

IN THE SUPREME COURT OF FIJI
Miscellaneous Civil Causes Action No. 1 of 1958
(Matrimonial Cause)

PERUMAL NAIDU	Petitioner
AND	
YASWANT KUMARI	Respondent
AND	
TULSI RAM	Co-Respondent

Divorce (Summary Jurisdiction) Ordinance, Cap. 29: Whether or not the Matrimonial Causes Rules, 1924, of England apply: Failure to file an answer to a divorce petition: Whether respondent estopped from raising certain defence.

Held.—(1) The Divorce (Summary Jurisdiction) Ordinance (Cap. 29) is self contained;

(2) Causes under that Ordinance to be dealt with within the provisions of the Ordinance;

(3) Rules, or decisions of any Court, under any other Act or Ordinance do not apply;

(4) Evidence of conduct of a petition conducing to alleged adultery by the respondent is relevant;

(5) The Ordinance contains no provision for the filing of an answer to a petition.

Cases referred to:—

Wallace Johnson v. The King, 1940, A.C., 231.

Evans v. Evans, Matrimonial Cause No. 25 of 1953.

LOWE, C.J. [10th July, 1958]—

This a case stated by the learned Magistrate, on questions of law which had been argued but on which no finality had been reached in this case, pending a determination by this Court of the legal questions involved.

The questions are:—

- (a) Whether the Matrimonial Causes, Rules, 1924, which were in force in England in July, 1933, are applicable to divorce proceedings under the Divorce (Summary Jurisdiction) Ordinance, Cap. 29; and
- (b) Whether, if the answer to the first question is in the affirmative the respondent is debarred from raising a defence of conduct conducing to adultery by wilful neglect, by reason of not having filed an answer.

It must be realized that Chapter 29 is an Ordinance for the summary disposal of certain Matrimonial causes and that, unlike Chapter 28, the Matrimonial Causes Ordinance, it contains no provision for the making of rules or for the application of any rules made under any Act or other Ordinance. The Ordinance, Cap. 29, is designed for the particular requirements of this Colony and it is self contained. I think that the well known principle laid down in *Wallace Johnson v. The King*, 1940, A.C., 231, is particularly applicable to Cap. 29 and that causes arising under that Ordinance are to be dealt with within the provisions therein enacted, unaffected by rules, or decisions of any Courts made under any other Act or Ordinance.

I therefore answer (a), above, in the negative.

Although no answer is now required as to (b), above, I would refer to the case of *Evans v. Evans*, Matrimonial Cause No. 25 of 1953 in which *Carew, J.* held:—"Under the provisions of the Divorce (Summary Jurisdiction) Ordinance, (*then* Cap. 16) a respondent is not required to file an answer, nor does this Ordinance confer power on the Court to grant relief to a respondent in respect of cross-charges contained in an answer. The provisions relating to the commencement and hearing of Matrimonial suits under the Ordinance (Cap. 16) are contained in sections 6 to 10."

If a respondent wishes to defend the cause the defence will take the normal course of evidential testimony and matters which tend to show that the petitioner has been guilty of conduct conducing to the adultery alleged in his petition are relevant and can be testified to by the respondent and his or her witnesses.