

**REGULATIONS FOR THE  
UNITED STATES CONSULAR  
COURTS IN CHINA: WITH  
TABLE OF FEES**

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Regulations for the United States Consular Courts in China: With Table of fees by George F. Seward

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**GEORGE F. SEWARD**

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UNITED STATES CONSULAR  
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*U. S. Legation. China.*

REGULATIONS

FOR THE

UNITED STATES CONSULAR  
COURTS IN CHINA;

WITH

TABLE OF FEES,

AS PRESCRIBED BY THE DECREE OF APRIL 23, 1864: TO WHICH IS ADDED

A SET OF FORMS,

AS USED IN THE UNITED STATES CONSULATE GENERAL;

AND

THE ACT OF JULY, 1870.

*PUBLISHED BY AUTHORITY.*



LANE, CRAWFORD & CO.,

SHANGHAI, HONGKONG & YOKOHAMA.

1874.



UNITED STATES CONSULATE GENERAL.

*Shanghai, 1st August 1874.*

THE original edition of the Regulations for the Consular Courts of the United States in China, decreed on the 23rd of April 1864, being out of print, this new edition is published. With the Regulations are also printed the Act of 1870, and a set of forms such as those used in the Court of this Consulate.

GEORGE F. SEWARD,  
*Consul General.*

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REGULATIONS  
FOR THE CONSULAR COURTS OF THE UNITED  
STATES OF AMERICA IN CHINA.

In pursuance of Sec. 5th of the Act of Congress, approved June 22nd 1860, entitled "An Act to carry into effect certain provisions in the treaties between the United States, China, Japan, Siam, Persia, and other countries, giving certain judicial powers to Ministers and Consuls, or other functionaries of the United States in those countries, or for other purposes," I, ANSON BURLINGAME, Minister Plenipotentiary and Envoy Extraordinary of the United States to the Empire of China, do hereby decree

the following rules and regulations for the guidance of the consular courts in China.

ANSON BURLINGAME.

LEGATION OF THE UNITED STATES TO CHINA,  
PEKING, April 23rd 1864.

|                             |   |
|-----------------------------|---|
| Assented to                 | GEO. F. SEWARD,<br><i>Consul General.</i>           |
| Peking, April 23rd 1864.    |   |
| Assented to                 | OLIVER H. PERRY,<br><i>U. S. Consul.</i>            |
| Canton, July 12th 1864.     |   |
| Assented to                 | J. C. A. WINGATE,<br><i>U. S. Consul.</i>           |
| Swatow, September 3rd 1864. |   |
| Assented to                 | OLIVER B. BRADFORD,<br><i>U. S. Vice-Consul.</i>    |
| Amoy, August 30th 1864.     |   |
| Assented to                 | A. L. CLARKE,<br><i>U. S. Vice-Consul.</i>          |
| Foo-chow foo,—1864.         |   |
| Assented to                 | EDWARD C. LORD,<br><i>U. S. Vice-Consul.</i>        |
| Ningpo, June 20th 1864.     |   |
| Assented to                 | Wm. BRECK,<br><i>U. S. Consul.</i>                  |
| Hankow, June 11th 1864.     |   |
| Assented to                 | H. G. BRIDGES,<br><i>U. S. Vice-Consul.</i>         |
| Kiukiang, June 13th 1864.   |   |
| Assented to                 | S. W. POMEROY,<br><i>U. S. Vice-Consul.</i>         |
| Tientsin, April 27th 1864.  |   |
| Assented to                 | G. H. COLTON SALTER,<br><i>Acting U. S. Consul.</i> |
| Chinkiang, June 2nd 1864.   |   |

## I.—ORDINARY CIVIL PROCEEDINGS.

1. *How commenced.*—Civil proceedings between American citizens must commence by written petition verified by oath before the Consul.

2. *Three classes of action.*—Ordinary personal civil actions are of three classes, viz : Contract, comprising all cases of contract or debt ; Wrong, when damages are claimed for a wrong ; Replevin, when possession of a specific article is claimed.

3. *Demand necessary in contract and replevin.*—In contract, the petition must aver that payment, or a performance of the conditions of contract, has been demanded and withheld ; and, in replevin, that the articles to be replevied have been demanded.

4. *Petitioner must deposit money.*—The petitioner shall be required to deposit a reasonable sum to defray the probable expenses of court and defendant's costs ; subsequent deposits may be required if found necessary.

5. *Notice to Defendant.*—Upon deposit of the money, the Consul shall order notice on the petition, in writing, directing defendant to appear before the court at a given day and hour, to file his written answer on oath.

6. *Service.*—Notice must be served on each defendant at least five days before return day, by delivery of an attested copy of the petition and order, and of any accompanying account or paper.

7. *Personal service* should always be required when practicable.

8. *Default.*—On proof of due notice, judgment by default shall be procured against any defendant failing to appear and file his answer as required ; but the default may be taken off for good cause within one day after, exclusive of Sunday.

9. *Damages.*—But in actions of wrong, and all others where the damages are in their nature unliquidated and indefinite, so that they cannot be calculated with precision from the statement of the petition, the amount of the judgment shall be ascertained by evidence, notwithstanding the default.

10. *Answer.*—If defendant appears and answers, the Consul, having both parties before him, shall, before proceeding further, encourage a settlement by mutual agree-



ment, or by submission of the case to referees agreed on by the parties, a majority of whom shall decide it.

11. *Amendments.*—Parties should, at the trial, be confined as closely as may be to the averments and denials of the statement and answer, which shall not be altered after filing, except by leave granted in open court.

12. *American witnesses compelled to attend.*—On application of either party and advance of the fees, the Consul shall compel the attendance of any witness within his jurisdiction before himself, referees, or commissioners.

13. *Parties are witnesses.*—Each party is entitled, and may be required, to testify.

14. *Decrees to be obeyed.*—Judgment may be given summarily against either party failing to obey any order or decree of the Consul.

15. *Attachment or Arrest.*—For sufficient cause and on sufficient security, the Consul, on filing a petition, may grant a process of attachment of any defendant's property to a sufficient amount, or of arrest of any defendant not a married woman, nor in the service of the United States under commission from the President.

16. *Dissolution of attachment.*—Defendant may at any time have the attachment dissolved by depositing such sum, or giving such security, as the Consul may require.

17. *Sale of perishable property.*—Perishable property, or such as is liable to serious depreciation under attachment, may, on petition of either party, be sold by the Consul's order, and its proceeds deposited in the Consulate.

18. *Release of Debtor.*—Any defendant arrested or imprisoned on civil petition shall be released on tender of a sufficient bond, deposit of a sufficient sum, or assignment of sufficient property.

19. *Debtor's disclosure.*—Any person under civil arrest or imprisonment may have his creditor cited before the Consul to hear a disclosure of the prisoner's affairs under oath, and to question thereon; and if the Consul shall be satisfied of its truth and thoroughness, and of the honesty of the debtor's conduct towards the creditor, he shall for ever discharge him from arrest upon that debt; provided that the prisoner shall offer to transfer and secure to his creditor the property disclosed, or sufficient to pay the debt, at the Consul's valuation.

20. *Debtor's board.*—The creditor must advance to the jailer his fees and payment for his prisoner's board until the ensuing Monday, and afterwards weekly, or the debtor will be discharged from imprisonment and future arrest.

21. *Execution.*—On the second day after judgment (exclusive of Sunday,) execution may issue, enforcing the same with interest at 12 per cent. a year against the property and person of the debtor, returnable in thirty days, and renewable.

22. *Seizure and sale of property.*—Sufficient property to satisfy the execution and all expenses, may be seized and sold at public auction by the officer, after due notice.

23. Property attached on petition, and not advertised for sale within ten days after final judgment, shall be returned to the defendant.

24. *Final judgment for defendant.*—When final judgment is given in favor of defendant, his person and property are at once freed from imprisonment or attachment, and all security given by him discharged. And the Consul may, at his discretion, award him compensation for any damage necessarily and directly sustained by reason of such attachment, arrest or imprisonment.

25. *Offset.*—In actions of contract, defendant may offset petitioner's claim by a counter claim, filing his own claim, under oath, with his answer. Petitioner shall be notified to file his answer seasonably, on oath, and the two claims shall then be tried together, and but one judgment given for the difference, if any be proved in favor of either party, otherwise for defendant's costs.

26. *Costs.*—Except as hereinafter provided, the party finally prevailing recovers costs, to be taxed by him and revised by the Consul.

27. *Trustee process.*—In contract, the Consul may order defendant's property or credits in a third party's hands, to be attached on the petition, by serving him with due notice as trustee, provided petitioner secures trustee his costs by adequate special deposit.

28. *Trustee's costs.*—If adjudged trustee, the third party may retain his costs from the amount for which he is adjudged trustee, if sufficient; otherwise the balance of trustee's costs must be paid out of petitioner's special deposit, as must the whole of his costs if not adjudged trustee.

29. *Demand on Trustee upon execution.*—The amount for which a trustee is charged must be inserted in the

execution, and demanded of him by the officer within ten days after judgment, or all claim on him ceases. Process against property or person of the trustee may issue ten days after demand.

80. *Debt must be at least ten dollars.*—If petitioner recovers judgment for less than ten dollars, or if less than ten dollars of defendant's property or credits is proved in the third party's hands, in either case the third party must be discharged with costs against petitioner.

81. *Replevin.*—Before granting a writ of replevin, the Consul shall require petitioner to file a sufficient bond, with two responsible sureties, for double the value of the property to be replevied, one an American citizen; or petitioner may deposit the required amount.

## II.—TENDER, &c.

82. Before a creditor files his petition in contract, his debtor may make an absolute and unconditional offer of the amount he considers due, by tendering the money in the sight of the creditor or his legal representative.

83. *Deposit.*—If not accepted, the debtor shall, at his own risk and paying the charges, deposit the money with the Consul, who shall receipt to him and notify the creditor.

84. *Demand or withdrawal.*—It shall be paid to the creditor at any time, if demanded, unless previously withdrawn by the depositor.

85. *Costs.*—If the depositor does not withdraw his deposit, and, upon trial, is not adjudged to have owed petitioner at the time of the tender more than its amount, he shall recover all his costs.

86. *Offer to be defaulted.*—At any stage of a suit in contract or wrong, defendant may file an offer to be defaulted for a specific sum and the costs up to that time; and if petitioner chooses to proceed to trial, and does not recover more than the sum offered, and interest, he shall pay all defendant's costs arising after the offer, execution issuing for the balance only.

## III.—REFERENCE.

87. When parties agree to a reference they shall immediately file a rule, and the case be marked "Referred;" a commission shall then issue to the referees, with a copy of all papers filed in the case.