

1928

Kenya

No. 153/4

SUBJECT

C.O 533/380

"The Criminal Law (Amendment) Order, 1928"

no. XV. of 1928.

Previous

X 10366/27

Subsequent

1619/30

1. Jor. Secs no 376

4 July 1928

Dis. 2 authenticated copies of Criminal Law (Amendment) Ord. 1928 - with legal report.

2

Mr. Sheppard E.

Am I correct in thinking that the age of consent in Kenya at present is 16 for white women, 12 for natives?

see § 5, 11 & 10 of ch. 78.

If so, the effect of this order would be to raise the age to 16 for all

6 races. This is no doubt most desirable, but it would seem to need rather more consonance than it has at present received.

Or am I wrong & may this be sanctioned § 13?

G. Sheppard  
8/8

Mr. Cashwood,

I think you are correct as to the present state of the law, but this alteration has been made deliberately & after debate in Council, & I see no reason why it should not be sanctioned § 13.

A.C.

J.M. Allen  
1928

12/8

to Edwards  
I am puzzled by the  
expression "wherever  
voluntarily uses force"

Is there any meaning  
at all in the word  
voluntarily in this  
context?

Alfred Davidson  
15.8.28

Mr. Parkinson,

The only force I can give to the  
word is that it excludes involuntary  
i.e. accidental & unintentional use of force.  
Perhaps we might ask why the word  
is inserted in this new sub., while it is  
absent in the two preceding ones

(1) As to the word 'voluntarily' we  
have already referred to the  
in the reply. but we might  
X recall an opp. of asking Mr.  
Staggard about it.

(2) The proviso is similar  
to the proviso to § 5 of R.L.  
Chap. 7A.

Section 9.3

Alfred  
18/8/28

2 To Gov. 618. 1 am  
AUG 28 1928  
3

B. U. note marginal notes.

Alfordan  
6.9.28

X. I have spoken to Mr. Staggard. The  
new sub. was drafted after he left the  
Colony. He can attach no significance  
to the word "voluntary".

Putz  
10/11/28

19/9/28

at once

DESTROYED UNDER STATUTE  
apbal Dec 31 1928  
Trans. 12 copies of No. XV of 1928.  
[Spares to librarians.]

Putz  
Franklin  
3/10  
at once

h/a

16073/30

B. U.

(L.S.)

EDWARD GRIGG

[2ND JULY 1928]

No. XV.

1928



# Colony and Protectorate of Kenya.

IN THE NINETEENTH YEAR OF THE REIGN OF  
HIS MAJESTY KING GEORGE V.  
EDWARD WILLIAM MACLEAY GRIGG

ESQ. M.C. K.C.M.G. D.S.O. M.C.

Governor

2ND JULY 1928

Date of Assent

## An Ordinance to Amend the Criminal Law Amendment Ordinance.

2nd July, 1928

Date of  
Publication

ENACTED by the Governor of the Colony of Kenya with the advice and consent of the Legislative Council that the following

1. This Ordinance may be cited as "the Criminal Law Amendment Ordinance, 1928" and shall be read as though it were the Criminal Law Amendment Ordinance in Chapter 28 of the Revised Edition as amended by the Criminal Law Amendment Ordinance, 1926 (hereinafter referred to as "the Principal Ordinance")

shall title

2. The Principal Ordinance shall be amended by the addition thereto of the following subsection

Use of force of an indecent nature to a woman and of words of indecent nature

Whoever voluntarily uses force of an indecent nature to any woman under the age of sixteen years shall

## LEGAL REPORT

### THE CRIMINAL LAW (AMENDMENT) BILL, 1928.

-----

Owing to the number of assaults of an indecent nature which have been committed upon children of tender years in the Colony it is apparent that the existing law does not constitute an adequate safeguard against the commission of such offences.

As the law is at present constituted, it is a good defence to a charge of an assault of this nature to prove that the child consented to the act of indecency, and in the case of such an assault upon a child of under six or seven years of age, it has been held in several cases that a child of such tender age has no modesty to outrage as is required by section 354 (2) of the Indian Penal Code.

This Bill was originally designed to protect any female under the age of twelve years from this class of offence despite the fact that such female has consented to the act of indecency or in spite of the fact that she might be held to be too young to have any modesty to outrage.

<sup>the</sup>  
Upon second reading of the Bill it was referred to a Select Committee of Legislative Council in view of the fact that a strong feeling had been expressed by all sections of the community to the effect that the age of consent to this form of assault should be sixteen years and not twelve years for all races.

The Select Committee took evidence on this point from Europeans and Indians and the Chief Native Commissioner and the Member of Legislative Council representing

END


representing native interests gave to the Committee the views of the natives. In the result the decision to raise the age from twelve to sixteen years was unanimous on all sides and the Bill was amended accordingly.

The proviso to Clause 2 of the Bill has been inserted because although the law of England makes no such provision in the case of indecent assaults yet the maximum sentence imposed under this Bill is so much heavier than the maximum sentence is for a like offence in England that it has been thought equitable to insert this proviso which only applies in England to cases of rape and attempted rape on girls under sixteen years of age.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

23rd June, 1928.

  
ACTING ATTORNEY GENERAL.

1928

*Kemp*

No. 15312

SUBJECT

*CO 533/380*

*Source List*

Previous

*X 10240/27*

Subsequent

*10712/29*

1. Governor's Form 377  
Tos. for approval, draft Rules to be made by the  
Secretary of State, under the Indian & Colonial  
Divorce Jurisdiction Act, 1926.

I have indicated  
in pencil the  
draft form in  
which the  
draft rules differ  
from the Indian  
draft

As the Gov proposes that the O. in C  
should come into force on Sept 1st  
that is some hours  
to Mr Buxton in the first place

F. Buxton

G. L. Darnley

J. H. Kille

4/10/26

898

A copy of these Rules, as altered by me  
should now be sent to the Lord Chancellor  
officially, asking him whether he will concur in  
their being made by the Secretary of State when  
the Order in Council is passed. Copies of all  
Kenya Ordinances mentioned in the Rules should  
of course, be sent as well.

The Order in Council, I think, being  
agreed and might now be sent to the Privy Council  
Office. I do not, however, think it would be safe  
to put any date earlier than the 1st of November  
for the Rules of coming into force. When the Rules  
have been concurred in by the Lord Chancellor, and  
the Order in Council has been passed, the  
Secretary of State should sign a copy of the Rules  
and the date of coming into force might be the date  
after

See - see 708  
with 10299/27  
VWB

if this is passed  
at the Council on  
the 7th inst -  
we might make it  
Oct 7. JLB

after that of the Order in Council.

*Handwritten initials/signature*

To the 5: a Council and any I should  
of to Council I have had to be  
as date of coming into force. I also  
hub of 50 to the other side. A  
billions suggests he also copy  
to be in copies of the Council.  
manipulate I further action as in  
to be made minute

*Handwritten initials/signature*

9/8/28

she tells us that our  
representation can be only  
to the Kenya Colony: The  
Kenya Protectorate cannot  
from the Gov.

accf  
G.S. R. [unclear]

DESTROYED UNDER STATUTE

President of the Council  
draft Order in Council  
No 4 in 10290/27

9 AUG 1928

To the Secy to the Lord Chancellor  
100 copies draft G. in C. - draft Rules:  
Book 170; & No III of 1926 (for personal & return)  
(No III of 1926)

21 AUG 1928

5. Privy Council Office 21 August 1928  
Two sealed and 25 plain copies of  
Kenya Divorce Jurisdiction Order in Council  
1928

Draft herewith since I have

shown to the Council.

[The Council does not come  
into force until 1st Oct it is a point  
with the Govt can make rules before  
that date. It may be necessary  
to consider whether we should not send  
the rules (draft) to Kenya as soon  
as agreed to explaining that there

is in the rules the Govt  
to make in the 1st Oct

The fact of signature  
will be telegraphed - the Govt  
rules then being submitted to  
the Govt of signature in the 1st  
Oct have never a bit been  
sent to the Govt. This point can  
be sent to the legal adviser upon the  
[unclear] [unclear] replies]

*Handwritten initials/signature*

27/8/28

To Gov. 621-1 Am...  
(27/1 sealed & 6 plain copies made 65)

*Handwritten initials/signature*

P.T.O.

DESTROYED UNDER STAMPANALLO 28 August 1928

States that his Lordship concurs in the proposed Rules.

Will you kindly advise as to the point raised in C.J. in memorandum no 5.

J.M. Allen

29/8/28

The Rules sh. not be made before the D.C. comes into force and I wd proceed as you propose in [ ] on no 5

J.S.R.

29/8/28

Then in the first instance Jff cars in Govt for Jff cars' mail. (The Jff sh. be made to be made J.M. Allen v. brief)

29/8

instance

To Gov. 634 w/3 copies of Rules (above No. 1) 28 AUG 1928

B. u. without fail on 26 Sept. M. Allen agrees that it is not necessary for the rules to be printed. But a copy sh. be made on stiff paper for the S. of S. to sign.

Sanctioned by the Govt. in Nov. 1928

X. I understand from Mr. Burke that under § 3 (1) of the Rules of Publication Act 1893 these Rules will have to be printed in the same way as the Indian Rules were printed.

(1) to Mr. Edgewood for Mr. Amey to sign and the copy on stiff paper on the file. This to be done on Oct. 1st.

Done 80. 1-10

(2) receive in red ink to be telegraphed to have anonymous reports as in Jff list. (3) to P.D. to arrange with Stationary Office as to printing. (4) Mr. Burke who writes to the paper again

26/9

When the Rules are printed a Jff. despatch will be necessary sending copies (usual no. sh. be ascertain) drawing attention to the fact that in the drafts sent with 8 in Rule 16 (4) the word limit should have been limited. The copy signed has been submitted as to the Indian Rules.

copy for (2) Noted. See previous no. 1.

attention was made that any  
the speed of the

Feb. 10 900 passed.

Now D.P.D. as to printing. Then  
now 15th By the

Steel  
1-10-28 at once

DESTROYED UNDER STATUTE

26 - 1.10.28

Copy of the O.M.C. of 14 Aug. (No 5)

✓ should be sent L7 to the Senior Registrar  
Principal Probate & Succession Registry  
Somerset House  
W.C.2

for inf

at once

6 OCT 1928

Will you please say how many  
copies of the S.R. 10. will be  
required for special use, so that  
the number of final copies to be  
printed can be determined (The  
Stationery Office leave this to us).

*[Signature]*

is. must be all that is to be required  
in traffic? understood that it happens  
thinks that 100 is sufficient for large  
I don't know whether there is any  
other distribution in this country of  
a Statutory Order. Starting this  
it seems that 125 copies is  
office.

*[Signature]*  
25-10

W. B. B. B.

Shall you care discuss on  
the point?

*[Signature]*  
27/10/28

Before make it 150. We shall want  
a fair no. here for one purpose or  
another.

2 677 825 for the Senior Registrar  
as on 9/10.

*[Signature]*  
28/10

*[Signature]*  
28/10

at all

The Rules have been published  
as No. 702, Statutory Rules and  
Orders, 1928. The library have  
the supply of copies for special use  
of the Registrar.

Mr. Allen

I submit Jt def. to King  
subjoining the points in  
Kitchin's minute of 1/10.

Q Easton's

1/11/20

Mr Allen

2/4

at once

See the  
12/11/20  
Richard like to  
see after action has  
been taken: he is  
interested in progress of  
the approval of the  
act to copy.

To Gov. 8/13 - 7 NOV 1928  
(w/100 copies Statutory Rules & Orders, 1926-702)

To the Hon. Sec. of Justice  
(w/ copy Statutory Rules & Orders)

30 OCT 1928

Minister of Justice for  
the Lord Chancellor.

The copy submitted to the Lord  
Chancellor under the J.G.O. of the names of  
persons to exercise powers (jurisdiction under the  
act) I do not know whether it  
means that there must be an original  
letter from the C.J. to the Lord Chanc.  
preserved?

Ans 9  
1/11/20

In what case? send copy of same  
to King def. to the Lord to the Lord Chanc.  
after the approval of the J.G.O. and

The deep purports to forward  
a letter (presumably in original) but the  
Lord Chancellor's dept have not been able to  
trace it - I think it might have  
been in a separate envelope

afterwards

Mr Allen

11/11/20

14. To the Secy to the Lord Chancellor  
(w. copy 13)

12/1/20

13 DEC 1928

DESTROYED UNDER STATUTE

LORD CHANCELLOR.

17 DECEMBER, 1928.

Approves the names submitted.

of the and 15

copy to O.K.

Q Easton's

(short of) from the will be that

the Lord Chancellor approves to a  
- adding that steps will be dealt  
with taken to notify the names  
in the Gazette as required  
& copy of the Rules.

Mr Allen 22/11/20

at once

all  
10. 11. 28  
at once

16 To Gov. 10.2.13 and copy 14.15.

Mr. Eastwood

Mr. Allen

Mr.

Mr. Bottomley.

Sir E. Harding.

Sir J. Shuckburgh.

Sir G. Grindle.

Sir C. Davis.

Sir S. Wilson.

Mr. Ormsby-Gore

Lord Lovat.

Mr. Amery.

15315/1928:Kenya.

Downing Street,

December, 1928.

DRAFT.

KENYA

No. 2

OAG.

Sir,

*ack this  
refer to*

*receipt of Sir Edward Smith's 23rd packet  
Governor's*

I have, etc., to ~~ack~~ the

~~receipt of the despatch~~ No. 609 of

the <sup>30<sup>th</sup></sup> ~~13<sup>th</sup>~~ October, ~~in which he~~

~~forwarded a copy of a letter~~

the Chief Justice, for transmission

to the Lord Chancellor, on the

subject of the appointment of Judges

to exercise jurisdiction in

~~accordance with Rule 2 (1) of the~~

Kenya

*To Secy to L<sup>d</sup> Chan<sup>ce</sup> 1/12  
no 14  
- do -  
Fr. H. of I. 17.12.  
(No. 15)*

X. 1830: 28  
Kanga

8

12 DEC  
1911

14

Mr. M. K. "102

Mr. Mashe 11/12

Mr. Bostomley

Sir E. Howard

Sir J. Shubbburgh

Sir G. Grindale

Sir C. Davis

Sir S. Wilson

Mr. Osmey-Gore

Lord Lohel

Mr. Amey

Ans. No. 15  
30

DRAFT

The Sec: to the  
Lord Chancellor

No. 7.

Copy Gov. No. 2 - 21 JAN 1928

Will ref: to the  
(225613)

Tax letter of the 28 Aug 11.  
I seek to transmit to  
you, to be laid before the  
Lord Chancellor, the  
acc: copy of a letter of  
from the Tax: & Customs  
together with a  
copy of a letter from  
his Chief Justice of the  
Colony submitting, in  
accordance with para  
2(d) of the  
(non-domiciled cases)

No 109: 30 Oct 25  
(No 13)

(Please p. 109)

names of three Judges  
of the Supreme Court for  
the future & exercising  
jurisdiction under the  
Indian Colonial Divorce  
Jurisdiction Act 1926  
the Kenya Rules.

2. I am to enquire  
whether the Lord Chancellor  
approves the names  
submitted:-

- Mr J. W. Bath - Ch. Justice
- Mr J. A. Sheridan } Preside Judges.
- Mr J. C. R. Stephens }

3. Although the  
Asst ~~was~~ <sup>purports to</sup> ~~appear~~  
forward the Chief Justice's  
letter in original and  
a copy of it <sup>has</sup> ~~is~~  
been received.

I am,

KENYA

No. 609



GOVERNMENT HOUSE,

NAIROBI,

KENYA.

5<sup>th</sup> October, 1928.

Sir,

With reference to your despatch No. 634 of the 30th of August, 1928, and your telegram of the 1st of October, 1928, I have the honour to forward herewith a letter from His Honour the Chief Justice, Sir Jacob Barth, for transmission to the Lord Chancellor.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

H. M. Maclean

GOVERNOR.

THE RIGHT HONOURABLE,

LIEUTENANT COLONEL L.C.M.S. AMERY, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, SW. 1

*Copy to the Lord Chancellor  
Recd. 10.10.28 - 10.10.28*

The Right Honourable,  
The Lord High Chancellor.  
Through,  
The Right Honourable,  
The Secretary of State for the Colonies,

My Lord,

In accordance with Rule 2(1) of the Kenya (Non-Domiciled Parties) Divorce Rules 1928 for the purpose of exercising jurisdiction under the Indian and Colonial Divorce Jurisdiction Act 1926 and the aforesaid Rules, I have the honour to submit the following names:-

J. W. Barth	Chief Justice.
J.A.Sheridan )	Puisne Judges.
J.E.R.Stephens)	

I have the honour to be,  
Your Lordship's most obedient servant,

J. W. BARTH

CHIEF JUSTICE.

15315/28/Kenya.

11  
R 2 NOV  
D 5

Downing Street,  
7 November, 1928

Mr. Eastwood *fx.*  
Mr. Allen *fx.*  
Mr.

Mr. Bottomley.  
Sir E. Harding.  
Sir J. Spuckburgh  
Sir G. Grindie.  
Sir C. Davis  
Sir S. Wilson.  
Mr. Ormsby-Gore.  
Lord Lovat.  
Mr. Attery

*54*  
Sir,

For consen.

(no8.)

With reference to my

despatch number 634 of the 30th  
August, and to my telegram of

the 1st October, regarding the  
~~application rules to be made for the~~  
~~application~~ provisions of the Indian and  
Colonial Divorce Jurisdiction  
Act, 1926, I have etc. to transm

DRAFT.

KENYA

Governor

NO. 813.

to you 100 printed copies of  
Kenya (the Domestic  
these Rules.

*Rules / Swora Rules, 928*

2. I should point out that

*Rule 16 (4) of the draft*  
in ~~the particulars~~ sent with my

despatch under reference, ~~in~~

~~Rule 16 (4)~~ the word "limit"

should have read "limited". *The*  
*reference at least was made*  
*in the Rules as framed.*

I have etc.

100 copies of Statutory Rules,  
~~to be obtained at the~~  
Library

(Signed) ALMERY

L. F. action required

*(i.e. copy refer to Public  
Admin. Reg. on no 10.)*

Revised 5/1/28

12

**FOR OFFICIAL USE**

**STATUTORY RULES AND ORDERS**

1928, No. 702

**KENYA**

THE KENYA (NON-DOMICILED PARTIES) DIVORCE RULES, 1928  
MADE OCTOBER 1, 1928.

In exercise of the powers conferred by the Indian and Colonial Divorce Jurisdiction Act, 1926 (16 & 17, Geo. 5, c. 40), and the Kenya Divorce Jurisdiction Order in Council, 1928, (a) 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 Kenya (Non-Domiciled Parties) Divorce Rules, 1928.
- (2) They shall come into force on the 2nd day of October, 1928.

*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 Kenya 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 Kenya Official 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.

(a) S.R. & O. 1928, No. 635

100 copies to Gov. 8/13.  
Copy to Mr. Roberts & Co. 8/13.

3. Every petition under the Act shall be heard by a single judge nominated and approved as herebefore provided, sitting without a jury and on appeal shall be within sixty days of 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 Ordinance (Chapter 170 of the Revised Edition of the Laws of Kenya as amended by the Revised Edition of the Laws of Kenya Ordinance, 1926, 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. In the body of a petition praying for the dissolution of a marriage shall be stated:

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

(b) the name 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;

(c) the principal permanent addresses where the parties have resided, including the addresses where they first resided together in Kenya;

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

(e) whether there have been in the Divorce Divisions of the High Court of Justice in England or in the Divisions in Scotland or in the Supreme Court of Kenya, and if so what, previous proceedings for the dissolution of the marriage by or on behalf of either of the parties to the marriage, and the result of such proceedings;

(f) the date when references, if any, set out in separate paragraphs (a) to (d) of the times and places of their alleged adultery;

(g) the time for the issue of any order for the dissolution of the marriage, and the grounds on which the petitioner claims that in the interests of justice it is desirable that the suit should be determined in Kenya.

(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 signed by the petitioner or some competent person in a manner required by the Civil Procedure Rules for the time being in force for the signing of pleadings, 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 Kenya, in the manner prescribed by the Civil Procedure 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 Pleading*

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. Any answer which contains matter other than a simple denial of the facts stated in the petition shall be deemed in respect of such matter by the respondent or co-respondent to

The case may be in the manner required by the Rules for the signature of petitioner and when the respondent is husband of wife of the petitioner the answer shall contain a declaration that there is not any collusion or contrivance between the parties.

12. 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 petitioner. 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 to appear in like manner as a petitioner within the time therein specified except in cases where the respondent and respondent's wife are named as respondents for interference with the respondent's wife as provided by the Court.

13. All pleadings before the Court in all proceedings for the dissolution of a marriage have been and shall be in English or Scottish Gaelic or the language in which the petition was filed, but the respondent may choose the petition in the language of his choice provided that the proceedings are conducted in the language in which the petition was filed, unless the Court shall otherwise direct.

14. All pleadings in all proceedings shall be submitted after the expiration of the time therein specified for that purpose, and the Court may accept a late submission if it is satisfied that the respondent was misled or otherwise prejudiced.

*Proceedings against a third party*

15. Any person who is a third party to a matrimonial cause may apply to the Court for an order that the respondent to the petition be ordered to disclose to the petitioner the names of all persons to whom he has communicated or disclosed the contents of the petition, and if the Court is satisfied that the respondent has done so, the Court may order the respondent to disclose to the petitioner the names of all persons to whom he has communicated or disclosed the contents of the petition.

16. Any person who is a third party to a matrimonial cause may apply to the Court for an order that the respondent to the petition be ordered to disclose to the petitioner the names of all persons to whom he has communicated or disclosed the contents of the petition, and if the Court is satisfied that the respondent has done so, the Court may order the respondent to disclose to the petitioner the names of all persons to whom he has communicated or disclosed the contents of the petition.

17. Any person who is a third party to a matrimonial cause may apply to the Court for an order that the respondent to the petition be ordered to disclose to the petitioner the names of all persons to whom he has communicated or disclosed the contents of the petition, and if the Court is satisfied that the respondent has done so, the Court may order the respondent to disclose to the petitioner the names of all persons to whom he has communicated or disclosed the contents of the petition.

18. Any person who is a third party to a matrimonial cause may apply to the Court for an order that the respondent to the petition be ordered to disclose to the petitioner the names of all persons to whom he has communicated or disclosed the contents of the petition, and if the Court is satisfied that the respondent has done so, the Court may order the respondent to disclose to the petitioner the names of all persons to whom he has communicated or disclosed the contents of the petition.

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.

19. 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.

20. 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.

21. 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 by the Proctor may apply forthwith for the rescission of the decree nisi and dismissal of the petition.

22. 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.

23. 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.

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

*Decree Absolute*

25. 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 entered, 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 Divorce Ordinance (Chapter 170 of the Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, 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 Kenya shall not enter 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 Kenya.

#### *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 the Registrar of the Supreme Court, 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 Divorce Ordinance as amended and the Rules made thereunder.

25. The forms set forth in the Schedule to the Rules made under section 4 of the Divorce Ordinance (Chapter 170 of the Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, 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.H. (Registrar) of the Supreme Court of Kenya do 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 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 intervener.

Signed \_\_\_\_\_  
Registrar.

LONDON:  
PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE  
To be purchased directly from H.M. STATIONERY OFFICE at the following addresses:  
Admiral House, Kingsway, London, W.C.2; 120, George Street, Edinburgh;  
York Street, Manchester; 1, St. Andrew's Crescent, Cardiff;  
15, Duncannon Square, West, Belfast;  
or through any Bookseller.

1928

In exercise of the powers conferred by the Indian and Colonial Divorce Jurisdiction Act, 1926 (16 and 17 Geo. 5 Cap. 40) and the Kenya Divorce Jurisdiction Order in Council 1928 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 Kenya (Non-Domiciled Parties) Divorce Rules 1928.
- (2) They shall come into force on the 2nd day of October 1928.

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 Kenya 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 Kenya Official Gazette as judges appointed to exercise jurisdiction under the Act, and the judges whose names shall have been so notified shall thereupon

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 name 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 Ordinance (Chapter 170 of the Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Operation) Ordinance 1926, 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

10  
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 Kenya;
- (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 Kenya 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 Kenya.

(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 signed by the petitioner or some competent person in manner required by the Civil Procedure Rules for the time being in force for the signing of plaints, 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

25  
shown otherwise directs, be served upon the person with whom adultery is alleged to have been committed, accompanied by a notice that such a 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 Kenya, in the manner prescribed by the Civil Procedure Rules for the time being in force for the service of summonses:

20  
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 affected.

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 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

2

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 Kenya, 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 Kenya, 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 in Council shall appoint a person to exercise within the jurisdiction of the Supreme Court of Kenya 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 Official Gazette by the designation of Proctor. Every Proctor so appointed shall in the exercise of his functions act under the instructions of the Attorney General of Kenya.

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

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.

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 of 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

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 Divorce Ordinance (Chapter 170 of the Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Operation) Ordinance 1926, 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 Kenya 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 Kenya.

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 the Registrar of

the Supreme Court of Kenya 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 Divorce Ordinance as amended and the Rules made thereunder.

25. The forms set forth in the Schedule to the Rules made under Section 43 of the Divorce Ordinance (Chapter 170 of the Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Operation Ordinance 1926, 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

*James*  
\_\_\_\_\_

1<sup>st</sup> October. 1928.

SCHEDULE

(See Rule 23)

I, A. B. (Registrar) of the Supreme Court of Kenya do hereby certify that the foregoing is a true copy of a decree made by the order 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 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.

X 15 315728 Kang  
836

- Mr. Eaton 28/8
- Mr. Allen 30/8
- Mr.
- Mr. Bottomley.
- Mr. E. J. Harding
- Sir J. Shackburgh.
- Sir G. Grindla.
- Sir C. Davis.
- Sir S. Wilson.
- Mr. Ormsby-Gore.
- Lord Locut.
- Mr. Amery.

30 Aug 1928

To go by mail of 30 Aug

Anal. No. 135

Sir.

In continuation of my despatch  
no 621 of the 23<sup>rd</sup> Aug: in  
which I transmitted to you  
copies of an Order in  
Council applying to keep the  
provisions of the Indian &  
Colonial Divorce Jurisdiction  
Act 1926, I have to  
inform you that the 2<sup>nd</sup> Chamber  
has agreed to the making  
of the enclosed order for  
the exercise of the  
jurisdiction conferred by  
the Act.

DRAFT. for conison

Kang  
no 634  
for Gigg

(1106)

Draft Rules  
Send 3 of the 10  
to the members of the Rules  
about no 1 on file

Enclosed in your despatch

101

no 377 of the 4<sup>th</sup> July with a simplification of the number of ~~steps~~ <sup>of</sup> ~~the~~ <sup>the</sup> ~~beams~~ <sup>beams</sup> ~~to~~ <sup>to</sup> ~~be~~ <sup>be</sup> ~~made~~ <sup>made</sup> ~~in~~ <sup>in</sup> ~~rule~~ <sup>rule</sup> 3 & 4 in accordance with the 140

advice of my legal advisers

2/1 I propose to ~~state~~ <sup>state</sup> ~~sign~~ <sup>sign</sup> copies ~~of~~ <sup>of</sup> ~~the~~ <sup>the</sup> ~~rules~~ <sup>rules</sup> on the

1<sup>st</sup> October next, the day on which the Order in Council takes effect & I shall not notify you of the fact of signature of telegraph.

I have 2

As I am advised that the rules cannot be made before this Order goes into force

X/15316 Kenya

6

- Mr. J. W. Allen
- Mr. Bush
- Mr. Pakenham
- Mr. Bottomley
- Sir E. Harding
- Sir J. Shuckburgh
- Sir G. Grindle
- Sir C. Davis
- Sir S. Wilson
- Mr. Ormsby-Gore
- Lord Lugard
- Mr. Amery

C. O. I.  
P 22 AUG 1928

23 Aug 1928

DRAFT Cons: 4 minutes

Kenya  
No 624  
P. C. Grey

On C. 14 Oct '28  
(1 sealed to be in copies)

Under the eyes of the law...  
any thing about the date...  
checked. J.M.P.

I have to be advised that receipt of your despatch no 377 of the 4<sup>th</sup> July & the transmission to you are sealed copy & six plain copies of an order of the Council in Council dated 14<sup>th</sup> August 1928 entitled "The Kenya Devolve Jurisdiction Order in Council 1928".

2. Parallel above that section 2 of the order provides that it shall have effect on & after the 1<sup>st</sup> Oct: 1928

3. I am in

AMERY

Communication with the  
Lord Chancellor with regard  
to the necessary rules which  
it is proposed should come  
into force on the 2nd  
Oct 1928 and shall  
communicate with the  
said subject at  
the earliest possible date

Yours  
truly



The 14th day of August, 1928.

Present,

**THE KING'S MOST EXCELLENT MAJESTY.**

Earl Winterton,  
Viscount Lee of Fitzham

Secretary Sir W. Johnson-  
Hicks  
Sir Ronald Lindsay

WHEREAS by Section 2 of the Indian and Colonial Divorce Jurisdiction Act, 1926, it is enacted that His Majesty may, by Order in Council, provide for applying the provisions of Section 1 of the said Act, subject to the necessary modifications, to any part of His Majesty's dominions other than a self-governing dominion (as therein defined) in like manner as they apply to India, and, in particular, such Order in Council may determine the Court by which the jurisdiction conferred by those provisions is to be exercised;

AND WHEREAS the Colony of Kenya is a part of His Majesty's dominions other than a self-governing dominion as aforesaid

AND WHEREAS it is expedient to provide for applying the aforesaid provisions of the said Act to the Colony of Kenya

NOW, THEREFORE, His Majesty by virtue and in the exercise of the powers in this behalf by the Indian and Colonial Divorce Jurisdiction Act, 1926, or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows

1. This Order in Council may be cited as the Kenya Divorce Jurisdiction Order in Council, 1928

2. On and after the first day of October, 1928, the provisions of the first section of the Indian and Colonial Divorce Jurisdiction Act, 1926, shall apply to the Colony of Kenya in like manner as they apply to India

3. In the application of the said provisions to the said Colony

(a) The Court which is to exercise the jurisdiction thereby conferred shall be the Supreme Court of Kenya, and references in the said first section to a High Court in India shall be read as references to such Supreme Court;

(b) references in the said first section to India shall be read as references to Kenya; and

(c) the reference to the Secretary of State in Council of India in the said section shall be read as referring to the Secretary of State for the Colonies.

M. P. A. Hankey.

- Mr Eastwood 14/8
- Mr. Allan 16/8
- Mr. Bushe 20/8
- Mr. Bottomley
- Sir E. Harcourt
- Sir J. Shuckburgh.
- Sir G. Grindle.
- Sir C. Davis.
- Sir S. Wilson.
- Mr. Ormsby-Gore.
- Lord Loat.
- Mr. Amery.

Downing Street,  
21 August, 1928.

Sir,

With reference to previous semi-official correspondence ending with Sir George Schuster's letter (No 2245/2) to Mr. Bushe of the 23rd November, 1927, I am etc., to ~~inform~~ you,

to inform the Lord Chancellor, ~~that~~ <sup>in view of</sup> ~~it is proposed shortly to apply~~ <sup>as proposed on his acc:</sup>

draft ~~copy~~ <sup>van</sup> by Order-in-Council the provisions ~~of~~ <sup>of</sup> Section 1 of the Indian and

Colonial Divorce Jurisdiction Act, 1926, to Kenya Colony, subject to the necessary modifications.

A copy of the proposed Order-in-Council is enclosed.

The Lord Chancellor will be aware

that under Section 1(4)

**DRAFT.**

THE SECRETARY  
TO THE LORD CHANCELLOR.

*urgent*

*Urgent 14/8*

*(10290/27 408)*

*is in draft*  
*14 August*

draft copy by Order-in-Council the provisions

*(which, it is understood, was approved by the King in Council in 1914)*

*Draft Order in Council*  
*is not.* (Amended)

*(The Order was passed but is awaiting the Secretary's countersignature)*



*[Handwritten scribble]*

21 August, 1928.

of the Act the jurisdiction

conferred is to be conducted in

accordance with rules made by the

Secretary of State in Council

India with the concurrence of the

Lord Chancellor. ~~It is proposed~~

in applying the Act to substitute

"the Secretary of State for the

*has been substituted*

Colonies" for "the Secretary of State

in Council for India".

Mr. Amery has therefore caused to

be drawn by the accompanying draft

rules for the exercise of this

jurisdiction? *The rules* are substantially

similar to those made by the Secretary

of State in Council ~~and~~ India, and *not Amery*

will be glad to be informed ~~what~~ *whether*

the Lord Chancellor ~~will~~ *concur* in these

rules *being made* when ~~the Order in Council is~~

passed.

3. Copies of the *Rules* ~~legislation~~

*Advances referred* referred to in the draft rules

*Draft Rules*  
~~concerns~~  
*(has to do as altered)*

*make several copies*

*(give 10 copies in envelope)*

~~Copy of [unclear]~~  
~~[unclear]~~

are also enclosed, and I am to request that they may in due course be returned to this Department.

Cap: 170 (copy h.w.)  
Kepp [unclear]  
Revised - 7/6/26 (Operation) Grace  
no. 7 2426  
(copy h.w.)

4. As the Order in Council provides for the application of Section 1 of the Indian Colonial Divorce Jurisdiction Act 1926 to Kenya Colony to have effect from the 1st Oct 1928, it will be necessary to send to the Governor of Kenya copies of the Statute of such nature as will be the subject of this letter at least

by the mail of the 6th Sept. I am to request therefore that a reply may be sent to this letter in time to permit of action being taken accordingly.

In exercise of the powers conferred by the Indian and Colonial Diverce Jurisdiction Act, 1926 (16 and 17 Geo. 5 Cap.40) and the Kenya Diverce Jurisdiction Order in Council 1928 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 Kenya (Non-Domiciled Parties) Diverce Rules 1928.
- (2) They shall come into force on the 2nd day of October 1928.

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 Kenya 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 Kenya Official 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,

35

the judge or <sup>judges</sup> 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 Ordinance (Chapter 170 of the Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Operation) Ordinance 1926, 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 co-habited, including the addresses where they last resided together in Kenya;

(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 Kenya 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 Kenya.

(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 signed by the petitioner or some competent person in manner required by the Civil Procedure Rules for the time being in force for the signing of plaints, 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.

37

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 Kenya, in the manner prescribed by the Civil Procedure 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 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 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

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 petitioner. 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 Kenya, 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 Kenya, the Court may proceed, subject to the provisions of the Act, with the trial of the suit.

Shewing cause against a Decree Nisi.

14. The Governor in Council shall appoint a person to exercise within the jurisdiction of the Supreme Court of Kenya the duties assigned to His Majesty's Preceptor 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 Official Gazette by the designation

designation of Proctor. Every Proctor so appointed shall in the exercise of his functions act under the instructions of the Attorney General of Kenya.

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

41

(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 Divorce Ordinance (Chapter 170 of the Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Operation) Ordinance 1926, and of the Rules made thereunder;

Provided

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 awarding of a gross or annual sum of money:

Provided further that the Supreme Court of Kenya 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 Kenya.

#### **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 the Registrar of the Supreme Court of Kenya 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 Divorce Ordinance as amended and the Rules made thereunder.

25. The forms set forth in the Schedule to the Rules made under Section 45 of the Divorce Ordinance (Chapter 170 of the Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Operation) Ordinance 1926, 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.**

SCHEDULE

(See Rule 23)

I, A.B. (Registrar) of the Supreme Court of Kenya  
at ..... hereby certify that the foregoing  
is a true copy of a decree 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. \_\_\_\_\_  
Appeal No. \_\_\_\_\_ of \_\_\_\_\_  
of \_\_\_\_\_ from judgment and decree

\_\_\_\_\_ in which the above-  
named C.D. was petitioner and the abovenamed E.F. was  
respondent and the abovenamed G.H. was co-respondent  
intervener.

Signed .....  
Registrar.

1898  
1898

2X  
AA

- Mr. McKen 9/8
- Mr. Babington J.S.
- Mr.
- Mr. Holliday
- Sir E. Harding
- Sir J. Shuckburgh
- Sir G. Smith
- Sir G. Davis
- Sir S. Wilson
- Mr. Ormsby-Gore
- Lord Lovat
- Mr. Amery

9 Aug 1898

DRAFT.

Dear Coler Smith  
 Journal  
 A letter is being sent  
 to the Lord President today  
 enclosing a draft of a  
 letter to the Secretary  
 of the Colonies  
 The letter has  
 been written in the  
 name of the Secretary  
 of the Colonies  
 and will be presented  
 to the Council at the  
 16 August. It has  
 been written in the  
 name of the Secretary  
 of the Colonies  
 and will be presented  
 to the Council at the  
 16 August.

Coler Smith Esq  
 Mr. Amery

depts con  
 V. minutes

Receive to Mr. McKen

any case it do not before

the Council that they should ~~be~~

necessary (insert some date) ~~to~~

~~to~~ ~~wait~~ ~~the~~ ~~date~~ ~~of~~

in order to allow time for copies to

~~be~~ ~~sent~~ ~~to~~ ~~the~~ ~~Council~~

each the Colony shall before the

~~date~~ ~~decided~~ ~~upon~~

date decided upon. Can will be

in the case of a ~~case~~ ~~of~~ ~~the~~ ~~kind~~

that date was in that case

to suitable period a ~~month~~

with the ~~mail~~ ~~to~~ ~~be~~ ~~sent~~ ~~at~~

least three weeks to

Says, indeed

Says, indeed

Sir,

With reference to your despatch

10240727  
(No. 10)

No. 1049 of the 23rd December, 1927, regarding the application to Kenya of the provisions of the Indian and Colonial Divorce Jurisdiction Act, 1926, I have the honour to transmit herewith, for your approval, draft Rules to be made by the Secretary of State.

Draft Rules

para copy

add) now about

Minute

Chancellor 21/12/27  
Copy Rules to Secy 6/1/28  
Genl. 6/21, 23/1/28

2. Rule 3, as originally drafted by the Solicitor General, provided that appeals should lie to the Court of Appeal for Eastern Africa, but in view of the opinion of His Honour the Chief Justice, which is expressed in the enclosed copy of His Honour's minute, the present re-draft of that Rule and of Rule 4 was made with the concurrence of the Acting Attorney General.

A re-draft of Rule 7, with the consequential alteration in Rule 12(1), was also made in view of the further opinion embodied in His Honour's minute. The Acting Attorney General concurs with this opinion.

3. With reference to paragraph 4 of your despatch under reply, I concur with the advice of the Acting Attorney General that the 1st of

/September

THE RIGHT HONOURABLE

LIEUTENANT COLONEL L.C.M.S. AMERY, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W.

September would be a suitable date for insertion in the Order-in-Council.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*Edward Gigg.*

GOVERNOR.

In exercise of the powers conferred by section 114 of the  
the  
The following Rules made by the Secretary of State for  
the Colonies, with the concurrence of the Lord Chancellor,  
under the Indian and Colonial Divorce Jurisdiction Act, 1926  
(15 and 17 Geo. 5. Cap. 40) <sup>and the Kenya Divorce Jurisdiction Act, 1926</sup>  
(15 and 17 Geo. 5. Cap. 40) are published for general  
information: <sup>and the Kenya Divorce Jurisdiction Act, 1926</sup>  
for the Colonies of Kenya, Uganda, Tanganyika, and Zanzibar  
Rules under section 114 of the Indian and Colonial  
Divorce Jurisdiction Act, 1926.

Short title and commencement.

1. (1) These Rules may be called the Kenya (Non-Domiciled Parties) Divorce Rules, 1926.

(2) They shall come into force on the 1st day of  
... 1926.

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 Kenya 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 of 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 Kenya Official Gazette as judges appointed to exercise jurisdiction under the Act, and the judges whose names shall have been so notified shall 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,~~ <sup>in the case of such appeals</sup> an appeal shall ~~lie to two judges of the Supreme Court of Kenya~~ <sup>lie to two judges</sup> against any decree or order which would be appealable ~~if it had been made in proceedings under the Divorce Ordinance (Chapter 170 of the Kenya Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Amendment) Ordinance, 1966,~~ and shall be disposed of accordingly.

4. An appeal shall lie ~~in the discretion of the~~ <sup>in the discretion of</sup> two ~~Judges~~ <sup>Judges</sup> to His Majesty in Council, in any case where an appeal would lie to England, ~~from a final decision of the Court of Appeal in the House of Lords.~~ <sup>from a final decision of the Court of Appeal in the House of Lords.</sup>

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, age, and ~~residence~~ <sup>residence</sup> of the wife before the marriage;
- (ii) the names of the husband and his domicile at the date 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;

*Handwritten notes:*  
to be heard by two judges who are to be appointed by the Chief Justice (or other authority approved)

*Handwritten initials:* RRR

*Handwritten note:* a bench of

- (i) the principal permanent addresses where the parties have co-habited, including the addresses where they last resided together in Kenya;
- (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 or Justice in England or in the Court of Session in Scotland or in the Supreme Court of Kenya any, 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 Kenya.

(8) 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 signed by the petitioner or some competent person in manner required by the Civil Procedure Rules for the time being in force for the signing of plaints, and in cases where the petitioner is seeking a decree of dissolution of

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 Kenya, in the manner prescribed by the Civil Procedure 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 the Court an answer to the petition.

12. (1) An 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 relief, a certified copy thereof shall be served upon the alleged adulteress, together with a notice to appear in like manner as a petition. When in such case no matter is claimed the alleged adulteress shall not be made a respondent, but a certified copy of the answer shall be served upon her together with a notice as under Rule 9. She may be admitted to plead the time therein specified, and may, if she so desires, intervene in the suit. If such application be made she may be allowed to intervene, subject to such directions 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 Kenya, the Court shall either dismiss the petition or stay or 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 Kenya, 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 in Council shall appoint a person to exercise within the jurisdiction of the Supreme Court of Kenya the duties assigned to His Majesty's Proctor by Sections 121 and 122 of the Supreme Court of Judicature (Consolidation) Act, 1925, and the name of the person so appointed shall be notified in the Official Gazette by the designation of Proctor. Every Proctor so appointed shall in the exercise of his functions act under the instructions of the Attorney General of Kenya.

15 (1) If any person during the progress of 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 <sup>each</sup> 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.

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 in such form as the Court shall direct, 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 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.

(8) 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 Diverse Jurisdiction (Chapter 170 of the Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Criminal) Ordinance, 1976, and of the Rules made thereunder.

Provided that when a writ is made for the dissolution of a marriage the parties to which are domiciled in Scotland the Court shall not entertain an application for securing of a gross or annual sum of money.

Provided further that the Supreme Court shall not entertain an application for the appointment or discharge of an order for custody of children, unless the applicant is a person whose name is on the list of persons for the time being in force of the provisions of the said Ordinance, 1976, and is a person resident in Kenya.

Certificate of Affirmation.

23. A certificate required by sub-section (1) of section 1 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 Kenya 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 Divorce Ordinance as amended and the Rules made thereunder.

26. The forms set forth in the Schedule to the Rules made under Section 43 of the Divorce Ordinance (Chapter 170 of the Revised Edition of the Laws of Kenya) as amended by the Revised Edition of the Laws (Operation) Ordinance, 1986 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. (Registrar) of the Supreme Court of Kenya at..... hereby certify that the foregoing is a true copy of a decree 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 No. \_\_\_\_\_ of \_\_\_\_\_ in which the abovesaid C.D. was petitioner and the abovesaid E.F. was respondent and the abovesaid G.H. was co-respondent; Intervener.

Signed.....  
Registrar.

Copy

Law Courts,

Nairobi.

57

Ref.No.J.C.825/45-21.

21st March, 1928.

The Honourable,  
The Colonial Secretary,  
Nairobi.

Re: Indian and Colonial Divorce Jurisdiction  
Act, 1926.

Reference your No.S/Leg.1/32/29 of 2nd of March, 1928.

With reference to the above and its enclosures I am of opinion that the provisions of Rule 3 of the draft rules for the appellate jurisdiction to be exercised by the Court of Appeal for Eastern Africa (cf. section 1 (4) b and section 2 (1)) of the Act are doubtfully intra vires of the Act. Section 1 (4) b of the Act provides that the rules shall provide that decrees or orders shall be subject to appeal to two Judges of the Court i.e. the Court substituted for the High Court of India that is in the case of Kenya the Supreme Court. I am doubtful if section 2 (1) of the Act gives the requisite power to transfer the appellate jurisdiction to the Court of Appeal for Eastern Africa. Section 2 (1) of the Act in my opinion gives power by Order-in-Council to determine what Court in a dominion shall exercise the jurisdiction given to a High Court in India by section 1 of the Act and does not give power to alter the conditions under which such jurisdiction is to be exercised and therefore does not give power to substitute the Court of Appeal for Eastern Africa for the two Judges of the Supreme Court as an appellate tribunal (cf. section 1 (4) b.). In my opinion it would be desirable if the appellate jurisdiction

58

jurisdiction were vested in the Court of Appeal for Eastern Africa. There is to the best of my belief in India no Court of Appeal as such from the various High Courts or any of them. For the East African groups there is a Court of Appeal to which appeals lie from the decrees and orders of the Supreme Court of Kenya. It would be in my view a step in the wrong direction to give a divisional Court of the Supreme Court appellate jurisdiction in cases arising under the Act while appeals from decrees or orders under the Divorce Ordinance are subject to the appellate jurisdiction of the Court of Appeal. But to give to the Court of Appeal for Eastern Africa jurisdiction in appeals from the Supreme Court in cases under the Act an amending Act would appear to be necessary. I do not think the application of the Act to Kenya should be held up pending such amending legislation. Rule 3 of the draft will therefore in my view require amending to bring it into conformity with section 14 (b) of the Act. It might be as well here to note that the Court of Appeal lays down its own period of limitation vide the East African Court of Appeal Rules 1925 Rule Rule 8. Rule (4) will require the necessary consequential alteration. In line 3 of this rule for "for" read "from".

Rule 7. O VI, r, 25 takes the place of verification. For the words "verified" and "verification" in the Rule, I would suggest that "signed" and "signing" be substituted.

The declaration that no collusion or connivance exists and that no proceedings are pending for the dissolution of the marriage in England or Scotland

/sight

4.  
might form part of the petition.

Rule 12 (1). The necessary consequential amendment should be made in this Rule.

(Sgd) J.W. Barth.

CHIEF JUSTICE.

59  
Eni