

CHAPTER 99.

MARRIAGE AND DIVORCE (MUSLIM).

Ordinances
Nos. 27 of 1929,
9 of 1934.

AN ORDINANCE TO AMEND AND CONSOLIDATE THE LAW RELATING TO THE MARRIAGE AND DIVORCE OF HIS MAJESTY'S SUBJECTS IN CEYLON PROFESSING THE MUSLIM FAITH. •

[1st January, 1937.]

PART I.

PRELIMINARY.

Short title, and
application.
[§ 2, 9 of 1934.]

1. (1) This Ordinance may be cited as the Muslim Marriage and Divorce Registration Ordinance.

(2) This Ordinance shall apply only to subjects of His Majesty professing Islam.

Powers of
Registrar-
General.
[§ 4, 9 of 1934.]

2. The Registrar-General shall, subject to the directions of the Executive Committee, have the general control and superintendence of the registration of marriages and divorces under this Ordinance.

Officiating
priests.
[§ 5, 9 of 1934.]

3. (1) The Provincial Registrar may issue a licence to be an officiating priest in the form prescribed in the First Schedule to any Muslim applying for the same, who, in his opinion, is a fit and proper person to register marriages and divorces under this Ordinance, and may by order cancel and recall any such licence at his discretion.

(2) Such licence shall be in original and counterfoil and shall state that the person named therein is licensed to register marriages and divorces for any particular area to be specified therein.

(3) The prescribed fee for any such licence shall be paid in stamps, which shall be supplied by the applicant and shall be affixed to the counterfoil and duly cancelled by the Provincial Registrar. A list of such licences shall be made and preserved in the office of the Provincial Registrar, and shall from time to time be published in the *Gazette*.

(4) No officiating priest shall register any marriage or divorce contracted or effected outside the limits of the area specified in the licence issued to him :

Provided, however, that it shall be lawful for the Registrar-General in his discretion, in respect of any particular marriage, on special application made for that purpose by the bridegroom and the wali of the bride and on payment of the prescribed fee, to authorise by letter an officiating priest licensed for one area to register the marriage in another area.

(5) Every officiating priest to whom a licence has been issued by the Provincial Registrar under subsection (1) shall reside within the particular area specified in that licence as the area for which he is licensed to register marriages and divorces. [§ 5, 9 of 1934.]

(6) In a case where an officiating priest is temporarily absent from the area for which he is licensed to register marriages and divorces or is temporarily incapacitated from the performance of his duties under this Ordinance by reason of illness or other sufficient cause, it shall be competent for the Provincial Registrar to issue a licence to a person duly qualified under subsection (1) to act for such officiating priest for a specified period. [§ 5, 9 of 1934.]

Every licence issued under this subsection shall be free from stamp duty and shall be valid only for the period specified therein.

(7) An officiating priest shall be bound to attend the marriage ceremony for the purpose of registering a marriage if either of the contracting parties to that marriage requires his attendance at the ceremony for that purpose : [§ 5, 9 of 1934.]

Provided that nothing in this subsection contained shall affect or be construed to affect the right of an officiating priest to refuse to register any marriage sought to be registered in contravention of the provisions of this Ordinance or of the regulations made thereunder.

4. (1) The Governor may appoint any male Muslim of good character and position and of suitable attainments to be a Kathi. The letter of appointment shall state that the person named therein is appointed to be a Kathi for any particular area to be specified therein and the period for which the appointment is made. Kathis.
[§ 6, 9 of 1934.]

(2) Every appointment of a Kathi shall be notified in the *Gazette*. The Governor may at any time at his pleasure by notification in the *Gazette* cancel such appointment.

[§ 6, 9 of 1934.] (3) Every Kathi shall reside within the particular area specified in his letter of appointment.

[§ 6, 9 of 1934.] (4) In the event of a Kathi temporarily leaving the area for which he is appointed or in the event of a Kathi being temporarily incapacitated from the performance of his duties under this Ordinance by reason of illness or other sufficient cause, the Governor may appoint a suitable person to act for him.

Board of Kathis.

5. (1) The Governor may appoint a board consisting of five male Muslims resident in the Island who are of good character and position and of suitable attainments (hereinafter called the Board of Kathis) to hear appeals from Kathis.

[§ 7, 9 of 1934.] (2) Three members of the Board of Kathis shall form a quorum of that board. No appeal shall be heard by the Board of Kathis unless a quorum is present. The decision of a majority of the members of the Board of Kathis who are present at the hearing of an appeal shall for all purposes be deemed to be the decision of the board.

(3) The appointment of the members of the Board of Kathis shall be notified in the *Gazette*. The Governor may at any time at his pleasure, by notification in the *Gazette*, cancel any such appointment and appoint some other suitable person to fill the place of the person whose appointment is so cancelled.

(4) In the event of a member of the Board of Kathis dying or resigning or leaving the Island or becoming incapable or refusing to perform his duties, the Governor may appoint a suitable person to fill his place.

PART II.

MARRIAGES.

Persons liable
to register
marriage.

6. (1) In the case of every marriage contracted between Muslims after the commencement of this Ordinance, it shall be the duty of the bridegroom and the wali of the bride (except where the Kathi has expressly authorised the marriage under section 21 (2)) and the officiating

priest who attends the marriage ceremonies at the request of the contracting parties and the priest conducting the marriage ceremonies and the two witnesses to the marriage, immediately upon the performance of such ceremonies, to register such marriage or to cause such marriage to be registered at the wedding meeting held according to custom. [§ 8, 9 of 1934.]

(2) Every person upon whom a duty is imposed by this Ordinance to register a marriage or to cause a marriage to be registered who omits to register such marriage or to cause such marriage to be registered shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred rupees, and on a second or subsequent conviction to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment. [§ 8, 9 of 1934.]

7. (1) Before the registration of the marriage, the bridegroom and the wali of the bride (except where the consent of such wali has been dispensed with under section 21 (2)) shall sign before the officiating priest declarations in the form prescribed in the First Schedule. It shall be the duty of the officiating priest to require the bridegroom and the wali, if any, to sign such declarations. Declarations and form of registration. [§ 9, 9 of 1934.]

(2) The officiating priest shall then enter in duplicate in the English or Tamil language a statement of the particulars of the marriage in a marriage register which he is hereby required to keep for that purpose in the form prescribed in the First Schedule. [§ 9, 9 of 1934.]

(3) The prescribed fee shall be paid in stamps which shall be supplied by the bridegroom. Such stamps shall be affixed to the duplicate of the marriage register and shall be duly cancelled by the officiating priest according to law. [§ 9, 9 of 1934.]

8. (1) The marriage register shall be signed by the officiating priest and by the priest conducting the marriage ceremonies and also by the bridegroom, and by the wali of the bride except where the Kathi has expressly authorised such marriage under section 21 (2), and shall be attested by the two witnesses present at the marriage. Entries of marriage to be signed and attested. [§ 10, 9 of 1934.]

(2) Every registration of a marriage shall be made and numbered consecutively from the beginning to the end of the marriage register. [§ 10, 9 of 1934.]

[§ 10, 9 of 1934.] (3) In a case where the officiating priest also conducts the marriage ceremonies it shall not be necessary for such officiating priest to sign the marriage register in more than one place.

Certificate and declarations to be forwarded to Provincial Registrar.

[§ 11, 9 of 1934.]

9. (1) The officiating priest registering the marriage shall forthwith detach the duplicate from the marriage register and send it together with the declarations under section 7 (1), on or before the fifth day of the month following that in which the marriage was registered, to the Provincial Registrar having jurisdiction over the area for which he has been licensed :

[§ 11, 9 of 1934.]

Provided, however, that where the marriage is registered by an officiating priest authorised under the proviso to section 3 (4), the officiating priest shall in addition send certified copies of the statement of the particulars entered in the marriage register, of the declarations, and of the letter authorising the registration of the marriage by the said officiating priest to the Provincial Registrar having jurisdiction over the area in which the marriage is registered.

[§ 11, 9 of 1934.]

(2) All duplicates sent to the Provincial Registrar in accordance with the provisions of subsection (1) shall be forwarded by him to the Registrar-General who shall cause such duplicates to be filed and preserved in his office.

Penalties.

[§ 12, 9 of 1934.]

10. Every officiating priest who when required under this Ordinance to attend any marriage ceremony for the purpose of registering a marriage shall fail or refuse to attend that ceremony for that purpose without reasonable cause, or who shall wilfully register any marriage contracted outside the limits of the area for which he is licensed save and except under a letter of authority issued under the proviso to section 3 (4), or who shall register any marriage at which he shall not have been present, or who shall wilfully neglect to carry out any duty imposed upon him by sections 7, 8, or 9, or who shall wilfully omit to have the declarations signed as provided by section 7 (1), or to register in the marriage register in the manner provided by sections 7 and 8 any marriage which by this Ordinance he shall be bound to register, or who shall fail without lawful excuse to comply with the provisions of section 9 or who shall wilfully contravene any rule made under this Ordinance, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees.

11. Every person required thereto by section 8 who without good cause refuses or wilfully neglects to sign the marriage register, and every person liable thereto under section 7 (3) who refuses or neglects to supply the stamp necessary for payment of the prescribed fee, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty rupees.

Penalty for refusing to sign register or not providing necessary stamps.
[§ 13, 9 of 1934.]

12. Every person who wilfully or to his knowledge makes a false statement in the declaration signed by him under section 7 (1) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Penalty for making false statement in declaration.

13. Where a marriage contracted on or after the first day of January, nineteen hundred and thirty-seven, has not been registered or has been erroneously registered, it shall be lawful for either of the parties to the marriage, or, in the case of his or her death, for the issue or other lawful representative of any such party, to apply to the Provincial Registrar of the province in which such marriage was contracted to have such marriage registered or correctly registered, as the case may be, and such Provincial Registrar shall cause the officiating or other priest before whom the marriage was contracted and such other persons as to him shall appear expedient to be noticed to show cause why such application should not be granted. If no sufficient cause be shown to the contrary and the Provincial Registrar shall be satisfied, after hearing such evidence as may be adduced, that such marriage has been proved and that it has not been registered or has been erroneously registered, he shall by order cause the marriage to be registered or correctly registered, as the case may be.

Power to supply omissions or correct errors in registration.

[§ 14, 9 of 1934.]

PART III.

DIVORCES.

14. When a husband desires, after the commencement of this Ordinance, to divorce his wife, the procedure laid down in the rules in the Second Schedule shall be adopted, and if a permit to effect and register the divorce is issued to him by the Kathi, he shall register the divorce for official use.

Divorce by husband.

priest within fourteen days after the issue of such permit, unless it has been revoked in the meantime.

Fasah divorce.
[§ 16, 9 of 1934.]

15. When a wife desires, after the commencement of this Ordinance, to effect a Fasah divorce from her husband, the procedure laid down in the rules in the Third Schedule shall be adopted, and if a permit stating that the divorce has been allowed and may be registered is issued to her by the Kathi, she shall register the divorce before an officiating priest within fourteen days after the issue of such permit.

Right of appeal to the Board of Kathis.
[§ 17, 9 of 1934.]

16. Any husband or wife aggrieved by the order of a Kathi under the rules in Part I of the Third Schedule shall have a right of appeal to the Board of Kathis, and any husband or wife aggrieved by the order of the Board of Kathis on any such appeal shall, subject to leave being granted, have a right of appeal to the Supreme Court against such order, in accordance with the rules in Part II of the said Schedule, and the provisions of those rules shall apply accordingly when any such right is exercised.

Transfer of divorce proceedings from one Kathi to another.

17. (1) Whenever it is made to appear to the Provincial Registrar, on the application of a wife or husband, that a fair and impartial inquiry in any divorce proceedings taken by a wife under this Ordinance cannot be had before a Kathi, whether proceedings have already been instituted before such Kathi or not, it shall be lawful for the Provincial Registrar to order that such inquiry should be held or transferred before another Kathi who may be specially appointed for that purpose by order of the Governor to be published in the *Gazette*.

(2) No such order shall be made until the applicant has deposited the prescribed fees for payment of the travelling and other expenses of such specially appointed Kathi.

Rules of procedure on appeals to the Supreme Court.

18. It shall be lawful for the Judges of the Supreme Court or any three of them, of whom the Chief Justice shall be one, from time to time to make, subject to the approval of the Governor, such general rules as to them shall seem meet for regulating the mode of applying for leave to appeal and of prosecuting appeals from decisions and orders of the Board of Kathis and for regulating any matters relating to the costs of such applications for leave to appeal and of appeals.

19. It shall be the duty of the officiating priest to register in the form prescribed in the First Schedule any divorce in respect of which a permit has been issued by a Kathi under this Ordinance, on production of the permit by the person to whom it was issued within fourteen days after the issue thereof, and the provisions of sections 7 (2) and (3), 8 (2), 9, 10, 11, and 13 shall apply *mutatis mutandis* to every such registration, and the entries in the divorce register and the duplicate shall be signed by the person to whom the permit was issued and the officiating priest, and shall be attested by two witnesses, and the officiating priest shall forward the permit to the Provincial Registrar together with the duplicate, to be filed of record in his office :

Registration of divorces.

[§ 19, 9 of 1934.]

Provided that in effecting a Fasah divorce the prescribed fee mentioned in section 7 (3) shall not be levied.

20. Every person who omits to register a divorce which has been authorised by a permit issued under this Ordinance within a period of fourteen days reckoned from the date of issue of that permit, and every Muslim who aids or abets another Muslim to obtain or effect a divorce otherwise than in accordance with the provisions of this Ordinance, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred rupees, and on a second or subsequent conviction to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Penalty for omission to register divorce.

[§ 20, 9 of 1934.]

PART IV.

SUPPLEMENTARY.

21. (1) A Kathi shall in addition have power to inquire into and adjudicate upon—

Additional powers of Kathi.

- (a) claims for the payment of mahr where the sum in dispute does not exceed one thousand rupees ;
- (b) claims for maintenance by or on behalf of a wife or a child (whether legitimate or illegitimate) where such claim does not exceed one hundred rupees a month in respect of the wife or fifty rupees a month in respect of a child ;

[§ 21, 9 of 1934.]

[§ 21, 9 of 1934.] (c) claims for maintenance by a divorced wife until the registration of the divorce or during her period of iddat, or, if such woman is pregnant at the time of the registration of the divorce, till she gives birth to the child, and in the last-mentioned case claims for her lying-in expenses :

[§ 21, 9 of 1934.] (d) claims for the increase or reduction of the amount of any maintenance ordered under this section ;

Provided that—

(i) no variation or alteration of any maintenance ordered under this section shall be made except upon good and sufficient cause shown to the Kathi and after notice to all the parties concerned ;

(ii) the amount of any order of maintenance made under this section shall not in any case exceed the amount of the maximum claim permitted by this section.

[§ 21, 9 of 1934.] (2) A Kathi may also inquire into and deal with any complaint by or on behalf of a woman made against a wali who unreasonably withholds his consent to the marriage of such woman and if necessary authorise such marriage against the express wishes of the wali :

Provided that where a woman has no wali, the Kathi may, after such inquiry as he may consider necessary, authorise the registration of her marriage and dispense with the necessity for the consent of a wali.

[§ 21, 9 of 1934.] (3) All such inquiries shall be held as nearly as possible *mutatis mutandis* in accordance with the rules in the Third Schedule, and any party aggrieved by an order made by a Kathi under this section shall have the same right of appeal to the Board of Kathis and the Supreme Court as in Fasah proceedings, and this Ordinance and the rules in the said Schedule and any amendments thereof shall apply to such appeals.

(4) Any sum so claimed and allowed by the Kathi, or on appeal, by the Board of Kathis, or, in the case of a further appeal, by the Supreme Court, may be recovered as though it were a fine imposed under this Ordinance on application made to the Magistrate having jurisdiction where the person liable to pay such sum may for the time being be resident. Every such application shall be made by the Kathi and shall be supported by a certificate under his hand stating the amount

of the sum due, the name of the person liable to pay such sum, and the name or names of the person or persons entitled thereto.

Such sum shall be recovered as a fine notwithstanding that it may exceed the amount of a fine which a Magistrate may in his ordinary jurisdiction impose, and when recovered shall be remitted to the Kathi for payment in due course to the person thereto entitled : [§ 21, 9 of 1934.]

Provided that, if any person against whom an order for maintenance is made under this section neglects to comply with the order, the Magistrate may for every breach of the order issue a warrant directing the amount due to be levied in the manner provided by law for levying fines imposed by Magistrates, and may sentence such person, in respect of the whole or any part of any monthly allowance remaining unpaid by such person after the execution of the warrant, to imprisonment of either description for any term not exceeding one month.

(5) A record shall forthwith be made by the Kathi in the prescribed book of any money received by him or remitted to him for payment under subsection (4) and such money shall forthwith be paid by him to the person entitled thereto : [§ 21, 9 of 1934.]

Provided that in a case where the person entitled to any money is a child under fourteen years of age—

- (i) such payment may be made by the Kathi in his discretion to the person who from time to time has the custody of that child ; and
- (ii) a record of every payment made shall forthwith be entered by the Kathi in the prescribed book and shall be supported by a receipt in the prescribed form signed by the payee.

(6) Any Kathi, who fails without reasonable cause forthwith to pay to the person entitled thereto, any sum of money received by him or remitted to him for payment under subsection (4), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment. [§ 21, 9 of 1934.]

(7) All moneys received by a Kathi or remitted to him for payment under subsection (4) and not paid by the Kathi to the persons entitled thereto on the ground that there is no claimant or that the claimant cannot be found shall be paid [§ 21, 9 of 1934.]

at the end of a period of one month after such moneys have been in the hands of the Kathi to the Provincial Registrar, and shall be disposed of in the prescribed manner.

Regulations.

[§ 22, 9 of 1934.]

22. (1) The Executive Committee may make regulations for or in respect of all or any of the following matters :—

- (a) the procedure to be observed in cases before Kathis in regard to matters for which no provision is made in this Ordinance ;
- (b) the processes to be issued by Kathis and the mode of enforcing the same ;
- (c) the form and method of appeals to the Board of Kathis and all matters incidental or appertaining to the hearing of such appeals and the recording of the verdict or decision of the Board ;
- (d) the summoning, challenging, and empanelling of Muslim assessors, and matters respecting them ;
- (e) the manner in which and the conditions subject to which processes may be served by the Fiscal, or otherwise ;
- (f) the stamp fees to be levied in respect of cases instituted before the Kathi, processes issued by the Kathi, and appeals heard by the Board of Kathis, and applications for leave to appeal and appeals made to the Supreme Court and, in general, all fees required by this Ordinance to be prescribed whether payable in stamps or not ;
- (g) the stamp fees to be paid on certificates of marriage or divorce and on declarations under section 7 (1) ;
- (h) the inspection from time to time by the Provincial Registrar of the registers and books kept by officiating priests, and Kathis, and the inquiry by the Provincial Registrar into complaints against Kathis and officiating priests ;
- (i) the books, registers, certificates, permits, forms, and indexes to be kept, issued, or used by Provincial Registrars, Kathis, and officiating priests ;
- (j) the fees, allowances, or other emoluments payable to Kathis ;
- (k) the manner in which accumulated moneys paid by Kathis to the Provincial Registrar under section 21 (7) shall be disposed of ;

- (l) the conditions relating to the prepayment of mahr and deposit of money for maintenance of a child to be born, subject to which a Muslim not domiciled in Ceylon may be allowed to marry in Ceylon ;
- (m) all other matters which may or are to be prescribed or which may appear to be necessary or expedient for the purpose of carrying out the provisions of this Ordinance.

(2) Every regulation made by the Executive Committee under this section shall be published in the *Gazette* in the English and Tamil languages. A regulation shall not come into operation unless it has been approved by the State Council and ratified by the Governor nor until notification of such approval and ratification has been published in the *Gazette*. [§ 22, 9 of 1934.]

(3) Any form in the First Schedule and any rule in the Second or Third Schedule may be rescinded, amended, varied or modified, and any Schedule may be added to, by regulation made under this section. [§ 22, 9 of 1934.]

23. (1) When any Fasah divorce has already been effected by a woman before a Muslim priest prior to the first day of April, nineteen hundred and twenty-five, or when any woman so divorced has re-married, such woman, or if the woman is dead, any child born of such re-marriage, may apply for the registration of such divorce or re-marriage to the Kathi of the area in which such woman or child is resident.

Procedure for validation of past divorces and re-marriages.

(2) The Kathi shall proceed to inquire into any such application made to him, and the procedure laid down in the rules in the Third Schedule shall be followed as nearly as possible.

(3) Any party aggrieved by an order made by a Kathi at any inquiry held under subsection (2) shall have the same right of appeal as in the case of an order made in a Fasah case, and this Ordinance and the rules in the Third Schedule and any amendments thereof shall apply to such appeals.

[§ 23, 9 of 1934.]

(4) When any such application is allowed by the Kathi, or on appeal, by the Board of Kathis, or in the case of a further appeal, by the Supreme Court, the Kathi shall issue to the applicant a permit authorising the registration of the divorce or of the re-marriage within fourteen days after the issue of such permit, and upon production of this permit, within the fourteen days, it shall be the duty of the officiating priest to file the permit and to register the divorce or marriage in

[§ 23, 9 of 1934.]

separate registers to be kept for that purpose in the prescribed form and the provisions of sections 9 and 19 shall apply accordingly, *mutatis mutandis*.

(5) Every divorce and re-marriage duly registered under this section shall be deemed to be valid and to have been duly effected and contracted as and from the original date of such divorce or re-marriage, and all children born of such re-marriage shall be deemed to be legitimate children of such re-marriage.

Indexes of books and registers.

[§ 24, 9 of 1934.]

24. Every officiating priest and every Kathi shall keep in the Tamil or English language and in the prescribed form a current index of the contents of every book and register kept by him, except where otherwise prescribed, and every entry in such index shall be made as far as it is practicable immediately after he shall have made an entry in the book or register.

Officiating priest and Kathi to deposit copies of entries and indexes.

[§ 25, 9 of 1934.]

25. Every officiating priest and every Kathi shall at the expiration of every month forward to the Provincial Registrar copies verified on oath in the prescribed form of all entries made by him in his books or registers or in the indexes thereto unless otherwise prescribed.

Copies to be bound in general register.

[§ 26, 9 of 1934.]

26. The Provincial Registrar shall cause such copies to be bound together, with translations in English if they are in the Tamil language, of such documents as may be prescribed, in a general register, of which a general index shall be kept.

Registers and indexes to be open to inspection.

[§ 27, 9 of 1934.]

27. The general register and general index, and the books, registers, and indexes of officiating priests and Kathis shall be open to inspection at all reasonable hours upon the payment of the prescribed fee by any person applying to inspect the same; and the Registrar-General or the Provincial Registrar or Kathi or officiating priest shall upon payment of the prescribed fee furnish to any person requiring the same a copy of any entry certified under his signature.

Registers and copies to be evidence.

[§ 28, 9 of 1934.]

28. Every book or register of an officiating priest or Kathi, and any general register, and every copy of any entry in any such book or register, and every extract therefrom, certified under the hand of an officiating priest or Kathi, or Provincial Registrar, or the Registrar-General, to be a true copy or

extract, shall be prima facie evidence in all courts in the Island of the dates and facts contained or set out in such book or register, general register, copy, or extract.

29. (1) A certified copy of the entry in the register of marriages or in the register of divorces kept under this Ordinance or heretofore kept under the Mohammedan Marriage Registration Ordinance, 1886,* shall be accepted and received in all courts as the best evidence of such marriage or divorce, as the case may be.

Entry in the register of marriages or in the register of divorces to be best evidence. [§ 29, 9 of 1934.]

(2) Provided, however, that nothing contained in this Ordinance shall be construed to render valid or invalid merely by reason of registration or non-registration any Muslim marriage or divorce which will otherwise be invalid or valid according to the Muslim law in force in Ceylon.

(3) Where a duplicate entry made by an officiating priest is lost, the Registrar-General may cause the missing document to be replaced by a copy of the original entry certified by the officiating priest, if available, and countersigned by the Provincial Registrar ; and a copy so certified shall be deemed to be the duplicate entry.

[§ 29, 9 of 1934.]

30. The forms contained in the First Schedule shall be used with such variations as may be necessary for any particular case.

Forms.

31. (1) Every officiating priest and every Kathi shall keep all registers, books, and indexes until they shall have been filled up and shall then forward them for record to the Provincial Registrar.

Custody of registers, books, and indexes.

(2) In the event of an officiating priest or Kathi leaving the area for which he is licensed or appointed, or ceasing to hold his licence or appointment, or resigning, or in the event of his licence or appointment being revoked or cancelled, he or in the event of his death, his legal representative, shall forthwith deliver his books, registers, and indexes to the Provincial Registrar ; and on failure of such delivery, the Provincial Registrar shall take possession of them.

[§ 31, 9 of 1934.]

(3) Any person who refuses or omits to deliver any book, register, or index, to the Provincial Registrar as required by this section, and any person who is found without lawful excuse in possession of any book, register, or index, which has

* Repealed by 27 of 1929.

not been delivered to the Provincial Registrar or taken possession of by him as required by this section, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees.

Penalty for destruction of registers, &c.
[§ 32, 9 of 1934.]

32. Every person who—

- (a) wilfully destroys or injures or causes to be destroyed or injured any register, book, permit or other document kept or issued under this Ordinance, or
- (b) falsely makes, fabricates or counterfeits in whole or in part any such register, book, permit or document or any document purporting to be a certified copy of any such register, book, permit or document, or part thereof or extract therefrom, or
- (c) wilfully inserts any false entry in any such register, book, permit or document,

shall be guilty of an offence, and shall be liable on conviction to imprisonment of either description for a term not exceeding seven years.

Kathi deemed to be public servant.

33. Every Kathi shall be deemed to be a public servant within the meaning of the Penal Code, and all proceedings before a Kathi or Board of Kathis under the provisions of this Ordinance shall be deemed to be judicial proceedings within the meaning of Chapter XI of the Penal Code.

Registers, &c., to be supplied free.

34. All register books with the certificates attached thereto and all other books required to be kept by officiating priests and Kathis shall be furnished by the Provincial Registrar on the application of the officiating priest or Kathi free of charge.

Appeal from order of Provincial Registrar.

35. Every order made by the Provincial Registrar refusing or cancelling or recalling a licence under section 3 and every order made by the Provincial Registrar under section 13 or section 17 shall be subject to appeal to the Governor, and every such appeal shall be preferred within fourteen days after the order appealed from shall have been notified to the party or parties concerned.

Unauthorised keeping of marriage or divorce registers.
[§ 35, 9 of 1934.]

36. (1) No person other than an officiating priest or Kathi shall keep any book or register being or purporting to be a register of Muslim marriages or divorce^s or proceedings relating to divorces effected by him or by any other person under the provisions of this Ordinance.

(2) No officiating priest or Kathi shall permit any other person to take possession or to have the custody of any register, book, or other document required to be kept by such priest or Kathi under this Ordinance, except in such cases or on such occasions as may be prescribed or on the orders of a competent court. [§ 35, 9 of 1934.]

(3) Any person offending against the provisions of this section shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one hundred rupees, and for a second or subsequent offence to a fine not exceeding one hundred rupees or to rigorous imprisonment for a period not exceeding six months or to both such fine and imprisonment.

37. Any person not being an officiating priest who registers or professes to register under this Ordinance any marriage or divorce or who, not being a Kathi, issues or professes to issue any permit under this Ordinance shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a term not exceeding seven years. Penalty for unauthorised registration of marriage, divorce, &c. [§ 36, 9 of 1934.]

38. It shall be the duty of the Provincial Registrar to inspect or cause to be inspected from time to time the books and registers required to be kept under this Ordinance by the officiating priests and Kathis, and to hear complaints made against them. Inspection of registers, &c., by Provincial Registrar. [§ 37, 9 of 1934.]

39. Nothing in this Ordinance shall be construed to prohibit the receipt by the officiating priest of any gratuity if such gratuity is voluntarily made. Voluntary gratuity to officiating priest.

40. (1) Whenever there shall be a special necessity for the licensing of an officiating priest otherwise than under section 3, it shall be lawful for the Registrar-General, on special application made for the purpose and on payment of the prescribed fee, to issue a licence to be a special officiating priest in the prescribed form to any Muslim who in his opinion is a fit and proper person to register marriages and divorces under this Ordinance, but such licence shall be limited to the necessity mentioned aforesaid and may be revoked and recalled by the Registrar-General at his discretion. Special officiating priests. [§ 38, 9 of 1934.]

(2) Such licence shall specify the conditions and restrictions under which it is to be used and may be issued for the whole of the land or for any particular area thereof specified in the licence.

(3) The prescribed fee for any such licence shall be paid in stamps, which shall be supplied by the applicant and shall be duly cancelled by the Registrar-General. A list of such licences shall be made and preserved in the office of the Registrar-General and shall from time to time be published in the *Gazette*.

(4) No officiating priest licensed as aforesaid shall register any marriage or divorce contracted or effected under this Ordinance in breach of the restrictions or conditions contained in the licence issued to him.

(5) The term "officiating priest" in this Ordinance shall include any person so licensed by the Registrar-General.

Special Kathis.

41. (1) Whenever there shall be a special necessity for the appointment of a Kathi otherwise than under section 4, it shall be lawful for the Governor to appoint any male Muslim of good character and position and of suitable attainments to be a special Kathi. The letter of appointment shall be in such form as the Governor may specify and shall contain the conditions and restrictions subject to which the Kathi shall function.

(2) Every appointment of a Kathi as aforesaid may be for the whole Island or for a portion thereof and shall be notified in the *Gazette*. The Governor may at any time at his pleasure by notification in the *Gazette* cancel such appointment.

(3) The term "Kathi" in this Ordinance shall include any person so appointed by the Governor.

When reference to Provincial Registrar may be read and construed as though reference to Registrar-General.

[§ 40, 9 of 1934.]

42. Any reference to a Provincial Registrar in this Ordinance or in any regulation made thereunder shall, for the purposes of the application of the Ordinance or of any such regulation to a special officiating priest licensed under section 40 or to a special Kathi appointed under section 41, be read and construed as though the words "Registrar-General" were substituted for the words "Provincial Registrar" in the context in which such reference is made.

General penalty.

[§ 41, 9 of 1934.]

43. Any person who fails to comply with or acts in contravention of any of the provisions of this Ordinance, or of any regulations made thereunder, shall be guilty of an offence, and shall, unless some other penalty is provided by this Ordinance, be liable on conviction to a fine not exceeding one hundred rupees.

44. Every Kathi appointed either under sections 4, 17 or 41, and every member of the Board of Kathis appointed under section 5, shall enter into, before the Provincial Registrar in the case of a Kathi, appointed under section 4 or section 17, and before the Registrar-General in the case of a member of the Board of Kathis, or of a special Kathi appointed under section 41, a bond to His Majesty, His heirs and successors, in the sum of one thousand rupees, conditioned for the due and faithful discharge of his duties, which amount shall be secured to His Majesty, His heirs and successors, either by the hypothecation of immovable property or by deposit of movable property, or by the guarantee of two or more sufficient sureties in that behalf to the satisfaction of such Provincial Registrar or Registrar-General. Such bond shall be filed in the office of the Provincial Registrar or of the Registrar-General, as the case may be.

Kathis and members of Board of Kathis to enter into security bonds.

[§ 42, 9 of 1934.]

45. (1) Any person who carnally knows, or attempts to have carnal knowledge of, a woman who is to his knowledge—

Relationship rendering carnal knowledge incestuous.

- (a) his daughter or other lineal descendant ; or
- (b) his mother or other lineal ascendant ; or
- (c) his sister by the full or the half blood ; or
- (d) the daughter of his brother or sister by the full or the half blood, or a descendant from either of them ; or
- (e) the sister by the full or the half blood of his mother, father, or other lineal ascendant ; or
- (f) his wife's mother or grandmother ; or
- (g) the daughter or granddaughter of his wife by another father ; or
- (h) his son's, grandson's, father's, or grandfather's wife or widow or divorced wife ; or
- (i) his wife's sister during his wife's lifetime,

[§ 43, 9 of 1934.]

shall be guilty of an offence, and shall on conviction be liable to imprisonment of either description for any period not exceeding one year.

For the purpose of this subsection it is immaterial that the carnal knowledge was had, or that the attempt was made, with the consent of the woman.

(2) Any woman of or above the age of twelve years who permits any man to have carnal knowledge of her knowing him to be—

- (a) her son or other lineal descendant ; or
- (b) her father or other lineal ascendant ; or
- (c) her brother by the full or the half blood ; or
- (d) the son of her brother or sister by the full or the half blood, or a descendant from either of them ; or
- (e) the brother by the full or the half blood of her father, mother, or other lineal ascendant ; or
- (f) her husband's father or grandfather ; or
- (g) the son or grandson of her husband by another mother ;
or
- (h) her daughter's, granddaughter's, mother's, or grandmother's husband, or widower, or divorced husband,

shall be guilty of an offence, and shall on conviction be liable to imprisonment of either description for any period not exceeding one year.

It is a defence to a charge of the offence defined in this subsection that the woman was at the time of the offence acting under the coercion of the person having carnal knowledge of her.

(3) Nothing in this section contained shall be construed to make valid a marriage which would otherwise be invalid according to the Muslim law in force in Ceylon.

Correction of
clerical errors
in registers.
[§ 44, 9 of 1934.]

46. Any clerical error which may from time to time be discovered in any register kept for the purposes of this Ordinance shall be reported to the Registrar-General who shall, after such inquiry as he may consider necessary, cause such amendment or correction to be made in the register as to him shall seem fit.

Prescription
of action for
mahr.
[§ 45, 9 of 1934.]

47. The time for the prescription or limitation of a suit or action for the whole or part of a woman's mahr shall not begin to run until after the dissolution of the marriage by death or divorce, and such suit or action shall be maintainable if commenced within such time as any action shall be maintainable by the Prescription Ordinance, or by any future Ordinance regulating the prescription of

actions, for the recovery of money paid or expended by a plaintiff on account of a defendant, or for money received by a defendant for the use of a plaintiff.

48. (1) Every Kathi shall, upon appointment, take an oath in the prescribed form before he assumes office for the purposes of this Ordinance. Oath of office. [§ 46, 9 of 1934.]

(2) Every Muslim Assessor who is empanelled for the purposes of this Ordinance shall take an oath in the prescribed form before he functions as an Assessor.

(3) Every Kathi is hereby empowered to administer oaths to witnesses or to Muslim Assessors for the purpose of taking any proceedings or of holding any inquiry under this Ordinance or of performing any duty imposed upon him by this Ordinance. Kathi empowered to administer oath.

49. Nothing contained in this Ordinance shall be construed so as to prevent a husband or wife from bringing an action in a civil court against a third party for damages incurred by him or her in respect of any injury to his or her matrimonial rights. Saving of actions in civil courts.

50. The repeal of sections 64 to 102 (first paragraph) inclusive of the Mahomedan Code of 1806, which is effected by this Ordinance, shall not affect the Muslim law of marriage and divorce, and the rights of Muslims thereunder. Saving of Muslim law of marriage and divorce.

51. (1) In this Ordinance, unless the context otherwise requires— Interpretation. [§ 3, 19 of 1934.]

“Executive Committee” means the Executive Committee for Labour, Industry and Commerce ;

“Fasah divorce” means a divorce of spouses subject to Muslim law effected in accordance with the procedure prescribed in the Third Schedule in a case where proceedings originate in an application made by a wife without the consent of her husband for divorce on the ground of ill-treatment or on account of an act or omission on his part amounting to a “fault” under the Muslim law ;

“Kathi” means a Kathi appointed by the Governor under section 4 ;

“ officiating priest ” means any Muslim licensed by the Provincial Registrar under section 3 to register marriages and divorces under this Ordinance ;

“ order ” means an order made under this Ordinance by a Kathi or by the Board of Kathis ;

“ Provincial Registrar ” means, subject to the provisions of subsection (2), the person officiating or appointed in any province as the Provincial Registrar of Marriages of that province for the purposes of the Marriage Registration Ordinance ;

“ Registrar-General ” means the person appointed to be or to act as Registrar-General of Marriages in this Island under section 2 of the Marriage Registration Ordinance, and includes an Assistant Registrar-General ;

“ regulation ” means a regulation made under section 22.

(2) Where, for the purposes of the Marriage Registration Ordinance, any person is appointed to be or is entitled to function as an Assistant Provincial Registrar of Marriages in any district of this Island, any reference in this Ordinance to a Provincial Registrar in respect of any act, duty or power required to be done, performed or exercised by him in any such district, shall be construed as a reference to the Assistant Provincial Registrar of Marriages of that district appointed or entitled to function as such under the provisions of the Marriage Registration Ordinance.

FIRST SCHEDULE.

[§ 47, 9 of 1934.]

Form No. I.

LICENCE OF OFFICIATING PRIEST TO REGISTER
MARRIAGES AND DIVORCES.

[Sections 3, 7,
19 and 30.]

Counterfoil. No. —. *Original. No. —.

I, the undersigned —, Provincial Registrar/Assistant Provincial Registrar for the — Province/District, do hereby license — of — to register marriages and divorces under the Muslim Marriage and Divorce Registration Ordinance, for the following area :— —.

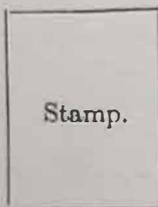
I, the undersigned —, Provincial Registrar/Assistant Provincial Registrar for the — Province/District, do hereby license — of — to register marriages and divorces under the Muslim Marriage and Divorce Registration Ordinance, for the following area :— —.

(Sgd.) —,
Provincial Registrar.
Assistant Provincial Registrar.

(Sgd.) —,
Provincial Registrar.
Assistant Provincial Registrar.

Date : —.

Date : —.



Form No. II.

The Muslim Marriage and Divorce Registration
Ordinance.

[Section 7 (1).]

Form of declaration by bridegroom under section 7 (1).

I, the undersigned —, do hereby give notice that a marriage is about to be/has been solemnized between me and —, and I further hereby solemnly declare that to the best of my knowledge and belief the several particulars entered below are true and correct and that there is no lawful hindrance to the said marriage :

1. Bridegroom's name in full : —.
2. Bridegroom's residence : —.
3. Name of bridegroom's guardian (if any) : —.
4. Bride's name in full : —.

5. Bride's residence : _____.
- *6. Name of bride's Wali : _____.
7. Whether bridegroom was previously married or not, and, if so, to whom : _____.
8. Whether previous wife or wives divorced or dead : _____.
9. If divorced, date and number of divorce registration and name, area and district of the officiating priest : _____.

(Sgd.) _____,
Signature of bridegroom.

Signed before me, this _____ day of _____, 19—.

(Sgd.) _____,
Officiating Priest licensed for the _____
area of the _____ District.

* This may be omitted where the Kathi has expressly authorised the marriage under section 21 (2).

Form No. III.

[Section 7 (1).]

The Muslim Marriage and Divorce Registration Ordinance.

Form of declaration by Wali of bride under section 7 (1).

I, the undersigned _____, do hereby give notice that a marriage is about to be/has been solemnized between _____ and _____ whose Wali I am for the purposes of such marriage, and I further hereby solemnly declare that to the best of my knowledge and belief the several particulars entered below are true and correct and that there is no lawful hindrance to the said marriage :

1. Bridegroom's name in full : _____.
2. Bridegroom's residence : _____.
3. Name of Bridegroom's guardian (if any) : _____.
4. Bride's name in full : _____.
5. Bride's residence : _____.
6. Whether the bride was previously married or not : _____.
7. If previously married, to whom : _____.
8. Whether bride's previous husband is dead or divorced : _____.
9. If divorced, date and number of divorce registration and name, area and district of the officiating priest : _____.

(Sgd.) _____,
Signature of Wali.

Residence of Wali : _____.

Signed before me, this _____ day of _____ 19—.

(Sgd.) _____,
Officiating Priest licensed for the _____
area of the _____ District.

Form No. IV. [Section 7 (2).]
CEYLON. No. ———.
The Muslim Marriage and Divorce Registration Ordinance.
Muslim Marriage Register.

District : ———.
 Officiating Priest's area : ———.
 Name of Officiating Priest registering the marriage : ———.

| | Bride- groom | Bride |
|--|-----------------|-------|
| 1. Name in full | | |
| 2. Whether previously married or divorced | | |
| 3. If divorced, evidence of divorce, if any .. | | |
| 4. Residence | | |
| 5. Name of father or other guardian .. | | |
| 6. Nature of guardianship .. | | |

7. Amount of Mahr and whether paid or not : ———.
 *8. Amount of Stridanum : ———.
 *9. Amount of Kaikuli : ———.
 10. Place of marriage : ———.
 11. Date and hour of marriage : ———.
 12. Date of registration : ———.
 13. Name and residence of first witness : ———.
 14. Name and residence of second witness : ———.
 15. Name of priest conducting marriage ceremony : ———.
 16. Signature of—
 (1) Bridegroom : ———.
 †(2) Bride's Wali : ———.
 (3) First witness : ———.
 (4) Second witness : ———.
 (5) Priest conducting marriage ceremony : ———.
 (6) Officiating priest : ———.

* It is optional and not obligatory to enter details of items 8 and 9.
 † Signature of the bride's Wali may be omitted when the Kathi has expressly authorised the marriage under Section 21 (2).

Form No. IV. [Section 7 (2).]
CEYLON. No. ———.
The Muslim Marriage and Divorce Registration Ordinance.
Muslim Marriage Register.

District : ———.
 Officiating Priest's area : ———.
 Name of Officiating Priest registering the marriage : ———.

| | Bride- groom | Bride |
|--|-----------------|-------|
| 1. Name in full | | |
| 2. Whether previously married or divorced | | |
| 3. If divorced, evidence of divorce, if any .. | | |
| 4. Residence | | |
| 5. Name of father or other guardian .. | | |
| 6. Nature of guardianship .. | | |

7. Amount of Mahr and whether paid or not : ———.
 *8. Amount of Stridanum : ———.
 *9. Amount of Kaikuli : ———.
 10. Place of marriage : ———.
 11. Date and hour of marriage : ———.
 12. Date of registration : ———.
 13. Name and residence of first witness : ———.
 14. Name and residence of second witness : ———.
 15. Name of priest conducting marriage ceremony : ———.
 16. Signature of—
 (1) Bridegroom : ———.
 †(2) Bride's Wali : ———.
 (3) First witness : ———.
 (4) Second witness : ———.
 (5) Priest conducting marriage ceremony : ———.
 (6) Officiating priest : ———.

* It is optional and not obligatory to enter details of items 8 and 9.
 † Signature of the bride's Wali may be omitted when the Kathi has expressly authorised the marriage under Section 21 (2).

Stamp.

Form No. V.

[Section 19.]

CEYLON.

No. —.

The Muslim Marriage and Divorce Registration Ordinance.

Muslim Divorce Register.

District : —.
Officiating priest's area : —.
Name of Officiating Priest registering the divorce : —.

1. Husband's name in full : —.
2. Husband's residence at time of divorce : —.
3. Wife's name in full : —.
4. Wife's residence at time of divorce : —.
5. Name, area and district of officiating priest who registered the marriage : —.
6. Number and date of the entry of marriage : —.
7. Place of divorce : —.
8. Nature of divorce (Talak or Fasah) : —.
9. Name, area and district of Kathi authorising the divorce : —.
10. If Fasah divorce, whether granted by Kathi or on order of the Board of Kathis or of the Supreme Court : —.
11. Number and date of Kathi's permit of divorce : —.
12. Date and hour of divorce : —.
13. Date of registration of divorce : —.
14. Name and residence of first witness to divorce : —.
15. Name and residence of second witness to divorce : —.
16. Signature of—
 - (1) Husband (if present) : —.
 - (2) Wife (if present) : —.
 - (3) First witness : —.
 - (4) Second witness : —.
 - (5) Officiating priest registering the divorce : —.

Form No. V.

[Section 19.]

CEYLON.

No. —.

The Muslim Marriage and Divorce Registration Ordinance.

Muslim Divorce Register.

District : —.
Officiating priest's area : —.
Name of Officiating Priest registering the divorce : —.

1. Husband's name in full : —.
2. Husband's residence at time of divorce : —.
3. Wife's name in full : —.
4. Wife's residence at time of divorce : —.
5. Name, area and district of officiating priest who registered the marriage : —.
6. Number and date of the entry of marriage : —.
7. Place of divorce : —.
8. Nature of divorce (Talak or Fasah) : —.
9. Name, area and district of Kathi authorising the divorce : —.
10. If Fasah divorce, whether granted by Kathi or on order of the Board of Kathis or of the Supreme Court : —.
11. Number and date of Kathi's permit of divorce : —.
12. Date and hour of divorce : —.
13. Date of registration of divorce : —.
14. Name and residence of first witness to divorce : —.
15. Name and residence of second witness to divorce : —.
16. Signature of—
 - (1) Husband (if present) : —.
 - (2) Wife (if present) : —.
 - (3) First witness : —.
 - (4) Second witness : —.
 - (5) Officiating priest registering the divorce : —.

Stamp.

SECOND SCHEDULE.

RULES TO BE ADOPTED IN THE CASE OF A DIVORCE
BY A HUSBAND.

[Section 14.]

In these rules, the words "the Kathi" means the Kathi licensed to register divorces in the area in which the husband who seeks to effect a divorce under this Ordinance resides, or a special Kathi appointed under section 41, as the case may be. [§ 48, 9 of 1934.]

1. The husband shall pronounce the first Talak in the presence of the Kathi and two witnesses, and the Kathi shall forthwith record such pronouncement in the prescribed book, and shall cause notice thereof to be served upon the wife, if she is not present.

2. If the Kathi is satisfied by affidavit or sworn testimony that the wife is not in the Island and that in the circumstances of the case it is not possible to serve such notice upon her, he may order the notice to be served on the wife's nearest relative, or, if no relative is known to be in the Island, he may dispense with the necessity for serving such notice on the wife.

3. If the presence of the wife cannot be secured or if a reconciliation cannot be effected, the husband shall, on the expiry of a period of thirty days reckoned from the date on which the first Talak was pronounced, similarly pronounce the second Talak before the Kathi who shall, in like manner, forthwith record such second pronouncement, give notice thereof to the wife if she is not present, and endeavour once again to effect a reconciliation between the parties.

The provisions of rule 2 shall apply equally in the case of any notice given or issued under this rule.

4. If the husband still persists in his intention to divorce his wife, he shall, on the expiry of a further period of thirty days reckoned from the date on which the second Talak was pronounced, similarly pronounce the third and final Talak before the Kathi who shall forthwith record such final pronouncement in the prescribed book and issue to the husband a permit in the prescribed form authorising him to register the divorce.

THIRD SCHEDULE.

RULES TO BE ADOPTED IN THE CASE OF A FASAH DIVORCE
BY WIFE.

[Sections 15, 21
(3), 23 (2) (3).]

PART I.

1. The wife shall, subject however to section 17, make the application for divorce to the Kathi of the area in which she is resident or to the Special Kathi appointed under section 41.

2. Upon receiving such application, the Kathi shall immediately cause a notice thereof to be served upon the husband and fix a date for the hearing of the application :

Provided that if it is made to appear to the Kathi by sworn statement that the husband is not in the Island and that in the circumstances of the case it is not possible to serve the notice

on the husband, the Kathi may order the notice to be served on the husband's nearest relative or, if no relative is known to be in the Island, may dispense with the notice.

3. If on the date appointed for the hearing of the application the husband does not appear, the service of the notice shall, unless the Kathi shall have dispensed with the notice under the preceding rule, be proved by sworn statement.

4. The Kathi shall then proceed to empanel three Muslim assessors (hereinafter referred to as "the Muslim assessors") for the purpose of assisting him in the hearing of the application :

Provided however that—

(a) where the Kathi is appointed under section 41 ; or

(b) in areas where owing to the sparseness of the Muslim population or for any other reason the Governor has by notification in the *Gazette* declared that applications for divorce can be heard without the assistance of Muslim assessors ;

it shall not be necessary for the Kathi to empanel Muslim assessors.

5. In an area brought under the operation of the Village Communities Ordinance, the Muslim assessors shall be persons professing the Muslim faith who are resident in that area and who possess the qualifications required under that Ordinance to be members of a Village Committee. A list of the names of such persons shall be sent from time to time by the Assistant Government Agent within whose district such area is situated to the Kathi to be filed of record by him.

6. In an area not brought under the operation of the Village Communities Ordinance the Muslim assessors shall be persons professing the Muslim faith who are resident in that area and whose names appear in the list of Tamil-speaking jurors for that area. A list of the names of such persons shall be sent from time to time by the Fiscal having jurisdiction over that area to the Kathi to be filed of record by him.

7. It shall be the duty of the Kathi and of the Muslim assessors, if any, before hearing the application to endeavour by all lawful means to bring the parties to an amicable settlement and to abate, prevent, or remove with their consent the real cause of trouble between them. But if the parties will not agree to such settlement, the Kathi and the Muslim assessors shall then proceed to hear evidence and to determine the application.

8. The Kathi shall record in the book to be kept by him for the purpose the sworn statements of the wife and of at least two of her witnesses and the sworn statements of the husband (if he is present) and of his witnesses.

When the Kathi and the Muslim assessors have examined all the witnesses, the Kathi may make such order or decree as may by Muslim law be lawful.

9. The Muslim assessors shall first express their opinion on the points arising for their adjudication, and the Kathi shall thereupon express his. In the event of any difference of opinion between the Kathi and the Muslim assessors or any of them, or in the event of a refusal by two or more of the Muslim assessors to express their opinion, the opinion of the Kathi shall prevail

and shall be taken as the order in the case; but in every such event a record shall be made of such difference of opinion or refusal.

[§ 40, 9 of 1934.]

10. The Kathi shall immediately after making the order register such order, and the register shall be signed by the Kathi and the Muslim assessors, by the wife who obtains the order, and by the husband, if he is present, and by all the witnesses whose evidence was taken by the Kathi.

11. After any such order, the Kathi shall furnish to the wife and the husband a certified copy each of the whole proceedings upon payment of the prescribed fees.

PART II.

12. If the husband or the wife is aggrieved by any such order, he or she may within thirty days of the date of such order appeal therefrom to the Board of Kathis, who shall have power to hear such appeal either in public or with closed doors, taking further evidence, if necessary, and to make such orders as the Board shall think fit.

13. (1) If the husband or wife is aggrieved by the order of the Board of Kathis, he or she may within one month of the communication of such order apply by petition to the Supreme Court for leave to appeal, and the applicant shall give the opposite party notice of the intended application. It shall be lawful for the Supreme Court to grant leave to appeal, and, if such leave is given, to hear the appeal upon such conditions as the Supreme Court may fix as to the payment of all costs that may become payable to the respondent in the event of the appellant not obtaining an order granting him leave to appeal or in the event of the appellant not succeeding in his appeal.

(2) Upon any such appeal it shall be lawful for the Supreme Court to order a new trial or that further evidence be taken or to affirm or to alter or amend or modify or reverse the order of the Kathi or of the Board of Kathis.

14. (1) Any husband or wife preferring an appeal under either of the last two preceding rules shall give notice of such appeal to the Kathi, and it shall be the duty of the Kathi to carry into effect the order of the Board of Kathis, if there is any appeal, or the order of the Supreme Court, if there has been a further appeal to the Supreme Court.

(2) After the appealable time has elapsed, if there has been no appeal from the order of a Kathi allowing a divorce, or if there has been an appeal to the Board of Kathis, after the Board of Kathis has allowed a divorce, or in case of a further appeal to the Supreme Court, if the order of the Supreme Court allows such a divorce, it shall be the duty of the Kathi to issue to the wife seeking a divorce a permit under his hand stating that such divorce has been allowed and that it may be registered.