

No. 678.

Hong Kong.

ORDINANCE No. 35 of 1932. (DIVORCE)

In exercise of the powers conferred by section 48 of the Divorce Ordinance, 1932 and by section 9 of the Interpretation Ordinance, 1911, the Chief Justice makes the following rules for regulating the practice and procedure under the said Ordinance and for fixing and regulating the fees and costs payable upon proceedings in suits thereunder:—

Petition and Notice to Appear.

1. Proceedings under the Divorce Ordinance, 1932, shall be commenced by filing a Petition.

(1) In the body of the Petition shall be stated:—

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

(b) The principal permanent addresses where the parties have cohabited within the jurisdiction;

(c) Whether there is living issue of the marriage, and if so, the names, and dates of birth or ages, of such issue;

(d) The occupation of the husband and the place or places of residence and of domicile of the parties to the marriage at the date of the institution of the suit;

(e) Whether there have been in any court within or without the Colony 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;

(f) The matrimonial offences charged, if any, set out in separate paragraphs;

(g) The claim for damages, if any.

(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 the custody of children which is sought, and shall (save as is otherwise provided by these Rules) be signed by the Petitioner.

2. The Petition and every copy to be served shall be indorsed in conspicuous characters with a Notice to Appear in Form No. 1 in the First Schedule.

3.—(1) Every Petition shall be accompanied by an affidavit made by the Petitioner, or by such other person as is in these Rules provided, verifying the facts of which he or she has personal cognizance, and deposing as to belief in the truth of the other facts alleged in the Petition, and such affidavit shall be sworn to and signed by the Petitioner or such other person as is in these Rules provided, and shall be filed with the Petition.

shall be filed with the Petition. A Petition for Restitution of Conjugal Rights shall further show that a written demand for cohabitation and restitution of conjugal rights has been made by the Petitioner upon the party to be served, and that, after a reasonable opportunity for compliance therewith, such cohabitation and restitution of conjugal rights have been withheld.

(2) In cases where the Petitioner is seeking a decree of Dissolution of Marriage or of Nullity of Marriage, or of Judicial Separation, the affidavit of the Petitioner or of such other person as is in these Rules provided, filed with the Petition, shall further state that no collusion or connivance exists between the Petitioner and the other party to the marriage or alleged marriage.

Co-respondents.

4. In every Petition for dissolution of marriage on the ground of adultery the alleged adulterers, if male, shall be made Co-respondents in the cause and served with a sealed copy of the Petition, unless a Judge shall otherwise so direct by order on summons supported by affidavits.

5. The term "Respondent" in these Rules shall include a Co-respondent so far as the same is applicable.

Service.

6. A Petitioner who has filed a Petition shall forthwith obtain in the Registry a sealed copy of the Petition, indorsed with Notice to Appear, for service upon each Respondent.

7. A Petition shall be served personally by delivery of such sealed copy as aforesaid. It may not be served by the Petitioner.

8. Service of any document on a party who has not entered an appearance must be personal service unless otherwise ordered.

9. Where personal service cannot be effected, leave to substitute some other mode of service may be granted upon an application to a Judge supported by affidavit of the person having conduct of the proceedings.

10. Any Petition or Decree may be served within or without the Colony.

11. After service has been effected a copy of the Petition as served with a certificate of service indorsed thereon shall be returned into and filed in the Registry. Such certificate shall be in Form No. 2 in the First Schedule.

12. When it is ordered that Notice to Appear to a Petition shall be advertised, the form of advertisement shall be settled by the Registrar and the newspapers containing the advertisements shall be filed with a sealed copy of the Petition.

13. A Petitioner cannot proceed to trial unless an appearance has been entered by or on behalf of the Respondents or it has been shown by affidavit filed in the Registry that they have been duly served with the Petition and by certificate of the Registrar filed in the Registry that they have appeared.

14. An Affidavit of service of a Petition shall be substantially in Form No 3 in the First Schedule and in addition shall show the means of knowledge of the Deponent as to the identity of the person served. A copy of the Petition referred to in the affidavit must be annexed thereto and marked by the person before whom the same is sworn.

Appearance.

15. All appearances are to be entered in the Registry in a book provided for that purpose, and shall be accompanied by an address for service within three miles of the Registry of the Supreme Court at the Courts of Justice, Victoria. Notice of such appearance must be given to the opposite party

16.—(1) An Appearance may be entered at any time before a proceeding has been taken in default, or afterwards by leave of a Judge obtained on summons.

(2) The Appearance may be under protest or limited to any proceeding in the cause in respect of which the party shall have received Notice to Appear. Provided that any Appearance under protest shall state concisely the grounds of protest, and provided further that the party entering an appearance under protest shall within fourteen days proceed by summons to obtain directions as to the determination of any question arising by reason of such appearance and in default of so proceeding shall be deemed to have entered an unconditional appearance. Directions to be given upon such summons as aforesaid may provide for the trial of a preliminary issue with or without stay of proceedings in the cause or for determination of the matters in question at the hearing of the cause.

Interveners.

17. Where a husband is charged with adultery with a named person, a sealed copy of the pleading containing such charge shall be delivered to the person with whom adultery is alleged to have been committed, indorsed, in lieu of Notice to Appear, with notice that such person is entitled within eight days after delivery thereof to apply for leave to intervene in the cause. Such delivery and notice may only be dispensed with by order upon summons for cause shown. Such notice shall be in Form No. 4 in the First Schedule.

18. Application for leave to intervene in any cause shall be made by summons supported by affidavit, and leave may be given with such directions as to appearance and procedure as a Judge shall think fit.

19. Parties intervening must join in the proceedings at the stage at which they find them unless otherwise ordered by a Judge

Staying Proceedings for Restitution.

20. At any time after the commencement of proceedings, for Restitution of Conjugal Rights the Respondent may apply to the Court by summons for an order to stay the proceedings by reason that he or she is willing to resume or to return to cohabitation with the Petitioner.

Answer and Subsequent Pleadings.

21. A Respondent who has entered an Appearance may within fourteen days thereafter file in the Registry an Answer to the Petition in the appropriate form.

22.—(1) Every answer which contains matter other than a simple denial of the facts stated in the Petition shall be accompanied by an affidavit made by the Respondent, verifying such other matter so far as the deponent has personal cognizance thereof and stating the deponent's belief in the truth of the rest of such other matter, and where the Respondent is husband or wife of the Petitioner shall further state, except where the claim in question is for Restitution of Conjugal Rights, that there is not any collusion or connivance between the parties; and such affidavit shall be filed with the Answer.

(2) Where the Answer of a husband alleges adultery and prays relief, the alleged adulterer must be served personally with a sealed copy thereof bearing a Notice to Appear in like manner as a Petition. Where in such a case no relief is claimed, the alleged adulterer shall not be made a Co-respondent but a sealed copy of the Answer shall be delivered to him indorsed with Notice as under Rule 17 that such person is entitled within eight days to apply for leave to intervene in the cause and upon such application he may be allowed to intervene subject to such directions as shall then be given.

23. Within fourteen days from the filing and delivery of the Answer the Petitioner may file a Reply thereto, except where such Answer is a simple denial, and no subsequent pleadings shall be delivered except by leave of a Judge to be obtained upon summons.

24. A Copy of every Answer and subsequent pleading shall within four days after the same is filed be delivered to the opposite parties or their solicitors.

25. A pleading may be amended by leave of a Judge to be obtained upon summons subject to any directions which may then be given as to further service of the amended pleading and as to any consequential amendments of pleading already filed.

26. No pleading shall be amended out of time without leave nor shall any pleading be filed out of time after a step in default has been taken without leave of a Judge to be obtained upon summons.

27. Application for further particulars of matters pleaded may be made to a Judge by summons, but, before applying by summons, a party may apply for them to the other party by letter. The costs of such letter and of any particulars delivered pursuant thereto shall be allowable on taxation and in dealing with the costs of any application for particulars by summons the provisions of this Rule shall be taken into consideration.

All particulars, whether given under order or otherwise, shall be filed by the party delivering them together with a verifying affidavit and within four days thereafter a copy thereof shall be delivered to the party who has applied for such particulars or to the solicitor of such party.

Service of Pleadings, etc.

28. Notices and copies of pleadings and other instruments which are required by these Rules to be delivered but of which personal service is not expressly required may be delivered by leaving the same at the respective addresses furnished by or on behalf of the parties.

Every notice shall be in writing and indorsed by the party or his solicitor.

29. When it is necessary to serve personally any order or decree of the Court an office copy thereof under seal of the Court must be produced to the party served and a copy so sealed annexed to the affidavit of service and marked as an exhibit by the person before whom the same is sworn.

Trial or Hearing.

30. Every Petition under the Ordinance shall be heard by a single Judge sitting without a Jury.

31. After the expiration of the time limited for filing an Answer, or, if a Reply be filed and subsequent pleadings be allowed to be delivered, after the expiration of the time limited for filing the last of such subsequent pleadings, the Petitioner may apply to the Court by summons for an order that the cause be set down for trial or hearing.

If the Petitioner fail to apply to the Court for such order within fourteen days of the time when he could first have made such application, any party defending the suit may proceed as the Petitioner might have done.

The party obtaining an order that a cause be set down for trial or hearing shall deliver a copy of such order to the Petitioner or to each party in the cause for whom an appearance has been entered, as the case may be.

32. No cause shall be placed in the list for trial or hearing until after the expiration of ten days from the date of setting down save with the consent of all parties to the suit or by order of a Judge.

33. The Registrar shall draw and sign the decree of the Court and the same shall be issued under the seal of the Court

34. After entering an Appearance a Respondent in a cause may without filing an Answer be heard in respect of any question as to costs and a Respondent who is husband or wife of the Petitioner may be heard also as to custody of or access to children.

Discovery.

35.—(1) In any cause or matter a party may deliver interrogatories for the examination of an opposite party or parties by leave of a Judge to be obtained upon summons.

(2) A copy of the interrogatories proposed to be delivered shall be delivered with the summons.

(3) Interrogatories shall be answered within ten days or such other time as may be appointed.

(4) A party may without affidavit apply for discovery of documents by an opposite party or parties and such opposite party or parties may be ordered to make such general or limited discovery as in the discretion of the Judge shall seem fit.

Evidence Taken by Affidavit.

36. When a Judge has directed that all or any of the facts set forth in a pleading may be proved by affidavit, all affidavits sworn in pursuance of such direction shall be filed in the Registry and copies thereof delivered to the other parties to the suit within such time as the Judge shall direct.

37. Application for an order for the attendance of a deponent for the purpose of being cross-examined whether in open court or otherwise shall be made to a Judge on summons.

Examination of Witnesses before Trial or Hearing.

38.—(1) Any necessary application for an order for examination before the trial or hearing of one of the parties or of a witness who is within the jurisdiction of the Court shall be made to a Judge by summons.

(2) Such examination shall be *vivâ voce*, unless otherwise directed, before a person to be nominated by the Judge.

(3) The other parties in the suit shall have four clear days' notice of the time and place appointed for the examination unless the Judge shall otherwise direct.

39.—(1) Application for a Commission or for Letters of Request, or for the appointment of a Special Examiner to examine a party or a witness, who is outside the jurisdiction of the Court, may be made to a Judge by summons and the procedure with regard thereto shall conform as nearly as may be to the provisions of the Code of Civil Procedure for the time being in force in like cases. A Commission shall be in Form No. 5 in the First Schedule.

(2) A wife may apply to a Judge for an order as to security for her costs of such examination at the hearing of the summons or subsequently by summons.

Trial of Issues.

40. A Judge may of his own motion or on application by summons by the Petitioner or by any party to a cause who has entered an appearance direct the separate trial of any issue or issues of fact, or of any question as to the jurisdiction of the Court.

Proceedings in Chambers.

41.—(1) All applications under these Rules which are not hereby directed to be made to the Registrar may be made upon summons to a Judge.

(2) On the day and at the hour named in the summons the party taking out the same shall attend at the Court with the original summons. If any party to the summons does not

appear on the day and at the hour named in the summons. the Court may consider and deal with the application in a summary way, and make such order as may be just.

42. A summons may be taken out by a party or at the discretion of the Registrar by any other person having or claiming the right to be heard in the cause or matter.

43. Any Appeal from any order or decision of a Registrar may be made to a Judge by summons issued within five days of the order or decision complained of and returnable on the first day on which summonses are heard after this period has elapsed, but such Appeal shall not act as a stay unless so ordered by a Judge.

Petition for Reversal of Decree of Judicial Separation.

44. A Petition to the Court for the reversal of a decree of Judicial Separation must set out the grounds on which the Petitioner relies.

45. Before such a Petition can be filed an Appearance on behalf of the party praying for a reversal of the decree of Judicial Separation must be entered in the cause in which the decree has been pronounced, leave to enter such Appearance being first obtained upon summons.

46. A certified copy of such Petition, under seal of the Court, shall be served personally, or as the Court may direct, upon the party in the cause in whose favour the decree has been made, who may within fourteen days file in the Registry an Answer thereto and shall forthwith deliver a copy of such Answer to the other party in the cause or to the solicitor of such party

47. All subsequent pleadings and proceedings arising from such Petition and Answer shall be filed and carried on in the same manner as before directed in respect of an original Petition and Answer thereto so far as such directions are applicable

Showing Cause against a Decree Nisi.

48.—(1) (a) When the Attorney General desires to show cause against making absolute a decree nisi he shall enter an appearance in the cause in which such decree nisi has been pronounced and shall within fourteen days after entering appearance file his plea in the registry setting forth the grounds upon which he desires to show cause as aforesaid and shall within four days thereafter deliver a copy thereof to the party in whose favour such decree has been pronounced, or to the solicitor of such party.

(b) Where such plea alleges a Petitioner's adultery with any named woman the Attorney General shall deliver to each such woman personally, or as the Court may direct, a copy of his plea omitting such part thereof as contains any allegation in which the woman so served is not named, and such copy shall be indorsed with the notice in Form No. 4 in the First Schedule, so far as applicable; such delivery and notice may only be dispensed with by order of a Judge on summons for cause shown; proof of such delivery must, unless the court shall otherwise direct, be by affidavit to which a copy of the plea,

as delivered, marked as an exhibit, must be annexed; the means of knowledge of the deponent as to the identity of the person served must be shown.

(c) 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.

(2) If no answer to the plea of the Attorney General is filed within twenty one days after the delivery of such plea, or if an answer is filed and withdrawn or not proceeded with, the Attorney General may apply forthwith by motion to rescind the decree nisi and dismiss the petition.

(3) If the charges contained in the plea of the Attorney General are not denied in the answer thereto, the party in whose favour the decree nisi has been pronounced shall within fourteen days from the expiry of the time limited for filing of a Reply apply to the Court by summons for an order that the cause be set down for trial or hearing and shall forthwith file and give to the Attorney General notice of his having so done.

In default of such application for setting down and notice the Attorney General may apply forthwith by motion to rescind the decree nisi and dismiss the petition.

49. Any person other than the Attorney General wishing to show cause against making absolute a Decree Nisi shall enter an appearance in the cause in which such Decree Nisi has been pronounced, and within four days thereafter file affidavits setting forth the facts upon which he relies and forthwith deliver copies thereof to the party or the solicitor of the party in whose favour the Decree Nisi has been pronounced.

50. The Party in the cause in whose favour the Decree Nisi has been pronounced may within fourteen days after delivery of the affidavits file affidavits in answer, and the person showing cause against the Decree Nisi being made absolute may within fourteen days file affidavits in reply.

51. No affidavits are to be filed in rejoinder to the affidavits in reply without leave of a Judge.

52. The questions raised on such affidavits shall be argued in such manner and at such time as a Judge may on application upon summons direct.

Decree Absolute.

53. Application to make absolute a Decree Nisi shall be made to the Court by filing in the Registry a Notice in writing, in Form 6 in the First Schedule to these Rules, 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 notice that search has been made in the proper books at the Registry 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 cause, and that no Appearance has been entered nor any affidavit 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 ob-

tained, or Appearance entered or affidavits filed on behalf of such person, it must be shewn by affidavit what proceedings, if any, have been taken thereon.

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 must be filed.

Alimony pending suit, Permanent Alimony, Maintenance and Periodical Payments, Variation of Settlements and Settlement of Wife's Property.

54. A wife who is Petitioner in a cause after filing her Petition may file and after serving the same may serve a Petition for alimony pending suit, and a wife after entering Appearance to a Petition may file and serve a Petition for alimony pending suit.

55. The husband shall within fourteen days after service of a Petition for alimony file his Answer thereto upon oath setting out his property and income and, if Respondent, shall before so doing enter an Appearance in the cause. Such Appearance may be limited to the alimony proceedings.

56. The wife, if the husband's Answer is insufficient, may apply on summons for a further and better Answer or for discovery of documents or for an order for the husband's attendance for cross-examination, and such order shall thereupon be made as in the circumstances of the case may appear to a Judge to be required.

57. If the Answer of the husband alleges that the wife has property or income, she may within fourteen days file a Reply on oath to that allegation; but the husband may not file a Rejoinder to such Reply without leave of a Judge.

58. A wife who has obtained a decree of Judicial Separation may apply for an allotment of permanent alimony. She may proceed with such application upon the pleadings already filed on her application for alimony pending suit on giving eight days' notice to her husband or his solicitor of her intention so to do. Otherwise the rules governing an application for alimony pending suit shall govern an application for permanent alimony.

59. Permanent alimony shall, unless otherwise ordered, commence from the date of the final decree for judicial separation.

60.—(1) Application for maintenance or periodical payments on a decree for dissolution or nullity of marriage shall be made in a separate Petition which may be filed at any time after Decree Nisi but not later than one calendar month after Decree Absolute except by leave to be applied for by summons to a Judge.

(2) Application for periodical payments may be made in like manner at any time after non-compliance with a Decree of Restitution of Conjugal Rights.

61. A certified copy of such Petition under the seal of the Court shall be served on the husband or wife (as the case may be) or his or her solicitor upon the record.

62. A party served with such Petition may within fourteen days after service, after entering an Appearance thereto, file an Answer on oath and shall forthwith deliver a copy of such Answer to the opposite party or his solicitor.

63. If the Answer of the husband alleges that the wife has property of her own, she may within fourteen days file a Reply on oath to that allegation; but the husband may not file a Rejoinder to such Reply without leave of a Judge.

64. A wife may at any time after alimony has been allotted to her, whether alimony pending suit or permanent alimony, file her Petition supported by affidavit for an increase of the alimony allotted, by reason of the increased means of the husband or the reduction of her own means, or the husband may file a Petition supported by affidavit for a reduction of the alimony allotted, by reason of his reduced means or the wife's increased means, and the course of proceeding in such cases shall be the same as required by these Rules in respect of the original Petition for alimony and the allotment thereof.

65. The provisions of the preceding Rule shall be observed in cases of application for increase or reduction of payments for maintenance and of periodical payments.

66. Application to vary marriage settlements shall be made by Petition filed after but within one calendar month of Decree Absolute unless such time is extended by a Judge on summons personally served on the husband or wife as the case may be, the trustees of the settlements, and such other persons as the Registrar shall direct. Subsequent pleadings shall be as in proceedings for maintenance. Appearance must be entered in the principal cause before an Answer is filed.

67. Application for a settlement of property of a wife by virtue of the Divorce Ordinance, 1932, section 31, shall be made and proceeded with in the manner prescribed in the preceding Rule.

68.—(1) The Court may, in its discretion, refer to the Registrar the investigation of the averments in any Petition, Answer, Reply or other pleading in relation to an application for alimony, whether alimony pending suit or permanent alimony, maintenance or periodical payments, variation of settlements or settlement of a wife's property.

(2) Such investigation shall be conducted in the presence of the parties or their solicitors, and the Registrar shall be at liberty to require the attendance of either party for the purpose of being examined or cross-examined and to take the oral evidence of witnesses, and to require the production of any document, and to call for affidavits.

(3) The Registrar may adjourn the proceedings from time to time and from place to place, if he thinks necessary.

(4) Counsel may attend at the hearing of any reference, but the costs so incurred shall not be allowed on taxation unless the Registrar certifies that the attendance of counsel was necessary.

(5) The Registrar may apply summarily to the Court for directions or for the decision of any question of doubt or difficulty and the Court may give such direction or make such order in the matter as may seem just and reasonable.

(6) When a reference has been completed, the Registrar shall draw up a report in writing of the result and may in such report make such recommendation as he may think fit.

(7) When the report is ready it shall be filed by the Registrar who shall give notice of such filing to the parties and the Petitioner shall forthwith pay the prescribed fee therefor.

(8) Within fourteen days after such filing any party may file a notice of motion to vary the report specifying the items or matter objected to and at the hearing of the motion the Court may remit the matter to the Registrar for further investigation or report or may make such order, including a final decree in the matter of the application, as may seem fit.

(9) If no notice of motion to vary the report is filed within fourteen days from the filing of the report, the Court may of its own motion forthwith proceed to consider the report and may make a final decree in the matter of the application.

69. Pending the final determination of an application for alimony, whether alimony pending suit or permanent alimony, or for maintenance or periodical payments an interim order may be made upon such terms as shall appear to a Judge to be just and without prejudice to the effect of the order to be ultimately made.

Custody and Maintenance of Children and Access.

70.—(1) When custody of children is claimed in any Petition the father, mother, or guardian, or any person who has intervened in the suit for the purpose of applying to be appointed guardian of such children, or who has the custody or control of such children under an order of the Court, may apply at any time either before or after final Decree to a Judge on summons for any order relating to the custody maintenance or education of such children or for directions that proper proceedings be taken for placing such children under the protection of the Court.

(2) When custody of children is claimed in any Petition, and a Petition for alimony pending suit, permanent alimony, periodical payments, maintenance, settlement or variation of settlement has been filed and is pending in such suit, applications for maintenance for children may be made from time to time to a Judge.

(3) Applications as to access to children may be made to a Judge on summons.

Guardians ad litem.

71.—(1) A minor who has attained the age of seven years may elect a guardian ad litem for the purpose of any proceeding on his or her behalf.

(2) A guardian for an infant under the age of seven years may be assigned by a Judge upon an application supported by affidavits.

(3) The election, the consent of the guardian to act, and an affidavit showing fitness and no contrary interest, must be filed in the Registry before an elected guardian can be permitted to file a Petition or enter an Appearance on behalf of the minor.

(4) The Petition of a minor shall be signed by such minor and his guardian, but the affidavit in verification of such Petition shall be made by the minor alone.

72.—(1) A Committee or other person duly appointed for a person of unsound mind may prosecute, defend, or intervene in a suit on behalf of such person or otherwise represent him; but if there be no such Committee or other person duly appointed application shall be made on affidavit to the Registrar, who will assign a guardian to the person of unsound mind. If the opposite party is already before the Court, the application shall be made to a Judge upon summons.

(2) Where the Petitioner is a person of unsound mind, the Committee or other person duly appointed or the guardian assigned by the Court alone shall sign the Petition and make the affidavit in verification thereof.

Attachment and Committal.

73. Application for attachment or committal shall be made to a Judge by motion.

74. Any person attached or committed may apply for his or her discharge by motion.

Enforcement of Orders.

75.—(1) In default of payment to any person of any sum of money at the time appointed by any order of the Court for the payment thereof, payment may be enforced in manner prescribed for the enforcement of judgments by the Code of Civil Procedure for the time being in force.

(2) A decree or order requiring a person to do an act thereby ordered shall state the time within which the act is to be done, and the copy to be served upon the person required to obey the same shall be indorsed with a memorandum in the words or to the effect following: "If you the within named (A B) neglect to obey this order by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same."

Office Copies, Extracts, etc.

76. The Registrar of the Supreme Court shall have the custody, subject to direction by the Chief Justice, of all pleadings and other documents brought in or filed and of orders and decrees made in any matter or suit.

77. Copies or extracts of documents originals of which are retained in the Registry will, if required, be examined with the originals from which the same are copied. Every copy so

required to be examined shall be certified under the hand of the Registrar to be an examined copy, and the seal of the Court will not be affixed to any copy which is not so certified.

Times Fixed by these Rules.

78.—(1) The time fixed by these Rules for the performance of any act may be varied by order of a Judge subject to such qualifications and restrictions and on such terms as upon the application for variation may be deemed fit.

(2) Where, by these Rules, or by any special order, or by the course of the Court, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceedings, the computation of such limited time shall not include the day of such date or of the happening of such event, but shall commence at the beginning of the next following day, and the act or proceeding must be done or taken at latest on the last day of such limited time, according to such computation.

(3) Where the limited time so appointed or allowed is less than six days, public holidays and general holidays, as defined by the Holidays Ordinance, 1912, shall not be reckoned in the computation of such time.

(4) The Supreme Court (Vacations) Ordinance 1898, shall not apply to any such limited time as in this Rule mentioned.

Motions.

79. When it is necessary to give notice of any motion to be made to the Court, such notice shall be served on all parties who may be affected by the proposed order and who shall have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the Registry, and the affidavits to be used in support of the motion and original documents referred to therein or intended to be used at the hearing of the motion shall at the same time be left in the Registry. Copies of such affidavits or documents shall be delivered upon request to the parties who are entitled to be heard upon the motion.

Taxing Bills of Costs.

80. All bills of costs referred to the Registrar for taxation shall be taxed in like manner as bills of costs in the Original Jurisdiction of the Supreme Court are for the time being taxed.

81. In Divorce and Matrimonial Causes solicitors shall be entitled to charge and be allowed the same fees as are provided for similar matters or proceedings in the Original Jurisdiction of the Supreme Court.

82. The provisions of Rule 1 of the Rules made by the Chief Justice on the 29th day of June, 1931, and published as Gazette Notification No. 405 of 1931 shall be applied on taxation of costs in Divorce and Matrimonial Causes so long as such Rule shall remain in force.

83. The fees payable on the taxation of any bill of costs shall be paid by the party on whose application the bill is taxed and shall be allowed as part of such bill. If more than

one-sixth of the amount of any bill of costs taxed as between solicitor and client is disallowed on taxation thereof, no costs incurred in such taxation shall be allowed and the party on whose application the bill is taxed shall be at liberty to deduct the costs incurred by him in the taxation from the amount of the bill as taxed, if so much remains due; otherwise the same shall be paid by the solicitor to the person on whose application the bill is taxed.

84. Upon the Registrar's certificate as to costs being signed an order of the Court for payment of the amount within seven days, or such other time as the Registrar shall direct, may issue.

Wife's Costs.

85. After the expiration of the time limited for filing an Answer, or, if a Reply be filed and subsequent pleadings be allowed to be delivered, after the expiration of the time limited for filing the last of such subsequent pleadings, or at an earlier stage of a cause by order of a Judge to be obtained on summons, a wife who is Petitioner or has filed an Answer may file her bill or bills of costs for taxation as against her husband, and the Registrar shall ascertain what is a sufficient sum of money to be paid into Court or what is a sufficient security to be given by the husband to cover the costs of the wife of and incidental to the hearing of the cause and shall report accordingly to the Court. A Judge may thereupon, unless satisfied that the wife has sufficient separate estate or unless other good cause be shown, order the husband to pay the wife's costs up to the setting down of the cause, and to pay into Court or secure the costs of the hearing within a time to be stated in such order.

86. The bond taken to secure the costs of a wife of and incidental to the hearing of a cause shall be filed in the Registry, and shall not be delivered out or be sued upon without the order of a Judge.

87. The order for payment of costs in which a Respondent or Co-respondent has been condemned by a Decree Nisi, if drawn up before the Decree Nisi is made absolute, shall direct payment into Court, and such costs shall not be paid out of Court to the party entitled to receive them under the Decree Nisi until the decree absolute has been obtained; but a wife who is unsuccessful in a cause, and who at the hearing of the cause has obtained an order of the Judge for costs, may nevertheless proceed at once to obtain payment of such costs after allowance thereof on taxation.

Code of Civil Procedure.

88. In any matter of practice or procedure which is not governed by Ordinance or dealt with by these Rules the Code of Civil Procedure for the time being in force in respect of like matters shall be deemed to apply.

Forms.

89. The forms in the First Schedule to these Rules shall be used with such variations as the circumstances of each case may require.

Fees.

90. The fees respectively specified in the Second Schedule shall be payable in all proceedings taken under the Ordinance and where no fee is provided in that Schedule the same fee shall be payable as is provided for a similar proceeding in the Original Jurisdiction.

The said fees shall be payable by means of adhesive stamps.

For the purposes of this rule a folio shall be deemed to consist of 72 words, each figure being counted as a word.

91. These rules may be cited as the Hong Kong Divorce Ordinances Rules, 1933, and shall come into operation upon the same day as the Divorce Ordinance, 1932, comes into operation under section 49 thereof.

Dated the 31st day of August, 1933.

J. R. Wood,
Chief Justice.

Approved by the Legislative Council on the 12th day of October, 1933.

H. R. BUTTERS,
Deputy Clerk of Councils.

FIRST SCHEDULE.

FORMS.

No. 1.

[Rules 2 &
22 (2)]

Notice to Appear.

IN THE SUPREME COURT OF HONG KONG.

Divorce. }
19 No. }

To _____ of _____

TAKE NOTICE that you are required, within eight days (1) after service hereof upon you, exclusive of the day of such service, to enter an appearance either in person or by your solicitor at the Registry of the Supreme Court, at the Courts of Justice, Victoria, in the Colony of Hong Kong, should you think fit so to do, and thereafter to make answer to the charges in this Petition, (2) and that, in default of your so doing, the Court will proceed to hear the said charges proved and pronounce judgment, your absence notwithstanding.

(1) Or as the case may be.

(2) Or Answer.

(3) Or Answer as the case may be.

The Petition (3) is filed and this notice to appear is issued by (4) of

(4) Stating name and address of petitioner or solicitor.

Dated at Hong Kong the _____ day of _____, 19 .

Note: Any person entering an appearance must state his name and address, and an address within the Colony, to be called an address for service, not more than three miles from the Registry.

[Rule 11.]

No. 2.

Certificate of Service.

THIS PETITION was duly served by the undersigned G.H. on the within named C.B. of _____ at _____ on the _____ day of _____, 19 .

(Signed) G.H.

[Rule 14.]

No. 3.

Affidavit of Service.

IN THE SUPREME COURT OF HONG KONG.

Divorce.	}	Between	A.B.	Petitioner
19 No.			and	
	}		C.B.	Respondent
				X.Y.

I, C.D. of etc. make oath and say, that the Petition bearing date the _____ day of _____, 19 filed in this Court against C.B. the Respondent (or X.Y. the Co-Respondent), a copy of which is hereunto annexed and marked with the letter A was duly served by me on the said C.B. (or X.Y.) at _____ on the _____ day of _____, 19 , by delivering to the said C.B. (or X.Y.) personally a sealed copy thereof.

(Means of knowledge of identity to be inserted here).

Sworn at etc. on the _____ day of _____, 19 .

Before me

A Commissioner for Oaths or as the case may be.

[Rules 17 22 (2) & 48 (1) (b)]

No. 4.

Notice of Right to Apply for leave to Appear.

IN THE SUPREME COURT OF HONG KONG.

Divorce.

To _____ of _____

(1) Or as the case may be.

TAKE NOTICE that you are entitled within eight days (1) after delivery hereof to you, exclusive of the day of such delivery to apply upon summons for leave to enter an appearance either in person or by your Solicitor at the Registry of the Supreme Court, at the Courts of Justice, Victoria, in the Colony of Hong Kong, for leave to intervene

in this cause, should you think fit so to do, and thereafter to make answer to the charges in this Petition, (2) and that, in default of your so doing, the Court will proceed to hear the said charges proved and pronounce judgment, your absence notwithstanding. (2) Or Answer.

The Petition (3) is filed and this notice is issued by (4) (3) Or Answer as the case may be.
 Dated at Hong Kong the day of , 19 .

Note: Any person entering an appearance must state his name and address, and an address within the Colony, to be called an address for service, not more than three miles from the Registry. (4) Stating name and address of Petitioner or Solicitor.

[Rule 39.]

No. 5.

Commission for Examination of Witnesses.

IN THE SUPREME COURT OF HONG KONG.

Divorce. }
 19 No. }

GEORGE V., by the grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, to (here set forth the name and proper description of the Commissioner), Greeting.

WHEREAS a certain cause is now depending in the Supreme Court of Hong Kong between *A.B.* Petitioner, and *C.B.* Respondent, and *X.Y.* Co-Respondent, wherein the said *A.B.* has filed his Petition praying for a dissolution of his marriage with the said *C.B.* (or otherwise as in the prayer of the Petition). AND WHEREAS by an Order made in the said cause on the day of 19 on the application of the said *A.B.* it was ordered that a Commission should issue under the Seal of Our said Court for the examination of (here insert name and address of the persons to be examined) as witnesses to be produced on the part of the said *A.B.* the Petitioner, in support of his Petition (saving all just Exceptions). Now know ye that We do by virtue of this Commission to you directed, authorize you within thirty days after the receipt of this Commission at a certain time and place to be by you appointed for that purpose with power of adjournment to such other time and place as to you shall seem convenient to cause the said witnesses to come before you and to administer to the said witnesses respectively an oath truly to answer such questions as shall be put to them touching the matters set forth in the said Petition (a true and authentic copy whereof sealed with the seal of Our said Court is hereunto annexed), and such oath being administered We do hereby authorize and empower you to take the examination of the said witnesses touching the matters set forth in the said Petition, and to reduce the said examination or cause the same to be reduced into writing. And that for the purpose aforesaid you do assume for yourself some notary public or other lawful scribe as and for your actuary in that behalf if to you it should seem meet and convenient so to do. And the said examination being so taken and reduced into writing as aforesaid, and subscribed by you We do **require you forthwith to transmit the said examination, closely sealed up, to the Registry of Our said Court at the Courts of Justice, Victoria, in the Colony of Hong Kong, together with these presents.** And we do hereby give you full power and authority to do all such acts, matters and things as may be necessary, lawful and expedient for the due execution of this Our Commission.

Dated at Hong Kong the day of in the year of our Lord one thousand nine hundred and and in the year of Our Reign.

(Signed)

Registrar.

[Rule 53]

No. 6.

Notice of Application for Decree Absolute.

IN THE SUPREME COURT OF HONG KONG.

Divorce.	}	Between	A.B.	Petitioner
19 No.			and	Respondent
				C.B.
			X.Y.	

NOTICE IS HEREBY GIVEN of application on behalf of Petitioner that the decree nisi for the dissolution of the marriage of the petitioner and respondent pronounced in this cause on the _____ day of _____, 19____, be made absolute, the usual affidavit in support of the application having been filed the _____ day of _____, 19____.

J.G., Solicitor for the petitioner.

SECOND SCHEDULE.

FEEs.

Amendment of any document	\$ 2.00
Answer, reply or other pleading, filing	2.00
Appearance, entering, each person (to be paid on praecipe) ...	2.00
Appointment before Registrar on reference, for each hour or part thereof	10.00
Decree Nisi or Decree Absolute, settling and entering	6.00
Letters of Request, settling and issuing	15.00
Medical Inspection; filing minute of identification and for oath	6.00
Minute of Registrar (on filing bond, commission, deposition, report of medical inspection or any other document)	4.00
Petition for alimony pending suit, permanent alimony, maintenance or periodical payments, variation of settlement, settlement of wife's property or increase or reduction of alimony, maintenance or periodical payments	2.50
Petition not hereinbefore referred to	10.00
Order of reference to Registrar, including application for appointment	5.00
Report of Registrar on petition for alimony, pending suit	10.00
Report of Registrar not hereinbefore referred to	15.00