.

L. H[AMMOND].

MEMORANDUM TO THE COMMISSIONERS OF DIVISIONS, JUDGES, ALL DEPUTY COMMISSIONERS AND LEGAL  
REMEMBRANCER, ASSAM, NO. 5767-83G.J., DATED THE 5TH SEPTEMBER 1927.

NOTIFICATION NO. 5824G.J., DATED THE 7TH SEPTEMBER 1927.

# ASSAM SECRETARIAT PROCEEDINGS.

GENERAL AND JUDICIAL DEPARTMENT.

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JUDICIAL—A.

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SEPTEMBER 1927.

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Rules under Section 1(4), Indian and Colonial Divorce Jurisdiction Act, 1926.

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No. 1.

No. F.-922—25Judicial, dated Simla, the 6th August 1927.

Memo. by—The Assistant Secretary to the Government of India, Home Department.

A copy of the following letter is forwarded to the Government of Assam for information.

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No. 2.

No. F.-922—25Judicial, dated Simla, the 6th August 1927.

From—U. C. STUART, Esq., Assistant Secretary to the Government of India, Home Department,

To—All Local Governments (except Bengal, the Central Provinces and Assam) and the Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side.

SUBJECT :—NOMINATION OF JUDGES UNDER THE INDIAN AND COLONIAL DIVORCE JURISDICTION ACT AND RULES.

With reference to the <sup>correspondence ending with your letter No. 127/W., dated the 28th July 1927.</sup> <sup>etc.,</sup> I am directed to say that the Secretary of State for India has intimated that the Lord Chancellor has approved the nomination of the Judges submitted by the Hon'ble the Chief Justice of the <sup>Rangoon</sup> <sup>etc.</sup> High Court to exercise jurisdiction under the Indian and Colonial Divorce Jurisdiction Act, 1926, and the rules made thereunder. I am to request that the Hon'ble the Chief Justice may be informed accordingly.

2. The Secretary of State desires that the names of the Judges should be announced simultaneously with the publication of the rules under Act. Those rules were made by the Secretary of State in Council on the 27th July 1927 and copies are awaited. Intimation will be sent, immediately they are received, of the date on which they will be published so that the Hon'ble the Chief Justice may take steps to cause the names of the Judges concerned to be simultaneously notified in the <sup>Local Official Gazette</sup> <sup>Gazette of India</sup> as Judges appointed to exercise jurisdiction under the Act.

No. 3.

No. F.-922-25Judicial, dated Simla, the 16th August 1927.

Memo. by—The Assistant Secretary to the Government of India, Home Department.

Madras  
Bombay  
Bengal  
the United Provinces  
Government of the Punjab  
Bihar and Orissa  
Burma  
the Central Provinces  
Assam

A copy of the following is forwarded to the

\* Registrar, High Court, Calcutta, Appellate Side  
Hon'ble the Chief Commissioner, North-West Frontier Province  
Chief Commissioner, Delhi  
Coorg  
Foreign and Political Department

for information (in continuation of the Home Department telegram No. F.-922-25Judicial, dated the 13th August 1927).  
6th

\* By usual letter.

( ) Not to Central Provinces, North-West Frontier Province, Coorg and Foreign and Political Department.

No. 4.

No. F.-922-25Judicial, dated Simla, the 16th August 1927.

Notification by—The Government of India, Home Department.

The following rules made by the Secretary of State in Council of India, with the concurrence of the Lord Chancellor, under the Indian and Colonial Divorce Jurisdiction Act, 1926, (16 and 17 Geo. 5), are published for general information :—

RULES UNDER SECTION 1 (4), INDIAN AND COLONIAL DIVORE JURISDICTION ACT, 1926.

*Short Title and Commencement.*

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.*

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.

(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 local official Gazette (or, in the case of the High Court of Judicature at Calcutta, in the *Gazette of India*) 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, 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.

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

*The 20th May 1937.*

**No.2287-G.J.**—The following notification issued by the Government of India in the Home Department is republished—

*No.F.27/13/36-Judicial, dated Simla, the 28th April 1937.*—The following Resolution by the Secretary of State is published for general information :

In exercise of the powers conferred by subsection (4) of section 1 of the Indian and Colonial Divorce Jurisdiction Act, 1926 (16&17 Geo. V. C. 40.), the Secretary of State, with the concurrence of the Lord Chancellor at a meeting of the Council of India held this 31st day of March 1937, hereby makes, with effect from 1st April 1937, the following amendments to the Indian (Non-Domiciled Parties) Divorce Rules, 1927, namely—

1. In sub-rule (2) of the said Rules, for the words and brackets "local official gazette (or, in the case of the High Court of Judicature at Calcutta, in the *Gazette of India*)" the words "the official gazette of the Province" shall be substituted.

*Recd. - Dist. 3/5/37*

*57*



*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 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 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 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 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 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 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 India.

(2) The petition shall conclude with a prayer setting out particulars of the relief claimed, include 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 cases 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.

*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, 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 British 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 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 the 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 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.

(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.

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.

(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 Governor-General in Council in the case of the High Court of Judicature at Calcutta and the Local Government in other cases shall appoint a person to exercise within the jurisdiction of each of the High Courts referred to in section 1 of the Act the duties assigned to His Majesty's Proctor by sections 181 and 182 of the Supreme Court of Judicature (Consolidation) Act, 1925, and the name of the person so appointed shall be notified in the *Gazette of India* or in the local official Gazette as the case may be, by the designation of Proctor. Every Proctor so appointed shall in the exercise of his functions act under the instructions of the Advocate-General or other Chief Law Officer of the Province.

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.

(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 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 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.

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.



2. For rule 14 of the said Rules the following rule shall be substituted, namely—

“14. The Provincial Government of the Province in which the principal seat of the Court is situate shall appoint an Officer to exercise, within the jurisdiction for the purposes 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 Consolidation Act, 1925, and the Officer so appointed shall be notified in the official gazette of the Province. Every Proctor so appointed shall, in the exercise of his functions, act under the instructions of the Advocate-General for the Province.”

C. K. RHODES,

*Offg. Chief Secretary to the Government of Assam.*

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

#### DECREE ABSOLUTE.

20. 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.

21.—(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 has 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 or settlement of damages assessed by the Court shall be conducted in accordance with the provisions of the Indian Divorce Act, 1869, 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 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.

#### CERTIFYING OFFICER.

23. A certificate referred to in sub-section (3) of section 1 of the Act shall be in the form set out in the Schedule and shall be signed by a Registrar or Prothonotary of the High Courts to which the Act applies, and sealed with the seal of the Court.

#### PROCEDURE GENERALLY.

24. 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.

25. 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.

#### SCHEDULE.

(See Rule 23.)

I. A. B. <sup>Registrar</sup><sub>Prothonotary</sub> of the High Court of Judicature at \_\_\_\_\_ hereby certify that the foregoing is a true copy of a <sup>decree</sup><sub>order</sub> made by the aforesaid High 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 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 co-respondent intervener.

Signed \_\_\_\_\_

Registrar  
Prothonotary

J. A. SHILLIDY,

*Offg. Joint Secretary to the Government of India.*

No. 5.

No. J.-745-5767-83G.J., dated Shillong, the 5th September 1927.

Memo. by—The Under-Secretary to the Government of Assam, Judicial and General Department.

Ccopy of Notification No. F.-922-25, dated the 16th August 1927, by the Government of India, Home Department, publishing rules made by the Secretary of State in Council of India under section 1(4) of the Indian and Colonial Divorce Jurisdiction Act, 1926, is forwarded to the Commissioners of Divisions, District and Sessions Judges, all Deputy Commissioners and the Legal Remembrancer, Assam, for information.

No. 6.

No. 5824G.J., dated Shillong, the 7th September 1927.

Notification by—The Government of Assam, Judicial and General Department.

The following notification by the Government of India in the Home Department is republished :—

No. F.-922-25, dated Simla, the 16th August 1927—Judicial.

[Same as Proceedings No. 4.]