

## NOTICES.

## No. 46.

*Order made by the Chief Justice under section 709 (2) of the Code of Civil Procedure on the 20th day of January, 1933.*

1. The following forms in the Schedule to the Code of Civil Procedure are amended by the deletion in each case of the words "inclusive of the day of such service" and the substitution therefor of the words "exclusive of the day of such service":

- Form No. 1. Writ of summons.
- Form No. 2. Specially indorsed writ of summons
- Form No. 3. Originating summons inter partes.
- Form No. 4. Originating summons not inter partes.
- Form No. 7. Writ of summons for service out of the jurisdiction.
- Form No. 8. Specially indorsed writ of summons for service out of the jurisdiction.

2. The following form in the said Schedule is amended by the deletion of the words "inclusive of the day of such receipt" and the substitution therefor of the words "exclusive of the day of such receipt":

- Form No. 8a. Notice of writ in lieu of service to be given out of the jurisdiction.

(Sd.) J. H. KEMP,  
*Chief Justice.*

Courts of Justice, Hong Kong,  
the 20th day of January, 1933.

NOTE:—Section 46 of the Code gives a defendant "8 days from the day of service" to enter an appearance. This means 8 clear days, i.e., 8 days *exclusive* of the day of service: see section 701 (1). The forms of writ in the Schedule, however, contain the words "*inclusive* of the day of such service." This is in accordance with the English practice but is in conflict with the above section of the Code.

In O. J. 231 of 1928 the writ, a specially indorsed writ, was served on the 30th August, 1928. Judgment in default of appearance was obtained on the 7th September, the eight days from service being taken as being eight days inclusive of the day of service, in accordance with the wording of the writ. This judgment was set aside on the 14th September, 1928, on the ground that it had been obtained before the expiration of the time limited for appearance by the defendants.

Forms Nos. 1 and 2 in the Schedule are therefore being amended by the deletion of the words "inclusive of the day of such service," and the substitution therefor of the words "exclusive of the day of such service."

There is no such conflict in the case of the other forms dealt with in this order, but it is thought advisable to make the method of computation of the days for appearance uniform throughout the forms scheduled in the Code. It is not overlooked that in Admiralty Jurisdiction the time for appearance is one week after the service of the writ, exclusive of the day of such service, and that in Probate

Jurisdiction the time is eight days after the service of the writ inclusive of the day of such service. In both these Jurisdictions, therefore, in spite of the unnecessary variation in the phrasology, the time for appearance is 7 clear days. It would seem desirable to make the time for appearance the same in all three Jurisdictions, but that would require the intervention of the Legislative Council. This order provides a quick method of resolving the conflict between the two parts of the Code.

The above-mentioned forms, as amended, are as follows:—

FORM No. 1. [s. 7.] R.S.C., 1883.  
*Writ of summons.* App. A, Part I, No. 1.  
 Action No. of 19

IN THE SUPREME COURT OF HONG KONG,  
 ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,  
 and  
*C.D.*, Defendant.

George the Fifth, by the Grace of God, &c.

*To C.D.*, of

We command you that within eight days after the service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of *A.B.*; and take notice that, in default of your so doing, the court may give leave to the plaintiff to proceed *ex parte*.

Witness the Honourable \_\_\_\_\_, Chief Justice of Our said Court, the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

*Memorandum to be subscribed on the writ.*

NOTE.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant may appear hereto by entering an appearance, either personally or by solicitor, at the Registry of the Supreme Court in Victoria, Hong Kong.

*Indorsement to be made on the writ before the issue thereof.*

The plaintiff's claim is (1).

This writ was issued by the plaintiff, who resides at (2) [or  
 This writ was issued by *E.F.*, solicitor for the plaintiff, who resides  
 at (2) \_\_\_\_\_].

(1) State concisely the nature of the claim.

(2) Mention the city, town, or village, and also the name of the street and number of the house, if any.

*Indorsement to be made on the writ after service thereof.*

This writ was served by me at \_\_\_\_\_ on the defendant *C.D.*  
 on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(Signed.)

(Address.)

R.S.C.,  
1883.  
App. A,  
Part I,  
No. 2.

FORM No. 2.

[ss. 19 and 20.]

*Specially indorsed writ of summons.*

Action No. of 19 .

IN THE SUPREME COURT OF HONG KONG,  
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,  
and  
*C.D.*, Defendant.

George the Fifth, by the Grace of God, &amp;c.

*To C.D., of*

We command you that within eight days after the service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of *A.B.*: and take notice that, in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence.

Witness the Honourable \_\_\_\_\_, Chief Justice of Our said Court, the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

*Memorandum to be subscribed on the writ.*

NOTE.—This writ is to be served within twelve calendar months from the date thereof or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant may appear hereto by entering an appearance, either personally or by solicitor, at the Registry of the Supreme Court in Victoria, Hong Kong.

*Indorsements to be made on the writ before the issue thereof.*

Statement of claim.

(1) State concisely the nature of the claim.

The plaintiff's claim is (1).

Particulars.

(2) Mention the city, town, or village, and also the name of the street and number of the house, if any.

(Signed.)

And the sum of \$ \_\_\_\_\_ for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued by the plaintiff, who resides at (2) \_\_\_\_\_ [or This writ was issued by *E.F.*, solicitor for the plaintiff, who resides at (2) \_\_\_\_\_].

*Indorsement to be made on the writ after service thereof.*

This writ was served by me at \_\_\_\_\_ on the defendant *C.D.* on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

(Signed.)

(Address.)

FORM No. 3.

[s. 26.] R.S.C.,  
1883.  
App. K.  
No. 1A.

*Originating summons* inter partes.

Action No. of 19

IN THE SUPREME COURT OF HONG KONG,  
ORIGINAL JURISDICTION.

Between A.B., Plaintiff,  
and

C.D., Defendant. (1)

Let C.D., of \_\_\_\_\_, within eight days after the service of this summons on him, exclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued on the application of \_\_\_\_\_, of \_\_\_\_\_, who claims to be (2) \_\_\_\_\_, for the determination of the following questions (3):--

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

This summons was taken out by \_\_\_\_\_, of \_\_\_\_\_, solicitor for the above named \_\_\_\_\_

The defendant may appear hereto by entering an appearance, either personally or by solicitor, at the Registry of the Supreme Court in Victoria, Hong Kong.

NOTE.—If the defendant does not enter an appearance within the time and at the place above mentioned, such order will be made and proceedings taken as the court may think just and expedient.

(1) If the question to be determined arises in the administration of an estate or a trust, entitle it also in the matter of the estate or trust.  
(2) State concisely the nature of the claim.  
(3) State the questions.

FORM No. 4.

[s. 26.] R.S.C.,  
1883.  
App. K.  
No. 1B.  
\*

*Originating summons* not inter partes.

Action No. of 19

IN THE SUPREME COURT OF HONG KONG,  
ORIGINAL JURISDICTION.

In the matter of the trusts of the will of A.B.

And in the matter of the Trustees Ordinance. 1901

[or as the case may be].

To \_\_\_\_\_, of \_\_\_\_\_

Let \_\_\_\_\_, of \_\_\_\_\_, within eight days after the service of this summons on him exclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued on the application of \_\_\_\_\_, of \_\_\_\_\_, for an order that (1) \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

This summons was taken out by \_\_\_\_\_, of \_\_\_\_\_, solicitor for the above-named \_\_\_\_\_

The respondent may appear hereto by entering an appearance, either personally or by solicitor, at the Registry of the Supreme Court in Victoria, Hong Kong.

NOTE.—If the respondent does not enter an appearance within the time and at the place above mentioned such order will be made and proceedings taken as the court may think just and expedient.

(1) State the object of the application.

\*As amended by Law Rev. Ord., 1924.

R.S.C.,  
1883.  
App. A,  
Part I.  
No. 5.

FORM No. 7.

[s. 42.]

*Writ for service out of the jurisdiction, or where notice in lieu of service is to be given out of the jurisdiction.*

(Title, &amp;c.) (a)

George the Fifth, by the Grace of God, &amp;c.

To C.D., of

We command you, C.D., that within [here insert the number of days directed by the court or judge ordering the service or notice] after the service of this writ [or notice of this writ, as the case may be.] on you, exclusive of the day of such service, you do cause an appearance to be entered for you in the jurisdiction of the Supreme Court of Hong Kong in an action at the suit of A.B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within twelve calendar months from the date hereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by a solicitor, at the Registry of the Supreme Court, Hong Kong.

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, &amp;c.

This writ was issued by the plaintiff who resides at \_\_\_\_\_, or this writ was issued by E.F., of \_\_\_\_\_, whose address for service is \_\_\_\_\_, solicitor for the said plaintiff, who resides at \_\_\_\_\_, or this writ was issued by G.H. of \_\_\_\_\_, whose address for service is \_\_\_\_\_, agent for \_\_\_\_\_ of \_\_\_\_\_, solicitor for the said plaintiff, who resides at \_\_\_\_\_ (mention the city, town, or village, and also the name of the street and number of the house of the plaintiff's residence, if any).

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction.

When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

*Indorsements to be made on the writ (b) after service thereof.*

This writ was served by me at \_\_\_\_\_ on the defendant  
on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 19  
Indorsed the \_\_\_\_\_ day of \_\_\_\_\_, 19

(Signed.)

(Address.)

NOTES.—(a) If the action is for administration the writ must be headed "In the matter of the estate of \_\_\_\_\_ deceased". If it is a debenture holder's action the writ must be headed "In the matter of \_\_\_\_\_ Company".

(b) Within three days.

[NOTE.—The above indorsement “N.B.” must be on any concurrent writ for service out of the jurisdiction, or of which notice is to be served out of the jurisdiction. The indorsement “N.B.” need not be made on a writ against defendants domiciled abroad but whom it is intended to serve within the jurisdiction].

FORM No. 8. [s. 42.] R.S.C., 1883.

*Specially indorsed writ for service out of the jurisdiction.* App. A, Part I, No. 6.  
(Title.)

George the Fifth, by the Grace of God, &c., to \_\_\_\_\_, of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_.

We command you, that within\* \_\_\_\_\_ days after service† of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of \_\_\_\_\_ according to the order.

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment be given in your absence. †If notice of the writ is to be served, insert “of notice”.

Witness, &c.

N.B.—This writ is to be used, &c. [as in Form No. 7, supra].

Appearance is to be entered at the Registry of the Supreme Court, Hong Kong.

*Statement of claim.*

The plaintiff’s claim is \_\_\_\_\_

Particulars:—

Place of trial \_\_\_\_\_

(Signed.)

And \$ \_\_\_\_\_ [or such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or \_\_\_\_\_ h \_\_\_\_\_ solicitor or agent within\* \_\_\_\_\_ days from \_\_\_\_\_ service† hereof, further proceedings will be stayed. \*Insert number of days according to the order.

This writ was issued, &c. [see Form No. 7 supra].

This writ [or notice of this writ] was served, &c.

N.B.—This writ is to be used, [as in Form No. 7 supra]. †If notice is to be served, insert “of notice”.

FORM No. 8a. [s. 42 (4).] R.S.C., 1883.

*Notice of writ in lieu of service to be given out of the jurisdiction.* App. A, Part I, No. 9.  
(Title, &c.)

To G.H., of \_\_\_\_\_

Take notice, that A.B., of \_\_\_\_\_, has commenced an action against you, G.H., in the \_\_\_\_\_ jurisdiction of the Supreme Court of Hong Kong by writ of that court, dated the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_; which writ is indorsed as follows [copy in full the indorsements], and you are required within \_\_\_\_\_ days after the receipt of this notice, exclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said court to the said action; and in default of your so doing the said A.B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Registry of the Supreme Court, Hong Kong.

(Signed.)

A.B. of \_\_\_\_\_ &c.  
or Z.Y. of \_\_\_\_\_ &c.  
Solicitor for A.B.

N.B.—This notice is to be used where the person to be served is not a British subject and is not in British dominions.