1969 No. 1837

MARRIAGE

Hong Kong (Non-Domiciled Parties) Divorce Rules 1969

Made - - - - 17*th December* 1969
Coming into Operation 1*st January* 1970

In exercise of his powers under subsection (4) of section 1 of the Indian and Colonial Divorce Jurisdiction Act 1926(a), as amended by article 2 of, and Part II of the Schedule to, the Government of India (Adaptation of Acts of Parliament) Order 1937(b) and paragraph (*d*) of section 1 of the Colonial and Other Territories (Divorce Jurisdiction) Act 1950(c), and subsection (1) of section 2 of the said Act of 1926 as amended by the said article 2 and Part II of the Schedule to the said Order of 1937, and as applied by articles 2 and 3 of the Hong Kong Divorce Jurisdiction Order in Council 1935(d) as amended by article 2 of the Hong Kong Divorce Jurisdiction (Amendment) Order 1969(e), the Secretary of State for Foreign and Commonwealth Affairs, with the concurrence of the Lord Chancellor, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Hong Kong (Non-Domiciled Parties) Divorce Rules 1969, and shall come into operation on 1st January 1970.

Interpretation

2. In these Rules, unless the context otherwise requires—

"court" means the Supreme Court of Hong Kong;

"Matrimonial Causes Ordinance" means the Matrimonial Causes Ordinance of Hong Kong (f) and any rules made thereunder and also means any Ordinance or rules for the time being amending or replacing such Ordinance or rules;

"the Act of 1926" means the Indian and Colonial Divorce Jurisdiction Act 1926;

"the Act of 1940" means the Indian and Colonial Divorce Jurisdiction Act 1940(g);

"the Acts" means the Colonial and Other Territories (Divorce Jurisdiction) Acts 1926 to 1950 and any Act amending or replacing the same.

Appointment of judges

3.—(1) The Chief Justice of Hong Kong may, from time to time, submit to the Lord Chancellor, through the Secretary of State for Foreign and

(a) 1926 c. 40.
(b) S.R. & O. 1937/230 (Rev. Vol. X, p. 545).
(c) 1950 c. 20.
(d) S.R. & O. 1935/836 (Rev. Vol. VI, p. 18; 1935 p. 585).
(e) S.I. 1969/1060 (1969 II, p. 3106).
(f) Laws of Hong Kong, Chapter 179.
(g) 1940 c. 35.

Commonwealth Affairs, the names of such judges of the court (including himself) as he may consider necessary for the purpose of exercising jurisdiction under the Acts and these Rules.

(2) Upon the approval of the Lord Chancellor of any nomination so submitted being signified to the Chief Justice by the Secretary of State for Foreign and Commonwealth Affairs, 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 Acts, and the judges whose names shall have been so notified shall thereupon have power to exercise jurisdiction accordingly.

(3) Any judge who has been appointed to exercise jurisdiction in accordance with the provisions in that behalf contained in the Hong Kong (Non-Domiciled Parties) Divorce Rules 1936 (a) shall be deemed to have been appointed under this Rule.

Hearing of petitions

4. Every petition under the Acts shall be heard and determined by one judge nominated and approved under Rule 3, sitting without a jury.

Appeals to two judges

5. An appeal shall lie to a bench of two other judges who have been nominated and approved under Rule 3 against any decree or order made by a judge under Rule 4 which could have been appealed against if it had been made in proceedings under the Matrimonial Causes Ordinance.

Appeals to Privy Council

6. An appeal shall lie from the determination of a bench of two such judges to Her 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.

Form of petition

7. In addition to any provisions as to the form of petitions in matrimonial causes specified in the rules for the time being in force in Hong Kong relating to matrimonial causes, every petition under the Acts shall state—

(*a*) the nationality of the parties to the marriage;

(*b*) the address at which the parties to the marriage last cohabited;

(*c*) whether there have been in any court of competent jurisdiction in any part of the United Kingdom any, and if so what, previous proceedings (including any application under Rule 5 or 6 of the Matrimonial Causes Rules 1968 (b)) with reference to the marriage, or with reference to any children of the family, the date and effect of any decree or order made in such proceedings, and, in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the making of such decree or order;

(a) S.R. & O. 1936/30 (Rev. VI, p. 992).
(b) S.I. 1968/219 (1968 I, p. 665).

(*d*) in the case of a wife's petition in which the court is alleged to have jurisdiction by virtue of section 3 of the Act of 1940, the domicile of the husband immediately before the alleged desertion, and the date when and circumstances in which the alleged desertion began ;

(*e*) the places at which the matrimonial offences charged are alleged to have been committed ;

(*f*) the grounds upon which the petitioner claims that in the interests of justice it is desirable that the suit should be determined in Hong Kong.

Limitation where proceedings pending in United Kingdom

8.—(1) Where it appears to the court that proceedings for the dissolution of the marriage have been instituted in any part of the United Kingdom before the date upon which the petition was filed in Hong Kong, the court shall either dismiss the petition or stay further proceedings thereon until the proceedings in the United Kingdom have terminated, or until the court shall otherwise direct.

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

Appointment of Proctor

9. The Attorney General of Hong Kong shall, under the designation of Proctor, exercise within the jurisdiction of the court the duties assigned to Her Majesty's Proctor by the law for the time being applying to matrimonial causes in England.

Court not to order secured provision where parties domiciled in Scotland

10. Where 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.

Court not to modify, etc. orders in certain circumstances

11. The court shall not entertain an application for the modification or discharge of an order unless the person on whose petition the decree for the dissolution of the marriage was pronounced is resident in Hong Kong at the time such application is made.

Certificates to be signed by Registrar of court

12. A certificate referred to in subsection (2) of section 1 of the Act of 1926 (as substituted by subsection (1) of section 4 of the Act of 1940 and as amended by paragraph (*c*) of section 1 of the Colonial and Other Territories (Divorce Jurisdiction) Act 1950) shall be in the form set out in the Schedule hereto and shall be signed by the Registrar of the court and sealed with the seal of the court.

Procedure generally

13. Subject to the provisions of these Rules, all proceedings under the Acts shall be regulated by the Matrimonial Causes Ordinance with such modifications as the circumstances require.

Revocation

14. The Hong Kong (Non-Domiciled Parties) Divorce Rules 1936 are revoked.

Given under my hand this 17th day of December 1969.

Michael Stewart,
Secretary of State for Foreign
and Commonwealth Affairs.

I concur.
Gardiner, C.

SCHEDULE
(See Rule 12)

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 $\frac{\text{a decree}}{\text{an order}}$ made by the aforesaid Supreme Court acting in exercise of the matrimonial jurisdiction conferred by or under the Colonial and Other Territories (Divorce Jurisdiction) Acts 1926 to 1950 in

Divorce Jurisdiction Action No. ..... of .....

Appeal No. ....., of .....

from judgment and decree in Divorce Jurisdiction Action No. ..... of .....in which the abovenamed *C.D.* was petitioner and the abovenamed *E.F.* was respondent and the abovenamed *G.H.* was co-respondent/intervener.

Dated this day of 19 .

(Signed)

Registrar.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules are made under section 1 of the Indian and Colonial Divorce Jurisdiction Act 1926, as amended by the Indian and Colonial Divorce Jurisdiction Act 1940 and the Colonial and Other Territories (Divorce Jurisdiction) Act 1950. That section has been applied to Hong Kong by the Hong Kong Divorce Jurisdiction Order in Council 1935 as amended by the Hong Kong Divorce Jurisdiction (Amendment) Order 1969. The Rules make provision for the manner in which proceedings shall be conducted before the Supreme Court of Hong Kong in the exercise of divorce jurisdiction in certain cases where the parties are domiciled in the United Kingdom, and also revoke the Hong Kong (Non-Domiciled Parties) Divorce Rules 1936.