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THE
LEGISLATIVE ENACTMENTS OF CEYLON

IN FORCE ON THE
30TH DAY OF JUNE, 1956

REVISED EDITION

PREPARED UNDER THE AUTHORITY OF THE
REVISED EDITION OF THE LEGISLATIVE ENACTMENTS ACT

BY

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CHIEF JUSTICE OF CEYLON

ASSISTED BY

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REFERENCE

THE following reference marks are used throughout this Edition (unless a contrary intention appears from the subject or context) to denote the Government Gazettes in which Proclamations effecting amendments to enactments under section 88 of the Ceylon (Constitution) Order in Council, 1946, and under section 8 of the Ceylon Independence Order in Council, 1947, have been published :—

REFERENCE MARK	GAZETTE DENOTED BY THE MARK
1	Gazette Extraordinary No. 9,773 dated 24th September, 1947.
2	Gazette Extraordinary No. 9,786 dated 13th October, 1947.
3	Gazette Extraordinary No. 9,828 dated 5th February, 1948.
4	Gazette Extraordinary No. 9,836 dated 25th February, 1948.
5	Gazette Extraordinary No. 9,848 dated 31st March, 1948.
6	Gazette Extraordinary No. 9,889 dated 28th July, 1948.

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CHAPTER 56

MARRIED WOMEN'S PROPERTY

AN ORDINANCE TO AMEND AND CONSOLIDATE THE LAW RELATING TO THE PROPERTY OF MARRIED WOMEN.

Ordinance No. 18 of 1923.

[*1st July, 1924.*]

Short title.

1. This Ordinance may be cited as the Married Women's Property Ordinance.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"contract" includes the acceptance of any trust or of the office of executrix or administratrix, and the provisions of this Ordinance as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities, unless he has acted or intermeddled in the trust or administration ;

"immovable property" includes land, incorporeal hereditaments and things attached to the earth or permanently fastened to anything which is attached to the earth, and any interest in land except that of a mortgagee ;

"movable property" means property of every description, except immovable property, and includes a thing in action.

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On inter-marriage of persons of different races, or nationalities, laws to which husband subject to prevail ; Ordinance not otherwise to apply to Kandyans, Muslims, or Tamils under the *Tésawalamai*, or persons married in community.

3. (1) Whenever a woman marries, after the commencement of this Ordinance, a man of different race or nationality from her own, she shall, subject to the provisions of section 3 of the Jaffna Matrimonial Rights and Inheritance Ordinance, and of the Kandyan Marriage and Divorce Act, be taken to be of the same race or nationality as her husband for all the purposes of this Ordinance, so long as the marriage subsists and until she marries again.

(2) Save as aforesaid, this Ordinance shall not apply to Kandyans, Muslims, or Tamils of the Northern Province who are or may become subject to the *Tésawalamai*.

(3) This Ordinance shall not, during the subsistence of such marriages, apply to women married in community of property prior to the 29th day of June, 1877.

Repeal of sections 4 to 19 of the Matrimonial Rights and Inheritance Ordinance.

4. Sections 4 to 19 (both inclusive) of the Matrimonial Rights and Inheritance Ordinance are hereby repealed in so far as they relate to persons married on or after the 29th day of June, 1877 :

Provided, however, that such repeal shall not affect any act done or right or status acquired while such sections were in force, or any right or liability of any husband or wife, married before the commencement of this Ordinance, to sue or be sued under the provisions of the said repealed sections, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Ordinance.

Married woman to be capable of holding property and of contracting as if unmarried.

5. (1) A married woman shall, in accordance with the provisions of this Ordinance, be capable of acquiring, holding, and disposing by will or otherwise of any movable or immovable property as her separate property, in the same manner as if she were a feme-sole, without the intervention of any trustee.

(2) A married woman shall be capable of entering into, and rendering herself liable in respect of and to

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the extent of her separate property on, any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme-sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her ; nor shall he be liable, merely on the ground that he is her husband, in respect of any tort committed by her and any damages or costs recovered by her in any such action or proceeding shall be her separate property ; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(3) Every contract hereafter entered into by a married woman otherwise than as agent—

(*a*) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract ;

(*b*) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to ; and

(*c*) shall also be enforceable by process of law against all property which she may thereafter while discovert be possessed of or entitled to.

(4) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the insolvency laws in the same way as if she were a feme-sole.

Will of married woman.

6. Any will made by a married woman during the subsistence of her marriage shall, whether she is or is not possessed of or entitled to any separate property at the time of making it, be construed, as regards the property contained therein, to speak and take effect as if it had been executed immediately before her death :

Provided, however, that there shall appear nothing in the will showing a contrary intention.

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Property of a woman married after the Ordinance to be held by her as a feme-sole.

7. Every woman who marries after the commencement of this Ordinance shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all movable and immovable property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

Loans by wife to husband.

8. Any money or other property of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his insolvency, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other property after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

Execution of general power.

9. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Ordinance.

Property acquired after the Ordinance by a woman married before the Ordinance to be held by her as if unmarried.

10. (1) Every woman married before the commencement of this Ordinance shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all movable and immovable property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Ordinance, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

(2) If any woman married before the commencement of this Ordinance shall, with the written consent of her husband, dispose by sale of any immovable property to which she may have become entitled before the commencement of this Ordinance, the proceeds of any such

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sale shall, whether the same are retained in the form of money or otherwise, remain the property of such woman, but subject always to the same trusts as affected the immovable property from the sale of which such proceeds are derived.

Sums secured by mortgages executed before commencement of Ordinance in favour of married women.

11. (1) All sums secured in favour of a married woman by any mortgage deed executed before the commencement of this Ordinance shall be deemed, unless or until the contrary be shown, to be the separate property of such married woman, and any such mortgage deed shall be sufficient prima facie evidence that she is beneficially entitled to the amount thereby expended to be secured in her favour for her separate use, so as to authorize and empower her to receive or otherwise deal with the same, and to receive the interest and profits thereof, without the concurrence of her husband, and to indemnify any person liable to pay the sum secured by any such mortgage as aforsesaid, in respect thereof.

(2) The provisions of this section shall apply to the right, title, and interest of any such married woman in respect of any sums secured by any such mortgage to which she is a party jointly with any person or persons whomsoever.

(3) If any investment in any such mortgage shall have been made by a married woman by means of moneys of her husband, without his consent, the court may, upon an application under section 23 of this Ordinance, order such investment and the interest thereon or any part thereof, to be transferred and paid respectively to the husband.

As to deposit in bank, public stocks, &c., to which a married woman is entitled.

12. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by any person, and all sums forming part of the public stocks or funds, which at the commencement of this Ordinance are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or

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loan society, which at the commencement of this Ordinance are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient prima facie evidence that she is beneficially entitled thereto for her separate use, so as to authorize and empower her to receive or transfer the same, and to receive the dividends, interest and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster-General, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

As to deposit in bank, public stocks, &c., to be transferred, &c., to a married woman.

13. All sums forming part of the public stocks or funds, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Ordinance shall be allotted to, or placed, registered, or transferred in or into, or made to stand in, the sole name of any married woman, shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which, so far as any liability may be incident thereto, her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not:

Provided always that nothing in this Ordinance shall require or authorize any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of the Parliament of the United Kingdom, enactment, Charter, by-law, articles of association, or deed of settlement regulating such corporation or company.

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Investments in joint names of a married woman and others.

14. All the provisions herein before contained as to deposits in any post office or other savings bank, or in any other bank, annuities, sums forming part of the public stocks or funds, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Ordinance shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Ordinance, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any person or persons other than her husband.

As to stock, &c., standing in the joint names of a married woman and others.

15. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

Fraudulent investments with money of husband.

16. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the court may, upon an application under section 23 of this Ordinance, order such

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investment and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Ordinance contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any money so deposited or invested may be followed as if this Ordinance had not been passed.

Moneys payable under policy of insurance.

17. (1) A married woman may by virtue of the power of making contracts herein before contained effect a policy of insurance upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

(2) A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts:

Provided that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid;

Provided further that, notwithstanding anything herein contained, any money received under any such policy shall be subject to the payment of estate duties under the Estate Duty Ordinance, upon the whole amount of such money where such policy is wholly kept up by the husband or wife, as the case may be, or upon a part of such amount in proportion to the

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amount of the premiums paid by him or her, where the policy is partially kept up by such husband or wife as aforesaid.

(3) The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy.

(4) In default of any such appointment of a trustee, such policy immediately on its being effected, shall vest in the insured and his or her executor or administrator, in trust for the purposes aforesaid.

(5) If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the Trusts Ordinance, or any enactment amending and extending the same.

(6) The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the executor or administrator of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

Remedies of a married woman for protection and security of separate property.

18. (1) Every woman, whether married before or after this Ordinance, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme-sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort.

(2) In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property.

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(3) In any proceeding under this section a husband or wife shall be competent and, except when he or she is the accused, compellable to give evidence against each other, any enactment or rule of law to the contrary notwithstanding.

(4) Provided always that no criminal proceedings shall be taken by any wife against her husband by virtue of this Ordinance while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

Wife's ante-nuptial debts and liabilities.

19. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the enactments relating to joint stock companies ;* and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong ; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property ; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof :

Provided always that nothing in this Ordinance shall operate to increase or diminish the liability of any woman married before the commencement of this Ordinance for any such debt, contract, or wrong as aforesaid, except as to any separate property to which she may become entitled by virtue of this Ordinance,

* See Fourteenth Schedule to Ordinance No. 51 of 1938.

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and to which she would not have been entitled for her separate use under the sections hereby repealed or otherwise, if this Ordinance had not been passed.

Limit of husband's liability for his wife's debts or liabilities contracted before marriage.

20. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the enactments relating to joint stock companies * as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been bona fide recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid ; but he shall not be liable for the same any further or otherwise ; and any court in which a husband shall be sued for any such debt shall have power to ascertain or to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount or value of such property :

Provided always that nothing in this Ordinance contained shall operate to increase or diminish the liability of any husband married before the commencement of this Ordinance for or in respect of any such debt or other liablity of his wife as aforesaid.

Suits for ante-nuptial liabilities.

21. (1) A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part against both of them.

(2) If in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as

* See Fourteenth Schedule to Ordinance No. 51 of 1938.

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aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him.

(3) In any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property ; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

When wife is liable to criminal proceedings in respect of act done with respect to husband's property.

22. (1) A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Ordinance, shall in like manner be liable to criminal proceedings by her husband.

(2) In any proceeding under this section, a husband and wife shall be competent, and, except when he or she is the accused, compellable, to give evidence against each other, any enactment or rule of law to the contrary notwithstanding.

Questions between husband and wife as to property to be decided in a summary way.

23. (1) In any question between husband and wife as to the title or possession of property, either party, or any such bank, corporation, company, public body, or society, as aforesaid, in whose books any stocks, funds, or shares of either party may be standing, may apply by petition in a summary way as provided for in Chapter XXIV of the Civil Procedure Code, to the District Court of the district in which either party resides.

(2) The District Judge may make such order, direct or make such inquiry, and award such costs as he shall think fit.

(3) The District Judge may, if either party so require, hear the application in his private room.

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(4) Any order so made shall be subject to appeal to the Supreme Court, and for the purposes of such appeal shall be regarded as an interlocutory order of the District Court.

(5) Any such bank, corporation, company, public body, or society as aforesaid shall, in the matter of such application for the purposes of costs or otherwise, be treated as a stakeholder only.

(6) Every such petition shall bear a stamp of ten rupees and no more.

Married woman as trustee, executrix, or administratrix.

24. A married woman who is a trustee solely or jointly with any other person or persons of property subject to any trust, or who is an executrix or administratrix solely or jointly as aforesaid of the estate of any deceased person, may sue or be sued, and may, without her husband, dispose of or join in disposing of any movable or immovable property held by her as such trustee, executrix, or administratrix, as if she were a feme-sole.

Saving of existing settlements, and the power to make future settlements.

25. Nothing in this Ordinance contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman.

Married woman to be liable for the maintenance of her husband.

26. When a married woman having sufficient separate property neglects or refuses to maintain her husband, who through illness or otherwise is unable to maintain himself, the Magistrate within whose jurisdiction such woman resides may, upon application of the husband, make and enforce such order against her for the maintenance of her husband out of such separate property as by section 2 of the Maintenance Ordinance, he may now make and enforce against a husband for the maintenance of his wife.

A married woman with separate property liable for the maintenance of her children.

27. A married woman having separate property adequate for the purpose shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children :

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Provided that nothing in this Ordinance shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

Liability of executor or administrator of married woman.

28. For the purposes of this Ordinance the executor or administrator of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

Abrogation of certain laws.

29. From and after the commencement of this Ordinance the benefit of the *Senatus Consultum Velleianum,* the benefit of the *Authentica si qua Mulier,* and of the Article 6 of the Placaat or Edict of the Emperor Charles V dated the 4th day of October, 1540, relating to marriage settlements shall not apply or have any force whatsoever in Ceylon.

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CHAPTER 57

MATRIMONIAL RIGHTS AND INHERITANCE

AN ORDINANCE TO AMEND THE LAW RELATING TO THE MATRIMONIAL RIGHTS OF MARRIED PERSONS WITH REGARD TO PROPERTY AND THE LAW OF INHERITANCE.

Ordinances Nos. 15 of 1876, 2 of 1889, 18 of 1923.

[*29th June, 1877.*]

PART I

PRELIMINARY

Short title.

1. This Ordinance may be cited as the Matrimonial Rights and Inheritance Ordinance.

Where persons of different races or nationalities intermarry, laws to which the husband is subject to prevail. Ordinance not otherwise to apply to Kandyans or Muslims or Tamils under the *Tésawalamai.*

2. Whenever a woman marries, after the proclamation of this Ordinance, a man of different race or nationality from her own, she shall be taken to be of the same race and nationality as her husband for all the purposes of this Ordinance, so long as the marriage subsists and until she marries again. Save as aforesaid, this Ordinance shall not apply to Kandyans or Muslims, or to Tamils of the Northern Province who are or may become subject to the *Tésawalamai.*

Interpretation.

3. In this Ordinance, unless the context otherwise requires—

"immovable property" includes land, incorporeal tenements, and things attached to the earth or permanently fastened to anything which is attached to the earth, and any interest in land except that of a mortgagee ;

"matrimonial rights" means the respective rights and powers of married parties in and about the management, control, disposition, and

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alienation of property belonging to either party, or to which either party may be entitled during marriage ;

"movable property" means property of every description except immovable property ;

"unmarried" means not having a husband or wife living ;

all words expressive of relationship shall apply to a child in the womb at the time in question who is afterwards born alive.

PART II

Matrimonial Rights Of Husband And Wife In Respect Of Property

This Ordinance not to affect rights acquired under marriages solemnized before the proclamation of this Ordinance.

4.* The respective matrimonial rights of any husband and wife with regard to property or status arising under or by virtue of any marriage solemnized before the proclamation of this Ordinance, and all rights which any other person may have acquired or become entitled to under or by virtue of any such marriage, shall (except where hereinafter otherwise expressly provided) be governed by such law as would have been applicable thereto if this Ordinance had not been passed.

Rights of husband and wife domiciled or resident in Ceylon in respect of movable property to be governed by this Ordinance.

5.* The respective matrimonial rights of every husband and wife domiciled or resident in Ceylon, and married after the proclamation of this Ordinance, in, to, or in respect of movable property shall, during the subsistence of such marriage and of such domicile or residence, be governed by the provisions of this Ordinance.

Rights of husband and wife in respect of immovable property situate in Ceylon to be governed by this Ordinance.

6.* The respective matrimonial rights of every husband and wife, married after the proclamation of this Ordinance, in, to, or in respect of any immovable property situate in Ceylon shall, during such marriage, be governed by the provisions of this Ordinance.

* Sections 4 to 19, both inclusive, repealed by section 4 of the Married Women's Property Ordinance, in so far as they relate to persons married on or after the 29th day of June, 1877.

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Community of goods not a consequence of marriage.

7.* There shall be no community of goods between husband and wife, married after the proclamation of this Ordinance, as a consequence of marriage, either in respect of movable or immovable property.

Immovable property of the wife.

8.* Any immovable property to which any woman, married after the proclamation of this Ordinance, may be entitled at the time of her marriage, or may become entitled during her marriage, shall, subject and without prejudice to the trusts of any will or settlement affecting the same, belong to the woman for her separate estate, and shall not be liable for the debts or engagements of her husband, unless incurred for or in respect of the cultivation, upkeep, repairs, management, or improvement of such property, or for or in regard to any charges, rates, or taxes imposed by law in respect thereof, and her receipts alone or the receipts of her duly authorized agent shall be a good discharge for the rents, issues, and profits arising from or in respect of such property. Such woman shall, subject and without prejudice to any such trusts as aforesaid, have as full power of disposing of and dealing with such property, by any lawful act *inter vivos* with the written consent of her husband, but not otherwise, or by last will without such consent, as if she were unmarried.

Wages and earnings of the wife.

9.* The wages and earnings of any married woman, whether married before or after the proclamation of this Ordinance, which may be acquired or gained by her after the proclamation of this Ordinance in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, shall be deemed and taken to be her separate property, independent of the debts, control, or engagements of her husband, and she shall have as full power of dealing with and disposing of the

* Sections 4 to 19, both inclusive, repealed by section 4 of the Married Women's Property Ordinance, in so far as they relate to persons married on or after the 29th day of June, 1877.

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same or any investment thereof as if she were unmarried, and her receipts alone shall be a good discharge for such wages, earnings, money, and property and the principal and interest of any investments thereof.

Wife's jewels, implements of trade and agriculture, to form part of her separate estate.

10.* All jewels and all personal or household ornaments and wearing apparel belonging to a woman, married after the proclamation of this Ordinance, at the time of her marriage, and also all jewels, personal ornaments, and apparel suitable in respect of value to her rank and condition of life, which she may acquire during marriage, whether by gift from her husband or otherwise, and all tools, implements, and appliances belonging to her during marriage, which may be requisite for the carrying on of any employment or trade in which she may be engaged separately from her husband, and all implements of husbandry, machinery, live and dead stock belonging to her during marriage and bona fide kept upon and employed for the cultivation or proper uses of any immovable property belonging to her for her separate estate, shall, subject and without prejudice to the trusts and provisions of any will or valid settlement affecting the same, belong to the woman for her separate estate independent of the debts, control, and engagements of her husband, and she shall have as full power of disposing of and dealing with the same by any lawful act *inter vivos* with the consent of her husband or by last will without such consent, as if she were unmarried.

When husband's consent may be dispensed with.

11.* If in any case, in which the consent of a husband is required by this Ordinance for the valid disposition of or dealing with any property by the wife, the wife shall be deserted by her husband or separated from him by mutual consent, or he shall have lain in prison under the sentence or order of any competent court for a period exceeding two years, or if he shall be a person of unsound mind or idiot, or his place of abode shall be unknown, or if his consent is unreasonably

* Sections 4 to 19, both inclusive, repealed by section 4 of the Married Women's Property Ordinance, in so far as they relate to persons married on or after the 29th day of June, 1877.

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withheld, or the interest of the wife or children of the marriage require that such consent should be dispensed with, it shall be lawful for the wife to apply by petition to the District Court of the district in which she resides, or in which the property is situate, for an order authorizing her to dispose of or deal with such property without her husband's consent; and such court may, after summary inquiry into the truth of the petition, make such order, and that subject to such conditions and restrictions, as the justice of the case may require; whereupon such consent shall, if so ordered and subject to the terms and conditions of such order, become no longer necessary for the valid disposition of or dealing with such property by such woman. Every such petition shall require a stamp of ten rupees, but no further stamps shall be required for any legal proceedings under this section. Such order shall be subject to appeal to the Supreme Court in the same manner and subject to the same rules and procedure as interlocutory orders of District Courts:

Provided, however, that in any case, when a separation *a mensâ et thoro* has been decreed by a competent court, the consent of the husband shall not be necessary to enable the wife, so separated, to deal with or dispose of her property.

Power of spouses to settle or gift property during marriage.

12.* It shall be lawful for any husband or wife, whether married before or after the proclamation of this Ordinance, notwithstanding the relation of marriage and notwithstanding the existence of any community of goods between them, to make or join each other in making, during the marriage, any voluntary grant, gift, or settlement of any property, whether movable or immovable, to, upon, or in favour of the other; but all property so granted, gifted, or settled, and all acquisitions made by a husband or wife out of or by means of the moneys or property of the other, shall, except as otherwise provided by section 10, be subject to the debts and engagements of each spouse in

* Sections 4 to 19, both inclusive, repealed by section 4 of the Married Women's Property Ordinance, in so far as they relate to persons married on or after the 29th day of June, 1877.

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the same manner and to the same extent as if such grant, gift, settlement, or acquisition had not been made or occurred.

Burden of proof on the wife.

13.* Whenever any question shall arise between any woman married after the proclamation of this Ordinance, or any person claiming under her and any creditor or alienee of her husband, as to the mode and time of the acquisition of any property claimed by such woman, it shall be incumbent upon such woman or person claiming under her to prove in what manner and at what time she became entitled to such property.

Disputes between husband and wife as to wife's estate to be settled summarily by District Court.

14.* (1) If any question or dispute shall arise between any husband and wife (whether married before or after the proclamation of this Ordinance) relative to any property declared by this Ordinance to be the separate property of the wife, either party may apply by motion in a summary way to the District Court of the district in which either party resides ; and thereupon the District Judge may make such order, direct such inquiry, and award such costs, as he shall think fit ; and the District Judge may, if either party so require, hear the application in his private room.

(2) Any order so made shall be subject to appeal to the Supreme Court, and for the purposes of such appeal shall be regarded as an interlocutory order of the District Court.

(3) Every such motion shall require a stamp of ten rupees, but no further stamps shall be required for any other legal proceedings under this section.

Wife may effect a policy of insurance.

15.* A married woman (whether married before or after the proclamation of this Ordinance) may after the proclamation of this Ordinance effect a policy of insurance upon her own life or the life of her husband for her separate use ; and the same and all benefits thereof,

* Sections 4 to 19, both inclusive, repealed by section 4 of the Married Women's Property Ordinance, in so far as they relate to persons married on or after the 29th day of June, 1877.

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if expressed on the face of it to be so effected, shall enure accordingly, and the contract in such policy shall be as valid as if made with an unmarried woman.

Husband may insure his life for the benefit of his family.

16.* A policy of insurance, whether effected before or after the proclamation of this Ordinance, by any married man (whether married before or after the proclamation of this Ordinance) on his own life, and expressed upon the face of it to be for the benefit of his wife or of his wife and children or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use and of his children or any of them according to the interests so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or his creditors, or form part of his estate :

Provided that if it shall be proved that the policy was effected and the premiums paid by the husband with intent to defraud his creditors they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.

All other movable property of the wife to vest in the husband.

17.* All movable property to which any woman, married after the proclamation of this Ordinance, shall be entitled at the time of her marriage or may become entitled during her marriage, shall, subject and without prejudice to any settlement affecting the same, and except so far as is by this Ordinance otherwise provided, vest absolutely in her husband.

Wife with separate property liable for the maintenance of her children.

18.* A married woman having separate property adequate for the purpose shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children :

Provided that nothing in this Ordinance shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

* Sections 4 to 19, both inclusive, repealed by section 4 of the Married Women's Property Ordinance, in so far as they relate to persons married on or after the 29th day of June, 1877.

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Article 6 of Placaat of Charles V of 1540 declared to have no operation in Ceylon.

19.* Whereas doubts have been entertained whether the Article 6 of the Placaat or Edict of the Emperor Charles V, dated the 4th day of October, 1540, relating to marriage settlements, is operative in Ceylon, it is hereby enacted that the said Article of the said Placaat has no force or operation in Ceylon.

PART III

INHERITANCE

Following sections to whom applicable.

20. The following sections of this Ordinance shall apply to the estates of such persons only as shall die after the proclamation of this Ordinance, and shall be then unmarried or (if married) shall have been married after the proclamation of this Ordinance.

Inheritance to immovable property in Ceylon to be governed by this Ordinance.

21. (1) Inheritance *ab intestato* to the immovable property in Ceylon of a person deceased shall be governed and regulated by the following provisions of this Ordinance wherever such person may have or have had his actual or matrimonial domicile.

Inheritance to movable property to be governed by the law of domicile.

(2) Inheritance *ab intestato* to the movable property of a person deceased shall be governed and regulated by the law of the country in which he had his domicile at the time of his death :

Provided that when any person shall have his domicile in any part of Ceylon, such domicile shall, so far as relates to the inheritance to his movable property, be deemed to be in the Maritime provinces ;

Provided also that if a person dies leaving movable property in Ceylon, in the absence of proof of his domicile elsewhere, the inheritance to such property shall be governed by the following provisions of this Ordinance.

Surviving spouse inherits one-half.

22. When any person shall die intestate as to any of his or her property, leaving a spouse surviving, the surviving spouse shall inherit one-half of the property of such person.

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* Sections 4 to 19, both inclusive, repealed by section 4 of the Married Women's Property Ordinance, in so far as they relate to persons married on or after the 29th day of June, 1877.

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Order of devolution of property.

23. Subject to the right of the surviving spouse in the preceding section mentioned, the right of inheritance is divided in the following order as respects (*a*) descendants, (*b*) ascendants, (*c*) collaterals.

Preferential right of children.

24. Children, grandchildren, and remoter descendants are preferent to all others in the estate of the parents; all the children take equally *per capita*, but the children or remoter issue of a deceased child take *per stirpes* or by representation.

When descendants fail.

25. The children and remoter descendants failing, the inheritance of the deceased goes to his father and mother in case they are both alive; but if only one of the parents be alive, the surviving parent takes half, and the brothers and sisters of the deceased of the full blood, and the issue of any deceased brother or sister of the full blood, by representation, and the brothers and sisters of the half-blood who are related to the intestate by the side of the deceased parent, and the issue of any such deceased brother or sister of the half-blood, by representation, take the other half. In case there is no full or half-brother or sister alive at the death of the deceased, the surviving parent inherits the whole, although there may be children or other issue of deceased brothers or sisters.

In case of parents failing.

26. Father and mother both failing, the property of the intestate goes to his brothers and sisters, whether of the whole or half-blood, and their children and other issue by representation.

Division in case of half-brothers and sisters.

27. The division however in the case of half-brothers and sisters is as follows:—

The inheritance is divided into two parts; the one-half the full brothers and sisters and the issue of such as are deceased by representation divide with the half-brothers and sisters of the father's side and the issue of such as are deceased by representation; and the other half they divide with those of the mother's side and the issue of such as are deceased by representation; but if there are only half-brothers and sisters or such

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issue of one side, the full brothers and sisters and the issue of deceased full brothers and sisters by representation take then in the first place one-half of the property, and divide the other half with the half-brothers and sisters and their issue by representation.

When full brothers and their children fail.

28. When full brothers and sisters or their children or remoter issue fail, and there are half-brothers' and sisters' children or remoter issue on both sides alive, then one-half of the property goes to the half-brothers and sisters or their children and remoter issue by representation on the father's side, and the other half to the half-brothers and sisters on the mother's side and their children and remoter issue by representation.

In case there are only half-brothers on one side.

29. In case all the half-brothers and sisters, their children and remoter issue, are related to the intestate on one side only, they take the whole of the inheritance, unless there be a grandfather or grandmother or higher ascendant yet alive, related to the intestate on the other side, in which case such half-brothers and sisters, their children and remoter issue by representation take one-half only, and the next ascendants *per capita* the other half.

Where all who succeed are equally near in degree.

30. Except when otherwise expressly provided, if all those who succeed to the inheritance are equally near in degree to the intestate, they take *per capita* and not *per stirpes*.

All persons above enumerated failing.

31. All the persons above enumerated failing, the inheritance goes first to the nearest in the ascending line *per capita,* although it should happen that on the one side both the grandfather and the grandmother, and on the other side only one of these parents, should be alive. Afterwards to uncles and aunts and the children of deceased uncles and aunts *per stirpes.* Uncles and aunts failing, then to their children and also great-uncles and aunts with them *per capita.*

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All persons above enumerated failing, surviving spouse takes.

32. All the persons above enumerated failing, the entire inheritance goes to the surviving spouse, if any, and if none then to the next heirs of the intestate *per capita*.

Illegitimate children.

33. Illegitimate children inherit the property of their intestate mother, but not that of their father or that of the relatives of their mother. Where an illegitimate person leaves no surviving spouse or descendants, his or her property will go to the heirs of the mother, so as to exclude the Crown.

On failure of heirs estate escheats to Crown.

34. If anyone dies intestate without heirs, his or her estate escheats to the Crown. If, however, any heirs can be found, even beyond the tenth degree, they take the inheritance.

Collation by children or grand-children.

35. Children or grandchildren by representation becoming with their brothers and sisters heirs to the deceased parents are bound to bring into hotchpot or collation all that they have received from their deceased parents above the others either on the occasion of their marriage or to advance or establish them in life, unless it can be proved that the deceased parent, either expressly or impliedly, released any property so given from collation.

The rules of the Roman-Dutch law as it prevailed in North Holland to be followed where Ordinance is silent.

36. In all questions relating to the distribution of the property of an intestate, if the present Ordinance is silent, the rules of the Roman-Dutch law as it prevailed in North Holland are to govern and be followed.

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CHAPTER 58

MATRIMONIAL RIGHTS AND INHERITANCE (JAFFNA)

Ordinances Nos. 1 of 1911, 58 of 1947.

AN ORDINANCE TO AMEND THE LAW RELATING TO THE MATRIMONIAL RIGHTS OF THE TAMILS WHO ARE NOW GOVERNED BY THE "TESAWALAMAI" WITH REGARD TO PROPERTY AND LAW OF INHERITANCE.

[*17th July, 1911.*]

PART I

PRELIMINARY

Short title.

1. This Ordinance may be cited as the Jaffna Matrimonial Rights and Inheritance Ordinance.

Application of Ordinance. [§ 2, 58 of 1947.]

2. This Ordinance shall apply only to those Tamils to whom the *Tésawalamai* applies, and it shall apply in respect of their movable and immovable property wherever situate.

Applicability of *Tésawalamai* to married women.

3. (1) Whenever a woman to whom the *Tésawalamai* applies marries a man to whom the *Tésawalamai* does not apply, she shall not during the subsistence of the marriage be subject to the *Tésawalamai.*

(2) Whenever a woman to whom the *Tésawalamai* does not apply marries a man to whom the *Tésawalamai* does apply, she shall during the subsistence of the marriage be subject to the *Tésawalamai.*

PART II

MATRIMONIAL RIGHTS OF HUSBAND AND WIFE WITH REFERENCE TO PROPERTY

Matrimonial rights of spouses married before the Ordinance.

4. The respective matrimonial rights of any husband and wife with regard to property or status arising under or by virtue of any marriage solemnized before the commencement of this Ordinance, and all rights which

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any other person may have acquired or become entitled to under or by virtue of any such marriage, shall (except where hereinafter is otherwise expressly provided) be governed by such law as would have been applicable thereto if this Ordinance had not been passed.

Matrimonial rights of those married after the Ordinance to be governed by the Ordinance.

5. The respective matrimonial rights of every husband and wife married after the commencement of this Ordinance in, to, or in respect of movable or immovable property shall, during the subsistence of such marriage, be governed by the provisions of this Ordinance.

Property of a wife acquired during or before marriage to remain her separate property.
[§ 3, 58 of 1947.]

6. All movable or immovable property to which any woman married after the commencement of this Ordinance may be entitled at the time of her marriage, or which she may during the subsistence of the marriage acquire or become entitled to by way of gift or inheritance or by conversion of any property to which she may have been so entitled or which she may so acquire or become entitled to, shall, subject and without prejudice to the trusts of any will or settlement affecting the same, belong to the woman for her separate estate, and shall not be liable for the debts or engagements of her husband, unless incurred for or in respect of the cultivation, upkeep, repairs, management, or improvement of such property, or for or in regard to any charges, rates, or taxes imposed by law in respect thereof, and her receipts alone or the receipts of her duly authorized agent shall be a good discharge for the rents, issues, and profits arising from or in respect of such property. Such woman shall, subject and without prejudice to any such trusts as aforesaid, have as full power of disposing of and dealing with such property by any lawful act *inter vivos* without the consent of the husband in case of movables, or with his written consent in the case of immovables, but not otherwise, or by last will without consent, as if she were unmarried.

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Property of husband acquired before or after marriage to be his separate property. [§ 4, 58 of 1947.]

7. All movable or immovable property to which any husband married after the commencement of this Ordinance may be entitled at the time of his marriage, or, which he may during the subsistence of the marriage acquire or become entitled to by way of gift or inheritance or by conversion of any property to which he may have been so entitled or which he may so acquire or become entitled to, shall, subject and without prejudice to the trusts of any will or settlement affecting the same, belong to the husband for his separate estate. Such husband shall, subject and without prejudice to any such trusts as aforesaid, have full power of disposing of and dealing with such property.

Power to District Court to supply consent in certain cases.

8. If in any case in which the consent of a husband is required by this Ordinance for the valid disposition of or dealing with any property by the wife, the wife shall be deserted by her husband or separated from him by mutual consent, or he shall have lain in prison under a sentence or order of any competent court for a period exceeding two years, or if he shall be a person of unsound mind or idiot, or his place of abode shall be unknown, or if his consent is unreasonably withheld, or the interest of the wife or children of the marriage require that such consent should be dispensed with, it shall be lawful for the wife to apply by petition to the District Court of the district in which she resides or in which the property is situated for an order authorizing her to dispose of or deal with such property without her husband's consent ; and such court may, after summary inquiry into the truth of the petition, make such order, and that subject to such conditions and restrictions as the justice of the case may require, whereupon such consent shall, if so ordered and subject to the terms and conditions of such order, become no longer necessary for the valid disposition of or dealing with such property by such woman. Every such petition shall require a stamp of ten rupees, but no further stamp duty shall be required for any legal proceedings under this section. Such order shall be subject to appeal to the Supreme Court :

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Provided, however, that in any case where a separation *a mensâ et thoro* has been decreed by a competent court, the consent of the husband shall not be necessary to enable the wife so separated to deal with or dispose of her property. The summary inquiry prescribed by this section may be held by the District Judge in his private room if either party so requires.

Power of husband or wife to make gifts to each other.

9. It shall be lawful for any husband or wife (whether married before or after the commencement of this Ordinance), notwithstanding the relation of marriage, to make or join each other in making during the marriage any voluntary grant, gift, or settlement of any property, whether movable or immovable, to, upon, or in favour of the other; but, except jewels, personal ornaments, and wearing apparel suitable in respect of value to the wife's rank given to her by her husband, all property so granted, gifted, or settled, and all acquisitions made by a husband or wife out of or by means of the moneys or property of the other, shall be subject to the debts and engagements of each spouse in the same manner and to the same extent as if such grant, gift, settlement, or acquisition had not been made or had not occurred.

Power of District Court to settle dispute between husband and wife.

10. (1) If any question or dispute shall arise between any husband and wife (whether married before or after the commencement of this Ordinance) relative to any property declared by this Ordinance to be the separate property of the wife, either party may apply by motion in a summary way to the District Court of the district in which either party resides, and thereupon the District Judge may make such order, direct such inquiry, and award such costs as he shall think fit; and the District Judge may, if either party so require, hear the application in his private room.

(2) Any order so made shall be subject to appeal to the Supreme Court.

(3) Every such motion shall require a stamp of ten rupees, but no further stamp duty shall be required for any other legal proceedings under this section.

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Power to husband or wife to effect policy of insurance upon his or her life.

11. A husband or wife (whether married before or after the commencement of this Ordinance) may after the commencement of this Ordinance effect a policy of insurance upon his or her own life or the life of his or her wife or husband, as the case may be, for his or her separate use ; and the same and all benefits thereof if expressed on the face of it to be so effected shall enure accordingly, and the contract in such policy with a married woman shall be as valid as if made with an unmarried woman.

Effect of life insurance by husband in favour of wife or children.

12. A policy of insurance, whether effected before or after the commencement of this Ordinance, by any married man (whether married before or after the commencement of this Ordinance), on his own life and expressed upon the face of it to be for the benefit of his wife or of his wife and children or any of them, shall enure and may be deemed a trust for the benefit of his wife for her separate use and of his children or any of them according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or his creditors or form part of the estate :

Provided that if it shall be proved that the policy was effected and the premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.

Married woman having separate property to be liable to maintain her children.

13. A married woman having separate property adequate for the purpose shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children :

Husband's liability not affected thereby.

Provided that nothing in this Ordinance shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

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PART III

INHERITANCE

Applicability of sections of this Part of the Ordinance.

14. The following sections of this Ordinance shall apply to the estate of such persons only as shall die after the commencement of this Ordinance, and shall be then unmarried, or if married, shall have been married after the commencement of this Ordinance.

Mudusam or property devolving on death of ancestor.

15. Property devolving on a person by descent at the death of his or her parent or of any other ancestor in the ascending line is called *mudusam* (patrimonial inheritance).

Urumai or property devolving on death of relative.

16. Property devolving on a person by descent at the death of a relative other than a parent or an ancestor in the ascending line is called *urumai* (non-patrimonial inheritance).

Property derived from the father's side.

17. Property received by any person in *mudusam*, or in *urumai*, or in dowry, or under a will as heir, or legatee, or in donation, or in a manner other than for pecuniary consideration from a father, or any of his ascendants, or any of his collateral relations, is said to be property derived from the father's side.

Property derived from the mother's side.

18. Property received in *mudusam*, or in *urumai*, or in dowry, or under a will as heir or legatee, or in donation, or in a manner other than for pecuniary consideration from a mother, or any of her ascendants, or any of her collateral relations, is said to be property derived from the mother's side.

Meaning of *thediatheddam*.
[§ 5, 58 of 1947.]

19. No property other than the following shall be deemed to be the *thediatheddam* of a spouse :—

(*a*) Property acquired by that spouse during the subsistence of the marriage for valuable consideration, such consideration not forming or representing any part of the separate estate of that spouse.

(*b*) Profits arising during the subsistence of the marriage from the separate estate of that spouse.

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Devolution of *thediathed-dam.* [§ 6, 58 of 1947.]

20. On the death of either spouse one half of the *thediatheddam* which belonged to the deceased spouse, and has not been disposed of by last will or otherwise, shall devolve on the surviving spouse and the other half shall devolve on the heirs of the deceased spouse.

Inheritance generally.

21. Subject to the right of the surviving spouse in the preceding section mentioned, the right of inheritance is divided in the following order as respects (*a*) descendants, (*b*) ascendants, (*c*) collaterals.

Rights of children, grandchildren, and remoter descendants.

22. Children, grandchildren, and remoter descendants are preferent to all others in the estate of the parents. All the children take equally *per capita ;* but the children or remoter issue of a deceased child take *per stirpes.*

Heir in default of children.

23. The children and remoter descendants failing, the whole of the property the deceased derived from the father's side and one-half of the remainder of the estate of the deceased (exclusive of the property derived from the mother's side) the father, if surviving, shall inherit.

Mother's right where children fail.

24. The whole of the property the deceased derived from the mother's side and one-half of the remainder of the estate of the deceased (exclusive of the property derived from the father's side) the mother, if surviving, shall inherit.

Rights of brothers and sisters where father has pre-deceased intestate.

25. Father failing, the property of the intestate derived from the father's side and one-half of the remainder of the intestate's estate (exclusive of that derived from the mother's side) shall devolve upon the intestate's full brothers and sisters as well as upon half-brothers and half-sisters related to the intestate by the side of the father, in equal shares, and their children and other issue by representation, or only on half-brothers and half-sisters related to the intestate by the side of the father and their issue by representation, if there are no full brothers and sisters or their issue.

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Rights where mother has predeceased intestate.

26. Mother failing, the property of the intestate derived from the mother's side and one-half of the remainder of the intestate's estate (exclusive of that derived from the father's side) shall devolve upon the intestate's full brothers and sisters as well as on half-brothers and half-sisters related to the intestate by the side of the mother, in equal shares, and their children and other issue by representation, or only on half-brothers and half-sisters related to the intestate by the side of the mother and their issue by representation, if there are no full brothers and sisters or their issue.

Rights of paternal grandparents, paternal uncles and aunts, and great-grandparents.

27. All the persons above enumerated failing, the property derived by the intestate from the father's side and one-half of the remainder of the intestate's estate (exclusive of the property derived from the mother's side) shall devolve on the paternal grandparent or grandparents of the intestate, if surviving ; and failing them, on paternal uncles and aunts and the issues of the paternal uncles and aunts by representation ; paternal uncles and aunts and their issues failing, on the great-grandparent or great-grandparents *per capita,* if surviving ; and failing them, on the brothers and sisters of the paternal grandparents and their descendants, if surviving ; afterwards on the brothers and sisters of the next nearest in the ascending line of the father and their descendants by representation, if surviving.

Rights of maternal grandparents, maternal uncles and aunts, and maternal great-grandparents.

28. The property derived from the mother's side and one-half of the remainder of the intestate's estate (exclusive of that derived from the father's side) shall devolve on the maternal grandparent or grandparents, if surviving ; and failing them, on maternal uncles and aunts and the issue of the maternal uncles and aunts by representation ; maternal uncles and aunts and their issue failing, on the great-grandparent or great-grandparents *per capita,* if surviving ; and failing them, on the brothers and sisters of the maternal grandparents and their descendants, if surviving ; afterwards on the brothers and sisters of the next nearest in the ascending line of the mother and their descendants by representation who may be surviving.

C 6——J. N. R 7589 (4/60)

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How estate is divided where those who inherit are equally near in degree to intestate.

29. Except when otherwise expressly provided, if all those who succeeded to the inheritance are equally near in degree to the intestate, they take *per capita* and not *per stirpes*.

How property is divided on failure of kindred on the side of either parent.

30. (1) On failure of kindred on the father's side, property derived from that side shall devolve on the mother and her kindred in the order mentioned in the preceding sections.

(2) On failure of kindred on the mother's side, property derived from that side shall devolve on the father and his kindred in the order prescribed in the foregoing sections.

When whole inheritance goes to the surviving spouse.

31. All the persons above enumerated failing, the entire inheritance goes to the surviving spouse, if any.

When estate escheats to the Crown.

32. If anyone dies intestate without heirs, his or her estate escheats to the Crown. If, however, any heirs can be found, even beyond the tenth degree, they take the inheritance.

Collation of property by children or grand-children.

33. Children or grandchildren by representation becoming with their brothers and sisters heirs to the deceased parents, unless they abandon all right to inherit as heirs *ab intestato*, are bound to bring into hotchpot or collation all that they have received from their deceased parents above the others by way of dowry or otherwise on the occasion of their marriage, or to advance or establish them in life, unless it can be proved that the deceased parent either expressly or impliedly released any property so given from collation.

Rights of illegitimate children.

34. Illegitimate children shall inherit the property of their intestate mother, but not that of their father.

Devolution of property of illegitimate children.

35. When an illegitimate person leaves no surviving spouse or descendants, his or her property will go to the mother, and then to the heirs of the mother so as to exclude the Crown.

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Cases not provided for by this Ordinance.

36. In all questions relating to the distribution of the property of an intestate where this Ordinance is silent, the provisions of the Matrimonial Rights and Inheritance Ordinance, and such laws as apply to the Tamil inhabitants of the Western Province, shall apply.

PART IV

Life Interest

Interest of surviving spouse in estate devolving on minor child.

37. When the estate of a deceased parent devolves on a minor child, the surviving parent may continue to possess the same and enjoy the income thereof until such child is married or attains majority.

Liability of surviving spouse to maintain minor child.

38. A surviving spouse continuing in possession of the estate of the deceased spouse as stated in the last section shall be bound to maintain the children till they attain majority either by effluxion of time or by marriage.

PART V

Interpretation And Repeal

Interpretation.

39. In this Ordinance, unless there is something repugnant in the subject or context—

"immovable property" includes land, incorporeal tenements, and things attached to the earth or permanently fastened to anything which is attached to the earth, and any interest in land except such as arises from a mortgage ;

"movable property" means property of every description except immovable property ;

"matrimonial rights" means the respective rights and powers of married parties in or about the management, control, disposition, and alienation of property belonging to either party, or to which either party may be entitled during marriage ;

"unmarried" means not having a husband or wife living.

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All words expressive of relationship shall apply to a child in the womb at the time in question who is afterwards born alive.

Repeal.

40. So much of the provisions of the collection of customary law known as the *Tésawalamai,* and so much of the provisions of section 8 of the Wills Ordinance, as are inconsistent with the provisions of this Ordinance are hereby repealed.

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CHAPTER 59

KANDYAN LAW

AN ORDINANCE TO DECLARE AND AMEND THE KANDYAN LAW IN CERTAIN RESPECTS.

Ordinances Nos. 39 of 1938, 25 of 1944.

[*1st January, 1939.*]

Short title and application of Ordinance.

1. (1) This Ordinance may be cited as the Kandyan Law Declaration and Amendment Ordinance.

(2) This Ordinance shall apply to persons subject to the Kandyan law.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

(*a*) "gift" means a voluntary transfer, assignment, grant, conveyance, settlement, or other disposition *inter vivos* of immovable property, made otherwise than for consideration in money or money's worth ;

(*b*) "donor" means a person who has made a gift ;

(*c*) "donee" means a person in whose favour a gift has been made ;

(*d*) "the commencement of this Ordinance" means the 1st day of January, 1939.

I · · TRANSFER OF PROPERTY

Validity of deeds of disposition not to be affected by absence of clause of disinherison.

3. Any deed or instrument, executed after the commencement of this Ordinance, whereby any property, movable or immovable, is transferred, assigned, granted, conveyed, settled, or otherwise disposed of, shall be of full force and effect according to the tenor of such deed or writing notwithstanding the absence therein of any clause providing, expressly or otherwise, for the disinherison of the heirs of the person executing such deed or instrument.

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Revocation of deeds of gift.

4. (1) Subject to the provisions and exceptions hereinafter contained, a donor may, during his lifetime and without the consent of the donee or of any other person, cancel or revoke in whole or in part any gift, whether made before or after the commencement of this Ordinance, and such gift and any instrument effecting the same shall thereupon become void and of no effect to the extent set forth in the instrument of cancellation or revocation :

Provided that the right, title, or interest of any person in any immovable property shall not, if such right, title, or interest has accrued before the commencement of this Ordinance, be affected or prejudiced by reason of the cancellation or revocation of the gift to any greater extent than it might have been if this Ordinance had not been enacted.

Method of revocation.

(2) No such cancellation or revocation of a gift effected after the commencement of this Ordinance shall be of force or avail in law unless it shall be effected by an instrument in writing declaring that such gift is cancelled or revoked and signed and executed by the donor or by some person lawfully authorized by him in accordance with the provisions of the Prevention of Frauds Ordinance or of the Deeds and Documents (Execution before Public Officers) Ordinance.

Deeds of gift which cannot be revoked.

5. (1) Notwithstanding the provisions of section 4 (1), it shall not be lawful for a donor to cancel or revoke any of the following gifts where any such gift is made after the commencement of this Ordinance :—

Gift to a temple.

(*a*) any gift by virtue of which the property which is the subject of that gift shall vest in the trustee or the controlling *viharadhipati* for the time being of a temple under the provisions of section 20 of the Buddhist Temporalities Ordinance or in any *bhikkhu* with succession to his sacerdotal pupil or pupils or otherwise than as *pudgalika* for the benefit of himself and his heirs, executors, administrators or assigns ;

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(*b*) any gift in consideration of and expressed to be in consideration of a future marriage, which marriage has subsequently taken place ; Gift in consideration of marriage.

(*c*) any gift creating or effecting a charitable trust as defined by section 99 of the Trusts Ordinance ; Gift effecting a charitable trust.

(*d*) any gift, the right to cancel or revoke which shall have been expressly renounced by the donor, either in the instrument effecting that gift or in any subsequent instrument, by a declaration containing the words " I renounce the right to revoke " or words of substantially the same meaning or, if the language of the instrument be not English, the equivalent of those words in the language of the instrument : Gift where right to revoke is renounced.

Provided that a declaration so made in any such subsequent instrument shall be of no force or effect unless such instrument bears stamps to the value of five rupees and is executed in accordance with the provisions of the Prevention of Frauds Ordinance or of the Deeds and Documents (Execution before Public Officers) Ordinance.

(2) Nothing in this section shall affect or be deemed to affect the revocability of any gift made before the commencement of this Ordinance.

6. (1) Upon the cancellation or revocation of any gift, the donor shall be liable to pay to the donee compensation in such sum as shall represent the cost of any improvements to the property effected by the donee, after deducting the rents and profits received by him, and the expenses incurred in the fulfilment of the conditions, if any, attached to the gift, provided that if the donee has made default in the fulfilment of any such conditions, no compensation shall be payable to him in respect of the improvements or otherwise. Compensation for revocation.

(2) Such compensation shall be payable to any donee otherwise entitled thereto whether or not he would be an heir at law of the donor in the event of such donor dying intestate.

(3) In this section " donee " includes any person who has succeeded to the title of the donee under the gift.

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II · · Adoption

Method of adoption.

7. (1) No adoption effected after the commencement of this Ordinance shall avail in law to create any right or liability unless it be evidenced by an instrument in writing with the consent of the person adopted expressed in the instrument and signed by both the adopter and the person adopted, in the presence of—

(*a*) a District Judge, a Commissioner of Requests, or the President of a Rural Court ; or

(*b*) a licensed notary and two witnesses :

Provided that if the person adopted be a minor, such consent may be given and such instrument signed on his behalf by his parents or, if only one parent is alive, by that parent ; but if there is no surviving parent or if either of his parents cannot be found or is incapable of acting in this behalf by reason of unsoundness of mind, ill health, or other incapacity, the District Court or Court of Requests having local jurisdiction over the place where the minor ordinarily resides may, upon petition made to such court by any person interested and after such inquiry as the court may deem necessary, appoint any person or persons to give such consent and to sign such instrument.

For the purposes of the Civil Procedure Code and of the Stamp Ordinance an application to the District Court under this section shall be deemed to be an action of the value of one hundred rupees.

(2) No stamp duty shall be payable or chargeable in respect of any instrument of adoption executed in accordance with the provisions of subsection (1) or of any application to a court made under that subsection.

Rights of person adopted.

8. (1) On the death of the adopter intestate, a person duly adopted, whether before or after the commencement of this Ordinance, shall have such right of succession to his estate as if he were a legitimate child of the adopter, that is to say, if the adopter leave him surviving no child or descendant of a deceased child, then as an only child, or if the adopter leave a child or children or a descendant of a deceased child, then to the same extent and in like manner as a child, and if married in *binna* or in *diga* as the case may be, then

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as a child so married ; but the person adopted shall, by virtue of the adoption, have no right of succession to any person other than the adopter.

Adopter not to succeed.

(2) The adopter shall not, by virtue of the adoption, acquire any right to succeed to the estate or any part thereof of the person adopted on his death intestate.

Person adopted succeeds to own parents or relations.

(3) Notwithstanding the adoption, the person adopted shall continue to have such right of succession to his or her own parent or parents, or any other person, as he or she would have had if the adoption had not been effected.

Adoption not to be revoked.

(4) A duly effected adoption shall not be cancelled or revoked, and no cancellation or revocation shall affect any right or liability arising out of the adoption.

III · · Marriage

Binna and *diga* marriages.

9. (1) A marriage contracted after the commencement of this Ordinance in *binna* or in *diga* shall be and until dissolved shall continue to be, for all purposes of the law governing the succession to the estates of deceased persons, a *binna* or a *diga* marriage, as the case may be, and shall have full effect as such ; and no change after any such marriage in the residence of either party to that marriage and no conduct after any such marriage of either party to that marriage or of any other person shall convert or be deemed to convert a *binna* marriage into a *diga* marriage or a *diga* marriage into a *binna* marriage or cause or be deemed to cause a person married in *diga* to have the rights of succession of a person married in *binna,* or a person married in *binna* to have the rights of succession of a person married in *diga.*

(2) Where after the commencement of this Ordinance a woman leaves the house of her parents and goes out in *diga* with a man, but does not contract with that man a marriage which is valid according to law, she shall not by reason only of such departure or going out forfeit or lose or be deemed to have forfeited or to have lost any right of succession to which she is or was otherwise entitled on the death of any person intestate.

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IV · · INHERITANCE : IMMOVABLE PROPERTY

"*Paraveni* property".

10. (1) The expressions "*paraveni* property" or "ancestral property" or "inherited property" and equivalent expressions shall mean immovable property to which a deceased person was entitled—

(*a*) by succession to any other person who has died intestate, or

(*b*) under a deed of gift executed by a donor to whose estate or a share thereof the deceased would have been entitled to succeed if the donor had died intestate immediately prior to the execution of the deed, or

(*c*) under the last will of a testator to whose estate or a share thereof the deceased would have been entitled to succeed had the testator died intestate :

Provided, however, that if the deceased shall not have left him surviving any child or descendant, property which had been the acquired property of the person from whom it passed to the deceased shall be deemed acquired property of the deceased.

Partition of *paraveni* property.

(2) Where the *paraveni* property of any person includes a share in any immovable property of which that person is a co-owner, any divided part of or interest in that property which may be assigned or allotted to that person by any deed of partition executed, or by any decree for partition entered by a court, after the commencement of this Ordinance, shall for all purposes be and be regarded as *paraveni* property of that person.

Acquired property.

(3) Except as in this section provided, all property of a deceased person shall be deemed to be acquired property.

"Paternal *paravani*"; "maternal *paraveni*".

(4) The expressions "paternal *paraveni*" and "maternal *paraveni*" and similar or equivalent expressions shall be deemed to mean *paraveni* property as herein before described derived from or through the father or from or through the mother, as the case may be.

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Widow.

11. (1) When a man shall die intestate after the commencement of this Ordinance leaving a spouse him surviving, then—

(*a*) the surviving spouse shall be entitled to an estate for life in the acquired property of the deceased intestate, and, if there be no acquired property, or if such property be insufficient for her maintenance, then to maintenance out of the *paraveni* property :

Provided that if the deceased intestate shall have left a child or descendant by a former marriage, the surviving spouse's life estate shall extend to only one-half of the acquired property ;

Provided, further, that the surviving spouse shall out of her estate for life in the acquired property be bound to maintain the legitimate children of the deceased—

(i) if such children are minors and in need of maintenance ; and

(ii) if the deceased left no *paraveni* property or if such *paraveni* property is insufficient for the maintenance of such children ;

Re-marriage of widow.

(*b*) if the surviving spouse shall contract a *diga* marriage, she shall cease to be entitled to maintenance out of the *paraveni* property of the deceased but shall not by reason of such re-marriage forfeit her aforesaid life estate in the acquired property ;

Widow an *ewessa* cousin.

(*c*) should the surviving spouse be an *ewessa* cousin of the deceased intestate, she shall not thereby become entitled to any share in the estate larger than that to which she would otherwise have become entitled ;

When widow succeeds to *paraveni*.

(*d*) in the event of the deceased leaving him surviving no other heir, the surviving spouse shall succeed to all his property both *paraveni* and acquired.

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(2) In this section "maintenance" when used with reference to any property, whether *paraveni* or acquired, means maintenance out of the income of such property.

Daughter married in *diga* after father's death.

12. (1) The *diga* marriage of a daughter after the death of her father shall not affect or deprive her of any share of his estate to which she shall have become entitled upon his death, provided that if within a period of one year after the date of such marriage the brothers and *binna*-married sisters of such daughter or any one or more of them, but if more than one then jointly and not severally, shall tender to her the fair market value of the immovable property constituting the aforesaid share or any part thereof, and shall call upon her to convey the same to him or her or them, such daughter shall so convey and shall be compellable by action so to do.

(2) In this section "marriage" means a marriage contracted after the commencement of this Ordinance.

Issue of two marriages: *per capita.*

13. When a man shall die intestate after the commencement of this Ordinance leaving him surviving issue by two or more marriages, such issue and the descendants of any predeceased child or children shall inherit *inter se* in all respects as if there had been but one marriage and the estate of the deceased shall not descend *per stirpes* to the issue of each marriage according to the number of marriages.

Legitimate and illegitimate.

14. For the purposes of succession to the estate of any person who shall die intestate after the commencement of this Ordinance the term "legitimate" shall mean born of parents married according to law and the term "illegitimate" shall mean born of parents not married according to law:

Provided that a legal marriage between any parties shall have the effect of rendering legitimate any children who may have been procreated between the same parties before the marriage, unless such children shall have been procreated in adultery.

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Illegitimate children.

15. When a man shall die intestate after the commencement of this Ordinance leaving an illegitimate child or illegitimate children—

(*a*) such child or children shall have no right of inheritance in respect of the *paraveni* property of the deceased ;

(*b*) such child or children shall, subject to the interests of the surviving spouse, if any, be entitled to succeed to the acquired property of the deceased in the event of there being no legitimate child or the descendant of a legitimate child of the deceased ;

(*c*) any such child shall, subject to the interests of the surviving spouse, if any, be entitled to succeed to the acquired property of the deceased equally with a legitimate child or the legitimate children, as the case may be—

(i) if the deceased intestate had registered himself as the father of that child when registering the birth of that child ; or

(ii) if the deceased intestate had in his lifetime been adjudged by any competent court to be the father of that child.

Succession to person dying intestate leaving no surviving spouse or descendant.

Father and mother.

16. If a person shall die intestate after the commencement of this Ordinance leaving him or her surviving parents, whether married in *binna* or in *diga*, or a parent, but no child or descendant of a child and no surviving spouse, then—

(*a*) the parents in equal shares, or if one only be alive, then that one shall, if there be surviving any brother or sister of the deceased or the descendant of a brother or sister, be entitled to a life estate in the acquired property of the deceased. The right of a sole surviving parent shall arise and continue whether or not the other parent shall have died before the deceased intestate ;

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Brothers and sisters.

(*b*) on the death of the surviving parent, the acquired property shall, subject to the provisions of section 17, devolve upon the brother or sister or brothers and sisters, or the descendant or descendants of any deceased brother or sister by representation ;

When no surviving brother or sister.

(*c*) if there be no brother or sister or descendant of a deceased brother or sister, the parents in equal shares, or the surviving parent as the case may be, shall become entitled to the property ;

Paternal *paraveni* and maternal *paraveni.*

(*d*) the father, or if the father be dead the next heir or heirs on the father's side, shall inherit the paternal *paraveni*, and the mother, or if the mother be dead the next heir or heirs on the mother's side, shall inherit the maternal *paraveni.* The mother shall not inherit paternal *paraveni* unless there be surviving no heir on the father's side, and in like manner the father shall not inherit maternal *paraveni* unless there be surviving no heir on the mother's side.

Brothers and sisters *inter se* always inherit as sons and daughters.

17. In the devolution of the estate of any person who shall die intestate after the commencement of this Ordinance,

(*a*) whenever the estate or any part thereof shall devolve upon heirs other than a child or the descendant of a child, and such heirs are in relation to one another brothers or sisters, or brothers and sisters, or the descendants of any deceased brother or sister, such heirs shall inherit *inter se* the like shares and in like manner as they would have done had they been the children or descendants of the deceased intestate ;

The half-blood *per capita.*

(*b*) whenever the estate or any share thereof shall devolve upon heirs who in relation to one another are of the half-blood, such heirs *inter se* shall inherit *per capita* and the estate shall not descend to them *per stirpes.*

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Succession to woman married in *diga* or married in *binna* on mother's property.

18. (1) When a woman unmarried, or married in *diga*, or married in *binna* on her mother's property, shall die intestate after the commencement of this Ordinance leaving children or the descendants of a child or children, the estate of the deceased shall devolve in equal shares upon all such children, (the descendant or descendants of any deceased child being entitled to his or their parent's share by representation) whether male or female, legitimate or illegitimate, married or unmarried, and, if married, whether the marriage be in *binna* or in *diga* :

Provided that if the deceased was married in *binna* as aforesaid, an illegitimate child or children shall not be entitled to succeed to the *paraveni* property of the deceased ;

Provided, further, that the descendant of a deceased child shall be entitled to that child's share by representation whether or not he or she has been kept apart from the deceased intestate.

Woman married in *binna* on father's property.

(2) When a woman married in *binna* on her father's property shall die intestate after the commencement of this Ordinance leaving children or the descendants of a child or children, such child or children, and his or their descendant by representation, shall be entitled to succeed *inter se* in like manner and to the like shares as they would have become entitled out of the estate of their father :

Provided that if the deceased was married in *binna* as aforesaid an illegitimate child or children shall not be entitled to succeed to the *paraveni* property of the deceased.

Rights of *diga* widower on death of spouse intestate and issueless.
[§ 2, 25 of 1944.]

19. On the death intestate of a woman married in *diga*, leaving a surviving spouse but no child or descendant of a child, such surviving spouse shall not be entitled, and shall not be deemed to have been at any time entitled, to any part of the immovable property of the deceased other than the part consisting of the acquired property to which the deceased became entitled subsequent to and during the subsistence of such marriage in *diga*.

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V · · Inheritance : Movable Property

Heirlooms and movables appertaining to *paraveni.*

20. Heirlooms and live and dead stock appertaining to immovable property to which a person has become entitled as *paraveni* property as defined by section 10 shall, on his dying intestate after the commencement of this Ordinance, devolve in like manner as immovable property and the following provisions of this Ordinance shall not apply thereto.

The widow's paraphernalia.

21. When a man shall die intestate after the commencement of this Ordinance leaving a surviving spouse she shall be entitled to all wearing apparel, jewellery and ornaments used by her or provided for her use by her deceased husband.

The widow or widower.

22. When any person shall die intestate after the commencement of this Ordinance leaving a surviving spouse and a child or children, or the descendant of any deceased child entitled to represent his or her parent, the surviving spouse, whether the marriage was in *binna* or in *diga*, shall succeed in like manner and to a like share of all the movable property of the deceased whenever obtained, as if he or she had been a legitimate child of the deceased.

All children inherit equally.

23. Subject to the aforesaid right of the surviving spouse, if any, the movable property of any person who shall die intestate after the commencement of this Ordinance shall devolve in equal shares upon all his or her surviving children (the descendant or descendants of any deceased child being entitled to his or her or their parent's share by representation) whether male or female, legitimate or illegitimate, married or unmarried, and, if married, whether the marriage be in *binna* or in *diga* :

Provided that if the deceased was a male person an illegitimate child shall not succeed if there be surviving any legitimate child or the descendant of a legitimate child ;

Provided further that the issue of a legitimate child *inter se* shall succeed in like manner.

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When there is no surviving child or descendant.

24. When any person shall die intestate after the commencement of this Ordinance leaving no child or descendant of any deceased child, the surviving spouse, if any, shall succeed to all the movable property of the deceased.

VI · · General

Assistance and support not to affect rights of succession.

25. A person who has rendered assistance and support or any other benefit to a person who has subsequently died intestate, shall not by reason of such assistance, support, or benefit, become entitled to succeed to any interest in the estate of such deceased intestate to which he would not have become entitled had such assistance, support or benefit not been rendered.

Saving existing judgments, decrees, or orders.

26. Nothing in this Ordinance shall be deemed to affect or render invalid any existing judgment, decree, or order of a court of competent jurisdiction in respect of any property or the right, title or interest of any person in respect of property the subject-matter of the action in which such judgment, decree, or order was given, passed, or made.

Ordinance not to have retrospective effect unless expressly so provided.

27. The provisions of this Ordinance shall not have, and shall not be deemed or construed to have, any retrospective effect except in such cases where express provision is made to the contrary.

C 7——J. N. R 7589 (4/60)

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CHAPTER 60

WILLS

Ordinances Nos. 21 of 1844, 11 of 1852, 15 of 1876, 1 of 1911.

AN ORDINANCE TO MAKE PROVISION WITH RESPECT TO TESTAMENTARY DISPOSITIONS OF PROPERTY.

[*23rd December, 1844.*]

Short title.

1. This Ordinance may be cited as the Wills Ordinance.

Parties may dispose of their property by will as they choose.

2. It shall be lawful for every person competent to make a will to devise, bequeath, and dispose of by will all the property within Ceylon which at the time of his death shall belong to him, or to which he shall be then entitled, of whatsoever nature or description the same may be, movable or immovable, and all and every estate, right, share, or interest in any property, and which if not so devised, bequeathed, or disposed of would devolve upon his heirs-at-law, executor, or administrator, to such person or persons not legally incapacitated from taking the same, as he shall see fit ; and no will made either within or beyond the limits of Ceylon subsequently to the time when this Ordinance shall commence and take effect shall be or be liable to be set aside as invalid or inofficious, either wholly or in part, by reason that any person who by any law, usage, or custom now or at any time heretofore in force within Ceylon, would be entitled to a share or portion of the property of the testator, has been excluded from such share or portion, or wholly disinherited by or omitted in such will ; but every testator shall have full power to make such testamentary disposition as he shall feel disposed, and in the exercise of such right to exclude from the legitimate or other portion any child, parent, relative, or descendant, or to disinherit or omit to mention any such person, without assigning any reason for such exclusion, disinheritance, or omission, any law, usage, or custom now or heretofore in force in Ceylon to the contrary notwithstanding :

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Provided that nothing herein contained shall extend or be construed to extend to authorize or entitle any testator to dispose by will of any property or estate of his wife, or to exclude or deprive her of any life or other interest (belonging to her in her own right) in any property, and to which property, estate, or interest she would have been entitled if this Ordinance had not been passed.

At what age wills may be made.

3. No will made by any male under the age of twenty-one years, or by any female under the age of eighteen years, shall be valid, unless such person shall have obtained letters of *venia aetatis* or unless such person shall have been lawfully married.

Governor-General may grant letters of *venia aetatis*.

4. The Governor-General[3] for the time being shall have and enjoy within and over each and every district of Ceylon all such rights and powers in respect of granting letters of *venia aetatis* as are now possessed and may lawfully be exercised by him within the Maritime provinces thereof.

As to the validity of foreign wills.

5. Every will made beyond the limits of Ceylon containing any devise or disposition of immovable property situate within Ceylon, which shall have been duly made and executed according to and in conformity with the forms and solemnities prescribed by the law of the country where the same shall have been so made and executed, by any person who by the law of such country or of Ceylon is competent to make a will, shall be valid and effectual to alienate and pass the property in any immovable property so devised or disposed of by any such testator; and every will duly made and executed in manner aforesaid, in any place beyond the limits of Ceylon, by any person who shall be competent to make a will by the law of the place where he shall be domiciled at the time of making and executing the same, shall be valid and effectual to alienate and pass the property in any movable property by such will bequeathed or disposed of, anything contained in the Prevention of Frauds Ordinance or any other law or custom to the contrary notwithstanding.

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As to the re-execution of wills.

6. Every will re-executed or republished, or revived by any codicil, shall for the purpose of this Ordinance be deemed to have been made at the time at which the same shall be so re-executed or republished or revived.

No survivorship as to property undivided held in shares, unless expressly stipulated for.

7. And for the avoiding of all doubts and questions as to the respective rights of persons jointly holding landed property situated within certain districts of Ceylon, it is further enacted and declared that all landed property situated in Ceylon which shall belong to two or more persons jointly, whether the same shall have come to them by grant, purchase, descent, or otherwise, is and shall be deemed and taken to be held by them in common, and upon the decease of any of such persons the said property so jointly possessed shall not remain or belong to the survivor, but all the right, share, and interest of the person so dying in and to the property so jointly possessed as aforesaid shall form part of his estate ; and the person or persons to whom the same shall by him be devised or bequeathed, or to whom it shall devolve, shall thereupon become and be co-proprietors with the survivor in the said property, in the proportion and according to the share of such deceased person therein, unless the instrument under which the said property is jointly held and possessed, or any agreement mutually entered into between them, shall expressly provide that the survivor, upon such decease, shall become entitled to the whole estate.

Effect of previous settlement.

8.* In all cases of marriages contracted either within any part of Ceylon or abroad without a nuptial contract or settlement, the respective rights and powers of the parties during the subsistence of the marriage in and about the management, control, disposition, or alienation of any immovable property situated in any part of Ceylon, which belonged to either party at the time of the marriage or has been acquired during the coverture, and also their respective rights in or to such property, or any portion thereof, or estate or interest therein, either during the subsistence of the marriage or upon the dissolution thereof, shall in all cases be

* This section is repealed so far as it is inconsistent with the provisions of the Matrimonial Rights and Inheritance Ordinance and the Jaffna Matrimonial Rights and Inheritance Ordinance.

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determined according to the law of the matrimonial domicile ; and if the parties shall have entered into a nuptial contract or settlement by which their or either of their rights, powers, or interests in, to, or over any such property as aforesaid are ascertained and determined, or by which either party shall be declared entitled to a defined portion of or interest in the common estates, or to any provision by way of dowry or maintenance, or otherwise, out of the separate estate of the other of such parties during the subsistence of the marriage or at the dissolution thereof, then and in any such case neither of the parties shall be entitled, upon the dissolution of the marriage, to any other or greater portion, interest, or provision in or out of any such property as aforesaid, than in and by such nuptial contract or settlement such party shall be declared entitled to, whether or not it shall be expressly stated therein that such portion, interest, or provision was in lieu of the right or interest which such party would otherwise have had in such property as aforesaid if such nuptial contract or settlement had not been made.

Interpretation

9. Whenever in this Ordinance the word " will " is used it shall be construed to extend to a testament and to a codicil, and to any other testamentary disposition ;

and whenever the words " landed property " are used they shall be construed to extend to houses and buildings erected on the same, and to any estate, right, or interest (other than a chattel interest) therein ;

and whenever the word " representative " is used it shall be construed to mean the party legally entitled to appear and act for and on behalf of another, as his guardian, tutor, curator, or attorney, as the case may be.

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CHAPTER 61

ADOPTION OF CHILDREN

Ordinances Nos. 24 of 1941, 54 of 1943.

AN ORDINANCE TO PROVIDE FOR THE ADOPTION OF CHILDREN, FOR THE REGISTRATION AS CUSTODIANS OF PERSONS HAVING THE CARE, CUSTODY OR CONTROL OF CHILDREN OF WHOM THEY ARE NOT THE NATURAL PARENTS, AND FOR MATTERS CONNECTED WITH THE MATTERS AFORESAID.

[*1st February, 1944.*]

Short title.

1. This Ordinance may be cited as the Adoption of Children Ordinance.

PART I

ADOPTION OF CHILDREN

Power to make adoption orders.

2. (1) Any person desirous of being authorized to adopt a child may make application to the court in the manner provided by rules made under section 13, and upon such application being made, the court may, subject to the provisions of this Part, make an order (hereinafter referred to as an "adoption order") authorizing that person to adopt the child.

(2) No adoption order shall be made authorizing two or more persons to adopt a child :

Provided, however, that the court may, on application made in that behalf by two spouses jointly, make an adoption order authorizing the two spouses jointly to adopt a child.

Restrictions on making of adoption orders.

3. (1) An adoption order shall not be made in any case where—

(*a*) the applicant is under the age of twenty-five years, or

(*b*) the applicant is less than twenty-one years older than the child in respect of whom the application is made :

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Provided, however, that where the child in respect of whom an application is made is—

(i) a direct descendant of the applicant ; or

(ii) a brother or sister of the applicant by the full or the half-blood or a descendant of any such brother or sister ; or

(iii) the child of the wife or husband, as the case may be, of the applicant by another father or mother,

the court may, if it thinks fit make an adoption order, notwithstanding that the applicant is less than twenty-one years older than the child.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the child in respect of whom the application is made is a female, unless the court is satisfied that there are special circumstances which justify the making of an adoption order.

(3) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the child in respect of whom the application is made, or who has the actual custody of the child, or who is liable to contribute to the support of the child :

Provided that the court may dispense with any consent required by the preceding provisions of this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the child or cannot be found or has been adjudged by a competent court to be of unsound mind, or, being a person liable to contribute to the support of the child, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.

A man who marries a woman having a child (whether legitimate or illegitimate) at the time of the marriage shall be deemed for the purposes of this subsection to be a person liable to contribute to the support of the child.

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(4) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them :

Provided that the court may dispense with any consent required by the preceding provisions of this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or has been adjudged by a competent court to be of unsound mind, or that the spouses have been judicially separated by a decree of a competent court.

(5) An adoption order shall not be made in respect of a child over the age of ten years except with the consent of such child.

(6) An adoption order shall not be made in favour of any applicant who is not resident and domiciled in Ceylon or in respect of any child who is not a British subject and so resident.

Matters with respect to which court must be satisfied.

4. The court before making an adoption order shall be satisfied—

(*a*) that every person whose consent is necessary under this Part and whose consent is not dispensed with has consented to, and understands the nature and effect of, the adoption order for which application is made, and in particular in the case of any parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights ; and

(*b*) that the order, if made, will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child ; and

(*c*) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.

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Terms and conditions of adoption order.

5. The court in an adoption order may impose such terms and conditions as the court may think fit and in particular may require the adopter by bond or otherwise to make for the adopted child such provision, if any, as in the opinion of the court is just and expedient.

Effect of adoption order.

6. (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child in relation to the future custody, maintenance and education of the adopted child including all rights to appoint a guardian or to consent to the marriage of the child, or to give notice forbidding the issue of a certificate for the solemnization of such marriage shall be extinguished ; and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock :

Provided that in any case where two spouses are the adopters such spouses shall, in respect of the matters aforesaid and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children, stand to each other and to the adopted child in the same relation as they would have stood, if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

(2) The court which makes an adoption order in respect of any child shall, unless in its discretion it considers it inexpedient so to do, by that order confer on the child the surname or family name of the adopter or such other name as would, having regard to the customs of the community to which the adopter belongs, be conferred on a child born in lawful wedlock of the adopter.

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(3) Upon an adoption order being made, the adopted child shall for all purposes whatsoever be deemed in law to be the child born in lawful wedlock of the adopter :

Provided, however, that unless the contrary intention clearly appears from any instrument (whether such instrument takes effect *inter vivos* or *mortis causa*), such adopted child shall not by such adoption—

(*a*) acquire any right, title or interest in any property—

(i) devolving on any child of the adopter by virtue of any instrument executed prior to the date of the adoption order ;

(ii) burdened with a fideicommissum in favour of the descendants of the adopter ; or

(iii) devolving on the heirs *ab intestato* of any child born in lawful wedlock of the adopter ;

(*b*) become entitled to any succession (whether by will or *ab intestato*) *jure representationis* the adopter.

(4) An adoption order shall not deprive the adopted child of any right to or interest in any property to which, but for the order, the child would have been entitled under any intestacy or disposition whether occurring or made before or after the date of the adoption order.

(5) Upon the death intestate of any person in respect of whom an adoption order has been made, neither the adopter nor any person claiming through or under him shall, by reason of the adoption, acquire any right to succeed to the estate or any part of the estate of the person adopted :

Provided, however, that where any part of the estate consists of immovable property which had accrued to or devolved on the adopted person by reason of his having been deemed in law to be the child born in lawful wedlock of the adopter, or which had been transferred to him by way of gift by the adopter or by any ascendant or descendant or brother or sister of the adopter, the adopter and persons claiming under him

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shall, notwithstanding anything in any written or other law to the contrary, be entitled to succeed to that immovable property in like manner as though the person adopted were the child born in lawful wedlock of the adopter.

Power to make *interim* orders.

7. (1) Upon any application for an adoption order the court may postpone the determination of the application and may make an *interim* order (which shall not be an adoption order for the purposes of this Part) giving the custody of the child to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the child and otherwise as the court may think fit.

(2) All such consents as are required to an adoption order shall be necessary to an *interim* order, but subject to a like power on the part of the court to dispense with any such consent.

Provisions as to existing *de facto* adoptions.

8. Where at the appointed date any child is in the custody of and being brought up, maintained and educated by any person or two spouses jointly as his, her or their own child under any *de facto* adoption and has for a period of not less than two years before that date been in such custody and been so brought up, maintained and educated, the court may upon the application of such person or spouses and notwithstanding that the applicant is a male and the child a female, make an adoption order authorizing him, her or them to adopt the child without requiring the consent of any parent or guardian of the child to be obtained, upon being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the child that no such consent should be required and that an adoption order should be made.

Power to make subsequent orders in respect of children already adopted.

9. An adoption order or an *interim* order may be made in respect of a child who has already been the subject of an adoption order and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the child for all the purposes of this Ordinance.

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Adoption Register.

10. (1) The Registrar-General shall establish and maintain at his office a register to be called the Adoption Register, together with an index thereof, and shall make or cause to be made in that register such entries as may be directed to be made therein by adoption orders.

(2) The court which makes any adoption order shall in that order direct the Registrar-General to make in the Adoption Register an entry recording the adoption in the form set out in the Schedule to this Ordinance.

(3) Where, upon any application for an adoption order in respect of any child, the date of the birth of that child and the identity of that child with a child to whom any entry or entries in any register of births kept under the Births and Deaths Registration Act relates, is proved to the satisfaction of the court, the court shall if the adoption order is made, in that order direct the Registrar-General—

(*a*) to cause such birth entry or entries in the register of births to be marked with the word " Adopted " ; and

(*b*) to include in the entry made under subsection (2) in the Adoption Register in respect of that order, the date of the birth of the child as specified in the order.

(4) Every court which makes an adoption order shall cause the adoption order to be communicated to the Registrar-General, and upon receipt of such communication the Registrar-General shall cause compliance to be made with the directions contained in such order in regard both to marking any entry in the registers of births with the word " Adopted " and in regard to making the appropriate entry in the Adoption Register.

(5) The Registrar-General shall not cause or permit any entry to be made in the Adoption Register other than an entry which is, by an adoption order, directed to be made therein :

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Provided, however, that—

(*a*) the Registrar-General or any person authorized by him may correct any clerical error which may at any time be discovered in any entry made in the Adoption Register ;

(*b*) where the Registrar-General is satisfied that any particulars in any such entry relating to any matter of fact or substance do not correspond with the particulars directed by an adoption order to be entered in the Adoption Register, the Registrar-General may cause the error to be corrected by an entry made under his hand in the margin of the register.

(6) A certified copy of any entry in the Adoption Register if purporting to be made under the hand of the Registrar-General or any Assistant Registrar-General shall—

(*a*) where the entry does not contain any record of the date of the birth of the adopted child, be received as prima facie evidence of the adoption to which the same relates ; and

(*b*) where the entry contains a record of the date of the birth of the adopted child, be received as prima facie evidence not only of the adoption to which the same relates but also of the date of the birth of the adopted child to which the same relates in all respects as though such copy were a certified copy purporting to be made under the hand of the Registrar-General, of an entry in a register of births.

Search of register and issue of copies of entries.

11. The Adoption Register and the index kept under section 10 shall be deemed to be books kept by the Registrar-General under the Births and Deaths Registration Act, and all the provisions of section 56 of that Act relating to searches of such books, to the issue of certified copies of entries, and to the stamps to be supplied in respect of such searches or copies, shall apply accordingly.

Books, &c.

12. The Registrar-General shall, in addition to the Adoption Register and the index thereof, keep such other books and registers and make such entries therein

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as may be necessary to record and make traceable the connexion between any entry in any register of births which has been marked " Adopted " in accordance with the provisions of section 10, and any corresponding entry in the Adoption Register :

Provided that no books and registers kept under this section shall be open to public inspection or search, and that the Registrar-General shall not, except under an order of a court of competent jurisdiction, furnish any person with any information contained in, or with any copy or extract from, any such register or book.

Jurisdiction, procedure, &c.

13. (1) The court having jurisdiction to make an adoption order under this Part shall be the Court of Requests having jurisdiction in the place at which the applicant, or the child in respect of whom the application is made, resides.

(2) It shall be lawful for the Judges of the Supreme Court or any five of them, of whom the Chief Justice shall be one, to make rules prescribing the manner in which applications to the court are to be made and the procedure to be followed in the hearing of such applications, and providing for all matters connected with or incidental to the matters aforesaid.

Such rules may provide for applications for adoption orders being heard and determined otherwise than in open court.

(3) The matters for which rules may be made under subsection (2) shall be deemed to be added to the list of matters in respect of which rules may be made under section 49 of the Courts Ordinance ; and the provisions of sections 49 and 50 of that Ordinance shall apply accordingly in the case of any rule made in respect of any of the matters referred to in subsection (2).

(4) For the purpose of any application under this Part, the court shall, subject to any rules made under this section, appoint some person or body of persons to act as guardian *ad litem* of the child upon the hearing of the application with the duty of safeguarding the interests of the child before the court.

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(5) For the purposes of the Civil Procedure Code and of the Stamp Ordinance an application to the court for an adoption order shall be deemed to be an action of the value of one hundred rupees :

Provided, however, that no stamp duty shall be chargeable in respect of any such application.

Restriction of payments.

[§ 2, 54 of 1943.]

14. Any adopter who shall receive, except with the sanction of the court, any payment or other reward in consideration of the adoption of any child under this Part, and any person who, except with the sanction of the court, shall make or give or agree to make or give to any adopter any such payment or reward, shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term which may extend to six months, or to both such fine and imprisonment.

Savings as to marriage law.

15. Nothing in this Part shall be construed to authorize any marriage that could not lawfully have been contracted if this Ordinance had not been enacted ; nor shall anything in this Part contained place an adopting parent or an adopted child as against each other's relatives by consanguinity or affinity within the degrees within which marriage is prohibited by the provisions of any other written law.

Savings for adoption under Kandyan law or *Tésawalamai.*

16. The provisions of this Part shall be in addition to and not in substitution of the provisions of any written or other law relating to the adoption of children by persons subject to the *Tésawalamai* or the Kandyan law ; and notwithstanding anything to the contrary in such other law, an adoption order may be made authorizing any such person to adopt a child, and where made, shall have effect in accordance with the provisions of this Part.

Interpretation of Part I.

17. In this Part, unless the context otherwise requires—

" adopter " means the person authorized by an adoption order to adopt a child, and where such an order is made in favour of a husband and wife on their joint application, means both husband and wife ;

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"appointed date" means the 1st day of February, 1944;

"child" means a person under the age of fourteen years;

"court" means the Court of Requests having jurisdiction under section 13 to make an adoption order;

"guardian" in relation to a child includes any person who, in the opinion of the court, has for the time being charge of or control over the child.

PART II

Registration Of Custodians Of Children

Registration of persons having custody of children on appointed date.

18. (1) Save as otherwise provided in section 29, no person who on the appointed date has in his care, custody or control any child of whom he is not the natural parent, shall continue to keep the child in his care, custody or control after the expiry of a period of three months from that date unless he gives notice in the prescribed form to an authorized officer to the effect that the child is in his custody.

(2) An authorized officer shall, on receipt of a notice under subsection (1) from any person, transmit the notice to the Government Agent of the district in which that person is resident; and the Government Agent shall thereupon register that person as the custodian of the child and deliver to him a certificate of registration in the prescribed form.

(3) Nothing in the preceding provisions of this section shall be deemed to prejudice the power of a Government Agent to register any person under subsection (2) as the custodian of a child, notwithstanding that the notice given by that person under subsection (1) is received after the expiry of the period mentioned in that subsection.

(4) In this section, "authorized officer" includes any police officer for the time being in charge of a police station, and any Registrar appointed under the Births and Deaths Registration Act or the Marriage Registration Ordinance.

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Registration as custodians of persons taking children into their custody.

19. (1) Save as otherwise provided in section 29, no person shall on or after the appointed date, take or receive into his care, custody or control any child of whom he is not the natural parent, unless he has been registered by an authorized officer as the custodian of that child.

(2) An authorized officer shall not register any person under this section as the custodian of any child—

(*a*) unless application is made to him in the prescribed form by the applicant for such registration ;

(*b*) unless he considers it expedient, after such inquiry as he may deem necessary, in the interests of the child that the child should be placed in the care, custody and control of the applicant ;

(*c*) unless the parents of the child consent, or in the case of an illegitimate child, the mother consents, in the presence of the officer, to deliver the child into the care, custody and control of the applicant ; and

(*d*) where the child is over ten years of age, unless such child consents to such registration : [§ 3, 54 of 1943.]

Provided, however, that an authorized officer may dispense with the consent of any person whose consent is required under paragraph (*c*), if the officer is satisfied that the person whose consent is to be dispensed with is dead or cannot be found, or has abandoned, deserted or neglected the child, or has been adjudged by a competent court to be of unsound mind.

(3) An authorized officer shall, upon the registration by him of any person as the custodian of a child, issue to that person a certificate of registration in the prescribed form, and transmit a copy of the certificate to the Government Agent of the district in which that person is resident.

Protected persons.

20. Where any person is registered under this Ordinance as the custodian of a child, the child shall, until he attains the age of eighteen years, be a protected person for the purposes of this Part and the provisions of sections 21 to 26 shall apply accordingly :

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Provided, however, that nothing in any of those sections shall apply in the case of any such protected person if he permanently leaves or is permanently removed from the care, custody or control of the person registered as his custodian.

Duties of registered custodians. [§ 4, 54 of 1943.]

21. It shall be the duty of every person who is registered as the custodian of a protected person—

(*a*) to provide adequate food, clothing and medical attention for the protected person ;

(*b*) as soon as may be after the protected person is taken into his care, custody or control or attains the age of twelve years (whichever of these events is the later) to open an account at the Ceylon Post Office Savings Bank in his own name as trustee for the protected person as beneficiary, and, until the protected person attains the age of eighteen years, to deposit each month to the credit of that account, an amount determined in accordance with such scales as may be prescribed ;

(*c*) at the end of each successive period of six months after the aforesaid account is opened, to send for purposes of inspection to the Government Agent of the district in which he is resident the deposit book issued by the bank in respect of that account ;

(*d*) to furnish to the Government Agent of the district in which he is resident such returns and information, relating to the protected person, as the Government Agent may from time to time require him to furnish.

Special provisions as to accounts opened under section 21. [§ 5, 54 of 1943.]

22. Notwithstanding anything in any rule in force under the Post Office Savings Bank Ordinance or in any other law—

(*a*) in the caption or title of the account opened for the benefit of a protected person under section 21, the description " a protected person " shall be added immediately after his name ; and

(*b*) no part of the amounts deposited to the credit of such account shall be, or be permitted by the Postmaster-General to be, withdrawn, until the protected person attains the age of eighteen years.

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Visits, inspections, &c.

23. It shall be lawful for any prescribed officer or for any other person specially or generally authorized in that behalf by the Minister—

(*a*) from time to time to visit and examine any protected person and to make such inquiries as may be necessary relating to the treatment and welfare of the protected person ; and

(*b*) for the purpose of any such visit, examination or inquiry, to enter and inspect at any reasonable time during the day, any premises in which the protected person is for the time being resident or employed.

Law relating to domestic servants not to apply to protected persons.

24. A protected person shall not, while he is in the care, custody or control of the person who is registered as his custodian, be deemed to be employed as a domestic servant for the purposes of any other written law relating to the registration or wages of domestic servants.

Savings for rights of parents.

25. The registration of any person as the custodian of any protected person shall not be deemed in any way to prejudice or affect the right of the natural parents or of the lawful guardian of the protected person to remove the protected person from the care, custody and control of the custodian.

Register of protected persons.

26. The Government Agent of every district shall cause a register to be maintained in the prescribed form containing such particulars as may be prescribed relating to protected persons who are in the care, custody or control of custodians resident in that district.

Offences and penalties.

27. (1) Any person who—

(*a*) acts in contravention of any provision of this Part ;

(*b*) fails or refuses to furnish any return or information when required to do so under this Part ; or in furnishing any such return or information, makes any statement which he knows to be incorrect ;

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[§ 6, 54 of 1943.]

(c) fails or refuses to comply with any of the provisions of paragraphs (a), (b) and (c) of section 21 ; or

(d) resists or obstructs any prescribed officer or other person in the exercise of the powers conferred on such officer or person by section 23,

shall be guilty of an offence, and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.

[§ 6, 54 of 1943.]

(2) Where any person is convicted of the offence of having failed or refused to deposit the appropriate amount to the credit of any account opened by him in accordance with the requirements of paragraph (b) of section 21, the Magistrate may, without prejudice to any punishment which may be imposed for the offence, direct that amount to be recovered from that person in like manner as a fine and when so recovered to be deposited to the credit of that account.

Regulations.

28. (1) The Minister [1] may make regulations for or in respect of any matter stated or required in this Part to be prescribed, or for which regulations are required or authorized to be made under this Part, and generally for the purpose of carrying out or giving effect to the principles and provisions of this Part.

(2) Every regulation shall be published in the Gazette and shall come into operation upon such publication.

(3) Every regulation shall, as soon as may be after the date of the publication thereof in the Gazette, be brought before the Senate and the House of Representatives [1] by a motion that such regulation be approved.

(4) Every regulation which is approved by the Senate and the House of Representatives [1] shall, upon the notification in the Gazette of such approval, be as valid and effectual as though it were herein enacted.

(5) Any regulation which the Senate or the House of Representatives [1] refuses to approve shall be deemed to be rescinded with effect from the date of such

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refusal, but without prejudice to the validity of anything previously done or suffered to be done thereunder. Notification of the date on which any such regulation is deemed to be rescinded shall be published in the Gazette.

(6) The provisions of section 7 of the Interpretation Ordinance shall apply in relation to the power to make regulations under this section in like manner as they apply in the case of the power to make rules or issue orders under any enactment.

Application of Part II.

29. (1) Nothing in this Part shall apply in any case where a child is in, or is taken or received into, the care, custody or control of any person—

(*a*) who is a relative or the lawful guardian of the child ;

(*b*) who adopts or has adopted the child in pursuance of an adoption order made under Part I, or has the care, custody or control of the child by virtue of an *interim* order made under that Part ;

(*c*) in whose care or under whose supervision the child is placed by an order made by a court under the provisions of any other written law ;

(*d*) who is for the time being in charge of any orphanage, hospital, home or other institution maintained by the Government, or of any other institution which is declared by notification in the Gazette under the hand of the Minister to be an approved institution for the purposes of this paragraph ;

(*e*) who is for the time being in charge of any school which is maintained by the Government, or which is in receipt of a grant from State funds, or is declared by notification in the Gazette under the hand of the Minister to be an approved school for the purposes of this paragraph ;

(*f*) who belongs to any such class of persons as may be exempted by regulation from the provisions of this Part.

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(2) In this section, "relative" when used with reference to a legitimate child, means a grandparent, brother, sister, uncle, aunt or child of an uncle or aunt, by consanguinity or affinity ; and when used with reference to an illegitimate child, means any person who would be so related to the child if the child were legitimate.

Interpretation of Part II.

30. In this Part, unless the context otherwise requires—

"appointed date" means the 1st day of February, 1944 ;

"authorized officer" means any Government Agent, Assistant Government Agent, Magistrate or Unofficial Magistrate or any officer of the Department of Health for the time being in charge of a Government hospital, and includes any other officer or person who belongs to any class of persons declared by regulation to be authorized officers for the purposes of section 19 ;

"child" means a person under the age of fourteen years ;

"prescribed" means prescribed by regulation ;

"regulation" means a regulation made by the Minister [1] under this Part.

[Section 10.]

SCHEDULE

No. of Entry.	Date of Entry.	Name of adopted child. (Enter name as stated in adoption order).	Sex of adopted child. (Enter sex as stated in adoption order).	Name and surname, address and occupation of adopter or adopters. (Enter name, address and occupation as stated in adoption order).	Date of birth of child. (Enter date of birth, if any, directed by the adoption order to be entered but otherwise no entry).	Date of adoption order and description of court by which made. (Entry to be made as appearing in the adoption order).	Signature of officer deputed by Registrar-General to attest the entry.

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CHAPTER 62

MUSLIM INTESTATE SUCCESSION

AN ORDINANCE TO DEFINE THE LAW RELATING TO MUSLIM INTESTATE SUCCESSION AND DONATIONS.

Ordinance No. 10 of 1931.

[*17th June, 1931.*]

Short title.

1. This Ordinance may be cited as the Muslim Intestate Succession Ordinance.

TESTATE AND INTESTATE SUCCESSION AND DONATIONS

Declaration of law relating tc intestacy.

2. It is hereby declared that the law applicable to the intestacy of any deceased Muslim who at the time of his death was domiciled in Ceylon or was the owner of any immovable property in Ceylon shall be the Muslim law governing the sect to which such deceased Muslim belonged.

Declaration of law relating to donations.

3. For the purposes of avoiding and removing all doubts it is hereby declared that the law applicable to donations not involving fideicommissa, usufructs and trusts, and made by Muslims domiciled in Ceylon or owning immovable property in Ceylon, shall be the Muslim law governing the sect to which the donor belongs :

Provided that no deed of donation shall be deemed to be irrevocable unless it is so stated in the deed, and the delivery of the deed to the donee shall be accepted as evidence of delivery of possession of the movable or the immovable property donated by the deed.

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Declaration of law relating to donations not covered by section 3.

4. * It is hereby further declared that the principles of law prevailing in the Maritime provinces shall apply to all donations, other than those to which the Muslim law is made applicable by section 3.

* Sections 5 to 24 omitted under section 6 (1) of the Revised Edition of the Legislative Enactments Act.

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CHAPTER 63

THE *TÉSAWALAMAI*

A REGULATION FOR GIVING FULL FORCE TO THE "TESAWALAMAI" OR THE CUSTOMS OF THE MALABAR INHABITANTS OF THE PROVINCE OF JAFFNA, AS COLLECTED BY ORDER OF GOVERNOR SIMONS IN 1706.

Regulation No. 18 of 1806, *Ordinance* No. 5 of 1869.

[*9th December, 1806.*]

1. This Regulation may be cited as the *Tésawalamai* Regulation.

Short title.

2. The *Tésawalamai,* or customs of the Malabar inhabitants of the province of Jaffna, as collected by order of Governor Simons, in 1706, shall be considered to be in full force.*

Tésawalamai as collected by Governor Simons to be in force.

3. All questions between Malabar inhabitants of the said province, or wherein a Malabar inhabitant is defendant, shall be decided according to the said customs.

What questions may be decided according to *Tésawalamai.*

4. All questions that relate to those rights and privileges which subsist in the said province between the higher castes, particularly the Vellales, on the one hand, and the lower castes, particularly the Covias, Nalluas, and Palluas, on the other, shall be decided according to the said customs and the ancient usages of the province.

Questions which relate to the rights and privileges of castes to be decided according to *Tésawalamai.*

* So much of the provisions of the *Tésawalamai* as is inconsistent with the Jaffna Matrimonial Rights and Inheritance Ordinance, is repealed by that Ordinance; and so much of the *Tésawalamai* as is inconsistent with the provisions of the *Thesawalamai* Pre-emption Ordinance is repealed by section 14 thereof.

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(Promulgated by the Dutch Government of Ceylon in the year 1707.)

Description of the Jaffnapatam Ancient Customs and Rules according to which persons of this Province are in the habit of recovering in Civil Matters, such as Inheritances, Adoptions, Gifts, Seizure, Purchase and Sale, Pledging and Redemption of Land and Gardens, &c., drawn up and collected by me, the undersigned, pursuant to the Order of Our honourable Commandeur the Governor of Ceylon, Cornelis Joan Simons, and the Council at Colombo, by Letter dated 14th August, 1706, directed hither, according to the experience which I, in the period of seven and thirty years that I have been passing here, of which said period most has been in this Province, have acquired.

PART I

OF INHERITANCES AND SUCCESSION TO PROPERTY

1. Different kinds of property.
2. Of dowry.
3—6. Of the marriage of daughters and the dowry given with them.
7. Of the marriage of sons and their portions.
8. Of resignation of property.
9. Of succession to property where children and their mother are left.
10. Property how to be divided where the mother marries again.
11. Of succession to property where children and their father are left.
12. Of the division of property where orphan children are left.
13. Division of property where there are half-brothers and sisters.
14. Division of property where there is issue of both marriages.
15. Division of property where two persons, each being the sole child of their respective parents, die without issue.
16. Property how to be divided where it has been improved.
17. How where a Pagan marries a Christian woman.
18. How where two Pagans intermarry.

I WILL commence by stating that a man and woman being married all descending heirs must proceed from them, and from them likewise can be indicated the inheritance in the ascending relation.

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Different Kinds of Property

1. From ancient times all the goods brought together in marriage by such husband and wife have from the beginning been distinguished by the denomination of *modesium,* or hereditary property, when brought by the husband, and when brought by the wife were denominated in the Tamil language *chidenam,* or by us *dowry;* the profits during marriage are denominated *tediatêtam,* or *acquisition.* On the death of the father all the goods brought in marriage by him should be inherited by the son or sons, and when a daughter or daughters married they should each receive dowry, or *chidenam,* from their mother's property, so that invariably the husband's property always remains with the male heirs, and the wife's property with the female heirs, but the acquisition or *tediatêtam* should be divided among the sons and daughters alike ; the sons, however, must always permit that any increase thereto should fall to the daughters' share.

Of Dowry

2. But in process of time, and in consequence of several changes of Government, particularly those in the times of the Portuguese (when the Government was placed by order of the King of Portugal in the hands of Don Philip Mascarenha), several alterations were gradually made in those customs and usages, according to the testimony of the oldest Mutaliyárs, so that, at present, whenever a husband and wife give a daughter or daughters in marriage the dowry is taken indiscriminately, either from the husband's or wife's property, or from the *acquisition,* in such manner as they think proper, that is to say, by parts and pieces, for there is scarcely any person who can say that he possesses the sole property of entire pieces of ground, gardens, companies of slaves, &c., for it will generally be found that he is actual owner of not more than the half or one-sixteenth part or less of the property.

Of the Marriage of Daughters and the Dowry given with them

3. The nearest relations, either on the father's or mother's side from a particular regard to the bride, in order that such bride may make a better marriage,

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often enlarge the dowry by adding some of their own property to it: and such a present should be particularly described in the *doty, marriage act,* or *ola,* which must specify by whom the present or gift is made, and the donor must also sign the act or *ola;* but such a donation or gift is voluntary. When the act of *doty* is executed it is presumed that it is done without fraud, but the donor does not point out therein what his share is of the pieces of ground, gardens, or slaves which he gives by pieces to his daughter or daughters, but says merely " such and such part of such a piece of ground ", so that frequently, the receiver or bridegroom finds himself deceived in his expectations, which always causes differences and disputes, for many often expect to get a sixth part when they do not get more than one-sixteenth. For instance, a husband and wife having five children, namely, two sons and three daughters, and possessing a quarter or fourth part of a ground called *Várakkúli,* of which they give as a dowry to each of their daughters, when they marry, a fourth part of their (the husband's and wife's) share in the said ground, which together is three-fourths, and retain the other one-fourth for themselves as long as they live ; but after their death the two sons come and take each the half, consequently the daughters have no more than one-sixteenth part each of the said ground, and the two sons each but one thirty-second part ; and it is the same with the donations of gardens, slaves, &c., from which often disputes also arise. The daughters must content themselves with the dowry given them by the act or *doty ola,* and are not at liberty to make any further claim on the estate after the death of their parents, unless there be no more children, in which case the daughters succeed to the whole estate. And in case the new-married couple, to whom one or more pieces of the said gardens, slaves, &c., have been given in marriage, do not take possession thereof within ten years, they forfeit their claim thereto: for there has been of old, since the time of the Tamil kings, a proverb, *Ottiyum chitanamum pattiyal,* that is, immediate possession must be taken of dowry and pawns. If this be not done, the lands, gardens, slaves, &c., again become a part of the common estate in the same manner

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as if they had never been given to the young married couple, unless they can produce an act of their parents concerning their delay in taking such possession.

4. If a father or mother gives as a dowry to their daughter or daughters a piece of land or garden which is mortgaged for a certain sum of money, and say in the *doty ola, "a piece of land called Kaluvanpanku, which is mortgaged to Kantar Pútar for sixty fanams; but which the bridegroom and his bride must redeem for that money"*, and if they are unable to do it, and the mortgagee does not wish to retain any longer the mortgage for the money lent by him, the parents themselves are obliged to redeem it; and notwithstanding (although it be fifty years afterwards) the said mortgaged land or garden devolves again to the child to whom it was originally donated by the *doty ola*, provided the money for which it had been mortgaged is paid by such a child.

5. If one or more pieces of land, garden, or slaves, &c., are given as a marriage gift, respecting which at the expiration of some years a lawsuit arises, and the young couple lose the same by the suit, the parents who gave the same (and after their decease the sons) are obliged to make good the loss of the land, garden, or slaves, &c., for a well-drawn up and executed *doty ola* must take effect because it is by this means that most of the girls obtain husbands, as it is not for the girls but for the property that most of the men marry; therefore, the dowry they lose in the manner above stated must be made good to them, either in kind or with the value thereof in money. Should it happen that after the marriage of the daughter or daughters the parents prosper considerably, the daughters are at liberty to induce their parents to increase the *doty*, which the parents have an undoubted right to do.

If all the daughters are married in the manner above stated, and each has received the dowry then given by their parents, and if one or more of them dies without issue, in such case the property indisputably devolves to the other sisters, their daughters, and granddaughters; but if there should be none of them in

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existence, the property in such case falls in succession to the brothers, their sons, and grandsons, if any; if not, the property reverts to the parents, if alive; and if not, the father's *modesium*, or hereditary property, and the half of the *tediatêtam*, or acquired property (after deducting therefrom the half of the debts), devolves first to his brother or brothers, then to their sons and grandsons; and the mother's *chidenam*, or dowry, with the other half of the acquired property, after deducting therefrom also the remaining half of the debts, devolves to her sister or sisters, their daughters, or grand-daughters, *ad infinitum*.

6. Although it has been stated that where a sister dies without issue the dowry obtained by her from her parents devolves to her other sister or sisters, yet it sometimes happens that her mother, having in the meantime become a widow and poor, requests the sister or sisters of the deceased to allow her to take possession of the property of her deceased daughter, and to keep the same as long as she lives, to which they sometimes agree, but are by no means bound to do it; but in order that they may not subject themselves to any loss, they ought to have the property described and registered, otherwise on the mother's death the son or sons will come and take possession of all that she has left.

Of the Marriage of Sons and Their Portions

7. Having pointed out the manner in which the daughters are given in marriage, and what becomes of their property when they die, I will now proceed to state what relates to the sons. So long as the parents live, the sons may not claim anything whatsoever; on the contrary, they are bound to bring into the common estate (and there to let remain) all that they have gained or earned during the whole time of their bachelorship, excepting wrought gold and silver ornaments for their bodies which have been worn by them, and which have either been acquired by themselves or given to them by their parents, and that until the parents die, even if the sons have married and quitted the paternal roof.

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So that when the parents die, the sons then *first* inherit the property left by their parents, which is called *modesium,* or hereditary property ; and if any of the sons die without leaving children or grandchildren, their property devolves in the like manner as is said with respect to the daughters' property, which devolves to the women as long as there are any. The property of the sons, therefore, devolves to the men, and in failure of them to the women ; and although the parents do not leave anything, the sons are nevertheless bound to pay the debts contracted by their parents, and although the sons have not at the time the means of paying such debts they nevertheless remain at all times accountable for the same ; which usage is a hard measure though according to the laws of the country.

Of Resignation of Property

8. Should it happen that age renders the parents incapable of administering their own acquired property, the sons divide the same, in order that they may maintain their parents with it, and it will be often found that sons know how to induce their parents to such a division or resignation of their property, with a promise of supporting them during the rest of their life ; but should the sons not fulfil their promise, the parents are at liberty to resume the property which has been so divided among the sons, which is not done without a great deal of trouble and dispute. And the experience of many years has taught us that such parents (in order to revenge themselves on their sons) endeavour by unfair means to mortgage their property for the benefit of their married daughters or their children ; and for this reason it has been provided by the *Commandeur* that such parents may not dispose of their property either by sale or mortgage without the special consent of the *Commandeur,* which is now become a law.

Of Succession to Property where Children and their Mother are left

9. If the father dies first leaving one or more infant children, the whole of the property remains with the mother, provided she takes the child or children she

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has procreated by the deceased until such child or children (as far as relates to the daughters) marry; when the mother, on giving them in marriage, is obliged to give them a dowry, but the son or sons may not demand anything so long as the mother lives, in like manner as is above stated with respect to parents.

Property how to be divided where the Mother Marries again

10. Should, however, the mother marry again and have children by her second marriage, then she does with the daughters as is above stated with respect to parents. But it is to be understood that if she has daughters by her first husband she is obliged to give them, as well as the daughters by her second husband, their dowries from her own *doty* property; and if the son or sons marry or wish to quit her, she is obliged to give them the hereditary property brought in marriage by their father and the half of the acquired property obtained by the first marriage, after deducting therefrom the dowry which may have been given to the daughters.

If the mother of whom we have just spoken also dies, the sons, both of the first and second marriage, succeed to the remaining property which the mother acquired by marriage; besides which such son or sons are entitled to the half of the gain acquired during the mother's marriage with his or their father, and which remained with the mother when he or she married, and provided that therefrom are also to be paid the debts contracted by her or their father when alive.

But, if any part of that property is diminished or lessened during the second or last marriage, then the second husband, if he still be alive, or if he be dead, his son or sons, are obliged to make good the deficiency, either in kind or in money, in such manner as may be agreed upon.

On the other hand, the son or sons of the second marriage are entitled to the hereditary property brought in marriage by his or their father, and also to the property acquired during marriage, after all the debts contracted by him shall have been paid from the same.

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OF SUCCESSION TO PROPERTY WHERE CHILDREN AND THEIR FATHER ARE LEFT

11. If the mother dies first, leaving a child or children, the father remains in the full possession of the estate so long as he does not marry again, and does with his child or children and with his estate in the like manner as is above stated with respect to the mother.

If a father wishes to marry a second time, the mother-in-law or nearest relation generally takes the child or children (if they be still young) in order to bring them up ; and in such case the father is obliged to give at the same time with his child or children the *whole* of the property brought in marriage by his deceased wife and the half of the property acquired during his first marriage. When those children are grown up and able to marry, that is to say, the daughters (if any there be), the father must go to the grandfather or grandmother with whom the children are, in order to marry them and to give them a dowry both from their deceased mother's marriage portion and from the acquired property, which, as before stated, had been given to the relations with the children, and from his own hereditary property.

This being done, and if anything remains of what had been given to the relations with the children as above stated, and if the son or sons have acquired a competent age to administer what remains, they then take and possess the same without dividing it until they marry, when they divide it equally among themselves, together with the profits acquired thereon ; but if they make a division immediately on taking possession of what remains, so that each possesses his share separately, then they are not obliged to share with each other what each has acquired.

But should there remain nothing of the mother's property and of the half of the acquired property during marriage, the sons, whether young men or married, must do as well as they can until their father dies ; for these sons by the former marriage cannot claim anything from this their father.

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If such a father has by his second wife a child or children, and among them a son or sons (for it is unnecessary to say anything further concerning daughters), and dies, his property which exists is divided into two equal shares, one of which the son or sons by the first wife take and the other the son or sons by the second wife, although there should be but one son of the first and five or six of the second. And what remains of the half of the acquired property during the first marriage must also devolve to the son or sons of that marriage; but if any part thereof has been diminished during the second marriage, then the sons of this marriage are obliged to make good the deficiency to the sons of the first marriage in the manner above stated, and the son or sons of the second marriage divide the property acquired during that marriage, and also the remaining part of that which has not been given as a dowry to the sisters (but not before their mother is dead); in which case the sons are obliged to pay all the debts contracted by the father during his marriage with their mother.

Of the Division of Property where Orphan Children are left

12. If the father and mother die without being married more than once, and their surviving children are infants under age, then the relations of both sides assemble to consult to whose care the children are to be entrusted; and a person being chosen, the children are delivered to him together with the whole of the property left by the parents, which remains with such persons, until they attain a competent age to marry; and when they are grown up it is to be supposed that it will be the turn of the eldest first to marry, when the friends must again assemble to consult what part of his or her parents' property shall be given to him or her as a dowry, with which he or she must be content. In order to understand the following observations better, we will limit the number of brothers and sisters remaining unmarried to *three*—that is to say, two brothers and one sister—which last, on account of some misfortune or other, remains unmarried. If

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the brothers (having attained in the meantime a competent age) marry, and if she desires that the remaining property of her parents shall be divided, the relations and possessors thereof may not refuse it ; but the brothers must in such case allow their sister who remains unmarried to have a larger share. This, however, the brothers often oppose, particularly when there is but little, because when the unmarried sister dies the married one succeeds to all that the unmarried one was possessed of.

But should it happen that both the brothers after they have grown up and are married possess the beforementioned property without having divided it, and that the unmarried sister receives nothing else besides what is necessary to provide herself with subsistence and clothing until her death, in such a case the whole of the property remains with the brothers, and the married sister has no right or claim thereto ; and should it happen that the unmarried sister had allowed herself to be deflowered and thereby had a child, she (in order to bring it up decently) ought to agree with the brothers and sister to divide the estate of their parents, in order to enable her to allot her child a certain portion thereof.

Division of Property where there are Half-Brothers and Sisters

13. With respect to the succession of half-brothers and sisters, if a woman who has been married twice, and by the first husband has had a son and by the second a son and daughter, and these all survive their parents and act with their parents' estate as is above mentioned, and if the son of the second marriage dies without leaving a child or children, and the question is, Who shall inherit the deceased's estate ?—(respecting which the principal Mutaliyárs and inhabitants have not agreed)—many are of opinion that the full sister must be preferred above the half-brother, but this would be quite contrary to the old established laws. Therefore I agree in opinion with the greatest part of the inhabitants who have been consulted on the subject, that the half-brother, from the side he is brother—that is to say, from the mother's side—must

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succeed to the inheritance, and the sister, because there cannot be brothers from the father's side, must succeed to all that is come from the father's side, and the acquired property must be divided half-and-half between the half-brother and full sister, provided that it has been acquired by means of the mutual property.

Division of Property where there is Issue of both Marriages

14. If the husband has been married twice, and has by his first wife had a son and daughter, and only one daughter by his second wife, and if the daughters have been married and received a dowry, and the father dies, it would be supposed, from what has been stated, that the son must succeed to the estate of the deceased ; but in this case it may not take place, for the daughter of the second marriage must inherit equally with her brother, there being no full brother to inherit. If a man has a child or children and his brother and sister die before or after him without children, then this man's son succeeds both to his brother's and sister's property as well as to that of his deceased father.

It is the same with a woman who has a child or children, and whose brother or sister dies afterwards without leaving children, for this woman's daughter or daughters inherit both from the brother and sister of her or their deceased mother ; but if the said brother and sister die first, and if the mother of the before-mentioned daughter is still alive, then the mother inherits from the brother and sister, whereby the daughters remain deprived of that inheritance, for when the mother afterwards dies her son or sons are justly entitled to all that their mother leaves at her death.

Division of Property where two Persons, each being the sole Child of their respective Parents, die without Issue

15. In the case of two married persons, each in particular being the sole child of their respective parents, all that the mutual parents possessed must be brought together ; and if the husband dies without leaving a child or children, then the property which

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proceeded from the father returns to the father's nearest relations, and to his mother's nearest relations all her dowry which he inherited and of the acquired property and debts, each a fourth part. The same usage obtains, as it respects her, for all that she inherited from the father returns to the father's nearest relations, and her mother's dowry to the mother's nearest relations, and of the acquired property and debts to each a fourth part, excepting that the gold and silver made for the husband's use goes reciprocally to his own father and to his mother's relations, and all that was made for the wife's use and worn by her goes to her relations, although there should be on the one side the value only of ten rix-dollars and on the other the value of one hundred rix-dollars.

Having thus stated what is to be done with the property when a husband and wife die, one after the other, without leaving a child or children, it is now necessary that we show, in case one of them dies, what the heirs ought to do to prevent all difficulties and losses. They must cause the survivor to return what was brought in marriage by the deceased, and also the half of the acquired property, they being justly entitled thereto ; but if from motives of affection or otherwise the heirs wish to leave the survivor in the possession of any part of the inheritance, they must do it in writing. If they neglect to do this, they must when the survivor marries again, take back the property left in his or her possession. But if they do not do this also, and if he or she, having children by the second marriage, dies, in such case the heirs who have suffered so many years to elapse without claiming the property as are established by the laws of the country remain deprived thereof. With respect to the crops that have been gathered, when one of them has died, disputes have often risen, one pretending that so much was produced from the hereditary lands, while the other pretends that so much was produced from the dowry lands ; but no attention is paid to such claims, for all kinds of grain collected are considered as acquired property, which they really are, and as such are divided equally.

Should any of the man's hereditary property or woman's dowry be diminished during marriage, when

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one of them dies and the property is divided the same must be made good from the acquired property, if it be sufficient ; if not, he or she who suffers the loss must put up with it patiently.

Property how to be divided where it has been improved

16. Should husband and wife during marriage considerably improve a piece of ground, whether it be husband's hereditary property or wife's dowry—for instance, by building houses, digging wells, and planting all sorts of fruit-bearing trees thereon—the heirs of the wife, should she die first, and should the improved ground be the husband's hereditary property, shall not be at liberty to claim any remuneration for the expenses made. In the like manner also the husband's heirs cannot claim any remuneration should the wife's dowry ground have been improved.

How where a Pagan marries a Christian Woman

17. If a Pagan comes from the Coast or elsewhere and settles himself here, and being afterwards inclined to marry a Christian woman procure himself to be instructed in the Christian doctrine, and being sufficiently instructed is at last baptized and married, and by his industry acquires property by means of what his wife has brought in marriage, his heirs (should he die afterwards without leaving a child or children) shall not be entitled to anything : for, not having brought anything in marriage they consequently shall not carry anything out, and being moreover Pagans. But should the wife die first without leaving any child or children, the husband is lawfully entitled to the half of the acquired property, it having been gained by his industry.

How where two Pagans intermarry

18. If a Pagan comes here as just stated and marries a Pagan woman, and such Pagan dies without leaving a child or children, his relations inherit the half of the property acquired during marriage, because should he

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have left any child or children, and should they or his relations claim the inheritance, they certainly would get it without his having brought anything in marriage, they being Pagans; but having once embraced the Christian religion the Pagan's relations are not entitled to anything. Pagans consider as their lawful wife or wives those around whose neck they have bound the *taly* with the usual Pagan ceremonies; and should they have more women, they consider them as concubines. If the wives, although they should be three or four in number, should all and each of them have a child or children, such children inherit, share and share alike, the father's property; but the child or children by the concubines do not inherit anything.

PART II

OF ADOPTION

1. Ceremonies of adoption.
2. Of the succession to, and division of, property, in the case of adoption, where the parties adopting leave other children.
3. Where the adopted person dies without issue.
4. Where two children, not related, are adopted.
5. Of the division of property among adopted children, to the adoption of whom some of the relatives of the person adopting consent, while others refuse their consent.
6. Where one of three brothers adopts a child.
7. Of the adoption of a person of a higher or lower caste.

Ceremonies of Adoption

1. If a man and woman take another person's child to bring up, and both or one of them being inclined to make such child their heir, they must first ask the consent of their brothers and sisters, if there be any—if not, that of their nearest relations who otherwise would succeed to the inheritance; and if they consent thereto, saffron water must be given to the woman or to the person who wishes to institute such a child their heir, to drink in the presence of the said brothers or sisters or nearest relations, and also in the presence of the witnesses, after the brothers and sisters or nearest

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relations, and also the parents of the child, shall previously have dipped their fingers in the water as a mark of consent. Although there be other witnesses, it is nevertheless the duty of the barbers and washermen to be present on such occasions.

If the brothers and sisters refuse to give their child, such a man and woman may take the child of another person, although a stranger, but they are not at liberty to drink saffron water without the consent of their brothers and sisters or of those who conceive themselves to be heirs ; although this litigious people, from mere motives of hatred, often endeavour to prevent a man and woman who have brought up a child with the same love and tenderness as their own from adopting such child. Nevertheless, according to the testimony of all the Mutaliyárs, such a man and woman may, in spite of the opposition, adopt such a child and bequeath it one-tenth part of the husband's hereditary or wife's dowry property ; out of the acquired property they may bequeath more than one-tenth, provided they have not many debts. But such an adoption may not be made without the consent of the Magistrate, in order to keep them within the bounds of discretion, and also in order to prevent them from adopting children from motives of hatred towards their relations.

Of the Succession to, and Division of, Property in the case of Adoption, where the Parties adopting leave other Children

2. But when the said man and woman have both together drunk saffron water, such or such a child shall inherit all that they leave when they die ; and if, after such adoption, they have a child or children of their own, then such adopted child inherits together with the lawful child or children. And it is to be observed that such an adopted child, being thus brought up and instituted an heir, loses all claim to the inheritance of his own parents, as he is no longer considered to belong to that family, so that he may not inherit from them. If the adopting father alone drinks saffron water then such a child shall succeed to the inheritance of his or her own mother ; and if the adopting mother has alone drunk saffron water without her husband, then such a child inherits also from his or her own father.

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WHERE THE ADOPTED PERSON DIES WITHOUT ISSUE

3. If such an adopted person dies without leaving a child or children, then all that he or she might have inherited returns to the person or persons from whom it came, or to their heirs.

WHERE TWO CHILDREN, NOT RELATED, ARE ADOPTED

4. If a husband and wife adopted two children, a boy and a girl who are not related to one another by blood, so that they can marry together, and if both husband and wife together drink saffron water in manner above stated, and if both the said adopted persons be married together after they arrive to the age of maturity, and at the expiration of time one of them dies without leaving a child or children, then the survivor inherits the whole on account of the adoption which binds them as brothers and sisters, and not in the blood. It goes in the same manner if husband and wife, after having adopted a boy, have a daughter of their own. Such a boy is allowed to marry with the daughter, provided they are not nearer related by blood than brothers' and sisters' children, and they inherit from one another as before mentioned.

DIVISION OF PROPERTY AMONG ADOPTED CHILDREN, TO THE ADOPTION OF WHOM SOME OF THE RELATIONS OF THE PERSON ADOPTING CONSENT, WHILE OTHERS REFUSE THEIR CONSENT

5. If a husband and a wife wish to adopt another person's child to which adoption some of his or her brothers and sisters or nearest relations consent, and others do not consent, in such case the husband and wife are at liberty to adopt such a child, and to make him the heir to so much as the share amounts to of those who have consented to the adoption, and who, as a token thereof, must have dipped their fingers in the saffron water drunk by the husband and wife, leaving the inheritance to which the non-consenting party is entitled at their disposal, until such a time as husband and wife, or one of them dies, when the child and each of them take the shares to which they are

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entitled. But if the said heirs, either through negligence or otherwise, permit or allow the adopted person to remain for several years in the peaceable possession of the property, the heirs by their silence forfeit their claim and title thereto.

Where one of three Brothers adopts a Child

6. If there are three brothers, one of whom has two children and the other two have none, and if one of these wishes, from pure motives of affection, to adopt one of his brother's children, which the other brother who has also no children wishes to approve,* the two brothers may carry their design into execution, leaving to the third brother the action which he pretends to have on the inheritance. On the death of such adopting brother all his property is divided between the adopted child and the non-consenting brother, share and share alike. If the non-consenting brother, who has no children, wishes to give some of his property to the child who has remained with the father unadopted, the question is, whether the adopted child can prevent it? The general opinion now is that on account of the right which he had thereto (as nephew and heir of his uncle) being lost by the adoption, he must allow the giver to do with his property what he pleases as long as he lives.

Of the Adoption of a Person of a Higher or Lower Caste

7. If a man adopts in the manner above stated a youth of a higher or lower caste than his own, such child not only inherits his property, but immediately goes over into his adopted father's caste, whether it be higher or lower than his own. But if a woman adopts a child, such child cannot go over into her caste, but remains in the caste of his own father, and will only inherit the woman's property after death.

If a man adopts a girl of another caste in the manner above stated, *she* (it is true) goes over into the caste

* The Tamil version in Mutukishna's *Thesawalamai* reads "even though the other brother who has also no children does not approve".

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of her adopted father, but not her children or descendants: for if she marries, and has a child or children, they follow their father, except among slaves, in which case it has another tendency, for there the fruit follows the womb.

PART III

OF THE POSSESSION OF GROUNDS AND GARDENS, &c.

1. Of joint possession or tenancy in common.
2. Of the renting of ground.
3. Division of produce where fruit trees overhang the ground of another.
4. To whom the possession of palmyra trees belongs.

Of Joint Possession or Tenancy in Common

1. If two or more persons possess together a piece of ground without having divided it, and one of them incloses with a fence as much as he thinks he would be entitled to on a division, and plants thereon coconut and other fruit-bearing trees, and the other shareholders do not expend or do anything to their share of the ground until the industrious one begins to reap the fruits of his labour, when the others, either from covetousness or to plague and disturb, come (which is frequently the case among the Tamils) and want to have a share in the profits without ever considering that their laws and customs clearly adjudge such fruits to the person who has acquired them by his labour and industry—when in such a case (not being able to obtain the fruits) they generally request to divide the ground to know what belongs to each person, such division may not be refused. But care must be taken in making it that the part which has been so planted falls to the share of the brother who planted the same, and that the unplanted part falls to the share of the other joint proprietors; unless they wish to put off the repartition of the ground and give one another time to plant an equal number of trees, and by proper

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attention to get them to bear fruit, in which case the repartition must be general without considering who has planted the ground.

Of the Renting of Ground

2. If a person has not a proper piece of ground of his own on which to plant coconut trees, and is allowed to do it on another man's ground, he gets two-thirds of the fruits which the trees planted by him produce, provided that he himself furnished the plants, and the owner of the ground receives the other third ; but if the owner of the ground supplies the plants, the planter gets but one-third and the owner of the ground the other two-thirds ; if, however, they have *both* been at an equal expense for the plants, then they are each entitled to an equal share of the fruits and trees. This division mostly takes place in the province of Tenmarádchi, for in the other provinces they know better how to employ their grounds than to let strangers plant coconut trees thereon. If a labourer squeezes out his *panankáys* and sows the kernels in order to obtain plants, and on digging them out forgets some of them, which afterwards become full-grown trees bearing fruit, the fruit which they produce remains the property of the owner of the ground, the trees having grown of themselves without any trouble (such as watering them) having been taken.

Division of Produce where Fruit Trees overhang the Ground of Another

3. If anyone plants on his ground near the boundaries thereof any fruit-bearing trees which must be cultivated with a great deal of trouble, and if by a crooked growth the tree or any of the branches grow on or over the neighbour's grounds, the fruits of such tree nevertheless remain the entire property of the planter, without his neighbour having any right to claim the fruit of the branches which hang over his ground ; but if any trees, such as tamarinds, illupai, and margosa, grow of themselves without having been planted or any trouble having been taken, in such case the fruit belongs to the person whose ground they overshadow.

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It seems that many customs have been invented here for the sole purpose of plaguing one another : for it is sufficient to say that the trees which stand on a person's own ground have grown up of themselves without trouble or labour, and that he is not to be the owner of the branches and fruit which grow over his neighbour's ground, the fruit of such branches being indisputably his ; and he is even at liberty to cut the branches, if they hinder him, and sell the same for his own profit without the consent of the owner of the ground on which the trees stand. And the owner of the branches cannot also prevent the owner of the tree from cutting it down, but in such a case he must give the branches to the person over whose ground they hang. But, on account of the margosa oil, it has been ordered, since the Company has had possession of the country, that the trees are not to be cut down without the special consent of the persons in power ; and it is the same with all other fruit-bearing trees.

To whom the Possession of Palmyra Trees belongs

4. Although a piece of ground belongs to one person and the old palmyra trees standing thereon belong to another person, the owner of such trees cannot claim the young trees, as they must remain to the possessor of the ground, excepting in the village of Aráli, where it is an ancient custom that the owner of the old trees takes possession of the young trees, which is the reason why only a few young trees are found in that village. For although a few ripe *panankays* fall occasionally from the trees upon the grounds from which young plants proceed, the owner of the ground, when he wants to cultivate it, has a right to extirpate such plants in order to get rid of other persons' trees on his ground.

In the province of Tenmarádchi and Pachchilaippalli, in so far as the trees and not the grounds stand mentioned in the Company's *Tompu,* the owners of the old trees take the young ones ; but where the grounds are mentioned and also the young trees, and for which rent is paid, then the young palmyra trees belong to the owners of the grounds.

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PART IV

OF A GIFT OR DONATION

1. In what cases a gift may or may not be made where husband and wife live separately.
2. How far they may make donations to their nephews and nieces.
3. When they receive a gift of land from another person.
4. How far gifts to one of two sons are good.
5. Presents to sons, being bachelors, by relations, remain to them on their marriage, but no other presents.

In what Cases a Gift may or may not be made where Husband and Wife live separately

1. When husband and wife live separately on account of some difference, it is generally seen that the children take the part of the mother and remain with her. In such a case the husband is not at liberty to give any part whatsoever of the wife's dowry away ; but if they live peaceably he may give some part of the wife's dowry away. And if the husband on his side wishes to give away any part of his hereditary property which he has brought in marriage, he may then give away one-tenth of it without the consent of the wife and children, and no more ; but the wife, being subject to the will of her husband, may not give anything away without the consent of her husband.

How far They may make Donations to their Nephews and Nieces

2. If a husband and wife have no children, and are therefore desirous to give away some of their goods to their nephews and nieces or others, it cannot be done without the consent of the mutual relations, and if they will not consent to it they may not give away any more of their hereditary property and dowry ; and if their debts be not many, they may also give something from the property acquired during their marriage. If those nephews and nieces who have received such donations die without issue, then the brothers inherit from brothers and sisters from sisters, and the children

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and grandchildren succeed also if there be any ; if not, it devolves to the parents of those who obtained the donation, that is to say, to their father's side and to his brother and his children, and in like manner on their mother's side to her sister and her daughters, and on failure of them to the brothers and their children ; and in default of heirs on his or her side the gift returns to the donor and his nearest heirs.

When They receive a Gift of Land from another Person

3. If a husband or his wife receives a present or gift of a garden from another person, so much of such gift or present as is in existence on the death of one of them, when the property is divided, remains to the side of the husband or wife to whom the present was made, without any compensation being claimable for any part of the gift that may have been alienated ; but the proceeds thereof acquired during marriage must be added to the acquired property. But if anyone has a present of a slave, cow, sheep, or anything else that may be increased by procreation, such present, together with what has been procreated, remains to the side where it was given, without any compensation being claimable for what might have been sold or alienated thereof.

How far Gifts to one of two Sons are good

4. If a husband and wife have two sons and no daughters, and the husband, from a greater affection which he bears the eldest son more than the youngest, wishes to give him a part of his hereditary property, he may do it by executing a regular deed ; and if, after the expiration of some time, the youngest son dies without issue, and afterwards the parents die one after the other, then it will be as if the gift never had been made, for everything devolves to him who received the gift ; and if he dies also without issue his property is inherited in the manner above stated. The father's hereditary property and the half of the acquired

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property, after deducting therefrom the debts, go to his brother or brothers, and the mother's dowry property and the other half of the acquired property (after deducting also therefrom the half of the debts) go to his sister or sisters, without the latter being at liberty to claim anything on account of what the father gave to his son as above stated. The same also obtains if the grant or gift had been made on the mother's side ; but if the gift has been obtained from any other person besides the father and mother, then it is divided both on the father's and on the mother's side.

If husband and wife have two, three, or more sons, and have given and delivered to them a piece of ground or garden, and if, after having possessed it for several years, the father and mother die, which causes a division of the estate, and if the above-mentioned son who has obtained the grant or gift demands that it shall be first delivered him from the estate, it may not be refused to him if he can prove it by a written document ; if not, the gift is considered of no value, and is equally divided.

Presents to Sons, being Bachelors, by Relations, remain to them on their Marriage, but no other Presents

5. We have stated above that all the property acquired by the son or sons while they are bachelors must be left by them to the common estate when they marry ; but this is by no means understood to include the presents that have been made them by relations or others, which must remain to the persons to whom they have been given.

Should a husband and wife who have no children have acquired during their marriage any property, and should the husband, without the knowledge of his wife, give a part thereof to his heirs, and both afterwards die, in such case on the division of the estate the relations of the wife must receive beforehand a part equal to that which was given away by the husband to his relations when he was alive.

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PART V

OF MORTGAGES AND PAWNS

1. Of mortgages of lands, on condition that the mortgagee should possess the same, and take the profits thereof in lieu of money.
2. Mortgagee so in possession to be liable to all land taxes or duties.
3. Of redemption of a mortgage where due notice has not been given by the mortgagor.
4. Of mortgages for certain terms of years.
5. Of mortgages of fruit trees.
6. Of mortgages of slaves.
7. Of loans of money for the use of beasts.
8. Of pawns of jewels, &c.

Of Mortgage of Lands, on condition that the Mortgagee should possess the same and take the Profits thereof in lieu of Money

1. When any person has mortgaged his lands or gardens to another for a certain sum of money, upon condition that such lands or gardens be possessed by the mortgagee, and that the profits thereof should be enjoyed by him instead of the interest of his money, then the mortgagor of such lands or gardens cannot redeem the same whenever he pleases, but after the crop has been reaped he must give information of his intention to the mortgagee so as to prevent any further trouble, labour, and expense to the latter. In such case the mortgagor must, without failure, pay to the mortgagee the sum of money for which the said property has been mortgaged, namely, for the *varaku* lands in the months of July and August, and for the *paddy* lands in the months of August and September; but should the mortgagee have left the ground for the space of one year without sowing, for the purpose of having a better crop, in that case the mortgagor will be obliged to pay the money for which the grounds have been mortgaged in the month of November in the same year, and in the month of November also must be redeemed the *palmyra, betel, and tobacco gardens.* Yet should the mortgagee conceive a dislike to the land or garden mortgaged to him on account of the same not yielding so much profit as the interest of the money for which the lands have been mortgaged, and should therefore wish to get rid of the

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same and to recover his money, he shall be obliged in that case to wait for his money one year after the lands or gardens have been delivered to the proprietor or the mortgagor ; and if the mortgagor is and remains unable to redeem such land or garden, in that case the same must be offered for sale to his heirs, who then may purchase such lands or gardens in case the same are worth more than the amount for which they were mortgaged, but should they *not* be worth so much the mortgagee must then accept and keep the same for the sum advanced by him, provided he is confirmed in the full possession thereof by a title deed drawn up in proper form.

Mortgagee so in Possession to be liable to all Land Taxes or Duties

2. The mortgagee is to pay all such taxes and land duties to which the mortgaged land is subject, so long as he remains in the possession of the same, even for that year in which the mortgaged land is redeemed ; for the payment of which taxes and duties the mortgagee must take a receipt from some person belonging to the Kachcheri, except in the province of Vadamarádchi, where the custom differs, because there the proprietor receives a tenth part of the fruits produced by the ground mortgaged by him, and he therefore pays the land duties and takes a receipt for the same in his own name ; and for the palmyra trees he receives the duties upon the trees from the mortgagee or possessor, which duties he, as mortgagor, then pays to the Majorals and takes a receipt for the payment thereof in his own name.

Of Redemption of a Mortgage where due Notice has not been given by the Mortgagor

3. In case the mortgagor wishes to redeem his mortgaged ground, but out of ignorance informs the mortgagee too late of his intention, namely, after the ground has been dug or other labour has been bestowed on it, in that case the redeemer must give to the mortgagee his proper share from the fruits which the land has produced in that year for the labour and

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expenses which he has bestowed upon such lands; in such case the redeemer must observe the customs prevailing in the province and village.

Yet when the mortgagee receives the money advanced by him, but cannot agree with the proprietor with respect to the profits expected by him according to the custom of the country, the proprietor in that case must permit the mortgagee himself to sow that piece of land, provided that he gives to the proprietor of the land, according to the custom of the country the *taraiváram*, that is, the ground duty.

Of Mortgages for certain Terms of Years

4. At present it is the prevailing custom here that many persons mortgage their lands for a fixed term of three, five, eight, or ten years; yet, in case the mortgagor before the expiration of the stipulated time shall be compelled to sell a piece of mortgaged land either for the purpose of discharging his debts or for some other reasons, the mortgagee cannot prohibit such a sale, but must consent to it and receive or accept the sum of money advanced by him according to the custom of the country.

Of Mortgages of Fruit Trees

5. If any person has mortgaged to another, in the manner above mentioned, any fruit-bearing trees, namely, coconut, mango, jak, or areca trees, and is able to redeem the same, he must do so in the months of December or January; and the mortgagee may pluck such ripe fruits as are eatable from the said trees before he delivers over the same to the proprietor.

Of Loans of Money for the use of Beasts

7.* Should any person lend a sum of money to another upon condition that the debtor, instead of paying the interest, should furnish the lender with one or more beasts for the purpose of having his land ploughed, without mentioning, however, what buffaloes or bullocks are to be delivered by him during the period

* Section 6—"Of mortgages of slaves", omitted.

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that he keeps the borrowed money under him, and should a beast or beasts so delivered to be used in ploughing the land happen to die during the said period, the debtor or the proprietor of such beast or beasts is obliged to furnish the lender of the money with one or more beasts instead of those which are dead, in order to be kept by the lender of such sums of money until his land has been ploughed, after which the borrower of the money may acquit himself from the said obligation by returning such sums of money as were borrowed by him.

Of Pawns and Jewels, &c.

8. Should any person take in pawn any jewels or wrought gold or silver for a certain sum of money in order to receive a monthly interest upon the same, and should the proprietor of the pawned goods be able to prove that the pawnee has either worn them himself or has lent out the same to be worn by others, the pawnee in such case will forfeit the interest of the sum of money lent by him, and such pawnee will be obliged in such case to return the pawn for such an amount as was lent by him to the pawner.

PART VI

OF HIRE

Of the Hire of Beasts

When any person has hired one or more beasts in order to plough his land, the proprietor of such beasts is not obliged to furnish the person who has hired the same with fresh beasts in case such as were hired become sick or happen to die during the time that they were used to plough the land. In case any person borrows from another any beasts for his use with the free consent of the proprietor, such proprietor, according to the custom of the country, may not demand from the borrower any indemnification for such of the beasts as are hurt or have broken their legs, but must consider the loss as accidental and consequently bear the same.

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PART VII

OF PURCHASE AND SALES

1. Of sales of land.
2. Of sales of cattle.
3. Of the sale of children.

Of Sales of Land *

1. Formerly, when any person had sold a piece of land, garden, or slave, &c., to a stranger without having given previous notice thereof to his heirs or partners, and to such of his neighbours whose grounds are adjacent to his land, and who might have the same in mortgage, should they have been mortgaged, such heirs, partners, and neighbours were at liberty to claim or demand the preference of becoming the proprietors of such lands. The previous notice which was to be given to persons of the above description was to be observed in the following manner, namely, to such as resided at the village, one month ; to persons residing in the same province but out of the village, three months ; to those residing in another province, six months ; and to those who reside abroad, one year.

The above periods having expired without such persons having taken any steps upon the information given to them, the sale was considered valid ; yet this mode of selling lands underwent an alteration afterwards in consequence of the good orders given on that subject during the time of the old Commandeur Bloom (of blessed memory), as since those orders no sale of lands whatever has taken place until the intentions of such as wish to sell the same have been published on three successive Sundays at the church to which they belong, during which period such persons as mean to have the preference to the lands for sale according to the ancient customs of the country are to come forward and to state the nature of their preference in consequence whereof they then became the purchasers of the same.

* So much of the *Tésawalamai* as requires publication and schedule of intended sales or other alienations of immovable property is repealed by Ordinance No. 4 of 1895.

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It is customary under this nation that a piece of land which has been mortgaged to one person is sold to another, for which sale, according to the above-cited order proper title deeds are granted, although the new purchaser is unable to discharge the amount of the purchase-money, and in consequence thereof pays immediately to the seller only that part of the purchase-money which exceeds the sum for which the land has been mortgaged and afterwards leaves the same in possession of the former mortgagee for the amount for which it was mortgaged by the former proprietor, until the new purchaser has the means to pay the amount for which the said land has been mortgaged. This manner of dealing creates many disputes, as it occurs very often that such sums of money are not discharged before the expiration of eight, nine, or ten and more years, on which account I am of opinion (yet submitting mine to wiser judgment) that the passing of title deeds without the purchase amount being fully discharged should be prohibited or at least that orders should be given that in cases of the above-described nature the mortgage deed made previously in the name of the seller should be repealed, and that a new one should be passed in the name of the purchaser instead of that which has been repealed.

Of Sales of Cattle

2. If any person wishes to sell cattle, namely, bullocks, cows, buffaloes, sheep, &c., the sales thereof are to take place without any application or acts in writing, which sales are considered valid when the dry dung or excrement of such animals as were sold has been delivered by the seller to the purchaser ; and in case the animals so sold happen to die or to get young ones before they are delivered up, the purchaser being able to prove by witnesses that the seller has sold them to him for a sum of money, and that the dry dung or excrement of those animals has been received in token of their having been sold, obtains the right of a proprietor of such animals as were purchased by him as well as of their young ones, without any claim whatever being made to them by any other person whomsoever, or any compensation for loss in case of death.

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Should any person sell any of his bullocks or buffaloes, &c., upon a statement that they are fit to be employed in ploughing lands, and should the contrary appear to be the case after the price has been agreed upon and paid for them, the purchaser may in such case, within the period of fifteen days, deliver back to the seller such of the above-described animals, and may demand from him the price paid for the same, who in that case is also obliged to restore it to the purchaser.

Should any person sell a cow or a she-buffaloe to another stating that the animal sold has once or several times had young ones, and should it appear afterwards that the animal sold upon the above statement, instead of having had young ones once or several times, is a cow which never bears a calf, and consequently unfit for generation, the purchaser may in that case deliver back to the seller the cow or such other animals as were purchased by him, and he may demand from the seller the restoration of the purchase-money. But should any person, on the contrary, purchase a calf a year and a half or two years old, and should it appear afterwards that the calf so purchased grows up a cow which never bears a calf, or is unfit for generation, the purchaser is then obliged to keep the same, as no fraud whatever could have taken place in the sale thereof.

PART IX*

OF LOANS OF MONEY UPON INTEREST

1. Of loans for fixed terms.
2. Securities how far liable for debt.
3. Wife or children how far liable for husband's debts.
4. Interest not to exceed the principal.
5. Of loans of paddy.
6. Of exchanges of paddy, &c.
7. What proportion of profits is to be paid where any person sows the grounds of another without stipulating any fixed portion of the produce.

Of Loans for fixed Terms

1. When any person lends a sum of money upon interest to another upon condition that the borrowed sum should be restored within the time fixed by the lender, with such interest as was usually paid to others

* Section 3 of Part VII, and Part VIII omitted.

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at the time that the money was lent by him, should such conditions not be fulfilled by the debtor, the creditor in that case must cause the pawn to be sold, if he has had the prudence to take any lands or any other goods whatever in pawn ; and in case the debtor does not consent to the said pawns being sold, the lender of such sums of money must prefer his complaint to Government and request from the same that such mortgaged goods be sold for his benefit.

Securities how far liable for Debt

2. Should there be securities and should the debtor or borrower abscond or be in reduced circumstances and unable to discharge the debt contracted by him, the creditor may then demand the payment of such debt from the securities, who in such case are obliged to discharge the debts for which they became securities, and such securities reserve the right of instituting an action against the debtor should the latter be improved in circumstances. If two persons jointly borrow a sum of money from another and bind themselves generally for the amount borrowed, the lender in that case may demand the payment of the amount so lent from such a debtor as he may happen to see first, provided that the following expressions are inserted in the *álai,* or bond, namely, *Munninran munirukka,* which signifies, "He who is present or before me must pay the debt" ; the consequence whereof then is that the debtor who comes first before the creditor, when he intends to demand the money, must pay the whole debt ; but such a debtor who pays the whole debt has a right to demand the payment of half the amount paid by him from his fellow-debtor wherever he may find him.

Wife or Children how far liable for Husband's Debts

3. When a man has contracted debts in his lifetime without the knowledge either of his wife, child, or children, and happens to depart this life before he has discharged the same, his wife, child, or children, are obliged to pay such debts, provided the same be duly proved.

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When husband and wife jointly cause a piece of land or a garden to be registered as a pawn for a sum of money borrowed by them, and do not deliver over such land or garden to the creditor, but keep the same in their own possession, and in consequence thereof give them afterwards to any of their daughters as a dowry without specifying in the deed of gift that such a piece of land or garden has been mortgaged to another—if the debtors in the supposed case happen to depart this life without discharging a debt of the above nature, yet leaving behind some other goods—their creditors of the above description, who have neglected to prevent such mortgaged lands or garden from being given as a dowry, have a right to seize such other goods as might have been left behind by the debtors ; and the son or sons of such debtors are responsible for such debts, provided that the creditors (if such son or sons are unable to discharge the debt) do wait until they are in better circumstances.

Interest not to exceed the Principal

4. When a person lends money upon interest and suffers the interest to exceed the principal, the debtor is not obliged to pay the interest exceeding such principal.

Of Loans of Paddy

5. When a person lends money on condition to receive paddy on account of interest, he loses the interest when the harvest fails ; and in the event of a bad harvest the interest is to be calculated and paid according to the profits of that harvest.

When any person is in want of paddy either as seed corn or for any other purpose, and borrows paddy to pay interest in kind, the borrower must stipulate the quantity which he agrees to pay, because it is not known what quantity is customary to be paid on such occasions, on which account the creditors take from two to five *parais* upon a quantity of ten *parais* of paddy ; and the mode to be observed in paying paddy on account of interest is that just stated in the event of a bad harvest or of no harvest having taken place. In case the debtor has had a good harvest every year during

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the time that he keeps the borrowed money, and the creditor has neglected to come and demand his interest upon the harvest, the debtor is not obliged in that case to pay anything on account of interest exceeding the principal, but it is sufficient if he pays double the principal sum borrowed by him.

Of Exchanges of Paddy, &c.

6. In case any person wishes to exchange grain, paddy, *chámi, kurakkan, kollu,* rice,* and *cadjan* must be exchanged for an equal quantity, because they bear the same price ; but any person wishing to exchange paddy for *varaku* must give one and a half *parai* of *varaku* for one *parai* of paddy.

What Proportion of Profits is to be paid where any Person sows the Grounds of another without stipulating any fixed Portion of the Produce

7. When any person sows the fields of another without a previous agreement what quantity the sower shall give from the harvest to the proprietor of the fields it is deemed sufficient if the sower pays to the proprietor the *taraiváram,* which signifies the ground duty, and is calculated to be one-third part of the profits, except the tenth part, which is to be given to the proprietor previously. And when the sower has agreed to give a fixed quantity to the proprietor, and the crop happens to fail in the year for which the contract has been made, the sower need not pay to the proprietor the quantity agreed upon ; but in case the other inhabitants of the village (in which such a sower resides) have all had a good harvest, then the sower of the above description is obliged to pay such a quantity to the proprietor as was agreed upon by him, because in such an event the failure of the crop of the field sown by him is attributed to his laziness and negligence ; yet should it happen that he has had a tolerably good harvest and the other inhabitants of his village a bad one, then the proprietor

* An old Tamil version has, "Peas and rice are exchanged for an equal quantity".

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of the ground must be satisfied with the quantity produced by the field, and may not claim *anything* more from the sower.

The above laws and customs of Jaffnapatam were composed by me in consequence of my experience obtained by my long residence and intercourse at that place. I have written the above laws and customs after a strict inquiry into the same by order of His Excellency the Governor and Doctor of Laws, CORNELIS JOAN SIMONS, and I hope my endeavours will satisfy His Excellency the Governor's intention ; in the expectation whereof I have the honour to be,

Honourable Sir,

Your Excellency's most obedient, humble Servant,

(Signed) CLAAS ISAAKSZ.

Jaffnapatam, 30th January, 1707.

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CHAPTER 64

THESAWALAMAI PRE-EMPTION

Ordinance No. 59 of 1947.

AN ORDINANCE TO AMEND AND CONSOLIDATE THE LAW OF PRE-EMPTION RELATING TO LANDS AFFECTED BY THE "THESAWALAMAI".

[*1st July, 1948.*]

Short title.

1. This Ordinance may be cited as the *Thesawalamai* Pre-emption Ordinance.

Restrictions on the right of pre-emption.

2. (1) When any immovable property subject to the *Thesawalamai* is to be sold, the right of pre-emption over such property, that is to say, the right in preference to all other persons whomsoever to buy the property for the price proposed or at the market value, shall be restricted to the following persons or classes of persons :—

(*a*) the persons who are co-owners with the intending vendor of the property which is to be sold, and

(*b*) the persons who in the event of the intestacy of the intending vendor will be his heirs.

(2) For the purposes of this Ordinance, the term "heirs" means all descendants, ascendants and collaterals up to the third degree of succession, and includes—

(*a*) children, grandchildren and great-grandchildren ;

(*b*) parents, grandparents on both the paternal and the maternal sides and great-grandparents on all sides ;

(*c*) brothers and sisters whether of the full or of the half-blood ;

(*d*) uncles and aunts, and nephews and nieces, both on the paternal and the maternal sides, and whether of the full or of the half-blood.

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Mode of exercising right of pre-emption.

3. The right of pre-emption shall not be exercised save in accordance with the provisions of this Ordinance.

Cases in which the right is permitted.

4. The right of pre-emption shall not be exercised except in a case where the property which is to be sold consists of an undivided share or interest in immovable property, and shall in no case be permitted where such property is held in sole ownership by the intending vendor.

Mode of publication of notice.

5. (1) Notice of an intention or proposal to sell to any person not entitled to the right of pre-emption under this Ordinance any property to which section 4 applies shall be signed by the intending vendor before a notary public. The notice shall be attested in triplicate, but the registration of it shall not be obligatory.

(2) The notice shall set out the actual price offered by the prospective purchaser, but it shall not be necessary to disclose in addition the name of the prospective purchaser.

(3) A certified copy of the notice shall be forwarded forthwith by the intending vendor to the Mayor or Chairman, as the case may be, of the local authority within whose administrative limits the land is situated.

(4) The Mayor or Chairman to whom the certified copy is forwarded shall record the particulars set out therein in a register to be kept by him for that purpose, and shall cause such certified copy to be posted immediately on the notice-board of his office.

(5) A certificate under the hand of the officer that the notice has been duly posted on his notice-board shall be conclusive evidence of the publication of the notice for the purposes of this Ordinance.

Time-limit for exercising the right by private treaty.

6. (1) Within three weeks of the date of publication of a notice under section 5, any person to whom the right of pre-emption is reserved by this Ordinance, may either tender the amount stated in such notice and buy the property from the intending vendor, or enter into an agreement to buy it.

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(2) Any conveyance of the property executed by the intending vendor within the period of three weeks specified in subsection (1), in completion of a sale of which he has given notice under section 5 or of a sale to any person other than one to whom the right of pre-emption is reserved by this Ordinance, shall be null and void and of no effect whatsoever in law.

Proceedings for enforcing the right within the time-limit.

7. (1) If a tender made under section 6 is not accepted by the intending vendor, and if the land remains unsold, the person making the tender may, on condition that he has first deposited in court the amount stated in the notice and tendered by him to the intending vendor, apply to court within the period specified in section 6, by way of petition duly stamped and verified by affidavit, for an order directing the intending vendor to sell the land to the applicant.

(2) Where the applicant alleges in his petition and proves by his affidavit, that the amount stated in the notice by the intending vendor is fictitious, the deposit of such smaller sum as may be alleged in the petition to be the reasonable price or the market value of the land, shall be deemed to be sufficient compliance with the condition in subsection (1) as to the deposit of money in court.

(3) In the event of any smaller sum being deposited under subsection (2), the court shall, without prejudice to such issues relating to the value of the land as may have to be dealt with at the inquiry into the petition, hold a preliminary inquiry as to the sufficiency of the sum deposited by the applicant, hearing such evidence as it may deem necessary for this purpose.

(4) Any order made by the court after an inquiry under subsection (3) shall be final and conclusive; and where such order directs any further sum to be deposited, compliance with the order shall be a condition precedent to the issue of any order *nisi*, interlocutory order, notice, or process, in the matter of the petition.

(5) Every petition under this section shall be disposed of according to the rules of summary procedure

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laid down in Chapter XXIV of the Civil Procedure Code ; and in the event of the non-appearance or other default of the intending vendor, the court may, if after due inquiry it is satisfied that the application should be allowed, execute a conveyance of the property to the applicant, and the provisions of section 333 of that Code shall *mutatis mutandis* apply to any conveyance so executed.

(6) Any conveyance of the property, in completion of the proposed sale, executed by the intending vendor after the service on him of an order *nisi* or interlocutory order and before the final order is made in any proceedings taken under this section, shall be null and void and of no effect whatsoever in law.

Remedy after the completion of the proposed sale.

8. (1) After the completion of a sale of which notice has been given under section 5 or of any sale of which notice has not been given under that section, the right of pre-emption shall not be enforced except by way of regular action, to which the purchaser shall also be made a party.

(2) An action to enforce the right of pre-emption under subsection (1) may be instituted on any of the following grounds :—

(i) that the notice required by section 5 was not given or that the notice given was irregular or defective ;

(ii) that the price set out in the notice was fictitious or not fixed in good faith ;

(iii) that at the time of, and for three weeks after, the publication of the notice, the person seeking to enforce the right was absent from the district and that within a reasonable time after the lapse of the said period of three weeks and before the completion of the proposed sale, he tendered to the intending vendor the purchase amount stated in the notice, and that such tender was not accepted.

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Time-limit to action for enforcing right.

9. No action to enforce a right of pre-emption on the ground that the notice required by section 5 was not given or that the notice given was irregular or defective shall be instituted or maintained—

(1) if the actual purchaser of the land is also a person who at the time of the purchase had the right of pre-emption over the property purchased by him ; or

(2) if more than one year has elapsed from the date of the registration of the purchaser's deed of transfer.

Registration of *lis pendens* to be compulsory.

10. No precept or order for the service of notice or summons shall be issued in any proceedings or action for enforcing a right of pre-emption, until proof is furnished to the court of the registration of the proceedings or action as a *lis pendens* in accordance with the provisions of the Registration of Documents Ordinance.

Deposit of purchase money as proof of plaintiff's bona fides.

11. At any time after the institution of an action to enforce a right of pre-emption, the court may in its discretion order the plaintiff to deposit the purchase amount set out in the notice given under section 5 ; and if the plaintiff makes default in depositing the amount within such period, or further periods not exceeding three months in the aggregate, as the court may allow, his action shall be struck off the roll of pending cases.

The minimum price payable by the plaintiff.

12. No person seeking to enforce a right of pre-emption by way of petition or by regular action, shall be permitted to take over the property for a less amount than that stated in the notice given under section 5 or recited as the consideration in the deed of transfer executed by the vendor :

Provided, however, that if the amount so stated or recited is proved to the satisfaction of the court to be fictitious, the court may ascertain the actual price paid and the market value, and allow the property to be pre-empted by the plaintiff for the price actually paid or at the market value, whichever of these is the larger.

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Equality of rights of all persons entitled to pre-empt;

13. All co-owners and heirs within the meaning of section 3 shall be deemed to have an equal right to pre-empt any share or interest in property sold without due publication of the notice required by section 5, and there shall be no preference or precedence among them:

and auction in case of competition among them.

Provided, however, that in the event of any competition among such co-owners and heirs, the court may accept the highest offer made by any of them, if such offer is also larger than the actual price paid or the market value, whichever of these is the larger.

Repeal.

14. So much of the *Thesawalamai* and of the Ordinance No. 4 of 1895, entitled "An Ordinance relating to the publication of intended sales or other alienations of Immovable Property affected by the *Thesawalamai* of the Northern Province of Ceylon" as is inconsistent with the provisions of this Ordinance, is hereby repealed.

C 11——J. N. R 7589 (4/60)

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CHAPTER 65

SEX DISQUALIFICATION REMOVAL

Ordinance No. 25 of 1933.

AN ORDINANCE TO ENABLE WOMEN TO BE ADMITTED TO THE LEGAL PROFESSION AND TO BE APPOINTED AS COMMISSIONERS FOR OATHS.

[*14th November, 1933.*]

Short title.

1. This Ordinance may be cited as the Sex Disqualification Removal (Legal Profession) Ordinance.

Women entitled to become advocates, proctors, &c.

2. A woman shall not be disqualified by reason only of her sex—

(*a*) from being admitted and enrolled, or from practising, as an advocate or as a proctor ; or,

(*b*) from being authorized to practise as a notary by a warrant issued under the provisions of the Notaries Ordinance, or from practising or functioning as a notary under the provisions of that Ordinance or of any other written law ; or,

(*c*) from being appointed, or from functioning, as a Commissioner for Oaths under the provisions of the Oaths Ordinance.

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CHAPTER 66

AGE OF MAJORITY

AN ORDINANCE TO MAKE THE AGE OF TWENTY-ONE YEARS THE LEGAL AGE OF MAJORITY IN CEYLON.

Ordinance No. 7 of 1865.

[*20th October, 1865.*]

1. This Ordinance may be cited as the Age of Majority Ordinance. Short title.

2. From and after the passing of this Ordinance all persons when they shall attain or who have already attained the full age of twenty-one years shall be deemed to have attained the legal age of majority, and, except as is hereinafter excepted, no person shall be deemed to have attained his majority at an earlier period, any law or custom to the contrary notwithstanding. Twenty-one years made the legal age of majority.

3. Nothing herein contained shall extend or be construed to prevent any person under the age of twenty-one years from attaining his majority at an earlier period by operation of law. Attainment of majority by operation of law not affected.

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CHAPTER 67

ENTAIL AND SETTLEMENT

Ordinance No. 11 of 1876.

AN ORDINANCE TO AMEND THE LAW REGULATING THE ENTAIL AND SETTLEMENT OF IMMOVABLE PROPERTY.

[*16th June, 1877.*]

Short title.

1. This Ordinance may be cited as the Entail and Settlement Ordinance.

Prohibition against alienation limited to existing lives.

2. No prohibition, restriction, or condition against the alienation of any immovable property declared by or contained in any will, deed, or other instrument, which shall be executed after the proclamation of this Ordinance, shall be effectual to prevent or restrict the alienation of such property for a longer period than the lives of persons who are in existence or *en ventre sa mère* at the time when such will, deed, or instrument is executed and are named, described, or designated in such will, deed, or instrument, and the life of the survivor of such persons.

Such prohibition void as to the excess beyond existing lives. Persons in whose favour prohibition is created must be designated.

3. Any such prohibition, restriction, or condition against alienation as aforesaid shall be null and void, so far as it prohibits or restricts alienation for a longer period than that limited in the preceding section. But where the will, deed, or instrument in which any prohibition, restriction, or condition against alienation is contained does not name, describe, or designate the person or persons in whose favour or for whose benefit such prohibition, restriction, or condition is provided, such prohibition, restriction, or condition shall be absolutely null and void.

Entailed property may be leased or sold by order of the court.

4. Whenever any immovable property is now or shall hereafter be held under or subject to any entail, fideicommissum, or settlement, whereby the alienation of such property is prohibited or in any way restricted,

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it shall be lawful for the District Court of the district in which such property is situate, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under such entail, fideicommissum, or settlement, and subject to the provisions and restrictions hereinafter contained, from time to time to authorize a lease, exchange, or sale of the whole or any part or parts of such property, upon such terms and subject to such conditions as the said court shall deem expedient :

Provided that every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for a term not exceeding twenty-one years ; and that on every such lease shall be reserved the best rent or reservation in the nature of rent that can be reasonably obtained, to be made payable half-yearly or oftener to the person or persons then lawfully entitled to the same, without taking any fine or foregift or other benefit in the nature of a fine or foregift.

Persons in possession may apply for a lease or sale.

5. Any person entitled to the possession or to the receipt of the rents and profits of any immovable property now or which may hereafter become subject to such entail, fideicommissum, or settlement as aforesaid, or of any share thereof, may apply to the District Court by petition in a summary way to exercise the powers conferred by this Ordinance.

Notice of application to parties interested.

6. Before making any order authorizing any such lease, exchange, or sale as aforesaid, the District Court shall require such notice, as it shall deem expedient, of the application to be given to all persons interested under the entail, fideicommissum, or settlement, who may be living at the time, and whose place of abode can, after reasonable inquiry, be ascertained. Such notice shall be sufficient if left at the last known place of abode in Ceylon of the person to be affected thereby :

Provided that if any person to whom notice has to be given shall be under the disability of minority, idiocy, or unsoundness of mind, it shall be sufficient if the notice is given to the guardian or curator of such person. It shall be competent for any person

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interested under the entail, fideicommissum, or settlement, to appear before the court and show cause against any such lease, exchange, or sale being authorized.

Application of proceeds of sale of entailed property.

7. All money received under or by virtue of any sale effected under the authority of this Ordinance shall be applied, as the District Court shall from time to time direct, to some one or more of the following purposes, that is to say :—

(*a*) the discharge or redemption of any charge or incumbrance affecting the property, or affecting any other property subject to the same entail, fideicommissum, or settlement ; or

(*b*) the purchase of other immovable property to be settled in the same manner as the property in respect of which the money was paid ; or

(*c*) investments in the Loan Board or in Government securities, the interest thereof being made payable to the party for the time being otherwise entitled to the rents and profits of the land sold ; or

(*d*) the payment to any person becoming absolutely entitled.

Property received in exchange to become affected by the same settlement as that for which it was exchanged.

8. Any property taken in exchange for any property exchanged under the provisions of this Ordinance shall become subject to the same entail, fideicommissum, or settlement, as the property for which it was given in exchange was subject to at the time of such exchange.

Court to direct what persons should execute the lease or transfer.

9. On every lease, exchange, or sale to be effected as herein before mentioned, the court may direct what person or persons shall execute the deed of lease, transfer, or assurance ; and the deed executed by such person or persons shall take effect as if all the persons interested or who might become interested in the property under the will or instrument by which the entail, fideicommissum, or settlement was created, had joined in such lease, transfer, or assurance. The court may also direct by whom and in what proportions the cost of such lease, transfer, or assurance, and of the proceedings taken under this Ordinance, shall be paid.

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Such costs may be recovered in the same way as costs in ordinary civil actions brought in District Courts.

Orders of District Court subject to appeal.

10. Every order or direction of the District Court made under any of the provisions of this Ordinance shall be subject to appeal to the Supreme Court, and such appeal shall be subject to and governed by the same rules and procedure as are applicable to appeals from interlocutory orders of District Courts.

Stamp duty on petition to court.

11. Every petition to the District Court made under section 5 shall bear a stamp of ten rupees ; but no other stamp shall be required for any legal proceedings under this Ordinance.

Ordinance not to apply to corporations, &c.

12. Nothing in this Ordinance contained shall be held to apply to any immovable property held or possessed or which may hereafter be held or possessed by, or to any grant, devise, or conveyance to or for the benefit of any corporation, joint stock company, church or temple, or any charitable, religious, or educational institution.

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CHAPTER 68

PRESCRIPTION

Ordinances Nos. 22 of 1871, 2 of 1889.

AN ORDINANCE TO AMEND THE LAWS REGULATING THE PRESCRIPTION OF ACTIONS.

[*1st January, 1872.*]

Short title.

1. This Ordinance may be cited as the Prescription Ordinance.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"immovable property" shall be taken to include all shares and interests in such property, and all rights, easements, and servitudes thereunto belonging or appertaining.

Term of prescription for lands or immovable property.

3. Proof of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands or immovable property, by a title adverse to or independent of that of the claimant or plaintiff in such action (that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgment of a right existing in another person would fairly and naturally be inferred) for ten years previous to the bringing of such action, shall entitle the defendant to a decree in his favour with costs. And in like manner, when any plaintiff shall bring his action, or any third party shall intervene in any action for the purpose of being quieted in his possession of lands or other immovable property, or to prevent encroachment or usurpation thereof, or to establish his claim in any other manner to such land or other property, proof of such undisturbed and uninterrupted possession as herein before explained, by such plaintiff or intervenient, or

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by those under whom he claims, shall entitle such plaintiff or intervenient to a decree in his favour with costs :

Saving in case of reversioners and remainder men.

Provided that the said period of ten years shall only begin to run against parties claiming estates in remainder or reversion from the time when the parties so claiming acquired a right of possession to the property in dispute.

Possessory action may be brought within one year of ouster.

4. It shall be lawful for any person who shall have been dispossessed of any immovable property otherwise than by process of law, to institute proceedings against the person dispossessing him at any time within one year of such dispossession. And on proof of such dispossession within one year before action brought, the plaintiff in such action shall be entitled to a decree against the defendant for the restoration of such possession without proof of title :

Provided that nothing herein contained shall be held to affect the other requirements of the law as respects possessory cases.

Mortgage debt or bond prescribed after ten years.

5. No action shall be maintainable for the recovery of any sum due upon any hypothecation or mortgage of any property, or upon any bond conditioned for the payment of money, or the performance of any agreement or trust, or the payment of penalty, unless the same be commenced, in the case of an instrument payable at, or providing for the performance of its condition within, a definite time, within ten years from the expiration of such time, and in all other cases within ten years from the date of such instrument of mortgage or hypothecation, or of last payment of interest thereon, or of the breach of the condition.

Term in case of partnership deeds, written promise, contract, bargain, agreement, or security, or upon promissory note, bill of exchange, &c.

6. No action shall be maintainable upon any deed for establishing a partnership, or upon any promissory note or bill of exchange, or upon any written promise, contract, bargain, or agreement, or other written security not falling within the description of instruments set forth in section 5, unless such action shall be brought within six years from the date of the breach of such partnership deed or of such written promise,

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contract, bargain, or agreement, or other written security, or from the date when such note or bill shall have become due, or of the last payment of interest thereon.

Term in cases of action to recover goods, rent, money lent, &c., without written security.

7. No action shall be maintainable for the recovery of any movable property, rent, or mesne profit, or for any money lent without written security, or for any money paid or expended by the plaintiff on account of the defendant, or for money received by defendant for the use of the plaintiff, or for money due upon an account stated, or upon any unwritten promise, contract, bargain, or agreement, unless such action shall be commenced within three years from the time after the cause of action shall have arisen.

Term in case for goods sold, shop bill, book debt, or work and labour.

8. No action shall be maintainable for or in respect of any goods sold and delivered, or for any shop bill or book debt, or for work and labour done, or for the wages of artisans, labourers, or servants, unless the same shall be brought within one year after the debt shall have become due.

Term in cases for damages.

9. No action shall be maintainable for any loss, injury, or damage, unless the same shall be commenced within two years from the time when the cause of action shall have arisen.

Term in case of actions not herein before provided for.

10. No action shall be maintainable in respect of any cause of action not herein before expressly provided for, or expressly exempted from the operation of this Ordinance, unless the same shall be commenced within three years from the time when such cause of action shall have accrued.

Claims in reconvention not to be allowed where action is barred.

11. No claim in reconvention or by way of set-off shall be allowed or maintainable in respect of any claim or demand after the right to sue in respect thereof shall be barred by any of the provisions herein before contained.

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No acknowledgment to take a case out of the operation of this Ordinance unless in writing.

12. In any of the forms of action referred to in sections 5, 6, 7, 8, 10, and 11 of this Ordinance, no acknowledgment or promise by words only shall be deemed evidence of a new or continuing contract, whereby to take the case out of the operation of the enactments contained in the said sections, or any of them, or to deprive any party of the benefit thereof, unless such acknowledgment shall be made or contained by or in some writing to be signed by the party chargeable, or by some agent duly authorized to enter into such contract on his behalf ; and that where there shall be two or more joint contractors, or heirs, executors, or administrators of any contractor, no such joint contractor, or heir, executor, or administrator shall lose the benefit of the said enactments, or any of them, by reason of any written acknowledgment or promise made by any other or others of them :

Provided always that nothing herein contained shall alter or take away, or lessen the effect of any payment of any principal or interest made by any person whatsoever ;

Provided also that in actions to be commenced against two or more such joint contractors, or heirs, executors, or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by any of the provisions contained in the said sections as to one or more of such joint contractors, heirs, executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgment or promise, or otherwise, judgment may be given for the plaintiff as to such defendant or defendants against whom he shall recover and for the other defendant or defendants against the plaintiff.

Proviso in case of disabilities with reference to claims for land.

13. Provided nevertheless, that if at the time when the right of any person to sue for the recovery of any immovable property shall have first accrued, such person shall have been under any of the disabilities hereinafter mentioned, that is to say—

(*a*) infancy,

(*b*) idiocy,

(*c*) unsoundness of mind,

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(*d*) lunacy, or

(*e*) absence beyond the seas,

then and so long as such disability shall continue the possession of such immovable property by any other person shall not be taken as giving such person any right or title to the said immovable property, as against the person subject to such disability or those claiming under him, but the period of ten years required by section 3 of this Ordinance shall commence to be reckoned from the death of such last-named person, or from the termination of such disability, whichever first shall happen ; but no further time shall be allowed in respect of the disabilities of any other person ;

Provided also that the adverse and undisturbed possession for thirty years of any immovable property by any person claiming the same, or by those under whom he claims, shall be taken as conclusive proof of title in manner provided by section 3 of this Ordinance, notwithstanding the disability of any adverse claimant.

Proviso in case of disabilities affecting claims other than those for lands.

14. Provided also, that if at the time when the right of action in respect of any of the causes referred to in sections 5, 6, 7, 8, 10, and 11 of this Ordinance shall accrue, the person so entitled to sue shall be subject to any of the said herein before mentioned disabilities, then the several periods of limitation herein before provided shall not commence to run until the removal of such disability or the death of such person, whichever first shall happen ; but no further time shall be allowed in respect of the disability of any other person.

This Ordinance not to affect Crown or causes matrimonial.

15. Nothing herein contained shall in any way affect the rights of the Crown, or shall be taken to apply to any proceedings in any action for divorce, or to any case in which special provision has been or may hereafter be made for regulating and determining the period within which actions may be commenced against any public officer or other person.

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CHAPTER 69

PARTITION

AN ACT TO PROVIDE FOR THE PARTITION AND SALE OF LAND HELD IN COMMON.

Act No. 16 of 1951.

[*1st June, 1951.*]

1. This Act may be cited as the Partition Act. Short title.

INSTITUTION OF PARTITION ACTION AND INCIDENTAL PROCEDURE

2. Where any land belongs in common to two or more owners, any one or more of them may institute an action for the partition or sale of the land in accordance with the provisions of this Act. Institution of partition action.

3. (1) Every partition action shall be instituted by presenting a written plaint to the court, within the local limits of whose jurisdiction the land which is the subject-matter of the action is situated in whole or in part. Appropriate court.

(2) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more courts any land is situated, any one of those courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any partition action relating to the land ; and such action so entertained and disposed of shall for all purposes be deemed to be and to have been duly instituted in a court of competent jurisdiction.

(3) Nothing herein contained shall affect or be deemed or construed to affect any provision of any written law (other than this Act) whereby any pecuniary or other limitation has been prescribed in respect of the jurisdiction of any court.

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Requisites of plaint.

4. In addition to the particulars required to be stated in a plaint by the Civil Procedure Code, every plaint presented to a court for the purpose of instituting a partition action shall contain the following particulars :—

(*a*) the name, if any, and the extent and value of the land to which the action relates ;

(*b*) a description of that land by reference to physical metes and bounds or by reference to a sketch, map or plan which shall be appended to the plaint ;

(*c*) the names and addresses of all persons who are entitled or claim to be entitled to any right, share, or interest to, of, or in that land or to any improvements made or effected on or to that land, and the nature and extent of any such right, share, interest or improvements, so far as such particulars are known to the plaintiff or can be ascertained by him ; and

(*d*) a statement setting out, with reference to a pedigree which shall be appended to the plaint, the devolution of the title of the plaintiff and, where possible, the devolution of the title of every other person disclosed in the plaint as a person entitled or claiming to be entitled to that land, or to any right, share, or interest to, of, or in that land.

Persons to be made parties.

5. The plaintiff in a partition action shall include in his plaint as parties to the action all persons who, to his knowledge—

(*a*) are entitled or claim to be entitled—

(i) to any right, share, or interest to, of, or in the land to which the action relates, whether vested or contingent, and whether by way of mortgage, lease, usufruct, servitude, trust, fideicommissum, life interest, or otherwise, or

(ii) to any improvements made or effected on or to the land ; or

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(*b*) are in actual possession of the land or any part thereof.

Application for registration of action as *lis pendens* to be filed with plaint.

6. (1) The plaintiff in a partition action shall file or cause to be filed in court with the plaint—

(*a*) where the land to which the action relates is situated in one registration district, an application for the registration of the action as a *lis pendens* addressed to the Registrar of Lands of that district, or

(*b*) where the land is situated in two or more registration districts, a separate application for the registration of the action as a *lis pendens* addressed to the Registrar of Lands of each of those districts.

(2) The application or each of the applications referred to in subsection (1) of this section shall be in duplicate and substantially in the form prescribed by the Registration of Documents Ordinance and shall contain a blank space for the insertion of the number to be assigned to the action by the court.

(3) Notwithstanding anything to the contrary in the Registration of Documents Ordinance or in any regulation made thereunder, no fee shall be charged for the registration of a partition action as a *lis pendens* under that Ordinance.

Failure to comply with sections 4, 5 or 6.

7. Where the plaintiff in a partition action fails to comply with the requirements of section 4, section 5 or section 6, the court may—

(*a*) return the plaint so that the plaintiff may, then and there or within such time as may be fixed by the court, comply with those requirements, or

(*b*) reject the plaint :

Provided that nothing herein contained shall affect the right of the court to reject the plaint on any ground specified in section 46 of the Civil Procedure Code.

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Procedure on acceptance of the plaint.

8. Where the plaint in a partition action is accepted, the court shall forthwith—

(*a*) cause to be inserted in each copy of the application for the registration of the action as a *lis pendens* a reference to the number assigned by the court to the action, and transmit the application in duplicate to the Registrar of Lands of each land registry in which the action is to be registered as a *lis pendens* ; and

(*b*) fix a date on or before which the plaintiff shall deposit in court such estimated costs of the preliminary survey of the land to which the action relates as may be determined by the court.

In estimating the costs of such preliminary survey, the court shall have regard to the rates set out in the First Schedule to this Act.

Determination of actual costs of preliminary survey.

9. After the preliminary survey of the land to which a partition action relates is made the court shall determine the actual costs of such survey in accordance with the rates set out in the First Schedule to this Act, and, if the actual costs so determined are more than the estimated costs determined under section 8, shall make order specifying the party by whom, and the date on or before which, the amount of the difference between such actual costs and such estimated costs shall be deposited in court.

Failure to deposit costs of preliminary survey.

10. (1) Where the plaintiff in a partition action fails to deposit, on or before the date fixed for the purpose, such estimated costs of the preliminary survey as are determined by the court under section 8, the court shall dismiss such action.

(2) Where the amount required to be deposited in court by an order made under section 9 is not deposited on or before the date fixed for the purpose by that order, the co[illegible] may make a second order allowing further time t[illegible]e party who is liable to deposit that

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amount. If that amount is not deposited in accordance with the second order, the court may—

(*a*) where the defaulting party is the plaintiff, dismiss the partition action, or

(*b*) where the defaulting party is a defendant, reject such part, if any, of his statement of claim as avers or has the effect of averring that the land described in the plaint is only a portion of a larger land which should have been made the subject-matter of the partition action or that only a portion of the land so described should have been made such subject-matter.

(3) If the amount due to a surveyor as the costs of the survey of a land to which a partition action relates is not paid as ordered by the court, it shall be lawful for the court to direct the recovery thereof in the same action as though the order for the payment of that amount were a decree in favour of that surveyor against the party ordered to pay that amount.

Registrar of Lands to report to court registration of partition action as a *lis pendens*.

11. A Registrar of Lands to whom an application for the registration of a partition action as a *lis pendens* has been transmitted by a court under section 8 shall, upon registration of the action as a *lis pendens*, return to the court the duplicate of the application duly endorsed in the manner prescribed by the Registration of Documents Ordinance on or before the date fixed by the court for the return of such duplicate.

Declaration by proctor, and papers to be filed with such declaration.

12. (1) After a partition action is registered as a *lis pendens* under the Registration of Documents Ordinance the plaintiff in the action shall file or cause to be filed in court a declaration under the hand of a proctor certifying that all such entries in the register maintained under that Ordinance as relate to the land constituting the subject-matter of the action have been personally inspected by that proctor after the registration of the action as a *lis pendens*, and containing a statement of the name of every person found upon the inspection of those entries to be a person whom the plaintiff is required by section 5 to include in the plaint as a party to the action and also, if an address of that person is registered in the aforesaid register, that address.

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(2) The plaintiff in a partition action shall, together with the declaration referred to in subsection (1) of this section, file or cause to be filed in court—

(*a*) if the aforesaid declaration discloses any person who is not mentioned in the plaint as a party to the action but who should be made such a party under section 5, an amended plaint including therein that person as a party to the action, which amended plaint shall be deemed for all purposes to be the plaint in the action ;

(*b*) as many summonses as there are defendants, each such summons being a summons substantially in the form set out in the Second Schedule to this Act and containing the name and address of the plaintiff and the name and address of the defendant on whom that summons is to be served ;

(*c*) if the language of any defendant is Sinhalese or Tamil, a translation, in that language, of the summons to be served on that defendant ;

(*d*) as many copies of a translation of the plaint in Sinhalese as there are defendants whose language is Sinhalese, as many copies of a translation of the plaint in Tamil as there are defendants whose language is Tamil, and as many copies of the plaint as there are defendants whose language is neither Sinhalese nor Tamil, each such copy being a copy certified by a proctor as a true copy ;

(*e*) one copy of the plaint certified by a proctor as a true copy, such copy being the copy to be attached to the commission issued to the surveyor who is to make the preliminary survey of the land to which the action relates ;

(*f*) as many copies of a notice substantially in the form set out in the Second Schedule to this Act as there are lands to which the action relates ;

(*g*) if the language of any defendant is Sinhalese or Tamil, as many copies of a translation, in that language, of the aforesaid notice as there are copies of that notice for the purposes of paragraph (*f*) of this subsection ;

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(*h*) such number of copies of the aforesaid notice and of each translation thereof referred to in paragraph (*g*) of this subsection as would enable the transmission of one copy of such notice and one copy of each such translation to the village headman of the division or of each of the divisions in which the land or each of the lands to which the action relates is situated ; and

(*i*) a precept to the Fiscal substantially in the form set out in the Second Schedule to this Act.

(3) If the plaintiff fails to comply with the provisions of the foregoing subsections of this section, the court may dismiss the action.

ISSUE, SERVICE AND PUBLICATION OF SUMMONS

Issue of summons.

13. (1) Where the court is satisfied that a partition action has been registered as a *lis pendens* under the Registration of Documents Ordinance, that the estimated costs of the preliminary survey of the land to which the action relates have been deposited in court and that the plaintiff in the action has complied with the provisions of section 12, the court shall order that such summonses, translations of summonses, copies and translations of the plaint, copies of the notice and copies of the translations of the notice as may have been filed in court under paragraphs (*b*), (*c*), (*d*), (*f*) and (*g*) of subsection (2) of section 12 shall be issued to the Fiscal together with the precept.

(2) When making an order under subsection (1) of this section, the court shall appoint a date for the appearance of the defendants in court and for compliance with the other requirements of the summons.

(3) The secretary or chief clerk or any other officer of the court shall insert the date appointed by the court under subsection (2) of this section in such summonses, translations of summonses, copies of the notice and copies of translations of the notice as are filed in court under subsection (2) of section 12 and shall sign them and the precept to the Fiscal.

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(4) If the language of any defendant is Sinhalese or Tamil, there shall be attached to the summons issued for service on that defendant a translation of the summons in that language.

(5) There shall be attached to the summons to be served on a defendant—

(*a*) if his language is Sinhalese or Tamil, a translation of the plaint in that language, and

(*b*) if his language is neither Sinhalese nor Tamil, a copy of the plaint.

Mode of service of summons.

14. The provisions of the Civil Procedure Code relating to the service of summons shall apply in relation to the service of summons in a partition action.

Public notice of institution of partition action.

15. (1) Where the court orders the issue of summonses for service on the defendants in a partition action, the court shall order that a copy of the notice and a copy of each translation thereof filed in court under paragraph (*h*) of subsection (2) of section 12 be transmitted to the village headman of the division or of each of the divisions in which the land or each of the lands to which the action relates is situated.

(2) Every village headman to whom any copy of a notice and any copy of a translation thereof are transmitted under subsection (1) of this section shall cause such copies to be exhibited in a conspicuous position at his office for a period of not less than thirty days.

(3) Where the value of the land to which a partition action relates is not less than fifteen thousand rupees, the plaintiff in the action shall, forthwith after the court orders the issue of summonses for service on the defendants in the action, cause a copy of such notice as is referred to in paragraph (*f*) of subsection (2) of section 12 to be published in such newspaper or newspapers as the court shall determine.

(4) The Fiscal shall cause—

(*a*) a copy of the notice issued to him under subsection (1) of section 13 to be exhibited in a conspicuous position on the land or on each of the lands to which the notice relates, and

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(*b*) the contents of the notice to be orally proclaimed, after beat of tom-tom, on such land or on each such land and at some public place in the neighbourhood of such land or of each such land or in the village in which such land or each such land is situated.

PRELIMINARY SURVEY

Commission to survey land to be issued simultaneously with summonses.

16. (1) When the court orders the issue of summonses to the Fiscal for service on the defendants in a partition action, the court shall at the same time order the issue of a commission to a surveyor directing him to survey the land to which the action relates and to make due return to his commission on a date to be fixed therein which shall not be later than the date specified in the summonses for the appearance of the defendants :

Provided that the court may, in its discretion, fix a date later than that specified in the summonses, or, if necessary, extend the date fixed in the commission from time to time as the circumstances of the case may require.

(2) The commission issued to a surveyor under subsection (1) of this section shall be in the prescribed form and shall have attached thereto a copy of the plaint. The court may in such commission make provision authorizing the surveyor to survey any larger land than that described in the plaint if any defendant named in the plaint points out such larger land as the land which should be the subject-matter of the partition action.

Survey.

17. (1) On receipt of his commission, the surveyor shall fix a date for commencing the survey of the land referred to therein and shall, at least fourteen days before that date, issue notice in writing to all the parties named in the plaint that he proposes to commence the survey of the land on that date.

Such notice to any party shall be in the prescribed form and shall be sent to him through the post by registered letter directed to the address stated in the plaint.

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(2) In addition to the written notice required to be issued to the parties under subsection (1) of this section, the surveyor shall, at least fourteen days before the date fixed by him for commencing the survey, cause the fact that he will commence the survey on that date to be orally proclaimed, after beat of tom-tom, on the land to be surveyed.

Return to surveyor's commission.

18. (1) The surveyor shall duly execute the commission issued to him and shall, on or before the date fixed for the purpose, make due return thereto in the prescribed form and shall transmit to the court—

(*a*) a report, verified by affidavit, stating—

(i) the dates on which notice of survey was issued to the parties ;

(ii) the nature and value of the land surveyed and of any buildings, walls, trees, fences, wells, plantations and other improvements thereon, and the details of his computation of such value ;

(iii) the parties to the partition action who were present at the survey, and the name and address of any person (not being a party to the action) who, at the time of the survey, preferred any claim, and the nature of such claim ;

(iv) the result of his investigation of any particular fact or matter specifically referred to in the terms of his commission ; and

(v) any fact, matter or circumstance relating to his survey or to the land surveyed which, in his opinion, may be necessary for, or prove of assistance in, the determination of the partition action ;

(*b*) a plan of the land surveyed, verified by affidavit, showing—

(i) the boundaries of any divisions of the land subsisting at the time of his survey,

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such divisions being indicated by appropriate letters or numerals ;

(ii) the locations of all buildings, walls and wells, such locations being indicated by appropriate letters or numerals ;

(iii) the trace or course of any road, path or stream within the boundaries of the land ; and

(iv) any other physical feature of or on the land which, in his opinion, may be necessary for, or prove of assistance in, the determination of the partition action ; and

(*c*) a certified copy of his field notes.

(2) The documents referred to in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of this section may, without further proof, be used as evidence of the facts stated or appearing therein at any stage of the partition action :

Provided that the court shall, on the application of any party to the action and on such terms as may be determined by the court, order that the surveyor shall be summoned and examined orally on any point or matter arising on or in connexion with any such document or on any statement of fact therein or any relevant fact which is alleged by any party to have been omitted therefrom.

(3) (*a*) Notwithstanding anything in subsection (2) of this section, the court, either of its own motion or on the application of a party to the action, may, before using the copy of the surveyor's field notes and the plan, cause them to be verified and to be certified as correct or, where such field notes and plan are incorrect, cause fresh field notes and a fresh plan to be made by the Surveyor-General or by any officer of his department authorized by him in that behalf, and may for that purpose issue a commission to the Surveyor-General.

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(*b*) As soon as may be after the receipt by the Surveyor-General of any commission issued under this subsection, the Surveyor-General or any officer of his department authorized by him in that behalf shall verify the field notes and the plan received with the commission and shall, where they are correct, certify them to be correct or, where they are incorrect, make fresh field notes and a fresh plan, and the Surveyor-General shall make a due return to the commission with the field notes and the plan so certified or with the fresh field notes and the fresh plan.

(*c*) The field notes and the plan certified as correct under paragraph (*b*) of this subsection, or the fresh field notes and the fresh plan furnished by the Surveyor-General under that paragraph, shall be used for the purposes of subsection (2) of this section at all stages of the action subsequent to the receipt by the court of the return made by the Surveyor-General under that paragraph.

(*d*) The Surveyor-General, or any officer of his department authorized by him in that behalf, shall, for the purposes of the execution of any commission issued under this subsection, have power to inspect or survey the land after giving not less than seven days' notice to the parties to the action of his intention so to do.

(*e*) The Surveyor-General shall not be entitled to the reimbursement of the costs incurred in the execution of a commission issued to him under this subsection unless the court, upon the amount of such costs being certified to the court by the Surveyor-General, makes order specifying the party by whom, and the date on or before which, that amount shall be deposited in court.

(*f*) The party depositing the amount of the Surveyor-General's costs shall be given credit therefor in such manner as the court may direct.

(*g*) If the costs due to the Surveyor-General are not deposited as ordered by the court, it shall be lawful for the court to direct the recovery thereof in the same action as though the order for the payment of such costs were a decree in favour of the Crown against the party ordered to pay such costs.

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PROCEDURE IN COURT AFTER APPEARANCE OF PARTIES

Statements of claims; disclosure of mortgages and leases; lists of documents; and inspection of documents.

19. (1) On the date for appearance in court specified in the summons issued in a partition action or on such later date as the court may fix for the purpose—

(*a*) any defendant in the action may file or cause to be filed in court a statement of claim setting out the nature and extent of his right, share or interest to, of or in the land to which the action relates, and shall, if he disputes any averment in the plaint relating to the devolution of title, file or cause to be filed in court, together with his statement of claim, an abstract of the devolution of title with reference to a pedigree which shall be attached to the abstract;

(*b*) any party to the action whose right, share or interest to, of or in the land is mortgaged or leased by an instrument registered under the Registration of Documents Ordinance shall disclose or cause to be disclosed to the court the existence of the mortgage or lease and the name and address of the mortgagee or lessee; and

(*c*) every defendant in the action shall disclose or cause to be disclosed to the court the name and address of every person, not being a party to the action, who to his knowledge has any right, share or interest to, of or in the land.

(2) (*a*) Every party to the action shall, not less than thirty days before the date of the trial of the action, file or cause to be filed in court a list of documents on which he relies to prove his right, share or interest to, of or in the land together with an abstract of the contents of such documents. No party shall, except with the leave of the court which may be granted on such terms as the court may determine, be at liberty to put any document in evidence on his behalf in the action if no such list as aforesaid has been filed by or on behalf of him in court, or if that document is not specified in a list so filed, or if an abstract of the contents of that document has not been so filed.

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(*b*) Any party to a partition action who desires to inspect any document specified in the list of documents filed in court under paragraph (*a*) of this subsection by any other party to the action may, by motion *ex parte,* obtain an order of court to that other party to produce that document, at such place and within such time as may be specified in the order, for the inspection of the first-mentioned party or of his proctor and to permit such party or proctor to take copies thereof. The party obtaining such order may himself serve or cause to be served such order on that other party.

(*c*) Where any party to a partition action to whom an order under paragraph (*b*) of this subsection is issued fails to comply with that order in regard to any document to which that order relates, he shall not afterwards be at liberty to put that document in evidence on his behalf in the action unless he satisfies the court that he had sufficient cause for not complying with the order.

Failure to produce material document of title at trial.

20. Every party to a partition action who fails to produce in court at the trial of the action any document relating to his title shall, if the court so orders on being satisfied that such document is material for establishing the title of such party, be liable to pay the costs incurred by any other party to the action in procuring such document or in furnishing to the court proof of the contents thereof.

Issue of copies of plaint and of statements of claims to parties.

21. Every person named in the plaint, or desiring to be added, as a party to a partition action, shall be entitled, on payment of a fee of one rupee, to obtain from the court a copy of the plaint or of any statement of claim in that action.

Notice of partition action to persons disclosed.

22. (1) The court shall order notice of a partition action to be issued to the Fiscal for service—

(*a*) on every claimant (not being a party to the action) who is mentioned in the report of the surveyor under subsection (1) of section 18, and

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(*b*) on every person disclosed under paragraph (*c*) of subsection (1) of section 19 by a defendant in the action.

(2) The plaintiff in a partition action shall file or cause to be filed in court the notices which are to be issued to the Fiscal under subsection (1) of this section :

Provided that a defendant who discloses any person referred to in paragraph (*b*) of subsection (1) of this section, and not the plaintiff, shall, if the court so orders, file or cause to be filed in court the notice which is to be issued to the Fiscal under that subsection for service on that person.

Dispute as to corpus sought to be partitioned.

23. (1) Where a defendant in a partition action avers that the land described in the plaint is only a portion of a larger land which should have been made the subject-matter of the action or that only a portion of the land so described should have been made such subject-matter, the court may on such terms as to the deposit or payment of costs of survey as the court may order, issue a commission to a surveyor directing him to survey the extent of land referred to by that defendant.

(2) The provisions of sections 17 and 18 shall apply in relation to a survey under a commission issued under subsection (1) of this section.

(3) Where a survey made under a commission issued under subsection (1) of this section discloses that the land described in the plaint is only a portion of a larger land which should have been made the subject-matter of the action, the court shall specify the party to the action by whom, and the date on or before which, an application for the registration of the action as a *lis pendens* affecting that larger land shall be filed in court, and the provisions of sections 6, 8 (*a*) and 11 shall apply to that application.

(4) The party to the action specified by the court under subsection (3) of this section—

(*a*) shall file or cause to be filed in court a statement setting out the names and addresses of all persons (other than persons named in

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the plaint as parties to the action) who are entitled or claim to be entitled to any right, share, or interest to, of or in the larger land referred to in that subsection or to any improvements made or effected on or to that land and the nature and extent of any such right, share, interest or improvements, so far as such particulars are known to him or can be ascertained by him, and

(*b*) shall, after the action is registered as a *lis pendens* affecting such larger land, file or cause to be filed in court a declaration under the hand of a proctor certifying that all such entries in the register maintained under the Registration of Documents Ordinance as relate to such larger land have been personally inspected by that proctor after the registration of the action as a *lis pendens* affecting such larger land, and containing a statement of the name of every person found upon the inspection of those entries to be a person whom the plaintiff is required by section 5 to include in the plaint as a party to the action if the action is in respect of such larger land, and also, if an address of that person is registered in the aforesaid register, that address.

(5) Where on an application filed in court under subsection (3) of this section the action is registered as a *lis pendens* affecting a larger land than that described in the plaint, the court may proceed with the action as though it had been instituted in respect of such larger land, and may, for such purpose, make any order in regard to service of notice of the action on any person who should be added as a party to the action and such other orders as the circumstances of the case may require.

Notice of trial.

24. The court shall fix the date of trial of every partition action, and, if the court so orders, notice of such date shall be given in such manner and to such persons as the court shall specify.

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Trial.

25. On the date fixed for the trial of a partition action or on any other date to which the trial may be adjourned, the court shall examine the title of each party and shall hear and receive evidence in support thereof and shall try and determine all questions of law and fact arising in that action in regard to the right, share, or interest of each party to, of, or in the land to which that action relates, and shall consider and decide which of the orders mentioned in section 26 should be made.

Interlocutory decree.

26. (1) At the conclusion of the trial of a partition action, or on such later date as the court may fix, the court shall pronounce judgment in open court, and the judgment shall be dated and signed by the Judge at the time of pronouncing it. As soon as may be after the judgment is pronounced, the court shall enter an interlocutory decree in accordance with the findings in the judgment, and such decree shall be signed by the Judge.

(2) The interlocutory decree may include one or more of the following orders, so however that the orders are not inconsistent with one another :—

(*a*) order for a partition of the land ;

(*b*) order for a sale of the land in whole or in lots ;

(*c*) order for a sale of a share or portion of the land and a partition of the remainder ;

(*d*) order that any portion of the land representing the share of any particular party only shall be demarcated and separated from the remainder of the land ;

(*e*) order that any specified portion of the land shall continue to belong in common to specified parties or to a group of parties ;

(*f*) order that any share remain unallotted.

(3) Where in a scheme of partition of a land under this Act a person is entitled to a divided portion which, by reason of its trivialness in extent or value, the court considers it inexpedient to allot to that person, the court may, on the payment to that person of such compensation as may be determined by the court, allot

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that portion to any other person who in that scheme is entitled to a divided portion adjoining the first-mentioned portion.

(4) Where a partition action is in respect of two or more lands, the interlocutory decree may, in lieu of ordering the allotment of divided portions in all such lands to the persons entitled thereto, order that—

(*a*) any divided portion or portions of one or of some of such lands, or

(*b*) the entirety of one or of some of such lands, whether with or without any divided portion or portions of any other such land or lands,

be allotted to any such person, whether with or without the award to him of owelty or of compensation for any improvements made by him to any such land. In any order under this subsection the court shall determine the amount of any owelty or of any compensation for improvements and the party by whom and the party to whom such owelty or compensation shall be paid.

(5) Where in an interlocutory decree the court has ordered the sale of a share or portion of the land and the partition of the remainder, the court may allot to each of the parties such share of the money to be realized by the sale of the share or portion of land ordered to be sold, or such share of the soil in the remainder ordered to be partitioned, or such share of both the money and the remainder of the land, as the court may consider just in the circumstances of each case.

Issue of Commission for Division of Land into Lots or for Sale or Partition

Commission for division of land into lots, or for sale or partition.

27. (1) Where the court decides that the land shall be sold in lots, the court shall, at the time of pronouncing judgment or on a later date notified by the court, order the issue of a commission for the division of the land into lots to a person to be named in the order and in open court fix the returnable date of the commission.

(2) At the time of pronouncing judgment or on a later date notified by the court the court shall order the issue of a commission for sale, or for partition, or for

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both sale and partition, or of two separate commissions for sale and for partition as the case may require, to a person to be named in the order and shall in open court fix the returnable date of the commission :

Provided that, where the court orders a sale, the court shall, if the value of the extent of land to be sold is not more than two thousand five hundred rupees, and may, if such value is more than two thousand five hundred rupees, order the Fiscal to conduct the sale in accordance with the provisions of this Act.

(3) Where the court decides that the land or any portion thereof shall be partitioned, the commission under subsection (2) of this section shall be issued to the surveyor who made the preliminary survey unless the court directs that such commission shall be issued to some other surveyor.

(4) The court may from time to time extend the returnable date referred to in subsection (1) or subsection (2) of this section.

(5) The court may revoke a commission issued under this section and order the issue of a fresh commission.

Form of commission.

28. Every commission issued under section 27 shall be substantially in the prescribed form and shall have attached thereto—

(*a*) a copy of the interlocutory decree certified as a true copy by the secretary or chief clerk or by any other officer of the court, and

(*b*) a statement specifying the place of residence of each party who has been allotted in the interlocutory decree any right, share or interest to, of or in the land to which the decree relates.

Costs of commission.

29. (1) Where the court orders a commission to be issued, the court shall—

(*a*) determine the amount to be deposited as the costs of the commission, such costs in the case of a commission for partition being determined according to the rates set out in the Third Schedule to this Act ;

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(b) fix a date on or before which the costs so determined shall be deposited in court ; and

(c) specify the party by whom the costs are to be deposited.

(2) If the costs are not deposited in court by the party specified on or before the date fixed under subsection (1) of this section or within such further time as may be allowed by the court on application made in that behalf, the court may order or permit any other party to deposit the costs and fix a date for that purpose.

(3) If the costs are not deposited by the party ordered or permitted so to do under subsection (2) of this section on or before the date fixed for the purpose or within such further time as may be allowed, the court may dismiss the action or make such other order as the circumstances may require.

(4) The party depositing costs under this section shall be given credit therefor in such manner as the court may direct.

COMMISSION FOR PARTITION

Execution of commission for partition.

30. (1) On receipt of a commission to partition the land, the surveyor shall fix a date for partitioning the land and shall, at least fourteen days before that date, issue notice in writing to each party mentioned in the statement attached to the commission that the land will be partitioned on that date.

(2) A notice to any party under subsection (1) of this section shall be in the prescribed form and shall be sent to him through the post by registered letter addressed to his place of residence specified in the statement attached to the commission.

(3) In addition to the written notice required to be issued under subsection (1) of this section, the surveyor shall, at least ten days before the date fixed for partitioning the land, cause to be orally proclaimed on the land, after beat of tom-tom, the fact that the land will be partitioned on that date.

(4) The date fixed under subsection (1) of this section for partitioning the land may from time to time

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be altered to a later date by the surveyor by written notice addressed to the parties mentioned in that subsection. Every such notice shall, not less than seven days before such later date, be served in the manner provided in subsection (2) of this section and a copy of the notice shall, in addition, be exhibited in a conspicuous position on the land.

Scheme of partition.

31. The surveyor shall, on the date or altered date fixed for partitioning the land, proceed to the land and prepare a scheme of partition in conformity with the interlocutory decree and with any special directions contained in his commission and demarcate the divided portions on the land by means of such boundary marks as are not easily removed or destroyed. He shall inform the parties present of the returnable date of his commission fixed under section 27.

Return to commission.

32. (1) The surveyor shall make his return to the commission, verified by affidavit, on or before the returnable date or the extended returnable date (as the case may be) fixed under section 27 and together with such return he shall transmit to the court—

(*a*) the plan of partition prepared by him ;

(*b*) a certified copy of his field notes ;

(c) a report explaining the manner in which the land has been partitioned stating the names of the parties, the nature and extent of their respective shares and interests, the dates on which notices were issued to such parties for the purpose of partitioning the land and the date on which the land was partitioned, and, where a lot is allotted in common to several parties, specifying each party's share of that lot ; and

(*d*) a summary of distribution substantially in the prescribed form.

(2) Where no provision is made in the interlocutory decree for the allotment of a lot in common, the surveyor shall not allot a lot in common to any parties without the written consent of those parties.

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Manner of partition.

33. The surveyor shall so partition the land that each party entitled to compensation in respect of improvements effected thereto or of buildings erected thereon will, if that party is entitled to a share of the soil, be allotted, so far as is practicable, that portion of the land which has been so improved or built upon, as the case may be.

Compensation and owelty.

34. (1) Where under any scheme of partition prepared by a surveyor, payment has to be made to or by any party to a partition action in respect of compensation for improvements to the land or of owelty, the amount of such payment shall, in the first instance, be assessed by the surveyor and shall be finally determined by the court.

(2) The amount determined by the court, under subsection (1) of this section or under subsection (4) of section 26, as compensation for improvements or as owelty shall, from the date on which final decree is entered, be a charge on the portion of the land or the extent of land finally allotted to the party made liable for the payment of such compensation or owelty, as the case may be.

Date to be fixed for consideration of scheme of partition.

35. After the surveyor makes a return to the commission, the court shall fix a date for the consideration of the scheme of partition proposed by the surveyor.

Final decree of partition.

36. On the date fixed under section 35, or on any later date which the court may fix for the purpose, the court may, after summary inquiry, confirm with or without modification the scheme of partition proposed by the surveyor and enter final decree of partition accordingly.

Commission for Division of Land into Lots or for Sale

Consideration of scheme of division of land into lots.

37. (1) The person who receives a commission to divide a land into lots for the purpose of the sale of the land in lots shall make his return to the commission, verified by affidavit, on or before the returnable

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date or the extended returnable date fixed under section 27, and together with such return he shall transmit to the court—

(*a*) a plan of the division of the land into lots, and

(*b*) a report explaining the manner in which the land is divided into lots.

(2) After the person referred to in subsection (1) of this section makes a return to the commission, the court shall fix a date for the consideration of the scheme of division of the land into lots proposed by such person. On such date, or on any later date which the court may fix for the purpose, the court shall, after summary inquiry, confirm such scheme with or without modification.

Valuation of land.

38. (1) Where in a partition action the court orders the issue of a commission to any person to divide the land to which the action relates into lots for the purpose of the sale of the land in lots or to sell the land otherwise than in lots or orders the Fiscal to sell the land, the court shall fix a date on or before which that person or the Fiscal, as the case may be, shall transmit to the court a valuation of the land.

(2) Where the commission is for the division of a land into lots for the purpose of the sale of the land in lots, the date fixed under subsection (1) of this section shall be the same as the returnable date of the commission fixed under section 27.

(3) The valuation referred to in subsection (1) of this section shall show separately and in detail—

(*a*) where the land valued is to be sold in lots, the appraised value of each lot and of any improvements thereon, and

(*b*) where the land is to be sold otherwise than in lots, the appraised value of the land and of any improvements thereon.

(4) After considering the valuation under the preceding provisions of this section and after such inquiry as the court may consider necessary, the court shall

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determine the value of the land or, where the land is to be sold in lots, the value of each of the lots and the value of the improvements.

Conditions of sale, &c.

39. (1) After determining the value of the land or, where the land is to be sold in lots, the value of each of the lots, and the value of the improvements, the court shall prescribe the conditions of sale and issue such orders as the court may consider necessary for the conduct of the sale, including orders as to the manner in which and the number of days before which notice of the sale or adjourned sale of the land shall be given and published by the person responsible for the sale.

(2) The court may, on application made in that behalf by a co-owner who desires to purchase the land or a lot, specify the terms as to credit to be allowed to him at the sale, having regard to the amounts, if any, payable by him by way of *pro rata* costs, compensation for improvements, owelty, mortgage debts or otherwise.

Notice of sale.

40. The person responsible for the sale shall give notice that he will, on a date to be specified in the notice, sell the land in terms of the commission or order for sale issued to him and in accordance with the conditions prescribed and the orders issued by the court under section 39. He shall, in addition to giving such notice in any other manner which may be specified by the court, give such notice by registered letter sent through the post to each party declared in the interlocutory decree to be entitled to any right, share or interest to, of or in the land.

Sale.

41. On the date specified in the notice referred to in section 40, the person responsible for the sale shall, in terms of the commission or order for sale issued to him, and in accordance with the conditions of sale prescribed and the orders issued by the court under section 39—

(*a*) first put up the land or, where the land is to be sold in lots, put up each lot to auction among the co-owners thereof, and if the highest bid

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made at that auction is not less than the value of the land or of that lot determined by the court under section 38, declare the co-owner by whom that bid was made to be the purchaser of the land or of that lot ; and

(*b*) if no co-owner becomes the purchaser of the land or of any lot, put the land or that lot up to public auction, permit the co-owners to bid thereat, and declare the highest bidder at such public auction to be the purchaser of the land or of that lot.

Return to court.

42. The person responsible for the sale shall, after complying with the provisions of section 41, make his return to the court, informing the court of the amount for which the land or, where the land was sold in lots, each lot was sold and the name and address of the purchaser thereof, and pay into court the money deposited with him by the purchaser.

Deposit of purchase money in court.

43. The purchaser of the land or, where the land was sold in lots, the purchaser of each lot shall pay into court the money realized by the sale of the land or of that lot in conformity with the conditions prescribed and the orders issued by the court under section 39 :

Provided that, where the purchaser is a co-owner, he shall be allowed such credit as may have been determined by the court under subsection (2) of section 39.

Disposal of objections to sale.

44. Any objection to a sale held under section 41 shall be preferred to court within a period of thirty days reckoned from the date of receipt by the court of the return to the commission for sale, and the court shall, after inquiry, make such order as the circumstances of the case may require.

Confirmation of sale.

45. The court shall confirm a sale if, within the period referred to in section 44, no objection is preferred against the sale, or if any objection duly preferred under that section is not upheld by the court after inquiry :

Provided that, where the amount realized by the sale of the land or of any lot under paragraph (*b*) of

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section 41 is less than the value of the land or of that lot determined by the court under section 38, the court may set aside the sale of the land or of that lot on such terms and conditions as the court may determine and order the issue of a fresh commission for the sale of the land or of that lot and make all such orders as the court considers necessary for the conduct of the sale.

Certificate of sale.

46. Upon the confirmation of the sale of the land or of any lot, the court shall enter in the record a certificate of sale in favour of the purchaser and the certificate so entered under the hand of the Judge of the court shall be conclusive evidence of the purchaser's title to the land or lot as on the date of the certificate. The court may, on the application of the purchaser, attach to the certificate a plan of the land or lot prepared at the cost of the purchaser and authenticated by the court.

Distribution and withdrawal of money in court.

47. (1) The court shall cause to be prepared by a party named by the court a schedule of distribution showing the amount which each party is entitled to withdraw out of the money deposited in court.

(2) No money shall be withdrawn from court by any party until the schedule of distribution has been approved by the court.

(3) A party entitled to compensation in respect of a plantation or a building or otherwise shall share proportionately with the other parties in any gain or loss, as the case may be, resulting from the sale of the land at a figure above or below the value determined by the court under section 38.

SPECIAL PROVISIONS RELATING TO DECREES

Finality of interlocutory decree and final decree of partition.

48. (1) Save as provided in subsection (3) of this section, the interlocutory decree entered under section 26 and the final decree of partition entered under section 36 shall, subject to the decision on any appeal which may be preferred therefrom, be good and sufficient evidence of the title of any person as to any right, share or interest awarded therein to him and be final and conclusive for all purposes against all persons

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whomsoever, whatever right, title or interest they have, or claim to have, to or in the land to which such decrees relate and notwithstanding any omission or defect of procedure or in the proof of title adduced before the court or the fact that all persons concerned are not parties to the partition action ; and the right, share or interest awarded by any such decree shall be free from all encumbrances whatsoever other than those specified in that decree.

In this subsection " encumbrance " means any mortgage, lease, usufruct, servitude, fideicommissum, life interest, trust, or any interest whatsoever howsoever arising except a constructive or charitable trust, a lease at will or for a period not exceeding one month, and the rights of a proprietor of a *nindagama.*

(2) The interlocutory decree and the final decree of partition entered in a partition action shall have the final and conclusive effect declared by subsection (1) of this section notwithstanding the provisions of section 44 of the Evidence Ordinance, and accordingly such provisions shall not apply to such decrees.

(3) The interlocutory decree or the final decree of partition entered in a partition action shall not have the final and conclusive effect given to it by subsection (1) of this section as against a person who, not having been a party to the partition action, claims any such right, title or interest to or in the land or any portion of the land to which the decree relates as is not directly or remotely derived from the decree if, but only if, he proves that the decree has been entered by a court without competent jurisdiction or that the partition action has not been duly registered under the Registration of Documents Ordinance as a *lis pendens* affecting such land.

Action for damages by person who is not a party to partition action.

49. Any person, not being a party to a partition action, whose rights to the land to which the action relates have been extinguished or who is otherwise prejudiced by the interlocutory decree entered in the action, may, by separate action, recover damages from any party to the action by whose act, whether of commission or omission, such damages may have accrued, and where the whole or any part of such damages

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cannot be recovered from any such party, recover such damages or part thereof from any other person who has benefited by any such act of such party.

Lease or mortgage of undivided share.

50. (1) If in an interlocutory decree for partition any undivided share of the land constituting the subject-matter of the partition action in which such decree is entered is declared to be subject to a mortgage or lease, the rights of the mortgagee or of the purchaser of the mortgaged share under a mortgage decree, or of the lessee, shall—

(*a*) where the partition is otherwise than in accordance with an order made under subsection (4) of section 26, be limited to the share allotted in such interlocutory decree to the mortgagor or lessor ; and

(*b*) where the partition is in accordance with an order made under subsection (4) of section 26, be limited to so much of the extent of land and of any owelty or compensation allotted in the partition action to the mortgagor or lessor as the court shall determine.

(2) If in an interlocutory decree for sale any undivided share of the land constituting the subject-matter of the partition action in which such decree is entered is declared to be subject to a mortgage or lease, the rights of the mortgagee or of the purchaser of the mortgaged share under a mortgage decree, or of the lessee, shall be limited to the mortgagor's or lessor's share of the proceeds of the sale of the land.

Registration of interlocutory decree, final decree of partition, and certificate of sale.

51. Where in a partition action an interlocutory decree under section 26 or a final decree of partition under section 36 or a certificate of sale under section 46 is entered, the court shall cause a copy of such decree or certificate to be transmitted to the Registrar of Lands of the district or of each of the districts in which the land or each of the lands to which such decree or certificate relates is situated, and such registrar shall duly register such copy under the Registration of Documents Ordinance as an instrument affecting the land or each of the lands to which it relates. No fee shall be

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charged for the registration of such copy under such Ordinance notwithstanding anything to the contrary in such Ordinance or in any regulation made thereunder.

Delivery of possession of land to parties and purchasers.

52. Every party to a partition action who has been declared to be entitled to any land by any final decree entered under this Act and every person who has purchased any land at any sale held under this Act and in whose favour a certificate of sale in respect of the land so purchased has been entered by the court, shall be entitled to obtain from the court, in the same action, on application made by motion in that behalf, an order for the delivery to him of possession of the land :

Provided that where such party is liable to pay any amount as owelty or as compensation for improvements, he shall not be entitled to obtain such order until that amount is paid.

Power of court to enforce its decrees and orders and to deal with offences of contempt of court.

53. (1) A court exercising jurisdiction in a partition action shall have full power to give effect to every order or decree made or entered in the action (including the power to order delivery of possession of any land or portion of land to any person entitled thereto) and to punish as for contempt of court any person who—

(*a*) disobeys any such order, or

(*b*) obstructs or resists any person acting under the authority of the court or exercising any power conferred on him by this Act, or

(*c*) damages, destroys or removes, during the pendency of the action, any boundary mark which, under section 31, has been made or set up on the land to which the action relates.

(2) Where, under subsection (1) of this section, a person is convicted of obstructing or resisting a surveyor engaged, under the authority of the court, in doing any work on a land, the court may, in addition to the imposition of any punishment on that person under that subsection, order him to pay an amount determined by the court as the expenses of the surveyor if in consequence of the obstruction or resistance it is

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necessary for the surveyor to proceed again to such land for the purpose of doing such work. Any amount ordered by the court under this subsection to be paid by any person may be recovered as though that amount were a fine imposed on that person by the court.

SPECIAL CASES

Right of *praveni nilakaraya* to institute partition action.

54. (1) Every *praveni nilakaraya* shall, for the purposes of this Act, be deemed to be a co-owner of the *praveni panguwa* of which he is a shareholder and shall be entitled to institute a partition action to obtain a decree for the partition or sale of that *panguwa* or of any of the lands in that *panguwa*.

(2) The rights of the proprietor of a *nindagama* shall in no way be affected by the partition or sale under this Act of a *panguwa* or of any of the lands in a *panguwa*, and that proprietor shall be entitled to exercise those rights as though that partition or sale had not occurred.

(3) In this section, the expressions "*praveni nilakaraya*" and "*praveni panguwa*" have the meanings respectively assigned to them in section 2 of the Service Tenures Ordinance.

Person owning a permanent plantation on a land apart from the soil.

55. (1) Where a person having the ownership of a permanent plantation, apart from the soil, on the land to which a partition action relates is a party to the action, he shall be entitled only to receive compensation in respect of that plantation.

(2) The ownership of a permanent plantation, apart from the soil, on a land may, for the purposes of subsection (1) of this section, be established by proof of any agreement with the owner of the land or of any custom recognized in the locality in which the land is situated, notwithstanding the provisions of the Prevention of Frauds Ordinance.

Partition of land belonging to partnerships.

56. (1) A co-owner shall not be entitled to institute a partition action in respect of a land if there exists a valid deed of partnership which binds such co-owner to cultivate that land or to raise crops or produce thereon for the purpose of selling such crops or produce or which is for the purpose of carrying on any trade

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manufacture or occupation relating to or connected with the joint ownership of that land, and if any of the terms, conditions or covenants of that deed of partnership will be avoided, infringed or violated by a partition or sale of the land.

(2) The provisions of subsection (1) of this section shall not apply in any case in which the right to institute a partition action has been expressly reserved in the deed of partnership referred to in that subsection.

Executors and administrators.

57. No person acting in the capacity of an executor or administrator shall institute a partition action in respect of any land belonging to the estate which he is administering.

COSTS

Recoverable costs.

58. (1) In any partition action, the following costs shall, unless the court otherwise directs, be borne by the parties to the action in the proportion of their respective rights to the land to which the action relates :—

(*a*) the costs of the execution of the commission for the preliminary survey and the costs of the execution of the commission for the partition or sale of the land or for the division of the land into lots for the purpose of the sale of the land in lots, determined as herein before provided ;

(*b*) the costs of the execution of any commission issued to the Surveyor-General under subsection (3) of section 18 ;

(*c*) other costs of instituting and prosecuting the action.

The costs referred to in paragraph (*c*) of this subsection shall be determined, in the case of a partition action in a District Court, in accordance with the rates set out in the Fourth Schedule to this Act, and, in the case of a partition action in a Court of Requests, by that court in its discretion.

(2) The costs referred to in subsection (1) of this section shall be known as the " recoverable costs " and

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the proportionate share thereof to be borne by each of the parties shall be known as the "*pro rata* costs" of that party and shall be recoverable in the same action from that party by the party who has incurred the recoverable costs.

Costs recoverable by proctor from his client.

59. The costs in a partition action which a proctor may recover from his client shall, in the case of a partition action in a District Court, be taxed at the rates set out in the Fifth Schedule to this Act and, in the case of a partition action in a Court of Requests, be determined by that court in its discretion.

Costs of contest.

60. In the event of a contest, the court, after hearing the parties concerned, shall fix the amount of the costs of the contest having regard to the value of the share or interest in dispute, and direct by whom such costs shall be paid.

Costs of proving title of defaulting party.

61. Where a party omits to prove his title, the court may permit one of the other parties to prove the title of the party in default. The amount allowed by the court as the costs of proving such title shall be specified in an order and shall be recoverable from the party in default.

One set of costs for parties jointly interested.

62. When parties are jointly interested in a contest, the court shall ordinarily allow only one set of costs for all such parties and may in its discretion apportion such costs among such parties ; and, in the event of an appeal by or against them to the Supreme Court, only one amount shall be fixed by way of security for costs of appeal.

Security for costs of parties.

63. (1) It shall be lawful for the court at any stage of a partition action to order any party to give security for costs if the court is of opinion that the party has been guilty of unreasonable delay in presenting or prosecuting his claim, or for other good and sufficient cause.

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(2) Where any party to a partition action who is ordered under subsection (1) of this section to give security for costs fails to give such security within the time allowed therefor by the court, then—

(*a*) where that party is the plaintiff, the court may dismiss the action or may permit any defendant to prosecute the action and may substitute him as plaintiff for that purpose, or

(*b*) where that party is a defendant, the court may reject his claim.

(3) Where the trial of a partition action is postponed or adjourned in consequence of such delay on the part of a party to the action as is referred to in subsection (1) of this section, the court may order that any costs payable by that party because of the postponement or adjournment shall be pre-paid.

Costs under sections 58 and 61 to be a charge on the share of party from whom they are due.

64. All costs due from any party to a partition action under sections 58 and 61 shall be a charge on the share of land or money allotted to that party in that action and such charge shall rank next in priority to the charge referred to in subsection (2) of section 34.

Costs in cases not expressly provided for.

65. Costs shall ordinarily be borne by the person who incurs the costs except in cases where it is expressly provided by this Act that any costs or proportion of costs shall be borne, or may be ordered by the court to be borne, by some other person.

Default in paying costs and charges in previous action under this Act.

66. Where the court is satisfied that the plaintiff in any action under this Act has not paid any costs or charges due from him in any previous action instituted by him under this Act in respect of the same land, the court may—

(*a*) fix a date for the payment of such costs or charges and stay proceedings until such payment is made ; and

(*b*) where such payment is not made on or before that date, dismiss the action.

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MISCELLANEOUS

Sale, lease or mortgage *pendente lite* is void.

67. (1) After a partition action is duly registered as a *lis pendens* under the Registration of Documents Ordinance no voluntary alienation, lease or hypothecation of any undivided share or interest of or in the land to which the action relates shall be made or effected until the final determination of the action by dismissal thereof, or by the entry of a decree of partition or by entry of a certificate of sale.

(2) Any voluntary alienation, lease or hypothecation made or effected in contravention of the provisions of subsection (1) of this section shall be void.

Appeals.

68. An appeal shall lie to the Supreme Court against any order or decree made or entered by any court in any partition action ; and all the provisions of the Civil Procedure Code shall apply accordingly to any such appeal as though an order or decree made or entered in a partition action were an order or decree made or entered in any action as defined for the purposes of that Code.

Proof of deeds.

69. It shall not be necessary in any proceedings under this Act to adduce formal proof of the execution of any deed which, on the face of it, purports to have been duly executed, unless the genuineness of that deed is impeached by a party claiming adversely to the party producing that deed, or unless the court requires such proof.

Addition of parties.

70. (1) The court may at any time before interlocutory decree is entered in a partition action add as a party to the action, on such terms as to payment or prepayment of costs as the court may order—

(*a*) any person who, in the opinion of the court, should be, or should have been, made a party to the action, or

(*b*) any person who, claiming an interest in the land, applies to be added as a party to the action.

(2) Where a person is a party to a partition action and his right, title and interest to or in the land to which the partition action relates are sold, during the

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pendency of the partition action, in execution of, or under, any decree, order or process of any court, the purchaser of such right, title and interest at the sale shall be entitled to be substituted for that person as a party to the partition action, and such purchaser, when so substituted, shall be bound by the proceedings in the partition action up to the time of the substitution.

Result of non-prosecution of partition action.

71. No partition action shall abate by reason of the non-prosecution thereof, but, if a partition action is not prosecuted with reasonable diligence after the court has endeavoured to compel the parties to bring the action to a termination, the court may dismiss the action :

Provided, however, that in a case where a plaintiff fails or neglects to prosecute a partition action, the court may, by order, permit any defendant to prosecute that action and may substitute him as plaintiff for the purpose and may make such order as to costs as the court may deem fit.

Penalty for dishonest non-disclosure of interested persons.

72. (1) Every party to a partition action who, knowing that any person has any interest in the land to which such action relates, fraudulently or dishonestly fails or omits to disclose in the pleading filed by him the fact that such person has such interest or that such person is a necessary party to such action, shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees, or to imprisonment of either description for a period not exceeding one year, or to both such fine and imprisonment.

(2) No prosecution for an offence under subsection (1) of this section shall be entertained without the sanction of the Attorney-General.

(3) A person guilty of an offence under subsection (1) of this section shall also, by reason of his fraudulent or dishonest failure or omission mentioned in that subsection, be guilty of a contempt of the court in which the partition action referred to in that subsection has been instituted and may be punished for such contempt in accordance with the provisions of Chapter LXV of the Civil Procedure Code.

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Penalty for false return, &c., by surveyor.

73. (1) Whoever, being a person to whom a commission for the survey, partition or sale of any land has been issued, makes any statement which he knows or has reasonable cause to believe to be false in the return made by him to such commission, or inserts in the survey plan or in the plan of partition prepared by him or in his field notes any signs, marks or particulars which he knows or has reasonable cause to believe to be false shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees, or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment.

(2) A person guilty of an offence under subsection (1) of this section shall also, by reason of his false return, survey plan, plan of partition, or field notes, be guilty of a contempt of the court which issued the commission referred to in that subsection and may be punished for such contempt in accordance with the provisions of Chapter LXV of the Civil Procedure Code.

List of surveyors.

74. Every court having jurisdiction to try a partition action shall from time to time prepare a list of surveyors to whom commissions may be issued under this Act.

Exemption from stamp duty.

75. (1) All pleadings and processes and all documents filed or produced in a partition action under this Act shall be exempt from stamp duty.

(2) All partition deeds shall be exempt from stamp duty.

(3) Nothing herein contained shall affect the proviso to paragraph (*b*) of the Exemptions under the heading "F-Miscellaneous" in Part II of Schedule A to the Stamp Ordinance.

Dismissal of partition action.

76. (1) The dismissal of a partition action in respect of any land under section 10, section 12, section 29, section 63, section 66 or section 71 shall not operate as a bar to the institution of another partition action in respect of that land.

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(2) The dismissal of a partition action under section 29, section 63, section 66 or section 71 shall not affect the final and conclusive effect given by section 48 to the interlocutory decree entered in such action.

Service of process.

77. The provisions of the Civil Procedure Code relating to the execution or service of writs, warrants and other processes of court shall apply in relation to the execution or service of writs, warrants and other processes of court in a partition action.

Delegation of powers and duties of Fiscal under this Act.

78. The Fiscal may either generally or specially authorize any officer to exercise or perform any power or duty conferred or imposed on the Fiscal by this Act.

Casus omissus to be governed by Civil Procedure Code.

79. In any matter or question of procedure not provided for in this Act, the procedure laid down in the Civil Procedure Code in a like matter or question shall be followed by the court, if such procedure is not inconsistent with the provisions of this Act.

Forms.

80. Where no form to be used for the purposes of this Act has been prescribed in any particular case or for any particular purpose, such form shall be used as the court may approve for use in that case or for that purpose.

Regulations. Power to amend or replace Schedule.

81. (1) The Minister may, by regulation, amend in any manner he may consider necessary, or substitute a new Schedule for, any of the Schedules to this Act and prescribe all matters required or authorized by this Act to be prescribed.

(2) No regulation made by the Minister shall have effect until it is approved by the Senate and the House of Representatives and notification of such approval is published in the Gazette.

Representation of estate of deceased party or co-owner.

82. Where a party to a partition action or any other person entitled, or claiming or alleged to be entitled, to any right, share, or interest to, of, or in the land, dies after the institution of that action, the court may, on the *ex parte* application of any other party appoint

C 14——J. N. R 7589 (4/60)

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a person to represent the estate of the deceased for the purposes of the action if the court is satisfied, after such inquiry as the court deems fit, that such appointment is necessary or desirable for the purpose of enabling the court to proceed with the action with a view to its speedy determination; and any decree entered, order made, partition or sale effected, or thing done in the action shall, if the person so appointed is a party to the action, be for all purposes as valid and effectual as if the executor or administrator of the deceased or the person lawfully entitled to the right, share or interest of the deceased were a party to the action.

Interpretation.

83. (1) In this Act, unless the context otherwise requires—

"boundary marks" means the marks made or set up on a land, at the time of the partition thereof, for the purpose of defining the boundaries of the divided portions into which the land is partitioned, whether such marks consist of trenches or fences along the boundaries or of posts of hard wood or other material erected at suitable points on the boundaries;

"constructive or charitable trust" has the same meaning as in the Trusts Ordinance;

"land", when used with reference to a partition action, means the land or lands constituting the subject-matter of that action;

"partition action" means an action instituted under this Act for the partition or sale of any land or lands belonging in common to two or more owners;

"prescribed" means prescribed by or under this Act;

"surveyor" means a surveyor whose name is included in a list prepared under section 74 and for the time being in force.

(2) For the purposes of sections 39, 41 and 43, "co-owner" means a party to whom a share of the land has been allotted in the interlocutory decree and includes a person who has been declared by such decree to be entitled to any right to compensation for improvements.

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FIRST SCHEDULE

[Sections 8 and 9.]

COSTS OF PRELIMINARY SURVEY

1. Preliminary Survey—	
(*a*) one acre or less ..	Rs. 25
(*b*) over 1 acre and up to 10 acres ..	Rs. 25 for the first acre plus Rs. 6 for each additional acre or part thereof
(*c*) over 10 acres and up to 25 acres	Rs. 79 for the first 10 acres plus Rs. 5 for each additional acre or part thereof
(*d*) over 25 acres	Rs. 154 for the first 25 acres plus Rs. 4 for every additional acre
2. Travelling to the land from surveyor's residence or office, whichever is nearer—	
(*a*) for each of the first 5 return miles	Rs. 2
(*b*) for each of the second 5 return miles	Re. 1·50
(*c*) for every return mile thereafter	Re. 1
3. Cost of notices to the parties (other than notices of alteration of date to suit the convenience of the surveyor) inclusive of cost of registration of letter	70 cents per notice
4. Wages of tom-tom beater ..	Rs. 5 plus 20 cents per return mile for travelling
5. Wages of 5 labourers.. ..	Rs. 3 per labourer per day for 4 labourers and Rs. 5 per day for head labourer
6. Fee for making plan and report—	
(*a*) 10 acres and under ..	Rs. 15
(*b*) over 10 acres but not over 25 acres	Rs. 20
(*c*) over 25 acres	Rs. 25
7. Fee for certified copy of field notes—	
(*a*) 10 acres and under ..	Rs. 10
(*b*) over 10 acres but not over 25 acres	Rs. 15
(*c*) over 25 acres	Rs. 20
8. For surveying and showing on plan building, wells, &c.	Re. 1 for each thing surveyed and shown
9. For marking boundary trees or other boundary marks	10 cents for each thing marked
10. For surveying and showing on plan fences, walls, ditches, &c. ..	40 cents per chain
11. For surveying and showing on plan roads, paths, streams, &c. ..	80 cents per chain
12. For taking copies of tracings or plans from court records	Rs. 4 per acre up to a limit of Rs. 15

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13.	Enlarging plan or reducing to scale ..	per acre 80 cents with a minimum of Rs. 4
14.	Batta for nights out for surveyor ..	Rs. 10 per night
15.	Batta for nights out for 5 labourers ..	Re. 1 per labourer per night
16.	Counting trees	2 cents per tree
17.	Surveyor attending court to give evidence relating to his work ..	Rs. 15 per day
18.	Assessing value of land, buildings, walls, trees, fences, wells, plantations and other improvements	An amount to be fixed by court not exceeding 1 *per centum* of the total valuation
19.	Special fees chargeable for surveys in the registration areas of Wellawatte, Kirillapone and Dehiwala in addition to the costs specified above—	
	I. Cement or clay pickets ..	25 cents each
	II. Copy of field notes supplied to the Surveyor-General for examination of plan	Rs. 5
	III. Travelling to Land Registry to obtain tracings, per return mile	Rs. 2
	IV. Stamp for application for search ..	Re. 1
	V. Charge for each tracing obtained from the records of lot under survey and all necessary abutting lots	Rs. 5 per lot
	VI. For drawing up affidavit and swearing affidavit before a Justice of the Peace or Commissioner for Oaths and stamp ..	Rs. 5

The court may, if it is satisfied that special circumstances justify a higher rate in any particular case, increase the cost of any particular item or items by a sum not exceeding 25 *per centum* of the amount set out above.

[Section 12.]

SECOND SCHEDULE

FORM OF SUMMONS

In the District Court

Court of Requests of .....

Action No. .....

A. B. .....Plaintiff.

Vs.

C. D. .....

and others .....Defendants.

Whereas the above-named plaintiff has instituted an action under the Partition Act for the partition/sale of the land/lands called ..... situated at ..... and described in the copy/ translation of the plaint annexed hereto, you are hereby summoned

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to appear in this court either in person or by proctor on the ..... day of ....., 19—, at ..... o'clock of the forenoon and to state whether you dispute the accuracy of the share/shares allotted in the plaint to you or to any other party and whether you are aware of any other person having a right, share or interest to, of or in the said land/lands.

By order of Court,

Signed .....
Secretary/Chief Clerk.

The ..... day of ....., 19.....

FORM OF NOTICE

In the District Court
——————— of .....
Court of Requests

Action No. .....

A. B. ..... Plaintiff.

Vs.

C. D. .....

and others .....Defendants.

It is hereby notified that Action No. ..... has been instituted in the District Court / Court of Requests of ..... under the Partition Act for the partition/sale of the land/lands called ..... and situated in the village/villages of ..... in the ..... District.

The defendants in the aforesaid action are summoned to appear in court on the ..... day of ....., 19...., at ..... o'clock of the forenoon.

By order of Court,

Signed .....
Secretary/Chief Clerk.

The ..... day of ....., 19.....

FORM OF PRECEPT TO FISCAL

In the District Court
——————— of .....
Court of Requests

Action No. ..... instituted under the Partition Act.

To the Fiscal of the ..... Province.

Serve forthwith each summons sent herewith on the defendant in the above-mentioned action to whom it is directed together with such of the documents sent herewith as are required by the aforesaid Act to be attached to that summons, and certify to this court on or before the ..... day of ....., 19...., in what manner you have executed this precept.

By order of Court,

Signed .....
Secretary/Chief Clerk.

The ..... day of ....., 19.....

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[Section 29.]

THIRD SCHEDULE

COSTS OF COMMISSION FOR PARTITION

1. Survey for partitioning land, one-third of the fee provided for the preliminary survey under item 1 in the First Schedule for the purpose of a re-survey for partitioning the land where in the opinion of the court a re-survey is necessary, if the commission is issued to the same surveyor to whom the commission for the preliminary survey had been issued and if the commission is issued within a year of the preliminary survey. If the commission is issued to a different surveyor or after the expiry of a year after the preliminary survey, then the fee provided for the preliminary half survey under item 1.	
2. For partitioning the land into allotments—	
(*a*) 10 acres and under—	
(i) for the first ten lots, per lot ..	Rs. 6
(ii) for every lot in excess of ten lots	Rs. 4
(*b*) Over 10 acres but not over 25 acres—	
(i) for the first ten lots, per lot ..	Rs. 8
(ii) for every lot in excess of ten lots	Rs. 6
(*c*) Over 25 acres—	
(i) for the first ten lots, per lot ..	Rs. 10
(ii) for every lot in excess of ten lots	Rs. 8
3. For making plan, report and schedule of adjustment of compensation—	
(*a*) 10 acres and under ..	Rs. 20
(*b*) over 10 acres but not over 25 acres	Rs. 25
(*c*) over 25 acres	Rs. 30
4. For certified copy of field notes—	
(*a*) 10 acres and under ..	Rs. 10
(*b*) over 10 acres but not over 25 acres	Rs. 15
(*c*) over 25 acres	Rs. 20
5. Assessing the value of the various lots, buildings, walls, trees, fences, wells, plantations and other improvements for the purpose of awarding compensation or owelty	An amount to be fixed by court not exceeding 1 *per centum* of the valuation
6. Cost of notices to the parties (other than notices of alteration of date to suit the convenience of surveyor) inclusive of registration of letter	70 cents per notice
7. Wages of tom-tom beater ..	Rs. 5 plus 20 cents per return mile for travelling

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8. Travelling to the land from surveyor's residence or office, whichever is nearer—	
(*a*) for each of the first 5 return miles	Rs. 2
(*b*) for each of the second 5 return miles	Re. 1·50
(*c*) for every return mile thereafter ..	Re. 1
9. Wages of 5 labourers	Rs. 3 per day for 4 labourers and Rs. 5 per day for head labourer
10. Batta for nights out for surveyor ..	Rs. 10 per night
11. Batta for nights out for 5 labourers ..	Re. 1 per labourer per night
12. Surveyor attending court to give evidence relating to his work	Rs. 15 per day

The court may, if it is satisfied that special circumstances justify a higher rate in any particular case, increase the cost of any particular item or items by a sum not exceeding 25 *per centum* of the amount set out above.

FOURTH SCHEDULE

[Section 58 (1).]

	Amount of costs under section 58 (1) (*c*) in a partition action in a District Court
	Rs.
Where the value of the subject-matter of the partition action—	
(1) is not less than Rs. 300 but less than Rs. 500 ..	90
(2) is not less than Rs. 500 but less than Rs. 1,000..	140
(3) is not less than Rs. 1,000 but less than Rs. 2,000	200
(4) is not less than Rs. 2,000 but less than Rs. 3,000 ..	325
(5) is not less than Rs. 3,000 but less than Rs. 5,000 ..	425
(6) is not less than Rs. 5,000 but less than Rs. 10,000	750
(7) is not less than Rs. 10,000 but less than Rs. 50,000	1,000
(8) is not less than Rs. 50,000	1,500

FIFTH SCHEDULE

[Section 59.]

COSTS RECOVERABLE BY A PROCTOR FROM HIS CLIENT IN AN ACTION IN THE DISTRICT COURT

Where the value of interest claimed is ..	Class I Under Rs. 750	Class II Rs. 750 and under Rs. 3.000	Class III Rs. 3,000 and under Rs. 5,000	Class IV Rs. 5,000 and under Rs. 10,000
	Rs. c.	Rs. c.	Rs. c.	Rs. c.
1. Conference with client and receiving instructions to sue, defend, or intervene ..	5 0	8 0	10 0	12 0
2. Every necessary attendance on client in the progress of an action or proceeding ..	2 0	3 0	4 0	6 0

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Where the value of interest claimed is ..	Class I Under Rs. 750	Class II Rs. 750 and under Rs. 3,000	Class III Rs. 3,000 and under Rs. 5,000	Class IV Rs. 5,000 and under Rs. 10,000
	Rs. c.	Rs. c.	Rs. c.	Rs. c.
3. Every necessary attendance on advocate	2 0	3 0	4 0	6 0
4. Every attendance in court—				
(*a*) on returnable date of summons, notice or other process or commission, and				
(*b*) for re-issuing summons, notice or other process or commission ..	2 0	3 0	4 0	5 0
5. Drawing plaint, statement of claim, or petition ..	10 0	15 0	20 0	24 0
6. Attending court and filing plaint, statement of claim, or petition	2 50	3 75	4 0	4 0
7. For translating plaint into Sinhalese or Tamil ..	2 50	3 75	4 0	4 0
8. For every copy of plaint or of a translation thereof ..	1 0	1 0	1 0	1 0
9. For preparing each application for registration of *lis pendens* and duplicate thereof ..	2 50	2 50	2 50	2 50
10. For searching for encumbrances in Land Registry and for proctor's certificate regarding inspection of entries in Land Register relating to land or lands constituting subject-matter of action ..	10 0 .. 10 0 .. 10 0 .. 10 0 plus the fee payable to the Land Registry			
11. Cost of advertising the action in a newspaper ..	the actual costs incurred			
12. Drawing summons, notice, subpoena, writ, or other process, or order of court, each ..	1 0	1 0	1 0	1 0
13. Making copy or translation thereof	0 50	0 75	0 75	0 75
14. Attending court to support or oppose all necessary or ordinary applications ..	5 0	5 0	7 50	7 50
15. Drawing affidavit and fair copy, per folio *	1 0	1 0	1 0	1 0
16. Drawing brief for advocate and fair copy, per folio * ..	1 0	1 0	1 0	1 0
17. Examining witnesses preparatory to trial or for instructions for brief	3 0	4 0	5 0	6 0

* A folio to consist of 120 words.

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Where the value of interest claimed is ..	Class I	Class II	Class III	Class IV
	Under Rs. 750	Rs. 750 and under Rs. 3,000	Rs. 3,000 and under Rs. 5,000	Rs. 5,000 and under Rs. 10,000
	Rs. c.	Rs. c.	Rs. c.	Rs. c.
18. Attending court with advocate on trial, if cause argued or heard	10 0	10 0	12 50	15 0
19. Attending court with advocate on trial, if cause adjourned or postponed	5 0	5 0	7 50	7 50
20. Attending court without advocate on trial, and conducting cause	20 0	20 0	25 0	30 0
21. Attending court without advocate on trial, if cause adjourned or postponed ..	5 0	5 0	7 50	7 50
22. Attending court for an inquiry	Half the rates set out in paragraphs 18, 19, 20 and 21 of this Schedule.			
23. Where judgment is deferred, attending court to hear it ..	2 50	3 50	3 50	3 50
24. For drawing interlocutory decree	10 0	10 0	10 0	10 0
25. For drawing final decree ..	10 0 plus Re. 1 for each lot	10 0	10 0	10 0
26. For preparing scheme of distribution	7 50	10 0	15 0	20 0
27. For drawing bill of costs ..	0 75	1 0	1 0	1 0
28. Attending taxation ..	1 50	2 50	2 50	2 50

Note.—(1) Costs in respect of plaint, summons, petition, affidavit or notice, or of copies or of translation thereof will be the actual cost of printing, typing or roneoing, or at the rates indicated in respect thereof in this Schedule, whichever is lower.

(2) In all actions over Rs. 10,000 the taxable charges shall be one-fourth higher than in Class IV.

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CHAPTER 70

PREVENTION OF FRAUDS

Ordinances Nos. 7 of 1840, 16 of 1852, 11 of 1896, 60 of 1947.

AN ORDINANCE TO PROVIDE MORE EFFECTUALLY FOR THE PREVENTION OF FRAUDS AND PERJURIES.

[*1st February, 1840.*]

Short title.

1. This Ordinance may be cited as the Prevention of Frauds Ordinance.

Deeds affecting immovable property to be executed before a notary and witnesses.

[§ 2, 60 of 1947.]

2. No sale, purchase, transfer, assignment, or mortgage of land or other immovable property, and no promise, bargain, contract, or agreement for effecting any such object, or for establishing any security, interest, or incumbrance affecting land or other immovable property (other than a lease at will, or for any period not exceeding one month), nor any contract or agreement for the future sale or purchase of any land or other immovable property, and no notice, given under the provisions of the *Thesawalamai* Pre-emption Ordinance, of an intention or proposal to sell any undivided share or interest in land held in joint or common ownership, shall be of force or avail in law unless the same shall be in writing and signed by the party making the same, or by some person lawfully authorized by him or her in the presence of a licensed notary public and two or more witnesses present at the same time, and unless the execution of such writing, deed, or instrument be duly attested by such notary and witnesses.

Certain contracts or agreements for the cultivation of paddy fields and *chenas* for any period not exceeding twelve months need not be notarially executed.

Operation.

3. (1) The provisions of section 2 shall not be taken to apply to any contract or agreement for the cultivation of paddy fields or *chena* lands for any period not exceeding twelve months, if the consideration for such contract or agreement shall be that the cultivator shall give to the owner of such fields or lands any share or shares of the crop or produce thereof.

(2) Subsection (1) shall come into operation in such places, districts, or provinces, and at such time or times,

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respectively, as the Minister [1] shall from time to time, by Order [1] to be published in the Gazette, appoint ; * and it shall be lawful for the Minister,[1] by Order,[1] to declare that subsection (1) shall cease to have operation in any place, district, or province which may become subject thereto, in which case subsection (1) shall accordingly cease to have any operation in such place, district, or province.

Every will shall be in writing, and signed by the testator in the presence of two witnesses at one time.

4. No will, testament, or codicil containing any devise of land or other immovable property, or any bequest of movable property, or for any other purpose whatsoever, shall be valid unless it shall be in writing and executed in manner hereinafter mentioned ; (that is to say) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of a licensed notary public and two or more witnesses, who shall be present at the same time and duly attest such execution, or if no notary shall be present, then such signature shall be made or acknowledged by the testator in presence of five or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Appointments by will to be executed like other wills, and to be valid although other required solemnities are not observed.

5. No appointment made by will, testament, or codicil in exercise of any power shall be valid unless the same be executed in manner herein before required ; and every will, testament, or codicil executed in manner herein before required shall, so far as respects the execution and attestation thereof be a valid execution of a power of appointment by will, testament, or codicil, notwithstanding that it shall have been expressly required that a will, testament, or codicil, made in exercise of such power, should be executed with some additional or other form of execution or solemnity.

* Proclaimed in all the provinces of Ceylon except the Eastern Province.

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No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

6. No will, testament, or codicil, or any part thereof, shall be revoked otherwise than by the marriage of the testator or testatrix, or by another will, testament, or codicil executed in manner herein before required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will, testament, or codicil is herein before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or testatrix, or by some person in his or her presence, and by his or her direction, with the intention of revoking the same.

No alteration in a will shall have any effect unless executed as a will.

7. No obliteration, interlineation, or other alteration made in any will, testament, or codicil after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will, testament, or codicil before such alteration shall not be apparent, unless such alteration shall be executed in like manner as herein before is required for the execution of the will, but the will, testament, or codicil, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator or testatrix, and the subscription of the witnesses be made in the margin or some other part of the will, testament, or codicil opposite or near to such alteration, or at the foot or end of or opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will, testament, or codicil.

No will revoked to be revived otherwise than by re-execution, or a codicil to revive it.

8. No will, testament, or codicil, or any part thereof, which shall be in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner herein before required, and showing an intention to revive the same ; and when any will, testament, or codicil which shall be partly revoked and afterwards wholly revoked shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

Publication not to be requisite.

9. Every will, testament, or codicil executed in manner herein before required shall be valid without any other publication thereof :

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Provided always that every such will, testament, or codicil shall, after the decease of the testator or testatrix, be duly proved and recorded in the District Court empowered by law to grant probate or administration in such case, according to such general rules of practice as may now or hereafter be made by the Judges of the Supreme Court.

Will not to be void on account of incompetency of attesting witness.

10. If any person who shall attest the execution of any will, testament, or codicil shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will, testament, or codicil shall not on that account be invalid.

Gifts to an attesting witness to be void.

11. If any person shall attest the execution of any will, testament, or codicil to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, disposition, or appointment of or affecting any immovable or movable property (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift, disposition, or appointment shall, so far only as concerns such person attesting the execution of such will, testament, or codicil, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as witness to prove the execution, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, disposition, or appointment mentioned in such will, testament, or codicil.

Creditor attesting to be admitted a witness.

12. In case by any will, testament, or codicil any immovable or movable property shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor whose debt is so charged, shall attest the execution of such will, testament, or codicil, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, testament, or codicil, or to prove the validity or invalidity thereof.

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Executor to be admitted a witness.

13. No person shall, on account of his or her being an executor or executrix of a will, testament, or codicil, be incompetent to be admitted a witness to prove the execution of such will, testament, or codicil, or a witness to prove the validity or invalidity thereof; nor shall any executor or executrix, by reason of his or her attesting such will, forfeit the recompense or commission for his or her trouble payable by law, custom, or practice.

Soldiers' and mariners' wills excepted.

14. Notwithstanding anything in this Ordinance contained, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Ordinance.

Deeds executed before other than proper notary prior to passing of Ordinance.

15. No writing, deed or instrument for the purposes aforesaid, and no will, testament, or codicil which shall have been made prior to the passing of this Ordinance, shall be deemed or taken to be invalid by reason alone of the same not having been executed and acknowledged before or attested by a notary licensed to practise within the district wherein the land or property devised or to be affected by such writing, deed, or instrument, will, testament, or codicil, is situated, any provision in Ordinance No. 7 of 1834 * to the contrary notwithstanding:

Provided always that every such writing, deed, or instrument, will, testament, or codicil shall have been at the time of the date thereof duly executed, acknowledged before, or attested by a notary licensed to practise in some other district.

Deeds to be executed in duplicate.

16. Every deed or other instrument, except any will, testament, or codicil required by this Ordinance to be executed or acknowledged before or to be attested by a notary, shall be executed, acknowledged, or attested in duplicate.

Ordinance not to affect sales by Government, &c.

17. None of the foregoing provisions in this Ordinance shall be taken as applying to any grants, sales, or other conveyances of land or other immovable property from or to Government, or to any mortgage of

* Repealed by Ordinance No. 7 of 1840.

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land or other immovable property made to Government, or to any deed or instrument touching land or other immovable property to which Government shall be a party, or to any certificates of sales granted by Fiscals of land or other immovable property sold under writs of execution.

No promise, &c., to be in force unless in writing and signed.

18. No promise, contract, bargain, or agreement, unless it be in writing and signed by the party making the same, or by some person thereto lawfully authorized by him or her, shall be of force or avail in law for any of the following purposes :—

(*a*) for charging any person with the debt, default, or miscarriage of another ;

(*b*) for pledging movable property, unless the same shall have been actually delivered to the person to whom it is alleged to have been pledged ;

(*c*) for establishing a partnership where the capital exceeds one thousand rupees :

Provided that this shall not be construed to prevent third parties from suing partners, or persons acting as such, and offering in evidence circumstances to prove a partnership existing between such persons, or to exclude parol testimony concerning transactions by or the settlement of any account between partners.

Instruments falling under section 18 to be notarially attested if affecting land.

19. Provided always that nothing in section 18 shall be construed to exempt any deed or instrument in any manner affecting land or other immovable property from being required for that purpose to be executed and attested in manner declared by section 2 of this Ordinance.

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CHAPTER 71

EXECUTION OF DEEDS

Ordinances Nos. 17 of 1852, 5 of 1875.

AN ORDINANCE TO PROVIDE FOR THE EXECUTION OF DEEDS WHICH ARE REQUIRED TO BE EXECUTED BEFORE AND ATTESTED BY A NOTARY PUBLIC BEFORE AN OFFICER OF GOVERNMENT INSTEAD OF BEFORE A NOTARY.

[*1st July, 1853.*]

Short title.

1. This Ordinance may be cited as the Deeds and Documents (Execution before Public Officers) Ordinance.

Deeds relating to land may be executed before a District Judge or Commissioner, &c.

2. Every writing, deed, or instrument which by section 2 of the Prevention of Frauds Ordinance is required to be executed in the manner therein mentioned in order to its validity, shall, if made after this Ordinance shall come into operation, be valid and effectual, so far as relates to the execution thereof, if the same be signed by the party making the same, or by some person lawfully authorized by him, and by two or more witnesses present at the same time, in the presence of some District Judge or Commissioner of a Court of Requests for the district in which the party making such writing, deed, or instrument, or the person signing the same as such attorney, resides, or in the presence of some Justice of the Peace for such district specially authorized by the Minister of Justice[1] to act in that behalf, and of whose appointment notice shall be given in the Gazette, and if the execution of such writing, deed, or instrument shall be certified at the foot or end thereof under the hand or hand and seal of such Judge or Commissioner, or of such Justice authorized as aforesaid, anything contained in the said Prevention of Frauds Ordinance to the contrary notwithstanding.

They shall be executed in duplicate and registered.

3. Provided that every such writing, deed, or instrument shall be executed in duplicate, which duplicate shall be delivered or transmitted by such Judge,

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Commissioner, or Justice to the Registrar of Lands in accordance with section 4 of the Registration of Documents Ordinance to be by him registered and preserved in the Land Registry in like manner as notarial deeds of a similar description ; and all persons interested in any such deed shall be entitled, on furnishing the proper stamp, to demand a copy or extract of such deed, certified as correct by the said Registrar of Lands, for which copy or extract a fee of two rupees shall be paid to the said Registrar of Lands who shall pay the same into the Treasury.

Copies or extracts how obtained.

4. No such Judge, Commissioner, or Justice as aforesaid shall be authorized to certify the execution of any such writing, deed, or instrument unless the same, and the duplicate thereof, shall be duly stamped as required by law, nor until the same shall have been read over and explained to the party making the same, and to the witnesses thereto, by or in the presence of such Judge, Commissioner, or Justice as aforesaid, nor unless the same, and the duplicate thereof, shall be legibly written or engrossed, without erasures therein, nor unless the party making such writing, deed, or instrument shall be known to such Judge, Commissioner, or Justice as aforesaid, or to at least two of the attesting witnesses thereto, who shall make a declaration to that effect before him.

Manner of execution of such deeds.

5. Every such Judge, Commissioner, or Justice as aforesaid shall insert in his certificate of the execution of every such writing, deed, or instrument, the day, month, and year on which and the place where the same is executed, together with the names and residences of the attesting witnesses ; and such certificate shall be in the following form of words, or in any other form of words to the same effect ; that is to say,

Form of certificate.

I, *A. B.*, District Judge of (*or as the case may be*), hereby certify that the above-written deed was signed by the within-named (*insert the name of the party making the deed*), the maker thereof, and by ——— of ———, and ——— of ———, the attesting witnesses thereto, in my presence and in the presence of one another, at ———, on the ——— day of ———, 19—.

Signature *A. B.*,

Seal District Judge.

C 15——J. N. R 7589 (4/60)

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No fees to be taken.

6. No fee or gratuity shall be received or taken by any such Judge or Commissioner, or by any such Justice authorized by the Minister of Justice[1] as aforesaid, of or from any person whomsoever for certifying the execution of any such writing, deed, or instrument, or for any act done or to be done by any such Judge, Commissioner, or Justice under this Ordinance; and any such officer who shall receive or take any fee or gratuity contrary to the true intent and meaning of this Ordinance shall be liable on conviction thereof to a fine not exceeding two hundred rupees.

Penalty.

Deeds not to be written by such Judges, &c., or by the officers of their courts.

7. No such Judge or Commissioner, and no such Justice authorized by the Minister of Justice[1] as aforesaid, and no secretary, clerk, interpreter, or other officer of any court presided over by such Judge or Commissioner shall draw up, write, or engross any writing, deed, or instrument to be executed under the provisions of this Ordinance, or any duplicate thereof; and any such officer who shall draw up, write, or engross any such writing, deed, or instrument, or the duplicate thereof, contrary to the true intent and meaning of this Ordinance, shall be liable on conviction to a fine not exceeding two hundred rupees.

Penalty.

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CHAPTER 72

CONTRACTS FOR HIRE AND SERVICE

AN ORDINANCE TO AMEND AND CONSOLIDATE THE LAW RELATING TO SERVANTS, LABOURERS, AND JOURNEYMEN ARTIFICERS UNDER CONTRACTS OF HIRE AND SERVICE.

Ordinances Nos. 11 of 1865, 16 of 1884, 16 of 1905, 23 of 1912, 41 of 1916, 43 of 1921, 27 of 1927.

[*1st July, 1866.*]

Short title.

1. This Ordinance may be cited as the Service Contracts Ordinance.

Interpretation.

2. The word "servant" shall, unless otherwise expressly qualified, extend to and include menial, domestic, and other like servants, pioneers, kanganies, and other labourers, whether employed in agricultural, road, railway, or other like work.

Verbal contract of service to be a contract of service for one month.

3. Every verbal contract for the hire of any servant, except for work usually performed by the day, or by the job, or by the journey, shall (unless otherwise expressly stipulated, and notwithstanding that the wages under such contract shall be payable at a daily rate) be deemed and taken in law to be a contract for hire and service for the period of one month, and to be renewable from month to month, and shall be deemed and taken in law to be so renewed, unless one month's previous notice or warning be given by either party to the other of his intention to determine the same at the expiry of a month from the day of giving such notice.

Wages when payable.

4. (1) The wages of such servant shall be payable monthly, except where the service shall have been determined by notice on a day other than the last day of the month, in which case the wages for the broken period shall be payable to the day the service is so determined, and such wages, where the same shall not be payable at a monthly rate, shall be computed according to the number of days on which such servant shall

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have been able and willing to work ; or, if payable at a monthly rate, shall be in proportion to the number of days on which he shall have been so able and willing as aforesaid. Any employer shall be entitled to discharge any such servant from his service under any such contract, without previous notice, provided such servant be instantly paid his wages for the time he has served, and also for one month from the time of such discharge :

Provided always that any such contract may at any time be determined by the misconduct of either party in their relative capacity of master and servant, which may be proved by either party against the other.

(2) Where any contract is so determined by misconduct on the part of the master, he shall pay to a servant, justly demanding discharge on account of such misconduct, wages up to the date of discharge and in addition, in the case of a servant employed on a contract for hire and service for a period of time, a sum equivalent to the wages which would be earned by such servant during the period of his engagement, such period however not exceeding one month for the purpose of this section.

(3) Where a master summarily discharges a servant employed and paid by the day on account of misconduct on the part of the servant, he shall pay to such servant wages earned by him up to the date of discharge, and in the case of a servant employed on a contract for hire and service for a period of time longer than one day, it shall be lawful for the master in his discretion to decline to pay any wages claimed by such servant subsequent to the last day of the last preceding period for which such servant was employed, provided that payment of wages earned shall not be so refused for any period exceeding one month reckoned from and immediately prior to the date of discharge.

(4) Any master failing to pay, on the day when the contract of service is determined, the wages of any servant which may be due to such servant under this section shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees.

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Term of verbal contract for journeyman artificer.

5. Every verbal contract for the hire, according to time, of any journeyman artificer (where no special contract or agreement shall have been made and duly proved) shall be deemed and taken in law to be a contract for the hire of such artificer for one day, and no longer.

Proviso, if service be continued after the time agreed upon.

6. Provided always that nothing in the preceding sections of this Ordinance shall be construed to prevent any servant or journeyman artificer, who may continue in the service of his employer beyond the period for which any verbal contract entered into by him is respectively declared binding only in law, as aforesaid, from recovering his wages according to the full period of time of his being in such service ; nor to prevent any similar subsequent verbal contract being respectively implied in law from the continuance of such service or otherwise.

Written contracts with servants and journeymen artificers for terms of service exceeding one month, but not exceeding three years.

7. No contract entered into in Ceylon for the hire and service of any servant or journeyman artificer for any period of time longer than one month shall be valid in law, so as to subject any party thereto to the provisions of this Ordinance for not performing the same, unless such contract shall be in writing and shall clearly express the terms and conditions thereof, and shall be signed or acknowledged by the parties thereto in the presence of a Magistrate, or a Justice of the Peace, or other person expressly authorized by the Minister of Justice,[1] such Justice or other person not being himself the employer of such servant or journeyman artificer or the agent of such employer. And it shall be the duty of such Magistrate, Justice of the Peace, or other authorized person to see that the contract is fully explained to the parties, and to certify on the contract that they fully understand the terms thereof and are desirous to fulfil the same. And such contract, when produced in evidence and bearing the certificate of the Magistrate, Justice of the Peace, or duly authorized person as aforesaid shall be prima facie evidence of the matters and things contained therein. And every such contract shall be executed in triplicate ; and it shall be the duty of such Magistrate or Justice of the Peace, or other authorized person as aforesaid, to give or to cause to be given

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one copy thereof to the servant, and to send or to cause to be sent, within ten days of the execution thereof, another copy thereof to the Magistrate of the district wherein such contract shall have been executed, and in default thereof such Magistrate or Justice shall be liable to a penalty of fifty rupees. And the said Magistrate is hereby required to preserve the said counterpart, and to allow any person who may be interested in the said contract to inspect the same :

Provided always that no contract (excepting contracts made under section 8 of this Ordinance) for the hire and service of any servant or journeyman artificer (whether made in Ceylon or in India, as provided by section 9) shall be valid under the provisions of this Ordinance if made for a longer period of hire or service than three years.

Contracts for the hire of persons to be employed in the service of Government.

8. It shall be lawful for the Director of Public Works, the Surveyor-General, or any other person expressly authorized thereunto by a Minister,[3] to enter into any contract on behalf of Her Majesty, for the hire and service of any person to be employed as a servant or artificer for any period not exceeding five years :

Provided that such contract, if made for a period of hire or service exceeding one month, shall (if entered into in Ceylon) be in writing, and shall be executed in the same manner and be subject to the same rules as are prescribed in the preceding section as respects contracts in the case of persons to be employed in service other than that of the Government.

Contracts entered into in India for hire and service in Ceylon.

9. Every contract entered into in India for the hire and service in Ceylon of any servant or journeyman artificer shall be valid and binding so as to subject the parties thereto to the provisions of this Ordinance, notwithstanding that the same be not executed in the manner prescribed by sections 7 and 8 of this Ordinance :

Provided that such contract be in writing and signed or acknowledged by the parties thereto or their agents respectively, and clearly express the terms and conditions thereof ; and provided also that such contract be valid and binding according to the laws of India in force at the time of the entering into such contract ; and

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every such contract as aforesaid when produced in any court of Ceylon shall be deemed valid and binding according to such laws as aforesaid, unless the contrary be proved. It shall be the duty of such employer or his agent with whom any such contract shall be entered into to give, at the time of entering into such contract, a copy thereof to the servant or journeyman artificer with whom such contract shall have been entered into.

Written contracts how determinable.

10. Unless provision to the contrary be expressly made therein, no contract entered into and required to be in writing under the provisions of this Ordinance shall be determinable before the expiration of the period specified therein, except by the mutual consent of the contracting parties, expressed in writing, signed or acknowledged by them in the presence of two witnesses, or except when the party contracting to be employed shall have been convicted of an offence, or have become a prisoner, or permanently disabled from completing his contract, and his employer shall elect to determine the contract, or except for some reason sufficient in law to set it aside :

Provided that, in case of such disability to serve, the employer shall be bound to furnish the immigrant from India who shall have contracted in India for any period of service in Ceylon, or who shall have contracted in Ceylon for any period of service not less than one year, with adequate means of returning to his own country.

Court may make abatement of wages or damages in case of misconduct.

11. Upon any complaint by any servant or journeyman artificer for non-payment of wages, or damages for breach of contract or misconduct by his employer, before a court having jurisdiction in that behalf, it shall be lawful for such court, at its discretion, to make a proportional abatement out of any sum to be awarded as the wages or damages due to any such servant or artificer, for such days or time as he shall have been proved to have been, without the consent of his employer, absent from or neglecting his service or work, and also for the value of any breakages or damage done to any of the property of his employer by or through the misconduct or gross negligence or carelessness of such servant or journeyman artificer.

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Persons giving false character.

12. If any person shall knowingly and wilfully pretend or falsely assert in writing that any servant or journeyman artificer has been hired or retained in his service or employment, or in the service or employment of any other person or persons, for any period of time whatsoever or in any station or capacity whatsoever, other than that for which such servant or artificer shall have been so employed, hired, or retained, or if any person shall otherwise knowingly and wilfully write, sign, or give any untrue, false, forged, or counterfeit certificate or writing in favour of the character of such servant or artificer, then in every such case such person or persons so offending shall be liable to a fine not exceeding one hundred rupees, or to imprisonment, with or without hard labour not exceeding twelve months, or to such fine together with such imprisonment, at the discretion of the court.

Servant, &c., making false statement of former employment or altering character.

13. If any person shall offer himself as a servant or journeyman artificer, asserting or pretending that he hath served in any service or employment in which such servant shall not actually have served, or with a false, forged, or counterfeit certificate of his character or shall in anywise add to or alter, efface, or erase any word, date, matter, or thing contained or referred to in any certificate given to him by his last or any former actual employer, or by any other person or persons duly authorized by such employer to give the same, then in any of the said cases such person or persons so offending shall be liable on conviction to a fine not exceeding thirty rupees, or to imprisonment, with or without hard labour, not exceeding three months, or to such fine together with such imprisonment, at the discretion of the court.

Servant, &c., denying former employment.

14. If any person, having been before in service or employment as a servant or artificer, shall, when offering to hire himself in any employment, capacity, or service, falsely and wilfully pretend not to have been hired or retained in any such previous employment, capacity, or service, then and in such case every such person so offending shall be liable on conviction to a fine not exceeding thirty rupees, or to imprisonment,

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with or without hard labour not exceeding three months, or to such fine together with such imprisonment, at the discretion of the court.

Transfer of contract of service to new proprietor or manager of estate.

15. If the estate upon which any agricultural servant or journeyman artificer is employed under any contract to serve for a period exceeding one month shall, during the pendency of such contract, become vested in or be transferred to or placed under the superintendence or management of any person other than the person with or by whom such contract was entered into, such contract and all the rights and liabilities incidental thereto shall be deemed in law to be transferred to the person in or to whom the said estate shall become vested or transferred as aforesaid, or under whose superintendence or management the said estate shall be placed as aforesaid, and such last-mentioned person and such servant or artificer shall be respectively bound to perform all the terms and conditions of the contract in the same manner, or as near thereto as the nature of the case will admit, as if the contract had been originally entered into between such person and such servant or artificer:

Provided always that in case such estate shall become vested in or transferred to any person other than the person with whom such contract shall have been entered into, such servant or journeyman artificer shall thereupon be entitled to determine such contract, if he shall so elect, and give notice of such being his intention to the person in whom the estate shall have become vested or to whom it shall have been transferred, and shall receive all wages then due to him under or by virtue of such contract:

Provided, however, that the last-mentioned proviso shall not be held to apply to cases where estates are held in partnership by several persons, and where one or more of the partners retire from the partnership, or when, on such retirement, other partner or partners shall take the place of the retiring partner or partners, one or more of the original partners who were parties to the contract continuing in the partnership.

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Penal provisions of this Ordinance not to affect civil actions.

16. Neither the alleged commission of any crime or offence by any person or persons under the provisions of this Ordinance, nor the conviction nor acquittal of any person or persons of any crime or offence under this Ordinance, shall be a bar to any civil action for damages against such person or persons at the instance of any person or persons who may have suffered any injury, or who may allege that he or they has or have suffered any injury from or by reason of the commission of any such crime or offence.

Employer bound to find lodging, food, and medical care to sick servant.

17. Any servant who shall be incapacitated by sickness from labour whilst in the service of any employer shall be entitled to lodging, food, as well as medical care, at the expense of such employer during such incapacity :

Provided that the employer shall not be bound to pay to the servant during such period his wages in addition ;

Provided further, that nothing herein contained shall prevent the employer from determining the contract under section 10 of this Ordinance in case the servant shall become permanently disabled from completing his contract.

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CHAPTER 73

CHAUFFEURS

AN ORDINANCE FOR THE REGULATION OF CHAUFFEURS.

Ordinance No. 23 of 1912.

[*9th September, 1912.*]

Short title.

1. This Ordinance may be cited as the Chauffeurs Regulation Ordinance.

The Service Contracts Ordinance and the Registration of Domestic Servants Ordinance to apply to chauffeurs as if they were domestic servants.

2. The Service Contracts Ordinance together with all amendments of the same, and the Registration of Domestic Servants Ordinance together with all amendments of the same, shall apply to chauffeurs in all respects as if they were domestic servants.

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CHAPTER 74

HOTEL-KEEPERS LIABILITY

Ordinances Nos. 19 of 1916, 61 of 1939, 3 of 1946.

AN ORDINANCE TO LIMIT THE LIABILITY OF HOTEL-KEEPERS IN CERTAIN RESPECTS.

[*29th July, 1916.*]

Short title.

1. This Ordinance may be cited as the Hotel-Keepers Liability Ordinance.

Hotel-keeper not to be liable for loss, &c., beyond seven hundred and fifty rupees, except in certain cases.

2. No hotel-keeper shall, after the passing of this Ordinance, be liable to make good to any guest of such hotel-keeper any loss or injury to goods brought to his hotel to a greater amount than the sum of seven hundred and fifty rupees, except in the following cases, that is to say :—

(*a*) where such goods shall have been stolen, lost, or injured through the act, default, or neglect of such hotel-keeper, or any servant in his employ ;

(*b*) where such goods shall have been deposited expressly for safe custody with such hotel-keeper or his manager :

Provided that in the case of such deposit, it shall be lawful for such hotel-keeper or his manager aforesaid, if he thinks fit, to require as a condition of his liability that such goods shall, where the nature of them reasonably so permits, be deposited in a box or other receptacle fastened and sealed by the person depositing the same ;

Provided also that the above liability shall, in the case of such hotels as provide no sleeping accommodation and such resthouses as are in charge of a paid servant of an Urban Council or a Town Council, not extend to more than two hundred and fifty rupees.

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Obligation to receive property of guests for safe custody.

3. If any hotel-keeper or his manager shall refuse to receive for safe custody, as before mentioned, any goods of his guest, or if any such guest shall, through any default of such hotel-keeper or manager, be unable to deposit such goods as aforesaid, such hotel-keeper shall not be entitled to the benefit of this Ordinance in respect of such goods.

Notice of law, &c., to be exhibited.

4. Every hotel-keeper shall cause at least one copy of this Ordinance, printed in plain type in the English, Sinhalese, and Tamil languages, to be exhibited in a conspicuous part of the hall or entrance to his hotel, and he shall be entitled to the benefit of this Ordinance in respect of such goods only as shall be brought to his hotel while such copy shall be so exhibited.

Interpretation.

5. For the purpose of this Ordinance the word "hotel" shall mean any hotel, inn, tavern, public house, resthouse, restaurant, eating house, or other place of refreshment the keeper of which is now by law responsible for the goods of his guest; the words "hotel-keeper" shall mean the keeper of such a place who is responsible as aforesaid; the word "manager" shall mean the agent or servant of the hotel-keeper for the time being in charge of the hotel or any person duly appointed by the hotel-keeper to receive the goods of his guests for safe custody as aforesaid; and the word "goods" shall mean goods and property of every description, including a horse or other live animal and any gear appertaining thereto, and any carriage, cart, bicycle, rickshaw, motor car, motor bicycle, or other vehicle.

Saving clause.

6. Nothing in this Ordinance contained shall be deemed to extend the liabilities to which an hotel-keeper is now by law subject or to affect the same otherwise than as herein before provided.

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CHAPTER 75

ABOLITION OF SLAVERY

Ordinance No. 20 of 1844.

AN ORDINANCE TO PROVIDE FOR THE TOTAL ABOLITION OF SLAVERY IN CEYLON.

[*20th December, 1844.*]

Short title.

1. This Ordinance may be cited as the Abolition of Slavery Ordinance.

Slavery no longer to exist in Ceylon.

2. Slavery shall no longer exist in Ceylon, and all persons being slaves shall become free, and entitled in every way to all the rights and privileges of free persons, any other law or enactment to the contrary now in force notwithstanding.

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CHAPTER 76

LOST PROPERTY

REGULATION FOR MAKING A GENERAL PROVISION IN RESPECT TO PROPERTY FOUND.

Regulation No. 15 of 1823, *Ordinance* No. 26 of 1917.

[*25th October, 1823.*]

Short title.

1. This Regulation may be cited as the Lost Property Regulation.

Persons finding property to bring it to the constable or police headman who is to report the same to the nearest Magistrate. Magistrate to publish the circumstance. If claimant appear. If no claimant.

2. Any person throughout Ceylon who may find any money or goods, of whatsoever description the same may be, do and shall bring the same forthwith to the constable or the police headman of the division or village in which the same may be found, which said constable or police headman shall forthwith report the circumstance to the nearest Magistrate, who shall cause public notice to be given of the same ; and the finder shall, if no fraud appear to have been by him committed in the matter, receive from the person who may substantiate, within six months, a right to the property so found, one-tenth of the value thereof ; and if no claimant shall appear or prove his right to the property within the period of six months, then the Magistrate shall cause the same to be sold, if the same be not money and shall pay one-half of the proceeds, or of the money, to the finder, and the remainder into the Treasury to the credit of the Consolidated Fund. [s]

Punishment for breach of this Regulation.

3. Any person who shall be convicted of a breach of this Regulation shall be subject to punishment by fine or imprisonment, either with or without being employed at hard labour, at the discretion and according to the powers of the court or Magistrate before whom such conviction may take place.

Construction of words "constables" and "police headmen".

4. All references in this Regulation to constables and police headmen shall be construed as including in the Kandyan provinces a reference to peace officers of the corresponding rank.

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CHAPTER 77

LAND TRANSFER

Proclamation, 14th July, 1821.

PROCLAMATION DECLARING SALES OF LAND IN THE KANDYAN PROVINCES FINAL UNLESS OTHERWISE STIPULATED.

[*14th July, 1821.*]

Short title.

1. This Proclamation may be cited as the Kandyan Land Transfer Proclamation.

Sales of land to be final unless otherwise stipulated.

2. We having taken into our consideration the expediency of settling the rights of purchasers of land in the Kandyan provinces on a footing which shall give them an immediate and permanent interest in their property, and induce them to improve the same, which the practice that has obtained in some of the said provinces of allowing the seller to repurchase the land at any time in his life is evidently calculated to prevent: Do therefore proclaim and enact, that from and after the publication of these presents all sales of land made in writing according to the provisions of our Proclamation * of the twenty-eighth day of October, One thousand Eight hundred and Twenty, in the Kandyan provinces shall be final and conclusive, and neither the seller nor his or her heirs shall have any peculiar right to repurchase the same, unless an express stipulation reserving such privilege shall be inserted in the deed of sale.

Expenses of purchaser to be paid.

3. Such reservation when made in the deed of sale shall not be valid for any longer period than three years from the date of the said deed; and that the person who wished to exercise this right of repurchase shall pay to the person to whom he or she sold the land not only the original consideration but also all expenses incurred for increasing the value of the property, the amount of

* Repealed by Ordinance No. 7 of 1834, itself repealed by Ordinance No. 7 of 1840.

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which will, in case of any dispute, be ascertained by appraisement on application to and under the sanction of the court in whose jurisdiction the land lies.

Redemption of land sold prior to this date.

4. And in respect to sales of land of a date prior to these presents, we do hereby order that no privilege of purchase shall in any part of these provinces be considered to attach to the seller unless he or she shall record his or her claim to the same in the court of the nearest Agent of Government within six months from this date, and such privilege shall then only be competent to such seller within the term of three years from this date, and upon the conditions in the preceding clause contained.

No right of repurchase vests in the seller's heirs.

5. And no right of repurchase shall be considered to vest in the heirs of the seller, but the privilege is confined to him or herself personally.

C 16——J. N. R 7589 (4/60)

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CHAPTER 78

RIOT DAMAGES

Ordinances Nos. 23 of 1915, 6 of 1916, 14 of 1916, 61 of 1939, 3 of 1946, 29 of 1947.

AN ORDINANCE TO MAKE PROVISION FOR THE PAYMENT OF COMPENSATION IN THE CASE OF DAMAGE CAUSED BY RIOTS.

[*18th October, 1915.*]

Short title.

1. This Ordinance may be cited as the Riot Damages Ordinance.

CHAPTER I

PRELIMINARY

Interpretation.

2. In this Ordinance the expression " administrative division " means—

(*a*) in the case of a village, the village headman's division ;

(*b*) in the case of any town or village within the jurisdiction of an Urban Council or a Town Council the area contained within the administrative limits thereof.

Provision of compensation for damage by riots.

3. Where any house, shop, or building has been injured or destroyed, or the property therein has been injured, stolen, or destroyed, by any persons riotously and tumultuously assembled together, compensation shall be payable to the owners thereof for the damage so caused, in such manner as is provided by this Ordinance.

CHAPTER II

COMMISSIONERS

Minister may appoint Commissioners.

4. (1) For the purpose of assessing any damage so caused and for awarding compensation in respect thereof, the Minister [1] may appoint Commissioners, with such powers and duties as are hereinafter defined.

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(2) Where a Commissioner has been appointed, damages shall not be recoverable by any person in respect of any matter specified in section 3 which is within the jurisdiction of the Commissioner, except in pursuance of the provisions of this Ordinance, and all actions already instituted for the recovery of such damages shall abate accordingly.

Duties of Commissioners.

5. It shall be the duty of the Commissioners so appointed—

(*a*) to ascertain by personal inquiry the amount of the damage ;

(*b*) to report the amount of such damage to the Minister ;[1]

(*c*) to apportion to any area for which they may be appointed the shares respectively payable by the administrative divisions comprised in such area ;

(*d*) to allot the sums payable as compensation for such damage among the persons residing or owning property within each administrative division.

Powers of Commissioners.

6. (1) The Commissioners so appointed shall have the following powers :—

(*a*) all the powers of a Magistrate for the purpose of summoning witnesses and enforcing the attendance of persons, the production of documents, the administration of oaths, and the issue of search warrants, and any other powers belonging to a Magistrate which may be reasonably required for the discharge of their duties under this Ordinance ;

(*b*) the power to call upon any person to declare on oath the amount of any damage which he may have sustained and in respect of which he claims compensation ;

(*c*) the power to require any person to furnish to them in such form as they may demand a full return in writing of all movable and immovable property of which such person is possessed, as well as his total annual income from all sources.

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(2) Any person who within any time fixed by the Commissioner for the purpose (without reasonable excuse, the proof whereof shall be on him) refuses or neglects to furnish to a Commissioner any return demanded by the Commissioner under the last preceding subsection shall be guilty of an offence, and liable on conviction to a fine not exceeding one hundred rupees, and in default to rigorous imprisonment not exceeding three months.

(3) Any person who in any inquiry held by a Commissioner, or in any document furnished upon his demand, or in any declaration made before him or presented to him, makes any statement which he knows, or has reason to believe, to be false shall be deemed to be guilty of the offence of giving false evidence in a judicial proceeding, and shall be punishable in accordance with the Penal Code.

CHAPTER III

Assessment Of Compensation

Notice of assessment.

7. Before assessing any damage the Commissioner shall give public notice in such manner as may be prescribed by Order under section 12, or in the absence of such Order in such manner as he may deem appropriate, either generally with reference to damage in any administrative division or part thereof, or particularly with reference to any special premises, stating—

(*a*) the time and place at which he proposes to make the assessment ;

(*b*) the manner in which claims for assessment shall be presented to him ;

(*c*) a date (not being less than one month from the date of the notice) beyond which no claims for the assessment of damage will be entertained.

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Limit of time for claims for assessment.

8. No claim for assessment of damages which is presented after the date fixed in any notice given under the last preceding section shall be entertained by the Commissioner, unless on good cause shown he in his discretion shall otherwise order.

Notice of adverse claims.

9. In any case in which a Commissioner receives notice that two or more persons claim adversely to be entitled to compensation in respect of any damage which he is assessing or which he proposes to assess, he shall serve upon each of the persons so claiming adversely a notice requiring him to take such steps as may be necessary to obtain a judicial decision on the matter at issue between them, and shall, pending such decision, proceed to assess the damage in question subject thereto.

Assessment to be conclusive.

10. Any assessment of damage made by a Commissioner or Commissioners in pursuance of this Ordinance shall be conclusive as to the amount of such damage :

Provided that the Minister [1] may in his discretion in any case direct a re-assessment.

CHAPTER IV

Apportionment Of Compensation

Riot areas.

11. (1) For the purpose of the recovery of compensation in respect of damage for which provision is made by this Ordinance, the Minister [1] may declare any area of Ceylon to be a riot area, and (subject to the provisions of Chapter IX) may direct the recovery from the persons resident or owning property within such area—

(*a*) of the amount of all such damage in such area ; and

(*b*) of the costs of suppressing within such area the riots or disturbances within such area, by which such damage was occasioned.

(2) A certificate under the hand of the Secretary to the Treasury [1] shall be conclusive as to the amount of such costs :

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Provided that the Minister[1] may direct that such costs shall in any case be deemed to be such percentage of the amount of the assessed damage as he shall specify.

Power of Minister.

12. (1) The Minister[1] may, either generally with regard to any damage caused in the manner referred to in section 3 of this Ordinance, or particularly with regard to any special damage so caused, by Order give directions in respect of all or any of the following matters :—

(*a*) the assessment of damages ;

(*b*) the apportionment of the shares recoverable from the several administrative divisions of a riot area ;

(*c*) the allotment of such shares among the persons resident or owning property in such area ;

(*d*) the classification of such persons for the purpose of such allotment ;

(*e*) the dates on which the sums due in respect of compensation shall be paid, and the instalments, if any, in which they shall be so paid ;

(*f*) generally, with respect to the exercise of the powers and the performance of the duties of Commissioners under this Ordinance.

(2) The Minister[1] may exempt any class of persons from liability to pay compensation under this Ordinance, or may direct that special terms shall be granted to any class of persons, or to any administrative division, or may exempt any administrative division or any part thereof within a riot area from such liability.

Apportionment among administrative divisions.

13. (1) Subject to any directions that may be contained in any Order made under the last preceding section, the total amount of all damages and costs directed to be recovered in respect of any riot area shall, if such area comprise more than one administrative division, be apportioned among the administrative divisions of the area in such proportion as shall be directed under the last preceding section.

(2) The Minister[1] may at any time cancel any apportionment and direct a fresh apportionment, or may revise any apportionment.

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Amount of apportionment to be a charge on the administrative division.

14. The Minister,[1] by Order published in the Gazette, may direct that any sums so apportioned, or, in the case of a riot area comprising only a single administration area, any sums directed to be recovered under section 11, shall be a charge payable by the administrative division in respect of which the apportionment or direction is made.

CHAPTER V

Allotment Of Liability

Allotment among persons liable.

15. Any sum declared to be a charge upon an administrative division by Order under the last preceding section (together with the costs of any proceedings under this Chapter) shall be allotted by the Commissioner or Commissioners in manner in this Chapter provided.

Method of allotment.

16. In each administrative division the Commissioner or Commissioners appointed for such division—

(*a*) shall cause lists to be made of all males of eighteen years and upwards residing within such division, and of all persons owning immovable property therein ;

(*b*) shall divide the persons contained in such lists into classes, in accordance with such principles of classification as may be prescribed by the Minister[1] under section 12, having regard to the means and ability to pay of the persons comprised in each class ;

(*c*) shall assign to each class a proportion of the amount charged, in accordance with such principles as may be prescribed by the Minister[1] under section 12 ;

(*d*) shall allot the amount of the proportion assigned to each class equally among the persons comprised in such class.

Exemptions and modifications.

17. (1) The Commissioner or Commissioners, for good cause shown, may exempt any person in whole or in part from any liability to which he may be subject

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under the last preceding section, or may extend the time for the discharge of any such liability.

(2) Where any person included in any list in any administrative division has been included or is liable to be included in any other list in some other administrative division, the Commissioner or Commissioners shall have regard to such inclusion or to such liability in any allotment made.

Publication of notice of allotment.

18. (1) The Commissioner or Commissioners shall cause to be published in the administrative division in respect of which any allotment under this Chapter is made a notice to the effect—

(*a*) that such allotment has been made ;

(*b*) that the sums allotted shall be payable before such dates and in such instalments, if any, as may be specified in the notice ;

(*c*) that lists showing the amount payable by each person are open to inspection at such place or places within the limits of the administrative division as may be specified in the notice.

(2) Every such notice shall be published by beat of tom-tom in such administrative division, and copies of such notice, in the language or languages of the inhabitants, shall be posted up in conspicuous places within such administrative division.

Conclusiveness of lists.

19. A list showing the amounts allotted by a Commissioner or Commissioners certified by the Commissioner or Commissioners as being made in accordance with this Chapter, and signed by the Commissioner or Commissioners, shall be conclusive as to the liability of the persons contained in the list to pay the sums therein stated :

Provided that the Minister[1] may in any case in his discretion direct that a fresh allotment shall be made or may revise any allotment ;

Provided further that nothing contained in this section shall preclude any person in any proceedings

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for or relating to the recovery or enforcement from such person of any such sum from showing that he was not liable to be included in the said list.

Supplementary allotment.

20. Where the full amount of the sum declared to be a charge upon the administrative division cannot be recovered owing to the default in payment on the part of persons to whom liabilities have been allotted under this Chapter, the Commissioner may make a supplementary allotment in the manner provided in this Chapter, and all the provisions of this Chapter shall apply to any allotment so made.

Commutation of liability by the performance of labour.

21. Any person liable to pay any sum in accordance with any allotment list under this Chapter shall have the same right to commute the money payment due from him by the performance of labour as a person liable in accordance with "The Repression of Crime (Consolidation) Ordinance, 1903",* under section 13 of that Ordinance and all the provisions of that section shall, with the necessary modifications, apply to the case as if they had been embodied in this section.

CHAPTER VI

Enforcement Of Liability

Recovery of amounts allotted.

22. If any sum allotted as payable by any person under this Ordinance, or any instalment thereof, is not duly paid, the amount shall be recovered by the Government Agent in whose district the administrative division is situated, in manner provided by section 41 and sections 49 to 54 of the Police Ordinance, and all the relevant provisions of the said sections shall, with the necessary modifications, apply, as if they had been embodied in this section.

Alternative method of enforcement.

23. In addition to, or in lieu of, proceeding in manner provided under the last preceding section the Government Agent may proceed in manner provided for in

* Repealed by Ordinance No. 16 of 1932.

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sections 14 and 15 of "The Repression of Crime (Consolidation) Ordinance, 1903",* and all the relevant provisions of the said sections shall, with the necessary modifications, apply, as if they had been embodied in this section :

Provided that in any such case the scale of punishment shall, in lieu of that prescribed by section 15 (2) of the said Ordinance, be as follows :—

(i) for any sum not exceeding one hundred rupees, one month,

(ii) for any sum of one hundred rupees or over, but not exceeding one thousand rupees, not less than one month and not more than six months,

(iii) for any sum exceeding one thousand rupees, not less than one month and not more than twelve months ;

Provided further, that subject to the furnishing of such bail and sureties as he may order, the Magistrate to whom application is made under this section may suspend the execution of any order of imprisonment subject to the payment of the sum due in such instalments extending over a period not exceeding six months as he may deem fit.

CHAPTER VII

Voluntary Contributions

Power of village to discharge liability by money payment or bond.

24. In lieu of taking proceedings for the allotment of liability under Chapter V, the Commissioner or Commissioners appointed in respect of any administrative division may agree to accept from the inhabitants and owners of property thereof, or such inhabitants or owners of property as may present themselves on behalf of the division, either payment in money of such amount as he or they may be authorized by the Minister [1] to receive in discharge of the liability of the division, or a mortgage bond or other obligation executed by such inhabitants or owners of property and secured in such manner as the Commissioner or Commissioners may approve, pending full payment of such amount by instalments or otherwise.

* Repealed by Ordinance No. 16 of 1932.

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Substitution of allotment under Ordinance.

25. (1) In the following cases, that is to say—

(*a*) where the amount secured by any such bond or obligation, or any instalment thereof, is not paid or not completely paid ;

(*b*) where the Commissioner or Commissioners shall be satisfied that any person or persons among the inhabitants or owners of property in any administrative division have refused to contribute the share equitably due from him or them in respect of any payment made, or of any bond or obligation accepted ;

(*c*) where the Commissioner or Commissioners shall be satisfied that it is the general desire of the signatories of any bond or obligation to be relieved of their liability thereunder, and to have the liability of the division allotted in manner herein before provided,

the Commissioner or Commissioners may, and in case (*c*) shall, proceed to allot the compensation payable by the inhabitants and owners of property in such division as though such payment had not been made or as though such bond or obligation had not been accepted.

(2) In any such case credit shall be given in the allotment lists to all persons in respect of any sum or sums they may have paid, and the balance due, if any, shall be alone recoverable.

(3) Where such allotment takes place in pursuance of paragraph (*b*) of subsection (1) of this section, the costs of the allotment (or such proportion thereof as the Commissioner or Commissioners may deem reasonable) may in the discretion of the Commissioner or Commissioners be charged against any person who in the opinion of the Commissioner or Commissioners shall have been responsible for the necessity of such allotment, and shall be added to, and shall be recoverable in the same manner as, the amount allotted to such person in the allotment list.

(4) In any case under the said paragraph in which the Commissioner or Commissioners shall be satisfied

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that a general allotment is not necessary, the Commissioner or Commissioners may make a special allotment in respect of the liability of the person or persons refusing as aforesaid, and the amount of such allotment and (subject to the discretion of the Commissioner or Commissioners) the costs of making the same shall be recoverable in the same manner as a sum allotted in an allotment list, and shall be disposed of in such manner as the Minister [1] shall direct.

CHAPTER VIII

Payment Of Compensation

Riot Damages Fund.

26. (1) Subject to the provisions of the next succeeding Chapter, in the case of any riot or disturbance in respect of which this Ordinance shall be applied there shall be established a fund, to be called "The Riot Damages Fund", and to be kept by the Deputy Secretary to the Treasury, [1] and there shall be paid into such fund—

(*a*) all sums collected in discharge of any liability under this Ordinance ;

(*b*) all other contributions towards the defrayal of the damage occasioned ;

(*c*) all fines or other sums collected in connection with the said riot or disturbance which the Minister [1] may direct to be so credited.

(2) There shall be paid out of such fund all sums payable for or in respect of compensation, and any other sums on account of expenses incurred in connection with the said riot or disturbance which the Minister [1] may direct to be so paid.

Payment of compensation.

27. (1) Subject as aforesaid, in any case in which a Commissioner is satisfied that any person is entitled to any sum as compensation in respect of any damage which has been assessed under this Ordinance, he may (subject to the direction of the Minister [1]) pay to such person such sum, in such manner, and in such instalments as he may determine.

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(2) In the case of adverse claims the Commissioner shall withhold payment pending a settlement or a judicial decision upon such claims.

Subsequent claims barred.

28. Upon the payment of any such sum no subsequent claim shall be entertained in respect of the same matter :

Provided that the person receiving such sum shall be deemed to receive it on behalf of the person who would be entitled thereto if the claim to compensation had been a right enforceable by a civil action.

CHAPTER IX

MUNICIPALITIES

Special provisions for Municipalities.

29. In any case in which the Municipal limits of any Municipality have been declared a riot area, the damage shall be assessed and compensation shall be payable in accordance with the provisions of this Chapter.

Appointment of Commissioners.

30. (1) The Commissioner or Commissioners shall be appointed by the Mayor of the Municipal Council, who may appoint himself a Commissioner.

(2) A Commissioner appointed under this Chapter shall have all the powers accorded to a Commissioner under section 6 of this Ordinance, and all the provisions of that section shall apply to a Commissioner so appointed.

(3) All the provisions of sections 4 (2), 7 to 10, 36, 37, 39 and 40 shall, with the necessary modifications, apply as if they had been embodied in this Chapter.

Amount of assessment to be a charge upon Municipal revenue.

31. (1) Upon the completion of the assessment, particulars thereof shall be published in the Gazette. Such particulars shall specify the several premises in respect of which the assessment is made, the amount of the assessment in each case, and (subject to the provisions of section 9) the person to whom compensation is due ; and thereupon the total amount of the assessment so published shall become a charge upon the Municipal fund of the Municipality in respect of which it is made.

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(2) The Minister [1] may direct that such charge shall be increased by the addition of such percentage as he may deem reasonable, as a contribution to the costs of suppressing the riot or disturbance by which the damage assessed was occasioned. The amount of such increase shall be deemed to be part of the charge, and shall be payable out of the Municipal fund to the Deputy Secretary to the Treasury, [1] and shall be disposed of in such manner as the Minister [1] shall direct.

Municipal Council may frame scheme.

32. (1) The Municipal Council may frame a scheme for the liquidation of the charge imposed upon its revenues under the last preceding section.

(2) Every such scheme shall be subject to the approval of the Minister, [1] and any scheme so approved, on being published in the Gazette, shall have the force of law.

(3) A scheme under this section may provide for the recovery of the amount payable by means of—

(*a*) the levying of a rate on all property assessed for the purpose of Municipal rates ;

(*b*) a tax on all males over the age of eighteen, or on such other persons as the Council may determine ;

(*c*) any combination of any of the above methods of taxation ;

(*d*) any other method approved by the Minister. [1]

(4) A scheme under this section may provide for all or any of the following matters :—

(*a*) the use or adaptation, for the purpose of the scheme, of any provisions of the Municipal Councils Ordinance, or any by-laws made thereunder, relating to the collection and enforcement of rates and taxes or of the commutation of any tax ;

(*b*) the enforcement of any liability imposed by this section in accordance with Chapter VI, or any modification or adaptation thereof ;

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(c) the exemption of any area or of any class of persons from the operation of the scheme, and the grant of special terms to any class of persons ;

(d) the liquidation of the charge imposed upon the Municipal fund by instalments ; and

(e) any other matter which in the opinion of the Minister [1] may be necessary or desirable for the purpose of the scheme.

Power of Municipal Council to frame supplemental scheme.

(5) A Municipal Council, subject to the approval of the Minister,[1] may from time to time frame a supplemental scheme for the amendment of any scheme framed under this Ordinance, and all the provisions of this section shall apply to such supplemental scheme.

Power to borrow.

33. (1) It shall be lawful for any Municipal Council on whose fund any charge is imposed under this Chapter, with the sanction of the Minister, [1] to borrow such sum or sums as may be necessary for the purpose of discharging the same, on such terms and conditions as may be approved by the Minister. [1]

(2) The limitation on the borrowing powers of a Municipal Council prescribed by sections 191 and 192 of the Municipal Councils Ordinance, shall not apply to a loan made under this section.

Rate to be Municipal rate.

34. A rate imposed in accordance with a scheme under this Chapter shall be deemed to be a Municipal rate, and all the relevant provisions of the Municipal Councils Ordinance, shall apply thereto :

Provided that in any agreement between any owner and any occupier by which provision is made for the incidence of Municipal rates or tax imposed by any Municipal Council falling upon the occupier, such provision shall not apply to a rate imposed under this Chapter.

Action by claimants for compensation.

35. (1) Where any scheme has been approved under this Chapter, any person to whom compensation is declared to be due in the assessment published in pursuance of section 30, or in the case of adverse claims

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any person to whom it is declared to be due in pursuance of section 36, whose claim is not discharged by the Municipal Council in accordance with the scheme, may bring an action against the Municipal Council for the payment of any sum due to him in accordance with the scheme.

(2) If no scheme is approved within three months of the publication of the assessment under section 31 of this Chapter, any such person may bring an action against the Municipal Council for the amount declared to be due to him, as aforesaid.

(3) Section 307 of the Municipal Councils Ordinance shall apply to any such action.

(4) Where judgment has been recovered against the Municipal Council in any such action, the amount of such judgment shall be payable out of the Municipal fund of such Council in accordance therewith.

(5) Upon the payment of any sum in pursuance of any scheme or assessment under this Chapter, whether upon a judgment or otherwise, no subsequent claim shall be entertained in respect of the same matter :

Provided that the person receiving such sum shall be deemed to receive it on behalf of the person legally entitled thereto.

CHAPTER X

Miscellaneous Provisions

Adverse claims.

36. In any case in which adverse claims are made to compensation under this Ordinance, any person so claiming may petition the District Court for a declaration of the respective rights of the persons so claiming, and the court shall have jurisdiction to make order accordingly.

Exemptions.

37. Nothing in this Ordinance shall be deemed to render any person liable to taxation in respect of any immovable property by law exempt from taxation, or exempt from the payment of local or police rates.

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Power to quarter special police force.

38. (1) The Minister [1] may quarter a special force of police in any administrative division in which he considers that it is desirable so to do, pending the assessment of damage and the recovery of compensation under this Ordinance, and for such longer period as he may consider necessary for the securing of good order in such administrative division.

(2) Such sum as shall be certified by the Secretary to the Treasury [1] to be the cost of the maintenance of such special force within the administrative division may from time to time be allotted and recovered in the same manner as any sum allotted under Chapter V of this Ordinance.

(3) For any administrative division in which such special force is quartered the Minister [1] may make such regulations as he may deem fit for the maintenance of good order in such division, and any person committing a breach of any such regulation shall be guilty of an offence, and shall be liable on summary conviction to imprisonment of either description for a period not exceeding six months, with or without fine not exceeding one hundred rupees.

Status of Commissioners.

39. The Commissioners appointed under this Ordinance shall be deemed to be public servants within the meaning of the Penal Code, and public officers within the meaning of the Civil Procedure Code.

Protection of Commissioners.

40. No Commissioner appointed under this Ordinance shall be liable, either civilly or criminally, in respect of anything which he may have done or may have omitted to do, when acting in good faith, in pursuance or in supposed pursuance of his powers under this Ordinance.

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CHAPTER 79

INTRODUCTION OF LAW OF ENGLAND

Ordinances Nos. 5 of 1852, 22 of 1866, 2 of 1889, 18 of 1914, 25 of 1927, 51 of 1938, 17 of 1944.

AN ORDINANCE TO INTRODUCE INTO CEYLON THE LAW OF ENGLAND IN CERTAIN CASES, AND TO RESTRICT THE OPERATION OF THE KANDYAN LAW.

[*1st July, 1853.*]

Short title.

1. This Ordinance may be cited as the Civil Law Ordinance.

Law of England to be observed in maritime matters.

2. The law to be hereafter administered in Ceylon in respect of all contracts or questions arising within the same relating to ships and to the property therein, and to the owners thereof, the behaviour of the master and mariners, and their respective rights, duties, and liabilities, relating to the carriage of passengers and goods by ships, to stoppage *in transitu*, to freight, demurrage, insurance, salvage, average, collision between ships, to bills of lading, and generally to all maritime matters, shall be the same in respect of the said matters as would be administered in England in the like case at the corresponding period, if the contract had been entered into or if the act in respect of which any such question shall have arisen had been done in England, unless in any case other provision is or shall be made by any enactment now in force in Ceylon or hereafter to be enacted.

Law of England to be observed in all commercial matters. [§ 357, 51 of 1938.]

3. In all questions or issues which may hereafter arise or which may have to be decided in Ceylon with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by land, life and fire insurance, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such

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question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any enactment now in force in Ceylon or hereafter to be enacted :

Provided that nothing herein contained shall be taken to introduce into Ceylon any part of the Law of England relating to the tenure or conveyance, or assurance of, or succession to, any land or other immovable property, or any estate, right, or interest therein.

What law to govern questions relating to the effect of war.

4. All questions, whether arising before or after the passing of this Ordinance, which relate to the effect of war upon legal rights, remedies, immunities, duties, liabilities, and obligations, shall be determined in accordance with the law by which such questions would for the time being be determined in England.

Legal rate of interest.

[§ 2, 17 of 1944.]

5. Provided that no person shall be prevented from recovering on any contract or engagement any amount of interest expressly reserved thereby or from recovering interest at the rate of five *per centum* per annum on any contract or engagement, in any case in which interest is payable by law and no different rate of interest has been specially agreed upon between the parties, but the amount recoverable on account of interest or arrears of interest shall in no case exceed the principal.

Contracts made abroad how determined.

6. Provided further, that nothing in the preceding sections contained shall alter or affect the law in regard to any question arising for adjudication within Ceylon upon a contract made abroad, which question shall be determined as if this Ordinance had not been enacted.

If the Kandyan law is silent, the law of the Maritime provinces to govern.

7. Where there is no Kandyan law or custom having the force of law applicable to the decision of any matter or question arising for adjudication within the Kandyan provinces, for the decision of which other provision is not herein specially made, the court shall in any such case have recourse to the law as to the like matter or question in force within the Maritime provinces, which is hereby declared to be the law for the determination of such matter or question.

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Marriages of Europeans not valid in the Maritime provinces to be invalid in the Kandyan provinces.

8. No marriage contracted between persons commonly known as Europeans or their descendants, or persons commonly known as Burghers, or between any such persons and any Sinhalese (whether of the Maritime or Kandyan provinces), or any Asiatic within the Kandyan provinces, shall be valid unless such marriage would have been valid if contracted within the Maritime provinces.

The succession *ab intestato* to the property of Europeans in the Kandyan provinces to be the same as in the Maritime provinces.

9.* The inheritance and succession to the real property situated within the Kandyan provinces of persons commonly known as Europeans and of their descendants, and of persons commonly known as Burghers, who may die possessed of or entitled to any such property, and without disposing of the same by will, and the inheritance and succession to the personal property of such persons who at the time of their death shall be domiciled within the Kandyan provinces, and who may die possessed of or entitled to any such property, and without disposing of the same by will, shall be regulated and determined in such manner and according to such laws and usages as would have been the case had such real property been situated, or had the deceased been domiciled at the time of his death, within the Maritime provinces, anything contained in section 8 of the Wills Ordinance to the contrary notwithstanding.

* Repealed so far as inconsistent with Ordinance No. 15 of 1876.

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CHAPTER 80

MONEY LENDING

AN ORDINANCE TO PROVIDE FOR THE BETTER REGULATION OF MONEY-LENDING TRANSACTIONS.

Ordinance No. 2 of 1918, *Act* No. 9 of 1954.

[*1st August, 1918.*]

Short title.

1. This Ordinance may be cited as the Money Lending Ordinance.

Re-opening of money-lending transactions.

2. (1) Where proceedings are taken in any court for the recovery of any money lent after the commencement of this Ordinance, or the enforcement of any agreement or security made or taken after the commencement of this Ordinance in respect of money lent either before or after the commencement of this Ordinance, and there is evidence which satisfies the court—

(*a*) that the return to be received by the creditor over and above what was actually lent (whether the same is charged or sought to be recovered specifically by way of interest, or in respect of expenses, inquiries, fines, bonuses, premia, renewals, charges, or otherwise), having regard to any sums already paid on account, is excessive, and that the transaction was harsh and unconscionable, or, as between the parties thereto, substantially unfair ; or

(*b*) that the transaction was induced by undue influence, or is otherwise such that according to any recognized principle of law or equity the court would give relief ; or

(*c*) that the lender took as security for the loan a promissory note or other obligation in which the amount stated as due was to the knowledge of the lender fictitious, or the amount due was left blank,

the court may re-open the transaction and take an account between the lender and the person sued, and

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may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest, and charges as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable ; and if any such excess has been paid or allowed in account by the debtor, may order the creditor to refund it ; and may set aside, either wholly or in part, or revise, or alter any security given or agreement made in respect of money lent, and if the lender has parted with the security may order him to indemnify the borrower or other person sued.

(2) Any court in which proceedings might be taken for the recovery of money lent shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under the last preceding subsection, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Ordinance by the borrower or surety or other person liable, notwithstanding that the time for repayment of the loan or any instalment thereof may not have arrived.

(3) In any insolvency proceedings on any application relating to the admission or amount of a proof in respect of any money lent, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money lending.

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

Prescription.

3. In the exercise of its powers under the last preceding section the court shall have regard to the lapse of time, the conduct of the party praying for relief, and any other equitable considerations that the justice of

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the case may require to be taken into account, but the provisions of the Prescription Ordinance shall not apply to any claim for relief under the said section :

Provided that in any case in which any amount claimed at any time to be due has been settled in account, no repayment or re-adjustment of the account shall be ordered in respect of any sum paid or allowed in account at a date exceeding six years before the date of the application to the court for relief.

Meaning of return being excessive.

4. (1) In considering whether in any case the return to be received by the creditor is excessive, the court shall have regard (amongst other things) to the reasonableness of the rate of interest charged.

Rates above which interest presumed to be unreasonable.

(2) Any rate of interest charged above the rates following, that is to say :—

(*a*) in the case of loans of an amount up to and including one hundred rupees, twenty *per centum* per annum ;

(*b*) in the case of loans over one hundred rupees and up to and including two thousand five hundred rupees, eighteen *per centum* per annum ;

(*c*) in the case of loans over two thousand five hundred rupees, fifteen *per centum* per annum,

shall be deemed to be unreasonable, unless the creditor, or any person claiming through the creditor, shall satisfy the court that in all the circumstances of the case the rate charged was in fact reasonable :

Provided that nothing in this section shall be deemed to preclude the court, in any case in which the above limits are not exceeded, from directing a reduction of the rate of interest charged, if the party seeking relief shall satisfy the court that in all the circumstances of the case such reduction ought to be made.

(3) In computing the rate of interest charged, the court shall take into account all payments, other than principal made by the debtor to the creditor, or charged to the debtor by the creditor in account, in respect of the loan, whether purporting to be by way of interest or otherwise (not being payments from which the

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creditor derives no benefit), and shall for the purposes of the computation, as nearly as practicable, convert all such payments into a rate *per centum* per annum.

Observance of rule that interest shall not exceed principal.

5. In taking the account under section 2, the court shall observe the rule that no interest shall at any time be recoverable to an amount in excess of the sum then due as principal.

Meaning of undue influence.

6. (1) A transaction is said to be induced by " undue influence ", within the meaning of section 2 of this Ordinance, where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

(2) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

(3) Nothing in subsection (2) shall affect the provisions of section 111 of the Evidence Ordinance.

Illustrations

(*a*) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A commercial firm, dealing with the owner of certain plumbago mines indebted to the firm, who is in insolvent circumstances, offers, as an alternative to obtaining an adjudication of his insolvency, to lend him a sum of money on condition of his repaying the amount in instalments at the customary rate of interest, but on the further condition of his binding himself to supply the firm during the period prescribed for the repayment of the loan, and if so required for the rest of his life, with the produce of his mines at a rate twenty *per centum* below the ordinary market rate for the time being. The mine owner, having no means of contesting any action the firm may take, consents. The commercial firm employs undue influence.

(*c*) A, being in debt to B, a money lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

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Exclusion of certain classes of transactions.

7. Section 2 of this Ordinance shall not apply to transactions in the ordinary course of business by—

(*a*) any mutual provident or specially authorized society registered under the Societies Ordinance ;

(*b*) any society incorporated under the National Housing Act ;

(*c*) any society registered under the Co-operative Societies Ordinance ;

(*d*) any body corporate or incorporated empowered by a special enactment to lend money in accordance with such special enactment ;

(*e*) any duly incorporated and registered bank or banking company ;

(*f*) any person or company bona fide carrying on the business of insurance ;

(*g*) any pawnbroker licensed under the Pawnbrokers Ordinance.

Duty of persons carrying on money-lending business to keep accounts.

8. (1) A person who carries on the business of money lending, or who advertises or announces himself or holds himself out in any way as carrying on that business, shall keep or cause to be kept a regular account of each loan, clearly stating in plain words and numerals the items and transactions incidental to the account, and entered in a book paged and bound in such a manner as not to facilitate the elimination of pages or the interpolation or substitution of new pages.

(2) If any person, subject to the obligations of this section, fails to comply with any of the requirements thereof, he shall not be entitled to enforce any claim in respect of any transaction in relation to which the default shall have been made :

Provided that in any case in which the court is satisfied—

(*a*) that the default was due to inadvertence and not to any intention to evade the provisions of this section ; and

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(*b*) that the receipt of the loan, the amount thereof, the amount of the payments on account, and the other material transactions relating thereto satisfactorily appear by other evidence,

the court may give relief against any such default on such terms as it may deem just.

[§ 2, 9 of 1954.] (3) The preceding provisions of this section shall not apply to any duly incorporated and registered bank or banking company.

Duty of persons carrying on money-lending business to give copies of accounts and receipts.

9. (1) A person who carries on the business of money lending, or who advertises or announces himself or holds himself out in any way as carrying on that business, shall in respect of every loan—

(*a*) on request in writing and subject to the payment of a reasonable sum for expenses, furnish the borrower from time to time with a true and certified copy of the account of the loan and any document relating to the loan or any security therefor, and shall on the like request allow him, or any person authorized by him in writing in that behalf, to compare such copy with the original ; and

(*b*) on request at the time when any payment is made by or on behalf of the borrower on account of the loan, tender to the borrower, or the person making the payment on his behalf a written receipt for the amount of such payment.

(2) An entry in any pass book or statement of account furnished to the borrower by the lender shall be deemed to be equivalent for the purposes of this section to the grant of a receipt for the amount so entered.

(3) If any person, subject to the obligations of this section, fails to comply with any of the requirements thereof, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred rupees.

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Particulars to be set forth in promissory notes.

10. (1) In every promissory note given as security for the loan of money after the commencement of this Ordinance, there shall be separately and distinctly set forth upon the document—

(*a*) the capital sum actually borrowed ;

(*b*) the amount of any sum deducted or paid at or about the time of the loan as interest, premium, or charges paid in advance ; and

(*c*) the rate of interest *per centum* per annum payable in respect of such loan.

(2) Any promissory note not complying with the provisions of this section shall not be enforceable :

Provided that in any case in which the court shall be satisfied that the default was due to inadvertence and not to any intention to evade the provisions of this section, it may give relief against the effect of this subsection on such terms as it may deem just.

(3) The setting forth of the particulars required by subsection (1) shall not affect the negotiability of any promissory note.

(4) Any promissory note setting forth the said particulars substantially in the form given in the Schedule shall be deemed to be in compliance with this section.

(5) The provisions of this section shall apply to renewals of any loan, and in all such cases the amount stated as the capital sum actually borrowed shall be the amount of the original loan.

Protection of bona fide holder for value.

11. Nothing in sections 2, 8, or 10 hereof shall impair the rights of any bona fide holder for value of any promissory note given in respect of any loan, without notice of any matter affecting the enforceability of such note :

Provided that in any case in which any borrower is prejudiced by the operation of this section, he shall be entitled to be indemnified by the lender to the extent to which he is so prejudiced.

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Penalties for false statements and representations.

12. If any person, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, he shall be guilty of the offence of cheating, and shall be liable on conviction to the penalties prescribed for that offence in the Penal Code.

Penalty for taking fictitious or blank promissory note as security.

13. Any person who shall take as security for any loan a promissory note or other obligation in which the amount stated as due is to the knowledge of the lender fictitious, or in which the amount due is left blank, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred rupees, or in the event of a second or subsequent offence, either to a fine not exceeding one thousand rupees, or to simple imprisonment for a period not exceeding six months.

Meaning of "fictitious".

14. A promissory note given in respect of a loan with regard to which a reduction was made or a sum paid at or about the time of the loan in respect of interest, premium, or charges payable in advance, without such deduction or payment being set forth upon the document in accordance with section 10 (unless the circumstances are such as reasonably to entitle the lender to relief under that section), and any promissory note or other obligation in respect of a loan, with regard to which at or about the time of the loan any payment was made, or any collateral transaction entered into with a view to disguising the actual amount of the sum advanced, or the rate of interest payable in respect thereof, shall be deemed to be a promissory note or obligation in which the amount stated as due is, to the knowledge of the lender, fictitious within the meaning of sections 2 and 13 of this Ordinance.

Besetting residence, &c., of debtor.

15. Any person carrying on the business of money-lending, who, with a view to harassing or intimidating his debtor or any member of his family, either personally or by any person acting on his behalf, watches or besets the residence or place of business or employment of the debtor, or any place at which the debtor receives

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his wages or any other sum periodically due to him, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred rupees, or to imprisonment of either description for a period not exceeding six months :

Provided that a person shall not be deemed to commit an offence under this section merely because, either personally or by any person acting on his behalf, he calls at reasonable intervals at such residence or place of business or employment for the purpose of demanding payment of the debt due to him.

Loans to women or children of householders by money lenders visiting the residence of any person.

16. Any person carrying on the business of money-lending, who, by visiting the residence of any person, induces the wife or child of any such person to contract a loan without his written consent, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding one hundred rupees, or to imprisonment of either description for a period not exceeding six months, or to both such fine and imprisonment.

Burden of proof.

17. (1) In any proceedings taken under, or in pursuance of the provisions of, this Ordinance, in which the lender in any money-lending contract is a person of the class commonly known in Ceylon as " Afghans ", such person shall be presumed to be a person carrying on the business of money-lending, unless the contrary is proved to the satisfaction of the court.

(2) Save as aforesaid, if any question arises as to whether any person is a person carrying on the business of money lending, the burden of proving that such person in fact carries on such business shall lie on the party alleging it.

Protection of lenders against frivolous and vexatious pleading of the Ordinance.

18. (1) In any case in which in any civil proceeding a borrower pleads any of the provisions of this Ordinance (whether in any plaint, answer, or other pleading, or in any affidavit or application for the purpose of obtaining leave to defend any action), if the court is satisfied that such plea was not made in good faith, but was made for the purpose of delaying or harassing the lender, the court may order such borrower to pay for the benefit of the lender a sum equivalent to the

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amount of any stamp duty incurred by the lender in the proceeding (or such lesser sum as may be ordered by the court), and every such sum so ordered to be paid shall be added to the amount of the judgment recoverable by the lender :

Provided that no payment ordered by the court under this subsection shall in any case exceed the amount of two hundred and fifty rupees.

(2) In any case in which in any criminal proceeding instituted against a lender for a breach of any provision of this Ordinance the court is satisfied that the charge was made maliciously, frivolously, or vexatiously, it may direct that the costs of the accused to such an amount as shall be determined by the court shall be payable by the complainant, and any amount so ordered to be paid shall be recoverable for the benefit of the accused in the same manner as a fine imposed by the court.

[Section 10.]

SCHEDULE

PROMISSORY NOTE GIVEN IN RESPECT OF A LOAN

Stamp.

Particulars required by the Money Lending Ordinance.
1. Capital sum borrowed, Rs. ————.
2. Interest, premium or charges deducted or paid in advance, if any, Rs. ————.
3. Rate of interest *per centum* per annum: ————.

On demand (*or* ———— months after date) I promise to pay to ————, or order, the sum of Rupees ————, with interest thereon at the rate of ———— *per centum* per annum.

————

(Signature of Borrower.)

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CHAPTER 81

DEBT CONCILIATION

AN ORDINANCE TO PROVIDE FOR THE ESTABLISHMENT OF A DEBT CONCILIATION BOARD IN CEYLON AND FOR OTHER MATTERS CONNECTED WITH OR INCIDENTAL TO SUCH ESTABLISHMENT.

Ordinances Nos. 39 of 1941, 40 of 1941, 9 of 1943, *Act* No. 43 of 1952.

[*15th November, 1941.*]

1. This Ordinance may be cited as the Debt Conciliation Ordinance. Short title.

THE BOARD

2. (1) For the purposes of this Ordinance there shall be established a board to be called the Debt Conciliation Board of Ceylon which shall consist of five members appointed by the Minister,[1] one of whom shall be nominated by the Minister[1] to be Chairman of the Board. Establishment and constitution of the Board.

(2) The Chairman of the Board shall be— [§ 2, 40 of 1941.]

(*a*) a person who holds or has held a substantive appointment as a Judge of the Supreme Court or as a District Judge ; or

(*b*) a person who is or has been a member of Class I of the Ceylon Civil Service and who holds or has held office as a District Judge ; or

(*c*) an advocate or proctor of the Supreme Court of not less than fifteen years' standing.

(3) Of the four other members of the Board— [§ 2, 40 of 1941.]

(*a*) at least one shall be an advocate or proctor of the Supreme Court of not less than fifteen years' standing ; and

(*b*) at least one shall be a person engaged in trade or commerce in Ceylon and recommended by the Minister[1] for appointment as a member of the Board.

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(4) The Chairman and every other member of the Board shall hold office for a period of three years from the date of his appointment :

Provided that notwithstanding the term of any such appointment, the Chairman or any other member of the Board may at any time—

(*a*) resign from his office ; or

(*b*) be removed from office by the Minister ; [1]

Provided, further, that any person who is appointed to the Board to fill any vacancy caused by the resignation or removal from office of any member of the Board shall hold office during a period equal to the unexpired portion of the term of office of the member in whose place he is appointed and no longer.

(5) Any member of the Board who is absent without reasonable cause from three consecutive meetings of the Board may, by resolution of the Board passed at a meeting of which due notice has been given in the prescribed manner, be held to have vacated his office ; and upon the passing of any such resolution, the member affected by that resolution shall cease to be a member of the Board.

(6) Any person ceasing to be a member of the Board shall be eligible for re-appointment thereto.

Conduct of business.

3. (1) The Chairman shall preside at all meetings of the Board at which he is present. In the absence of the Chairman from any meeting, the members present at the meeting may elect one of their own number to be Chairman at that meeting :

Provided, however, that if at any time it appears to the Chairman that he will be unable to discharge his duties for a period exceeding one week by reason of ill health or other sufficient cause, the Chairman shall nominate a member of the Board temporarily to exercise and perform all the powers and duties of the Chairman until the resumption of duties by him.

(2) Three members shall constitute a quorum of the Board.

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(3) If at any meeting the Board is divided in opinion as to the decision to be given on any point or matter, such point or matter shall be decided according to the opinion of the majority of the members present; but if the members are equally divided, then the opinion of the Chairman shall prevail.

(4) The Board may regulate its own procedure in any matter not provided for in this Ordinance or by regulation.

Appointment of secretary.

4. The Board shall, subject to the approval of the Minister[3] appoint any person by name or by office to be the secretary of the Board, and may at any time, subject to the like approval, remove such person from office and appoint another person in his stead. The secretary shall receive such remuneration (if any) as may, with the approval of the Minister given with the concurrence of the Minister of Finance,[1] be fixed by the Board.

Subordinate officers.

5. For the purpose of carrying out the provisions of this Ordinance, the Board may, with the approval of the Minister[3] appoint and, with the like approval, remove such officers and servants, other than the secretary, as it may think necessary. It may also from time to time fix and alter the salaries and allowances attached to such offices.

Remuneration of members of the Board.

6. Regulations may be made providing for—

(*a*) the payment of fees to any or all of the members of the Board for attendance at meetings of the Board and the rates at which such fees shall be computed;

(*b*) the payment of an allowance in respect of travelling done by any or all of the members of the Board outside the Municipal limits of the town of Colombo in the discharge of their duties as members of the Board, and the rates at which such allowance shall be computed.

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BRANCH BOARDS

Establishment of branch boards.

7. The Board may from time to time establish such number of branch debt conciliation boards as may be necessary—

(*a*) to advise and assist the Board in any matter on which the advice and assistance of the branch board is sought by the Board ;

(*b*) to deal, as hereinafter provided, with any one or more applications referred to the branch board by the Board.

Constitution of branch boards.
[§ 3, 40 of 1941.]

8. (1) Every branch board shall consist of a chairman and such number of other members appointed by the Board, not exceeding four and not being less than two, as the Board may determine.

[§ 3, 40 of 1941.]

(2) The chairman of each branch board shall be a member of the Board and shall be—

(*a*) a person who holds or has held a substantive appointment as a Judge of the Supreme Court or as a District Judge ; or

(*b*) a person who is or has been a member of Class I of the Ceylon Civil Service and who holds or has held office as a District Judge ; or

(*c*) an advocate or proctor of the Supreme Court of not less than fifteen years' standing.

[§ 3, 40 of 1941.]

(3) Of the other members of each branch board—

(*a*) at least one shall be an advocate or proctor of not less than fifteen years' standing ; and

(*b*) at least one shall be a person engaged in trade or commerce in Ceylon and approved by the Minister [1] for appointment as a member of a branch board.

(4) Any member of a branch board may at any time—

(*a*) resign from his office on the branch board ;

(*b*) be removed from office by the Board.

(5) Any person ceasing to be a member of a branch board shall be eligible for re-appointment thereto.

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Conduct of business by branch boards.

9. (1) The chairman of a branch board shall preside at all meetings of the branch board.

(2) A branch board shall have such quorum as may be prescribed.

(3) The procedure to be followed at the meetings of the branch board shall be prescribed.

Remuneration of members of branch boards.

10. Regulations may be made providing for the payment of fees to any or all of the members of a branch board for attendance at meetings of the branch board and for any work done or any travelling performed in the discharge of their duties as members of the branch board, and the rates at which such fees shall be computed.

Delegation of powers by the Board to a branch board.

11. (1) The Board may at any time, in respect of any one or more applications received by it, delegate to any branch board all or any of its powers under this Ordinance.

(2) Every delegation under this section shall be made by order in writing under the hand of the Chairman of the Board and shall specify the powers so delegated and the particular application or applications in respect of which such delegation is made ; and, upon such delegation, it shall be lawful for the branch board to exercise in respect of such application or applications the powers so delegated in all respects as if it were the Board.

Special Provisions relating to Members of the Board and of Branch Boards

Penalty on member for hearing, considering, &c., application in which he has an interest.

12. Any member of the Board or of a branch board who participates in any discussion on, or in the consideration, hearing, or determination of, any application or other matter before the Board or the branch board, as the case may be—

(*a*) where the applicant or any other party is a debtor or creditor of his or is in partnership with him or in his employ ; or

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(b) where he has a pecuniary interest in the property or assets of the debtor or of a creditor,

shall be guilty of an offence and shall be liable on conviction before a Magistrate to a fine not exceeding one thousand rupees or, in default of payment, to imprisonment of either description for a period not exceeding three months.

Members to be public servants.

13. Every member of the Board and of a branch board shall be deemed to be a public servant within the meaning of the Penal Code.

APPLICATION TO THE BOARD BY A DEBTOR OR CREDITOR

Application by debtor or creditor.

14. (1) A debtor may make an application to the Board to effect a settlement of the debts owed by him to all his secured creditors or any one or more of them.

(2) Any secured creditor of any debtor may make an application to the Board to effect a settlement of the debts owed to him by that debtor.

(3) Where an application has been made to the Board under subsection (1) or subsection (2) in respect of any debt owed by any person, and another application under either of those subsections is made to the Board in respect of any other debt owed by that person, the Board may order that the applications be consolidated.

Mode of application.

15. Every application under the preceding section shall be in writing, signed by the applicant, and shall be forwarded to the Board in the prescribed manner, together with such affidavits as may be requisite to furnish prima facie proof of the material facts set out or alleged in the application.

Affidavits.

16. Every affidavit submitted under section 15 shall contain a statement of only those facts to which the declarant is able of his own knowledge and observation to testify :

Provided, however, that a statement of the declarant's belief may be set forth in any such affidavit where the grounds of such belief are stated.

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Particulars to be set out in debtor's application.

17. (1) Every application made by a debtor to the Board shall contain the following particulars :—

(*a*) the name, description, and place of residence of the applicant ;

(*b*) a statement that the applicant is desirous of obtaining relief ;

(*c*) particulars of the debt or debts in respect of which relief is sought, and of all debts due to secured creditors by the applicant, together with the names and residences of such creditors so far as they are known to and can by the exercise of reasonable care be ascertained by him ;

(*d*) the number and date of each mortgage bond, the amount payable as principal and as interest on each bond, together with a clear description of the land affected by each bond and the situation of such land ;

(*e*) particulars of all debts due by the applicant to unsecured creditors, together with the names and residences of such creditors so far as they are known to or can by the exercise of reasonable care be ascertained by him ;

(*f*) particulars of the applicant's property both movable and immovable (including debts or claims due to him), a specification of the estimated value thereof and the places where the immovable property is situated or where the movable property may be found ;

(*g*) particulars of all debts, whether secured or unsecured, due to the Crown or to any person or body prescribed by regulation under section 61 (2) ; [§ 4, 40 of 1941.]

(*h*) particulars relating to such other matters as may be prescribed.

(2) The debtor shall, together with his application, transmit to the Board a statement setting out the manner in which the properties disclosed in his application are being administered, the income obtained from each such property, and the purposes for which such income is being applied.

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The debtor shall, unless otherwise directed by the Board, transmit such a statement to the Board periodically, at such intervals as may be prescribed.

(3) The debtor shall, forthwith upon entering into any transaction affecting or relating to any property disclosed in his application, transmit to the Board a statement setting out full particulars of such transaction.

Particulars to be set out in creditor's application.

18. Every application made by a secured creditor shall contain the following particulars :—

(*a*) the name, description and place of residence of the applicant ;

(*b*) the name, description and place of residence of the debtor ;

(*c*) the amount and particulars of the applicant's claim against such debtor.

Powers and Duties of the Board and Procedure to be followed on Receipt of Application

Applications involving matters already the subject of pending actions.

19. The Board shall not entertain any application by any debtor or creditor in respect of a debt which is the matter directly and substantially in issue in a previously instituted action which is pending in any court between the same parties or between parties under whom they or any of them claim litigating under the same title :

Provided that nothing herein contained shall be held to affect the right of the Board to deal with any application referred to it under section 45.

Effect of insolvency proceedings on applications to the Board.

20. (1) Where an application under this Ordinance has been made to the Board by any debtor or by any creditor of his for the settlement of any debt and it appears to the Board that proceedings under the Insolvency Ordinance are pending in any court in respect of the insolvency of that debtor, the Board shall, whether or not proceedings under this Ordinance have already commenced upon such application, forthwith dismiss such application.

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(2) The dismissal of any application under subsection (1) shall not be a bar to a further application.

Matters to be taken into consideration by the Board.

21. The Board in coming to a decision on any application may take into consideration :—

(*a*) the amount actually lent to or received by the debtor ;

(*b*) the reasonableness of the rates of interest charged ;

(*c*) the amount of interest that has been left to accumulate ;

(*d*) the amount that has already been paid as or by way of interest and other charges ;

(*e*) the onerous conditions, if any, subject to which the loan was granted ;

(*f*) the capacity of the debtor to repay ;

(*g*) any other particulars which the Board thinks it desirable to take into account.

Return of application for amendment.

22. The Board may, if it is of opinion that any application is substantially defective in any of the particulars required by section 17 or section 18, return the application and order that it be amended within such time as may be fixed by the Board. If the application is not amended as ordered by the Board it shall be deemed to have been withdrawn by the applicant.

Fixing of date for preliminary hearing of application.

23. (1) On receipt of an application under section 14 or, where an application is returned for amendment under section 22, on receipt of the amended application, the Board may make order fixing a date and place for the preliminary hearing of the application or amended application, as the case may be.

(2) Notice of the order under subsection (1) shall be sent by registered post to the applicant, and, where the application is made by a creditor, such notice shall also be sent to the debtor.

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Preliminary hearing of application.

24. (1) At the time and place appointed under section 23 (1), or at any other time and place to which the preliminary hearing may be postponed or adjourned, the Board shall examine the applicant.

(2) Where the application has been made by a creditor—

(*a*) the Board shall, in addition to the examination required by subsection (1), also examine the debtor ;

(*b*) the debtor shall furnish in writing a statement of the particulars mentioned in paragraphs (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) of section 17 (1) ;

(*c*) if the debtor desires that the Board should attempt to effect a settlement between him and all his creditors, whether secured or unsecured, he shall annex to the statement of particulars furnished under paragraph (*b*) a written request to that effect.

Action where Board decides to attempt to effect a settlement with secured creditor or creditors.

25. (1) Where, after holding the examination required by section 24, the Board is of opinion that it is desirable to attempt to effect a settlement between the debtor and all his secured creditors or any one or more of them, the Board—

(*a*) shall cause a notice signed by the secretary to be served in the prescribed manner on each of such secured creditors calling upon him to submit to the Board on or before a specified date a statement, verified by a declaration, setting out all particulars of the debts owed to him by that debtor ;

(*b*) shall cause a notice to be published in the Gazette stating that the Board proposes to attempt to effect a settlement under the Ordinance between the debtor and all his secured creditors, or one or more of them, as the case may be, and specifying the date on or before which each such secured creditor has been called upon to submit a statement of the debts owed to him by the debtor ; and

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(*c*) may cause a notice in the prescribed form to be delivered or transmitted by the secretary to the proper Registrar of Lands for registration in accordance with the provisions of section 35, setting out the prescribed particulars relating to each land which has been disclosed to be the property of the debtor and stating that proceedings under the Ordinance have commenced in respect of certain debts owed by the debtor.

(2) The cost of the service of any notice under paragraph (*a*) of subsection (1) and of the publication of the notice under paragraph (*b*) of that subsection shall be paid in the prescribed manner by the debtor or by any secured creditor or creditors as the Board may in its discretion determine :

Provided, however, that the Board may, if it thinks fit so to do in any case, waive the whole or any part of the cost of such service or publication. [§ 2, 9 of 1943.]

(3) Any secured creditor on whom a notice under paragraph (*a*) of subsection (1) has not been served may, on or before the date specified in the notice published under paragraph (*b*) of that subsection, submit to the Board a statement, verified by a declaration, setting out all particulars of the debts owed to him by the debtor, and may, if he desires that the Board should attempt to effect a settlement in respect of such debts, attach to the statement submitted by him a written request to that effect.

Action where Board decides to attempt to effect a settlement with all creditors, secured and unsecured.

26. (1) Where, after holding the examination required by section 24, the Board is of opinion that it is desirable to attempt to effect a settlement between the debtor and all his creditors whether secured or unsecured, the Board—

(*a*) shall cause a notice signed by the secretary to be served in the prescribed manner on each such creditor calling upon him to submit to the Board on or before a specified date a statement, verified by a declaration, setting out all particulars of the debts owed to him by that debtor ;

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(*b*) shall cause a notice to be published in the Gazette stating that the Board proposes to attempt to effect a settlement under the Ordinance between the debtor and all his creditors, whether secured or unsecured, and specifying the date on or before which each such creditor has been called upon to submit a statement of the debts owed to him by the debtor ; and

(*c*) may cause a notice in the prescribed form to be delivered or transmitted by the secretary to the proper Registrar of Lands for registration in accordance with the provisions of section 35, setting out the prescribed particulars relating to each land which has been disclosed to be the property of the debtor, and stating that proceedings under the Ordinance have commenced in respect of the debts due by that debtor.

(2) The cost of the service of any notice under paragraph (*a*) of subsection (1) and of the publication of the notice under paragraph (*b*) of that subsection shall be paid in the prescribed manner by the debtor or by any creditor or creditors as the Board may in its discretion determine :

[§ 3, 9 of 1943.] Provided, however, that the Board may, if it thinks fit so to do in any case, waive the whole or any part of the cost of such service or publication.

(3) Any creditor, whether secured or unsecured, on whom a notice under paragraph (*a*) of subsection (1) has not been served may, on or before the date specified in the notice published under paragraph (*b*) of that subsection, submit to the Board a statement, verified by a declaration, setting out all particulars of the debts owed to him by the debtor, and may, if he desires that the Board should attempt to effect a settlement in respect of such debts attach to the statement submitted by him a written request to that effect.

Action when Board decides not to attempt to effect a settlement.

27. Where, after holding the examination required by section 24, the Board is of opinion that it is not desirable to attempt to effect a settlement between the debtor and any of his creditors, the Board shall dismiss the application.

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Hearing of application.

28. (1) As soon as may be after the date specified under section 25 or section 26 as the date on or before which statements of debts should be submitted to the Board, the Board shall appoint a time and place for the hearing of the application and notice thereof signed by the secretary shall be served in the prescribed manner on—

(*a*) each creditor who has submitted a statement of debts in response to a notice served on him under section 25 (1) or section 26 (1), and

(*b*) on each creditor who has submitted a statement of debts under section 25 (3) or section 26 (3) and who has attached to such statement a request that the Board should attempt to effect a settlement in respect of the debts owed to him by the debtor.

(2) At the time and place appointed under subsection (1) for the hearing of the application, or at any other time and place to which such hearing may be postponed or adjourned, the Board shall call upon the debtor and each creditor to explain his case regarding each debt.

Order for issue of certificate on failure of creditor to submit a statement of debts or to appear at hearing of application.

29. (1) (*a*) Where any creditor, who has been required by a notice issued under section 25 (1) or section 26 (1) to submit a statement of debts, fails to submit such statement on or before the date specified in such notice, and

(*b*) where any creditor to whom notice of the time and place appointed for the hearing of the application has been issued under section 28 (1) fails to appear at that time and place or at any other time and place to which such hearing may be postponed or adjourned—

the Board may, if it is satisfied, after such inquiry (if any) as it may deem necessary, that such notice has been served on that creditor, order that a certificate shall be granted to the debtor in respect of the debts owed by him to that creditor unless on or before a date fixed in the order that creditor shows cause as hereinafter provided against the grant of such certificate :

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Provided, however, that no order shall be made for the grant of a certificate in respect of any debt which is payable under a decree or order of a civil court.

(2) A copy of every order under subsection (1) for the grant of a certificate in respect of any debt shall be served in the prescribed manner on the creditor to whom that debt is payable.

(3) If, on or before the date fixed in any order under subsection (1), the creditor proves to the satisfaction of the Board that his failure to submit the statement of debts, or to appear, as the case may be, was due to accident, misfortune or other unavoidable cause, the Board may rescind the order in such terms as it may deem fit.

(4) Where any creditor on whom a copy of any order under subsection (1) has been served fails, on or before the date fixed in that order, to show cause to the satisfaction of the Board against the grant of a certificate in terms of that order, the Board shall grant to the debtor a certificate in the prescribed form in respect of the debts owed by him to that creditor.

Amicable settlement. [§ 5, 40 of 1941.]

30. (1) Subject as hereinafter provided, where any secured creditor comes to an amicable settlement with the debtor, such settlement shall, if approved by the Board, be reduced to the form of a document (hereinafter referred to as "the original") and a duplicate thereof shall also be prepared ; and such original as well as the duplicate shall be signed by the debtor and by such creditor :

[§ 5, 40 of 1941.]

Provided, however, that the Board shall not approve any such settlement until the Board is satisfied that a notice setting out in full the terms of such settlement has been served in the prescribed manner on each person who appears to the Board to be a secured creditor of the debtor.

(2) The Chairman shall countersign the original as well as the duplicate, and any such settlement shall, when the original and the duplicate have been countersigned by the Chairman, be valid and effectual for all purposes, notwithstanding anything to the contrary in the Prevention of Frauds Ordinance.

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(3) The original of the settlement shall be retained in the custody of the Board.

Settlement with secured and unsecured creditors. [§ 6, 40 of 1941.]

31. (1) Where creditors, whether secured or unsecured, to whom more than fifty *per centum* of the total amount of the debtor's debts is owing come to an amicable settlement with the debtor, such settlement shall, if it is considered equitable by the Board, be reduced to the form of a document (hereinafter referred to as " the original "), which shall set out the amounts payable to each of such creditors and the manner in which, the assets from which, and the times at which such amounts are payable. Together with such original, a duplicate thereof shall be prepared, and the original as well as the duplicate shall be signed by the debtor and by each of the creditors who have agreed to the settlement.

(2) Subject as hereinafter provided, the Chairman shall countersign the original as well as the duplicate ; and any such settlement shall, when the original and the duplicate have been countersigned by the Chairman, be valid and effectual for all purposes, notwithstanding anything to the contrary in the Prevention of Frauds Ordinance : [§ 6, 40 of 1941.]

Provided that where the debtor owes an unsecured debt to the Crown or to any person or body prescribed by regulation under section 61 (2), the Chairman shall not countersign such original or duplicate until proof has been adduced to the satisfaction of the Board that such debt has been liquidated. [§ 6, 40 of 1941.]

(3) The original of the settlement shall be retained in the custody of the Board.

Dismissal of application and grant of certificate where creditor refuses to agree to reasonable settlement.

32. (1) The Board may, if it thinks fit so to do, dismiss any application at any stage of the proceedings.

(2) Where no amicable settlement is arrived at between the debtor and any secured creditor, the Board shall dismiss the application so far as it relates to the debts due to that creditor, and may, if it is of opinion that the debtor has made the creditor a fair offer which the creditor ought reasonably to have

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accepted, grant the debtor a certificate in the prescribed form in respect of the debts owed by him to that creditor.

Provisions relating to settlements.

33. In any settlement under this Ordinance—

(*a*) all property which is exempt from seizure and sale under section 218 of the Civil Procedure Code shall not be taken into account ; and

(*b*) no creditor shall be allowed a greater amount in satisfaction of both principal and interest due to him than twice the amount of such principal.

Appointment of manager or trustee to give effect to settlement.

34. (1) It may be a term of any settlement under this Ordinance that, for the purpose of giving effect to the settlement or any of the terms thereof, the debtor shall execute a deed or instrument appointing a specified person as manager or trustee for the purpose of administering any property dealt with in the settlement ; and, where such a term is inserted in any settlement, the deed or instrument may be submitted by any party to the settlement to the Board for its approval.

(2) Any deed or instrument which is approved by the Board shall be signed by the debtor and attested by the Chairman of the Board at the time when the settlement is countersigned by the Chairman, and shall have effect notwithstanding anything in any other written law to the contrary regarding the mode of execution of such deed or instrument :

Provided, however, that no such deed or instrument shall be executed in respect of any immovable property dealt with in the settlement, unless all persons having any mortgage or charge over that property are parties to the settlement and concur in the terms of the deed or instrument.

(3) Notwithstanding anything in the Stamp Ordinance or the Registration of Documents Ordinance, every deed or instrument executed under this section shall be free of stamp duty and no fee shall be payable in respect of the registration of any such deed or instrument.

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Registration of notice of proceedings under the Ordinance.

35. (1) Where, at any time in the course of proceedings before the Board, any land in respect of which a notice under section 25 (1) (c) or section 26 (1) (c) has not already been registered is disclosed to be the property of the debtor, the Board may cause a notice in the prescribed form to be delivered or transmitted to the proper Registrar of Lands for registration, setting out the prescribed particulars relating to that land and stating that proceedings under the Ordinance have commenced in respect of the debts owed by that debtor or of certain of such debts, as the case may be.

(2) Every notice under subsection (1) or under section 25 (1) (c) or section 26 (1) (c) shall be registered by the Registrar in the manner provided in the Registration of Documents Ordinance for the registration of an instrument affecting or relating to land and shall be deemed for such purpose to be an instrument affecting or relating to each land the prescribed particulars of which are set out in such notice ; and the provisions of that Ordinance shall apply accordingly :

Provided, however, that notwithstanding anything in that Ordinance, no fee shall be payable for or in respect of the registration of any such notice.

(3) Every notice registered under subsection (2) shall be in force for a period of six months from the date of registration, but may be re-registered from time to time at the direction of the Board, and every such re-registration shall have the effect of an original registration :

Provided that the Board shall on the dismissal of any application under this Ordinance, and may at any time prior to such dismissal if they think fit so to do, direct that the registration of any such notice shall be cancelled ; and thereupon such cancellation shall be effected and registered in the manner provided in the Registration of Documents Ordinance for the cancellation of the registration of a *lis pendens*.

(4) Every alienation, transfer, lease, mortgage, or other transaction whatsoever, of or affecting any immovable property of the debtor made or executed by him without the written sanction of the Board, at any

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time while a notice registered under subsection (2) is in force in respect of such property, shall be void and of no effect.

Rights of secured creditor who is not a party to a settlement unaffected by such settlement.

36. Subject to the provisions of section 39, the right of any secured creditor to proceed against the debtor or the security given by the debtor for the recovery of any debt shall not be affected or prejudiced by reason of the fact that such creditor is not, or has refused to be, a party to any settlement under section 30.

Power of Board to decide dispute.

37. If there is a dispute as to the existence or the amount of the debt due to any creditor or the assets of any debtor the Board may decide the matter after hearing such evidence as may be adduced by all the parties concerned and such decision shall be binding on all parties in all proceedings before the Board :

[§ 7, 40 of 1941.]

Provided that a decree of a court relating to a debt shall be conclusive evidence that the debtor was indebted to the creditor at the time of the decree in the sum specified therein.

Signature of agent to bind debtor or creditor as the case may be.

38. The duly authorized agent of any debtor or creditor may consent to any settlement under this Ordinance on behalf of that debtor or creditor, and where such agent so agrees to any settlement, the settlement shall be binding on that debtor or creditor, as the case may be.

Effect of certificate.
[§ 2, 43 of 1952.]

39. Where any creditor brings an action in any court for the recovery of any debt in respect of which a certificate has been granted under this Ordinance, then, notwithstanding the provisions of any law for the time being in force, the court—

(*a*) shall order the debt together with the interest thereon to be paid in such instalments, and within such period not exceeding ten years, as the court thinks fit, and

(*b*) shall not allow the creditor any costs in such action, and shall not allow, in respect of any period subsequent to the receipt by the Board of any application for the settlement of the

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debt, any interest on the amount of the debt in excess of simple interest at a rate not higher than the prescribed rate.

Effect of settlement.

40. (1) A settlement under section 30 or section 31 shall when the original and the duplicate thereof have been countersigned by the Chairman and subject to any order the Board may make in respect of that settlement under section 54, be final between the parties, and the contract in respect of any debt dealt with in the settlement shall become merged in the settlement :

Provided, however, that where any debt secured by any charge, lien or mortgage over any property, movable or immovable, is dealt with in any settlement, the rights of the creditor under such charge, lien or mortgage shall, unless otherwise expressly provided in the settlement, be deemed to subsist under the settlement to the extent of the amount payable thereunder in respect of such debt, until such amount has been paid or the property over which the charge, lien or mortgage was created has been sold for the satisfaction of such debt.

(2) Where, in any settlement, any charge or mortgage over any movable or immovable property which is the subject-matter of the settlement, is created in favour of any party to that settlement, such charge or mortgage shall, upon the registration of the settlement as hereinafter provided, be as valid and effectual for all purposes as though it had been made or executed by the debtor in respect of the property to which it relates by an instrument duly executed on the date on which the settlement is countersigned by the Chairman.

PROCEDURE SUBSEQUENT TO SETTLEMENT

Registration of settlement.

41. (1) The duplicate of every settlement under this Ordinance shall, within the prescribed period from the date on which it is countersigned by the Chairman, be delivered or transmitted by the secretary to the proper Registrar of Lands for registration.

For the purposes of the application to such registration of the provisions of the Registration of Documents Ordinance the settlement shall be deemed to be an

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instrument affecting or relating to each land dealt with in the settlement, and, so far as the settlement deals with any movable property, a bill of sale affecting such movable property.

(2) Notwithstanding anything in the Registration of Documents Ordinance to the contrary, no fee shall be payable for or in respect of the registration of the duplicate of any settlement under this Ordinance.

Certified copy of settlement to court for a such bank or other institution as the Minister may specify.

42. A copy of every settlement made under section 30 or section 31, certified under the hand of the secretary as a true copy of such settlement shall, within the prescribed period from the date on which the Chairman countersigns the settlement, be forwarded to such bank or other institution as the Minister [1] may by Notification published in the Gazette specify for the purposes of this section.

Application to court for a decree in terms of settlement, and entry of decree *nisi*.

43. (1) Where the debtor fails to comply with the terms of any settlement under this Ordinance, any creditor may, except in a case where a deed or instrument has been executed in accordance with the provisions of section 34 for the purpose of giving effect to those terms of that settlement, apply to a court of competent jurisdiction, at any time after the expiry of three months from the date on which such settlement was countersigned by the Chairman of the Board, that a certified copy of such settlement be filed in court and that a decree be entered in his favour in terms of such settlement. The application shall be by petition in the way of summary procedure, and the parties to the settlement, other than the petitioner shall be named respondents, and the petitioner shall aver in the petition that the debtor has failed to comply with the terms of the settlement.

(2) If the court is satisfied, after such inquiry as it may deem necessary, that the petitioner is prima facie entitled to the decree in his favour, the court shall enter a decree *nisi* in the petitioner's favour in terms of the settlement. The court shall also appoint a date, notice of which shall be served in the prescribed manner on the debtor, on or before which the debtor may show cause as hereinafter provided against the decree *nisi* being made absolute.

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(3) In this section—

"court of competent jurisdiction" means any court in which the creditor could have filed action for the recovery of his debt, if the cause of action in respect of that debt had not been merged in the settlement;

"summary procedure" has the same meaning as in Chapter XXIV of the Civil Procedure Code.

Decree absolute.

44. (1) If on or before the date appointed by the court under section 43, the debtor fails to prove to the satisfaction of the court that there has been no default on his part in complying with the terms of the settlement, the decree *nisi* entered under section 43 shall by order of the court be made absolute.

(2) Any decree which has been made absolute under subsection (1) may be executed as if it were a decree entered in a civil action, and the court may award to the petitioner the costs of the application under section 43 and of the execution of the decree, and the provisions of the Stamp Ordinance and of the Civil Procedure Code shall apply accordingly :

Provided that no appeal from, or application for revision of, any such decree shall lie to the Supreme Court.

REFERENCE BY COURT

Reference by court.

45. Where an action has been instituted in a court by a secured creditor to enforce a right of sale under a mortgage or to obtain a decree for the payment of money in satisfaction of a claim arising under a mortgage and at any time before decree is entered the parties agree that the matter in dispute between them be referred to the decision of the Board, the court shall refer the matter to the Board.

Procedure on reference by a court.

46. On receipt of a reference from a court under section 45, the Board shall appoint a day and place for inquiring into the matter and notice thereof signed by the secretary shall be served on the debtor and creditor in the manner prescribed. On or before the appointed date each party shall submit a concise statement of his case in writing.

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Hearing before Board on reference.

47. (1) On the appointed date or on any date to which the inquiry may be postponed or adjourned, the Board shall call upon each of the parties respectively to explain his case.

[§ 8, 40 of 1941.]

(2) Subject as hereinafter provided, where on the date referred to in subsection (1), both parties fail to appear without good and sufficient cause being shown, the Board shall make order dismissing the plaintiff's action ; and where on such date one of the parties fails to appear without good and sufficient cause being shown and the other party appears, the Board shall inquire into the matter and make its decision :

Provided, however, that if at any time before a copy of such order or decision is forwarded to the court under subsection (5), it is proved to the satisfaction of the Board that the failure of the party or parties to appear was due to accident, misfortune or other unavoidable cause, the Board may rescind such order or decision on such terms as it may deem fit.

(3) If the parties come to an amicable settlement such settlement shall be reduced to writing and shall be signed by the parties and it shall be countersigned by the Chairman of the Board.

(4) If the parties fail to arrive at an amicable settlement the Board shall, after considering the written statements referred to in section 46 and the evidence, if any, make its decision on the matter in dispute.

(5) A copy of the order or decision referred to in subsection (2) or a copy of the settlement referred to in subsection (3) or the decision referred to in subsection (4), certified under the hand of the Chairman of the Board, shall be forwarded by the Chairman to the court which referred the matter to the Board.

Decree to be entered by court in terms of the order, decision or settlement under section 47.

48. The court shall enter decree in accordance with the terms of the order, decision or settlement referred to in section 47 and such decree may be executed in accordance with the provisions of the Civil Procedure Code and all the provisions of that Code and of the Stamp Ordinance shall apply accordingly :

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Provided that no appeal from, or application for revision of, any such decree shall lie to the Supreme Court.

SPECIAL PROVISIONS RELATING TO PROCEEDINGS BEFORE THE BOARD

Procedure before the Board.

49. It shall be the duty of the Board to do substantial justice in all matters coming before it without regard to matters of form.

Application of certain provisions of the Civil Procedure Code to proceedings under this Ordinance.

50. (1) The provisions of the Civil Procedure Code relating to—

(*a*) the enforcing of the attendance of any person and his examination on oath ;

(*b*) the enforcing of the production of documents ; and

(*c*) the issuing of commissions for the examination on interrogatories or otherwise of any person,

shall apply to all proceedings by or before the Board, and, for the purpose of the application of such provisions, proceedings before the Board shall be deemed to be an action instituted in a court under that Code, and the Board shall be deemed to be a court and shall have and may exercise all the powers of a court.

(2) Any person present at a hearing before the Board may be required by it to furnish any information or to produce any document then and there in his possession or power.

(3) Any person who when summoned by the Board to attend or when required by the Board to produce any document or book refuses or, without reasonable cause, neglects to attend, or to produce such document or book, or who, when summoned by the Board to attend, attends and refuses to be sworn or affirmed or to be examined, shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding one month, or to both such fine and imprisonment.

Appearance of parties.

51. In any proceedings before the Board any party may appear in person or by a legal practitioner or an agent authorized in writing.

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Exemption of certain documents from stamp duty.

52. All applications, declarations, statements, orders, certificates, settlements, notices and other documents in proceedings before the Board under this Ordinance shall be exempt from stamp duty.

CASES STATED FOR OPINION OF SUPREME COURT

Power of Board to state case on question of law for opinion of Supreme Court.

53. (1) The Board may in its discretion, at any time in the course of any proceedings under this Ordinance, state a case for the opinion of the Supreme Court on any question of law arising for decision in such proceedings.

[§ 10, 40 of 1941.]

(2) The stated case shall set forth in writing the facts of the case as found by the Board and the question of law upon which the opinion of the Supreme Court is sought, and shall, when signed by the Chairman of the Board be transmitted to the Supreme Court. At or before the time when the stated case is transmitted to the Supreme Court, a copy of the stated case shall also be transmitted to each party to the proceedings.

(3) Any two Judges of the Supreme Court may cause a stated case to be sent back for amendment by the Board and thereupon the case shall be amended accordingly.

(4) Any two Judges of the Supreme Court may hear and determine any question of law arising on a stated case, and upon such determination the Registrar of the Court shall remit the case to the Board with the opinion of the Supreme Court thereon. Such opinion shall be final and conclusive and shall be binding on the Board and on the parties to the proceedings.

(5) Any party to the proceedings may appear either personally or by pleader at the hearing before the Supreme Court.

REVIEW OF DECISIONS OF THE BOARD

Power of Board to review its order.

54. (1) The Board may, of its own motion or on application made by any person interested, within three months from the making of an order by the Board dismissing an application, or granting a certificate, or approving a settlement, or before the payment of the

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compounded debt has been completed, whichever date is earlier, review any order passed by it and pass such other order in reference thereto as it thinks fit.

(2) No order shall be reviewed under subsection (1) unless previous notice of the application or of the intention of the Board to review its order has been served in the prescribed manner on the parties interested in the order which is to be reviewed.

(3) Every order made by the Board under subsection (1) shall be final and shall not be subject to further review by the Board under that subsection.

(4) If the terms of any settlement under section 30 or section 31 are varied by any order of the Board under subsection (1), the Board shall cause the order to be registered in the manner provided in section 41 for the registration of the duplicate of a settlement, and the provisions of that section shall apply accordingly.

MISCELLANEOUS

Bar against execution of decree.

55. Notwithstanding anything in the Civil Procedure Code, where, after the date on which any settlement is countersigned by the Chairman, any creditor sues for the recovery of any debt which is not dealt with in the settlement, any decree entered in such action shall not, save to the extent to which the rights of any secured creditor to proceed against any security given by the debtor for the debt are preserved under section 36, be executed against the assets, if any, set apart in the settlement for the satisfaction of the debts specified in such settlement, until all amounts recorded as payable under such settlement have been paid.

Bar of civil actions.

56. No civil court shall entertain—

(*a*) any action in respect of—

(i) any matter pending before the Board ; or

(ii) the validity of any procedure before the Board or the legality of any settlement ;

(*b*) any application to execute a decree, the execution of which is suspended under section 55.

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Compliance with provisions of Ordinance not to be an act of insolvency or a fraudulent preference within the meaning of the Insolvency Ordinance.

57. (1) No debtor shall, by reason only of the fact that any proceedings under this Ordinance have been taken or are pending or have commenced in respect of any debt owed by him, be deemed to have committed an act of insolvency within the meaning of the Insolvency Ordinance.

(2) No alienation, transfer, lease, mortgage or other transaction whatsoever, of or affecting land, made with the sanction of the Board in order to give effect to any settlement under this Ordinance shall be deemed to be a fraudulent preference of any creditor before any other creditor within the meaning of the Insolvency Ordinance.

Computation of period of prescription for suits and proceedings.

58. In calculating the period of prescription for the purposes of any action filed in or proceeding before a civil court for the recovery of any debt which was the subject of any proceedings under this Ordinance, the period that elapsed between the making of the application under section 14 in respect of that debt and the date of the dismissal of the application, or of the grant of the certificate, or of the signing of the settlement, as the case may be, shall be excluded.

Certified copies of settlements, &c.

59. Any person shall be entitled on payment of the prescribed fee to obtain a copy of any settlement under this Ordinance, or of any order or decision made by the Board, certified by the secretary to be a true and correct copy of such settlement, order or decision.

Evidence of acts of the Board.

60. The production in any court of any document purporting to be issued by the Board, or on the authority thereof, shall be prima facie proof of the contents of that document and it shall be presumed until the contrary is proved that such document was issued by the Board or on its authority, as the case may be.

Ordinance not to apply to debts due to the Crown and prescribed persons or bodies.

61. (1) Nothing in this Ordinance shall apply or be deemed to apply to any debt due to the Crown, or to affect the rights of Her Majesty or Her Heirs or Successors in respect of the recovery of any such debt.

(2) Regulations may be made declaring that this Ordinance shall not apply or be deemed to apply to any debt due to any prescribed person or body, or affect the

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rights of any such person or body in respect of the recovery of any such debt.

Regulations.

62. (1) The Minister[1] may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister[1] may make regulations for and in respect of all or any of the following matters :—

(*a*) all matters stated or required in this Ordinance to be prescribed ;

(*b*) the forms of applications, notices, certificates, required to be made, issued or used for the purposes of this Ordinance ;

(*c*) the procedure to be followed at the hearing of applications ;

(*d*) the form in which settlements under this Ordinance shall be entered, the particulars which shall be mentioned and the matters for which provision shall be made in such settlements, and generally for all matters incidental to or connected with such settlements ;

(*e*) the matters for which provision shall be made in every deed or instrument executed under section 34 ;

(*f*) generally for all matters incidental to or connected with the matters or subjects specifically mentioned in this subsection.

Approval of regulations.

63. (1) No regulation shall have effect unless it has been approved by the Senate and the House of Representatives.[1] Notification of such approval shall be published in the Gazette.

(2) Every regulation made by the Minister[1] shall, upon the publication of a notification of the approval of that regulation as provided for in subsection (1), be as valid and effectual as if it were herein enacted.

Interpretation.

64. In this Ordinance unless the context otherwise requires—

" agricultural property " means any land used for the purposes of agriculture or horticulture, or for

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any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees, and the cultivation of fruits, vegetables, and the like ;

" Board " means the Debt Conciliation Board established under section 2 ;

" branch board " means a branch debt conciliation board established under section 7 ;

" court " means a court in which civil actions may be brought ;

" creditor " means a person to whom a debt is owing, but does not include the Crown or any person or body prescribed by regulation under section 61 (2) ;

[§ 11, 40 of 1941.]

" debt " includes all liabilities owing to a creditor in cash or kind, secured or unsecured, whether payable under a decree or order of a civil court or otherwise, and whether mature or not, but does not include arrears of wages or any money for the recovery of which an action is barred by prescription ;

" debtor " means a person—

(i) who has created a mortgage or charge over an agricultural property or any part thereof, and

(ii) whose debts in respect of such property exceed the prescribed amount ;

" prescribed " means prescribed by regulation ;

" regulation " means a regulation made by the Minister [1] under this Ordinance ;

" secured creditor " means a creditor holding a mortgage or charge on the immovable or movable property of the debtor or any part thereof created by a notarial instrument as a security for a debt due to him from the debtor ;

" secretary " means the secretary of the Board ;

" secured debt " means a debt secured by a mortgage of immovable property and includes any debt in respect of which a charge on immovable property is created by a notarial instrument.

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CHAPTER 82

BILLS OF EXCHANGE

AN ORDINANCE TO DECLARE THE LAW RELATING TO BILLS OF EXCHANGE, CHEQUES, BANKERS' DRAFTS, AND PROMISSORY NOTES.

Ordinances Nos. 25 of 1927, 30 of 1930, *Act* No. 5 of 1955.

[*1st March, 1928.*]

PART I

PRELIMINARY

Short title.

1. This Ordinance may be cited as the Bills of Exchange Ordinance.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"acceptance" means an acceptance completed by delivery or notification ;

"action" includes a claim in reconvention and set-off ;

"banker" includes a body of persons, whether incorporated or not, who carry on the business of banking ;

"bank holiday" means a day appointed to be a bank holiday by or under the powers contained in any enactment for the time being in force ;

"bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to insolvency or bankruptcy ;

"bearer" means the person in possession of a bill or note which is payable to bearer ;

"bill" means bill of exchange, and "note" means promissory note ;

"delivery" means transfer of possession, actual or constructive, from one person to another ;

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"holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof ;

"indorsement" means an indorsement completed by delivery ;

"issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder ;

"value" means valuable consideration ;

"written" includes printed, and "writing" includes print.

PART II

Bills Of Exchange

FORM AND INTERPRETATION

Bill of exchange defined.

3. (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

Particular fund.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section ; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

Date, place, and value.

(4) A bill is not invalid by reason—

(*a*) that it is not dated ;

(*b*) that it does not specify the value given, or that any value has been given therefor ;

(*c*) that it does not specify the place where it is drawn or the place where it is payable.

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Inland and foreign bills.

4. (1) An inland bill is a bill which is, or on the face of it purports to be—

(*a*) both drawn and payable within Ceylon, or

(*b*) drawn within Ceylon upon some person resident therein.

Any other bill is a foreign bill.

(2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

Effect where different parties to bill are the same person.

5. (1) A bill may be drawn payable to, or to the order of, the drawer ; or it may be drawn payable to, or to the order of, the drawee.

Drawer and drawee same person or firm.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Address to drawee.

6. (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

Certainty required as to payee.

7. (1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

What bills are negotiable.

8. (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

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(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable.

9. (1) The sum payable by a bill is a sum certain within the meaning of this Ordinance, although it is required to be paid—

(*a*) with interest ;

(*b*) by stated instalments ;

(*c*) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due ;

(*d*) according to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof.

(4) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, the interest shall be at the rate of nine *per centum* per annum :

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Provided that the amount recoverable on account of interest or arrears of interest shall in no case exceed the principal.

Bill payable on demand.

10. (1) A bill is payable on demand—

(*a*) which is expressed to be payable on demand, or at sight, or on presentation ; or

(*b*) in which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

Bill payable at a future time.

11. (1) A bill is payable at a determinable future time within the meaning of this Ordinance which is expressed to be payable—

(*a*) at a fixed period after date or sight ;

(*b*) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

(2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

Omission of date in bill payable after date, or acceptance after sight.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly :

Provided that—

(i) where the holder in good faith and by mistake inserts a wrong date, and

(ii) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

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Presumption as to date being true date.

13. (1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is antedated or postdated, or that it bears date on a Sunday.

Computation of time of payment.

14. Where a bill is not payable on demand, the day on which it falls due is determined as follows :—

(1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace :

Provided that—

(*a*) when the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed to be a public holiday by or under any law for the time being in force, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day ;

(*b*) when the last day of grace is a bank holiday (other than Christmas Day or Good Friday), or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day.

(2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

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(4) The term "month" in a bill means calendar month.

Case of need.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may think fit.

Special stipulations by drawer or indorser restricting liability.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(*a*) negativing or limiting his own liability to the holder ;

(*b*) waiving as regards himself some or all of the holder's duties.

Definition and requisites of acceptance.

17. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely :—

(*a*) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(*b*) It must not express that the drawee will perform his promise by any other means than the payment of money.

Time for acceptance.

18. A bill may be accepted—

(*a*) before it has been signed by the drawer, or while otherwise incomplete ;

(*b*) when it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment ;

(*c*) when a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

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General and qualified acceptances.

19. (1) An acceptance is either—

(*a*) general, or

(*b*) qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

(3) In particular an acceptance is qualified which is—

(*a*) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated ;

(*b*) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn ;

(*c*) local, that is to say, an acceptance to pay only at a particular specified place ;

(*d*) qualified as to time ;

(*e*) the acceptance of some one or more of the drawees, but not of all.

(4) An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only, and not elsewhere.

Inchoate instruments or blank signatures.

20. (1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a prima facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser ; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact :

Provided that if any such instrument after completion is negotiated to a holder in due course, it shall be

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valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Delivery to complete contract.

21. (1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable until delivery of the instrument in order to give effect thereto :

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a*) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be ;

(*b*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

CAPACITY AND AUTHORITY OF PARTIES

Capacity of parties.

22. (1) Capacity to incur liability as a party to a bill is coextensive with capacity to contract.

(2) Where such capacity is to be determined by the law of Ceylon, it shall be determined by Roman-Dutch law as administered in Ceylon subject to the provisions of any enactment affecting that law.

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(3) Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill, unless it is competent to it so to do under the law for the time being in force relating to corporations.

(4) Where a bill is drawn or indorsed by a minor or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such :

Provided that—

(*a*) where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name ;

(*b*) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Forged or unauthorized signature.

24. Subject to the provisions of this Ordinance, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority :

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

Procuration signatures.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

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Persons signing as agent or in representative capacity.

26. (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon ; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

THE CONSIDERATION FOR A BILL

Value defined.

27. (1) Valuable consideration for a bill may be constituted by—

(*a*) any consideration which by the law of England is sufficient to support a simple contract ;

(*b*) an antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Accommodation bill or party.

28. (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value ; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

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Holder in due course.

29. (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely :—

(*a*) that he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact ;

(*b*) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Ordinance when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption of value and good faith.

30. (1) Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value.

(2) Every holder of a bill is prima facie deemed to be a holder in due course ; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

NEGOTIATION OF BILLS

Negotiation defined.

31. (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

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(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely :—

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a " copy " of a bill issued or negotiated in a country where " copies " are recognized, is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill until the contrary is proved.

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(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

Conditional indorsement.

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Indorsement in blank.

34. (1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Ordinance relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

Restrictive indorsement.

35. (1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D only", or "Pay D for the account of X", or "Pay D or order for collection".

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorize him to do so.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

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How long bill continues negotiable.

36. (1) Where a bill is negotiable in its origin it continues to be negotiable until it has been—

(*a*) restrictively indorsed, or

(*b*) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course.

Negotiation of bill to party already liable thereon.

37. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Ordinance, reissue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of the holder.

38. The rights and powers of the holder of a bill are as follows :—

(*a*) he may sue on the bill in his own name ;

(*b*) where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences

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available to prior parties among themselves, and may enforce payment against all parties liable on the bill ;

(c) where his title is defective—

(i) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and

(ii) if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

GENERAL DUTIES OF THE HOLDER

When presentment for acceptance is necessary.

39. (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight.

40. (1) Subject to the provisions of this Ordinance, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

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(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules regarding presentment for acceptance, and excuses for non-presentment.

41. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules :—

(*a*) the presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue ;

(*b*) where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only ;

(*c*) where the drawee is dead presentment may be made to his personal representative ;

(*d*) where the drawee is insolvent or bankrupt, presentment may be made to him or to his assignee or trustee ;

(*e*) where authorized by agreement or usage, a presentment through the post office is sufficient ;

(*f*) where the day on which a bill should be presented is a bank holiday, the bill shall be presented on the succeeding business day.

(2) Presentment in accordance with these rules is excused and a bill may be treated as dishonoured by non-acceptance—

(*a*) where the drawee is dead, insolvent, or bankrupt, or is a fictitious person or a person not having capacity to contract by bill ;

(*b*) where, after the exercise of reasonable diligence, such presentment cannot be effected ;

(*c*) where, although the presentment has been irregular, acceptance has been refused on some other ground.

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(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Non-acceptance after customary time.

42. (1) When a bill is duly presented for acceptance, and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

(2) Where the day on which a bill should be accepted is a bank holiday, the bill shall be accepted on the succeeding business day.

Dishonour by non-acceptance and its consequences.

43. (1) A bill is dishonoured by non-acceptance—

(*a*) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Ordinance is refused or cannot be obtained ; or

(*b*) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Ordinance, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

44. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this subsection do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

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(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

Presentment for payment.

45. Subject to the provisions of this Ordinance a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules :—

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then, subject to the provisions of this Ordinance, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3) Presentment must be made by the holder or by some person authorized to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4) A bill is presented at the proper place—

(*a*) where a place of payment is specified in the bill and the bill is there presented ;

(*b*) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented ;

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(c) where no place of payment is specified, and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence if known ;

(d) in any other case, if presented to the drawee or acceptor, wherever he can be found, or if presented at his last known place of business or residence.

(5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6) Where a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

(7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8) Where authorized by agreement or usage a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment.

46. (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with—

(a) where, after the exercise of reasonable diligence, presentment, as required by this Ordinance, cannot be effected ;

(b) where the drawee is a fictitious person ;

(c) as regards the drawer, where the drawee or acceptor is not bound, as between himself and

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the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented ;

(*d*) as regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented ;

(*e*) by waiver of presentment, express or implied.

(3) The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

Dishonour by non-payment.

47. (1) A bill is dishonoured by non-payment—

(*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or

(*b*) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Ordinance, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dishonour and effect of non-notice.

48. Subject to the provisions of this Ordinance, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged :

Provided that—

(*a*) where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequently to the omission, shall not be prejudiced by the omission ;

(*b*) where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

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Rules as to notice of dishonour.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules :—

(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2) Notice of dishonour may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

(3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4) Where notice is given by or on behalf of an indorser entitled to give notice as herein before provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9) When the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be and with the exercise of reasonable diligence he can be found.

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(10) Where the drawer or indorser is insolvent or bankrupt, notice may be given either to the party himself or to the assignee or trustee.

(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(*a*) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;

(*b*) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

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Excuses for delay in giving notice of dishonour.

50. (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with—

(*a*) When, after the exercise of reasonable diligence, notice as required by this Ordinance cannot be given to or does not reach the drawer or indorser sought to be charged ;

(*b*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice ;

(*c*) As regards the drawer in the following cases, namely—

(i) where drawer and drawee are the same person,

(ii) where the drawee is a fictitious person or a person not having capacity to contract,

(iii) where the drawer is the person to whom the bill is presented for payment,

(iv) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill,

(v) where the drawer has countermanded payment ;

(*d*) As regards the indorser in the following cases, namely—

(i) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill,

(ii) where the indorser is the person to whom the bill is presented for payment,

(iii) where the bill was accepted or made for his accommodation.

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Noting inland bill.

51. (1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be ; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4) Subject to the provisions of this Ordinance, when a bill is noted or protested, it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6) A bill must be protested at the place where it is dishonoured :

Provided that—

(*a*) when a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day ;

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(b) when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a) the person at whose request the bill is protested ;

(b) the place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Duties of holder as regards drawee or acceptor.

52. (1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

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(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

LIABILITIES OF PARTIES

Funds in hands of drawee.

53. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Ordinance is not liable on the instrument.

Liability of acceptor.

54. The acceptor of a bill, by accepting it—

(1) engages that he will pay it according to the tenor of his acceptance;

(2) is precluded from denying to a holder in due course—

(*a*) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(*b*) in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(*c*) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of drawer.

55. (1) The drawer of a bill by drawing it—

(*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b*) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

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(2) The indorser of a bill, by indorsing it—

(*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;

(*b*) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements ;

(*c*) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Stranger signing bill liable as indorser.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

Measure of damages against parties to dishonoured bill.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows :—

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(*a*) the amount of the bill ;

(*b*) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case ;

(*c*) the expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer, or an

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indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him the amount of the re-exchange with interest thereon until the time of payment.

(3) Where by this Ordinance interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Transferor by delivery and transferee.

58. (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a " transferor by delivery ".

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

DISCHARGES

Payment in due course.

59. (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

" Payment in due course " means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged ; but—

(*a*) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill ;

(*b*) where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his

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former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Banker paying demand draft whereon indorsement is forged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Acceptor the holder at maturity.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express waiver or renunciation.

62. (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity, but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

63. (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.

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(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative ; but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Alteration of bill.

64. (1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided, except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers :

Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered ; and may enforce payment of it according to its original tenor.

(2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

ACCEPTANCE AND PAYMENT FOR HONOUR

Acceptance for honour suprà protest.

65. (1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill suprà protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour suprà protest in order to be valid must—

(*a*) be written on the bill, and indicate that it is an acceptance for honour ;

(*b*) be signed by the acceptor for honour.

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(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

Liability of acceptor for honour.

66. (1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

Presentment to acceptor for honour.

67. (1) Where a dishonoured bill has been accepted for honour suprà protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity ; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

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Payment for honour suprà protest.

68. (1) Where a bill has been protested for non-payment, any person may intervene and pay it suprà protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour suprà protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment suprà protest he shall lose his right of recourse against any party who would have been discharged by such payment.

LOST INSTRUMENTS

Holder's right to duplicate of lost bill.

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

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If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Action on lost bill.

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

BILL IN A SET

Rules as to sets.

71. (1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill ; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

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CONFLICT OF LAWS

Rules where laws conflict.

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows :—

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance suprà protest, is determined by the law of the place where such contract was made :

Provided that—

(*a*) where a bill is issued outside Ceylon it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue ;

(*b*) where a bill, issued outside Ceylon, conforms, as regards requisites in form, to the law of Ceylon, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in Ceylon.

(2) Subject to the provisions of this Ordinance, the interpretation of the drawing, indorsement, acceptance, or acceptance suprà protest of a bill, is determined by the law of the place where such contract is made :

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of Ceylon.

(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

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(4) Where a bill is drawn out of but payable in Ceylon, and the sum payable is not expressed in the currency of Ceylon, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III

Cheques On A Banker

Cheque defined.

73. A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this Part, the provisions of this Ordinance applicable to a bill of exchange payable on demand apply to a cheque.

Presentment of cheque for payment.

74. Subject to the provisions of this Ordinance—

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of such cheque as to which such drawer or person is discharged shall be a

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creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

Revocation of banker's authority.

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(*a*) countermand of payment;

(*b*) notice of the customer's death.

CROSSED CHEQUES

General and special crossings defined.

76. (1) Where a cheque bears across its face an addition of—

(*a*) the words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or

(*b*) two parallel transverse lines simply, either with or without the words "not negotiable";

that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossing by drawer or after issue.

77. (1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally, the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque or a cheque crossed generally is sent to a banker for collection, he may cross it specially to himself.

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Crossing a material part of cheque.

78. A crossing authorized by this Ordinance is a material part of the cheque ; it shall not be lawful for any person to obliterate, or, except as authorized by this Ordinance, to add to or alter the crossing.

Duties of banker as to crossed cheque.

79. (1) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid :

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Ordinance, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Ordinance, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Protection to banker and drawer where cheque is crossed.

80. Where the banker on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection, being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

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Effect of crossing with words "not negotiable" on holder.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable", he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Protection to collecting banker.

82. (1) Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

(2) A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Extension of sections 76 to 82 to certain drafts on bankers.

83. Sections 76 to 82, both inclusive, of this Ordinance shall extend to any document issued by a customer of any banker, and intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document, and shall so extend in like manner as if the said document were a cheque :

Provided that nothing in this Ordinance shall be deemed to render any such document a negotiable instrument.

For the purpose of this section, the Deputy Secretary to the Treasury [1] shall be deemed to be a banker, and the public officers drawing on him shall be deemed customers.

Application of sections 76 to 82 to drafts drawn by a bank on itself.
[§ 2, 5 of 1955.]

84. Sections 76 to 82, both inclusive, of this Ordinance shall apply to a banker's draft as if that draft were a cheque.

For the purposes of this section, the expression "banker's draft" means a draft payable on demand drawn by or on behalf of a bank upon itself, whether payable at the head office or some other office of the bank.

C 22——J. N. R 7589 (4/60)

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PART IV

Promissory Notes

Promissory note defined.

85. (1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section, unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within Ceylon is an inland note. Any other note is a foreign note.

Delivery necessary.

86. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Joint and several notes.

87. (1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.

(2) Where a note runs "I promise to pay" and is signed by two or more persons, it is deemed to be their joint and several note.

Note payable on demand,

88. (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had

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no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of note for payment to render maker liable.

89. (1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker.

90. The maker of a promissory note by making it—

(*a*) engages that he will pay it according to its tenor;

(*b*) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Application of Part II to notes.

91. (1) Subject to the provisions in this Part, and except as by this section provided, the provisions of this Ordinance relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

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(3) The following provisions as to bills do not apply to notes, namely, provisions relating to—

(*a*) presentment for acceptance ;

(*b*) acceptance ;

(*c*) acceptance suprà protest ;

(*d*) bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V

SUPPLEMENTARY

Good faith.

92. A thing is deemed to be done in good faith within the meaning of this Ordinance, where it is in fact done honestly, whether it is done negligently or not.

Signature.

93. (1) Where, by this Ordinance, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation, where, by this Ordinance, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Computation of time.

94. Where, by this Ordinance, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

" Non-business days " for the purposes of this Ordinance mean—

(*a*) Sunday ;

(*b*) a bank holiday ;

(*c*) a day appointed to be a public holiday by or under any law for the time being in force.

Any other day is a business day.

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When noting equivalent to protest.

95. For the purposes of this Ordinance, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

Protest when notary not accessible.

96. Where a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in the Schedule to this Ordinance may be used with necessary modifications, and if used shall be sufficient.

Dividend warrants may be crossed.

97. The provisions of this Ordinance as to crossed cheques shall apply to a warrant for payment of dividend.

Savings.

98. (1) The rules in insolvency or bankruptcy relating to bills of exchange, promissory notes, and cheques shall continue to apply thereto, notwithstanding anything in this Ordinance contained.

(2) The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, or any other enactment for the time being in force, shall apply to bills of exchange, promissory notes, and cheques.

(3) Nothing in this Ordinance or in any repeal effected thereby shall affect—

(*a*) any law or enactment for the time being in force relating to stamps or the revenue;

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(*b*) the provisions of the Companies Ordinance, or enactments amending it, or any enactment relating to joint stock banks or companies ;

(*c*) the provisions relating to promissory notes contained in the Money Lending Ordinance ;

(*d*) the validity of any usage relating to dividend warrants or the indorsement thereof.

SCHEDULE

[Section 96.]

FORM OF PROTEST WHICH MAY BE USED WHEN THE SERVICES OF A NOTARY CANNOT BE OBTAINED

Know all men that I, *A. B.* (householder), of ————, in the district of ————, in Ceylon, at the request of *C. D.*, there being no notary public available, did on the ———— day of ————, 19——, at ————, demand payment (or acceptance) of the bill of exchange hereunder written, from *E. F.*, to which demand he made answer (*state answer, if any*), wherefore I now in the presence of *G. H.* and *J. K.* do protest the said bill of exchange.

(Signed) *A. B.*

G. H.
J. K. } Witnesses.

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

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CHAPTER 83

PARTNERSHIP

AN ORDINANCE TO AMEND AND DECLARE THE LAW RELATING TO PARTNERSHIP.

Ordinance No. 21 of 1866.

[*24th December, 1866.*]

Short title.

1. This Ordinance may be cited as the Partnership Ordinance.

Interpretation.

2. In the construction of this Ordinance the word "person" shall include a partnership firm, a joint stock company and a corporation.

Lender not a partner by advancing money for share of profits.

3. The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person carrying on such trade or undertaking, or render him responsible as such.

Remuneration of agents, &c., by profits not to make them partners.

4. No contract for the remuneration of a servant or agent or any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Certain annuitants not to be deemed partners.

5. No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of, or to be subject to, any liabilities incurred by such trader.

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Receipt of profits, &c., not to make the seller a partner.

6. No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of, or to be subject to, the liabilities of the person carrying on such business.

In case of bankruptcy, &c., lender not to rank, as respects profit or interest, with other creditors.

7. In the event of any such trader as aforesaid being a bankrupt or insolvent, or taking the benefit of any enactment for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than ten rupees for every ten rupees, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid, until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

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CHAPTER 84

SALE OF GOODS

AN ORDINANCE TO AMEND AND CODIFY THE LAW RELATING TO THE SALE OF GOODS.

Ordinance No. 11 of 1896.

[*1st January, 1897.*]

1. This Ordinance may be cited as the Sale of Goods Ordinance.

Short title.

PART I

FORMATION OF THE CONTRACT

CONTRACT OF SALE

2. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called " the price ". There may be a contract of sale between one part-owner and another.

Sale and agreement to sell.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called " a sale " ; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called " an agreement to sell ".

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

3. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property :

Capacity to buy and sell.

Provided that where necessaries are sold and delivered to a minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

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"Necessaries" in this section means goods suitable to the condition in life of such minor or other person, and to his actual requirements at the time of the sale and delivery.

FORMALITIES OF THE CONTRACT

Contract of sale how made.

4. Subject to the provisions of this Ordinance and of any enactment in that behalf, a contract of sale may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties :

Provided that nothing in this section shall affect the law relating to corporations.

No contract to be in force unless in writing and signed.

5. (1) A contract for the sale of any goods shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or pay the price or a part thereof, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof or rendering the same fit for delivery.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not.

SUBJECT-MATTER OF CONTRACT

Existing or future goods.

6. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Ordinance called "future goods".

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(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods which have perished.

7. Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

Goods perishing before sale, but after agreement to sell.

8. Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish before the risk passes to the buyer, the agreement is thereby avoided.

THE PRICE

Ascertainment of price.

9. (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation.

10. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided :

Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

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CONDITIONS AND WARRANTIES

Stipulations as to time of payment.

11. (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

(2) In a contract of sale " month " means prima facie calendar month.

When condition to be treated as warranty.

12. (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated.

(2) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition though called a warranty in the contract.

(3) Where a contract of sale is not severable, and the buyer has accepted the goods or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, expressed or implied, to that effect.

(4) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied undertaking as to title, &c.

13. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

(*a*) an implied condition on the part of the seller that in the case of a sale he has a right to sell the

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goods, and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass ;

(*b*) an implied warranty that the buyer shall have and enjoy quiet possession of the goods ;

(*c*) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

Sale by description.

14. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description ; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied conditions as to quality or fitness.

15. Subject to the provisions of this Ordinance and of any enactment in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows :—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose :

Provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality :

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Provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Ordinance unless inconsistent therewith.

SALE BY SAMPLE

Sale by sample.

16. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample—

(*a*) there is an implied condition that the bulk shall correspond with the sample in quality ;

(*b*) there is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample ;

(*c*) there is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

PART II

Effects Of The Contract

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

Goods must be ascertained.

17. Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

18. (1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

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(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

Rules for ascertaining intention.

19. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer :—

Rule 1.—Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2.—Where there is a contract for the sale of specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing be done and the buyer has notice thereof.

Rule 3.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act of thing be done and the buyer has notice thereof.

Rule 4.—When goods are delivered to the buyer on approval, or "on sale or return", or other similar terms, the property therein passes to the buyer—

(*a*) when he signifies his approval or acceptance to the seller, or does any other act adopting the transaction ;

(*b*) if he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed,

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on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5.—(1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

(2) Where in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Reservation of right of disposal.

20. (1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

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Risk prima facie passes with property.

21. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk, whether delivery has been made or not :

Provided that where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault ;

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

TRANSFER OF TITLE

Sale by person not the owner.

22. (1) Subject to the provisions of this Ordinance, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Provided also that nothing in this Ordinance shall affect—

(52 & 53 Vict. c. 45.)

(*a*) the provisions of the Factors Act, or any enactment of the Parliament of the United Kingdom in force in Ceylon, or any local enactment, enabling the apparent owner of goods to dispose of them as if he were the true owner thereof ;

(*b*) the validity of any contract of sale under any statutory power of sale or under the order of a court of competent jurisdiction.

Sale under voidable title.

23. When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

C 23——J. N. R 7589 (4/60)

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Re-vesting of property in stolen goods on conviction of offender.

24. (1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen re-vests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them.

(2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in such goods shall not re-vest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

Seller or buyer in possession after sale.

25. (1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(3) In this section the term " mercantile agent " shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

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Effect of writs of execution.

26. A writ of execution against goods shall bind the property in the goods of the execution-debtor as from the time when the writ is delivered to the Fiscal to be executed ; and, for the better manifestation of such time, it shall be the duty of the Fiscal, without fee, upon the receipt of any such writ, to endorse upon the back thereof the hour, day, month, and year when he received the same :

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ, by virtue of which the goods of the execution-debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the Fiscal.

PART III

Performance Of The Contract

Duties of seller and buyer.

27. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

28. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions ; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Rules as to delivery.

29. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence :

Provided that, if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

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(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf :

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Delivery of wrong quantity.

30. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

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Instalment deliveries.

31. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case, depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to carrier.

32. (1) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, is prima facie deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant places.

33. Where the seller of goods agrees to deliver them, at his own risk, at a place other than that where they are when sold, the buyer must, nevertheless, unless

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otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

34. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

35. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

36. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

37. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods :

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

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PART IV

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

Unpaid seller defined.

38. (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Ordinance—

(*a*) when the whole of the price has not been paid or tendered ;

(*b*) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part of this Ordinance the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights.

39. (1) Subject to the provisions of this Ordinance and of any enactment in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(*a*) a lien on the goods or right to retain them for the price while he is in possession of them ;

(*b*) in case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them ;

(*c*) a right of re-sale as limited by this Ordinance.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

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UNPAID SELLER'S LIEN

Sellers lien.

40. (1) Subject to the provisions of this Ordinance, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely :

(*a*) where the goods have been sold without any stipulation as to credit ;

(*b*) where the goods have been sold on credit, but the term of credit has expired ;

(*c*) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

41. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

Termination of lien.

42. (1) The unpaid seller of goods loses his lien or right of retention thereon—

(*a*) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods ;

(*b*) when the buyer or his agent lawfully obtains possession of the goods ;

(*c*) by waiver thereof.

(2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

STOPPAGE *IN TRANSITU*

Right of stoppage *in transitu.*

43. Subject to the provisions of this Ordinance, when the buyer of goods becomes insolvent the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu ;* that is to say,

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he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

Duration of transit.

44. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee, for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If after the arrival of the goods at the appointed destination the carrier or other bailee acknowledges to the buyer, or his agent, that he holds the goods on his behalf, and continues in possession of them as bailee for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case whether they are in possession of the master as a carrier or as agent to the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu,* unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage *in transitu* is effected.

45. (1) The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods or by giving notice of his claim to the

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carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

RE-SALE BY BUYER OR SELLER

Effect of sub-sale or pledge by buyer.

46. Subject to the provisions of this Ordinance, the unpaid seller's right of lien or retention or stoppage *in transitu* is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto :

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage *in transitu* is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage *in transitu* can only be exercised subject to the rights of the transferee.

Sale not generally rescinded by lien or stoppage *in transitu.*

47. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage *in transitu.*

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage *in transitu* re-sells the goods, the buyer acquires a good title thereto as against the original buyer.

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(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

PART V

Actions For Breach Of The Contract

REMEDIES OF THE SELLER

Action for price.

48. (1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

Damages for non-acceptance.

49. (1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

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(3) Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

REMEDIES OF THE BUYER

Damages for non-delivery.

50. (1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Specific performance.

51. In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise as to the court may seem just. And the application by the plaintiff may be made at any time before judgment or decree.

Remedy for breach of warranty.

52. (1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller

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as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods ; but he may—

(*a*) set up against the seller the breach of warranty in diminution or extinction of the price ; or

(*b*) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(3) In the case of breach of warranty of quality, such loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

Interest and special damages.

53. Nothing in this Ordinance shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VI

SUPPLEMENTARY

Exclusion of implied terms and conditions.

54. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

Reasonable time a question of fact.

55. Where by this Ordinance any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

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Rights, &c., enforceable by action.

56. Where any right, duty, or liability is declared by this Ordinance, it may, unless otherwise by this Ordinance provided, be enforced by action.

Auction sales.

57. In the case of a sale by auction—

(1) Where goods are put up for sale by auction in lots, each lot is prima facie deemed to be the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made any bidder may retract his bid.

(3) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer.

(4) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

Savings.

58. (1) The rules in insolvency relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Ordinance contained.

(2) The rules of the English law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress, or coercion, mistake, or other invalidating cause, shall apply to contracts for the sale of goods.

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(3) The provisions of this Ordinance relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

(4) Nothing in this Ordinance shall prejudice or affect the landlord's right of hypothec or lien for rent.

Interpretation.

59. (1) In this Ordinance, unless the context or subject-matter otherwise requires—

"action" includes claim in reconvention ;

"buyer" means a person who buys or agrees to buy goods ;

"contract of sale" includes an agreement to sell as well as a sale ;

"delivery" means voluntary transfer of possession from one person to another ;

"document of title to goods" includes any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented ;

"Factors Act" means the Act of the Parliament of the United Kingdom, 52 & 53 Vict. c. 45 ;

"fault" means wrongful act or default ;

"future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale ;

"goods" include all movables except moneys. The term includes growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale ;

"lien" includes the right of retention ;

"plaintiff" includes the defendant claiming in reconvention ;

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" property " means the general property in goods and not merely a special property ;

" quality of goods " includes their state or condition ;

" sale " includes a bargain and sale as well as a sale and delivery ;

" seller " means a person who sells or agrees to sell goods ;

" specific goods " mean goods identified and agreed upon at the time a contract of sale is made ;

" warranty " means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) A thing is deemed to be done " in good faith " within the meaning of this Ordinance when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Ordinance, who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not, and whether he has become an insolvent or not.

(4) Goods are in a " deliverable state " within the meaning of this Ordinance when they are in such a state that the buyer would under the contract be bound to take delivery of them.

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CHAPTER 85

CARRIAGE OF GOODS BY SEA

AN ORDINANCE TO AMEND THE LAW RELATING TO THE CARRIAGE OF GOODS BY SEA.

Ordinance No. 18 of 1926.

[*3rd December, 1926.*]

WHEREAS at the International Conference on Maritime Law held at Brussels in October, 1922, the delegates at the Conference, including the delegates representing His Majesty, agreed unanimously to recommend their respective Governments to adopt as the basis of a convention a draft convention for the unification of certain rules relating to bills of lading :

And whereas at a meeting held at Brussels in October, 1923, the rules contained in the said draft convention were amended by the Committee appointed by the said Conference :

And whereas it is expedient that the said rules as so amended and as set out with modifications in the Schedule to this Ordinance (in this Ordinance referred to as " the rules ") should, subject to the provisions of this Ordinance, be given the force of law with a view to establishing the responsibilities, liabilities, rights, and immunities attaching to carriers under bills of lading :

And whereas provision has been made by the Carriage of Goods by Sea Act, 1924, that the said rules as so amended and as set out with modifications in the Schedule to that Act shall be given the force of law with a view to establishing the responsibilities, rights, and immunities attaching to carriers under bills of lading :

(14 & 15 Geo. v, c. 22.)

And whereas it is expedient that like provision should be made in Ceylon :

C 24——J. N. R 7589 (4/60)

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Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows :—

Short title.

1. This Ordinance may be cited as the Carriage of Goods by Sea Ordinance.

Application of rules in Schedule.

2. Subject to the provisions of this Ordinance, the rules in the Schedule shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Ceylon to any other port whether in or outside Ceylon.

Absolute warranty of seaworthiness not to be implied in contracts to which rules apply.

3. There shall not be implied in any contract for the carriage of goods by sea to which the rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Statement as to application of rules to be included in bills of lading.

4. Every bill of lading, or similar document of title, issued in Ceylon which contains or is evidence of any contract to which the rules apply shall contain an express statement that it is to have effect subject to the provisions of the said rules as applied by this Ordinance.

Modification of Article VI of rules in relation to coasting trade.

5. Article VI of the rules in the Schedule shall, in relation to the carriage of goods by sea in ships carrying goods from any port in Ceylon to any other port in Ceylon, have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

Modification of rules 4 and 5 of Article III in relation to bulk cargoes.

6. Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the rules, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

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Saving and operation.

(57 & 58 Vict. c. 60.)

7. (1) Nothing in this Ordinance shall affect the operation of sections 446 to 450, both inclusive, 502, and 503 of the Merchant Shipping Act, 1894, of the United Kingdom as amended by any subsequent enactment, or the operation of any other enactment for the time being in force limiting the liability of the owners of sea-going vessels.

(2) The rules shall not by virtue of this Ordinance apply to any contract for the carriage of goods by sea made before such day * as the Governor may by Proclamation published in the Gazette direct, nor to any bill of lading or similar document of title issued, whether before or after such day as aforesaid, in pursuance of any such contract as aforesaid.

SCHEDULE

RULES RELATING TO BILLS OF LADING

ARTICLE I

DEFINITIONS

In these rules the following expressions have the meanings hereby assigned to them respectively, that is to say—

(*a*) "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper;

(*b*) "contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;

(*c*) "goods" includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;

(*d*) "ship" means any vessel used for the carriage of goods by sea;

(*e*) "carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

ARTICLE II

RISKS

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and

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* 1st June, 1927.—Gazette No. 7,578 of 22nd April, 1927.

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discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III

RESPONSIBILITIES AND LIABILITIES

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

(*a*) make the ship seaworthy ;

(*b*) properly man, equip, and supply the ship ;

(*c*) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master, or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

(*a*) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage ;

(*b*) either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper ;

(*c*) the apparent order and condition of the goods :

Provided that no carrier, master, or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (*a*), (*b*), and (*c*).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled

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to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a " shipped " bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the " shipped " bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a " shipped " bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article IV

RIGHTS AND IMMUNITIES

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(*a*) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship ;

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(*b*) fire, unless caused by the actual fault or privity of the carrier ;

(*c*) perils, dangers, and accidents of the sea or other navigable waters ;

(*d*) act of God ;

(*e*) act of war ;

(*f*) act of public enemies ;

(*g*) arrest or restraint of princes, rulers, or people, or seizure under legal process ;

(*h*) quarantine restrictions ;

(*i*) act or omission of the shipper or owner of the goods, his agent or representative ;

(*j*) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general ;

(*k*) riots and civil commotions ;

(*l*) saving or attempting to save life or property at sea ;

(*m*) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods ;

(*n*) insufficiency of packing ;

(*o*) insufficiency or inadequacy of marks ;

(*p*) latent defects not discoverable by due diligence ;

(*q*) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

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Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master, or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article V

SURRENDER OF RIGHTS AND IMMUNITIES, AND INCREASE OF RESPONSIBILITIES AND LIABILITIES

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these rules shall not be applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they shall comply with the terms of these rules. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article VI

SPECIAL CONDITIONS

Notwithstanding the provisions of the preceding Articles, a carrier, master, or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect:

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

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Article VII

LIMITATIONS ON THE APPLICATION OF THE RULES

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

Article VIII

LIMITATION OF LIABILITY

The provisions of these rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Article IX

The monetary units mentioned in these rules are to be taken to be gold value.

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CHAPTER 86

TRUST RECEIPTS

AN ORDINANCE TO PROVIDE FOR THE EXECUTION OF TRUST RECEIPTS IN CONFORMITY WITH PRESCRIBED REQUIREMENTS AND FOR THE REGISTRATION AND EFFECT OF TRUST RECEIPTS SO EXECUTED.

Ordinance No. 12 of 1947.

[*1st May, 1947.*]

Short title.

1. This Ordinance may be cited as the Trust Receipts Ordinance.

Trust receipt for imported goods.

2. (1) Where any person, being the consignee of any goods imported into Ceylon or a person at whose instance any goods are imported into Ceylon, is not entitled, under the terms of any contract relating to the goods or to payment therefor or otherwise, to obtain possession of the goods or of the documents of title relating thereto, except upon payment of a sum of money or upon an undertaking to hold the goods in trust, and such person or any other person—

(*a*) obtains possession of such goods or documents upon the execution, in favour of any approved credit agency by which the goods or documents are actually released, of a document in respect of the goods which complies with the provisions of subsection (2) or subsection (3) (which document is hereinafter referred to as "a trust receipt for imported goods") ; or

(*b*) obtains a loan from any approved credit agency for the purpose of making the payment necessary to enable him to obtain possession of such goods, or documents, upon the execution in favour of such agency of a document in respect of those goods which complies with the provisions of subsection (2) or subsection (3) (which document is hereinafter referred to as "a trust receipt for imported goods"), the

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provisions of section 4 shall be applicable in relation to that trust receipt and the goods to which it relates.

(2) In order to comply with the provisions of this subsection, a document which is executed by any person in the circumstances mentioned in subsection (1) must contain the following undertakings on the part of that person in respect of the goods to which it relates :—

(i) an undertaking to hold those goods in trust for the agency in favour of which it is executed, to mark the goods or packages or cases containing them in a specified manner, and to keep the goods in specified premises until the sale thereof ;

(ii) an undertaking to pay to the agency from time to time as received, the proceeds of the sale of those goods or a specified proportion of such proceeds ;

(iii) an undertaking not to sell those goods or any of those goods except for cash ;

(iv) an undertaking to deliver such of those goods as may for the time being be unsold, to, or to the order of, the agency upon demand made in writing in that behalf ;

(v) an undertaking to permit the agency, without prior notice, from time to time to enter and inspect the premises in which those goods are kept and to take stock of such of those goods as may be in the premises.

(3) In order to comply with the provisions of this subsection, a document which is executed by any person in the circumstances mentioned in subsection (1) must contain the following undertaking on the part of that person in respect of the goods to which it relates, that is to say—an undertaking to hold the goods in trust for the agency in favour of which it is executed, and to store them in a specified warehouse in the name of the agency.

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(4) Nothing in subsection (2) or subsection (3) shall be deemed to prevent the inclusion in the document of any undertakings, conditions or stipulations in addition to the undertaking specified in either of those subsections.

Trust receipt for goods for exportation.

3. (1) Where, upon a statement made to any approved credit agency by any person, that he proposes to purchase goods for the purpose of exportation from Ceylon, such person, for the purpose of making payment for the goods and of meeting expenditure in connection with the exportation and preparation for exportation thereof, obtains from such agency advances by way of loan, overdraft or otherwise, upon the execution in favour of such agency, of a document which complies with the provisions of subsection (2) (which document is hereinafter referred to as " a trust receipt for goods for exportation "), the provisions of section 4 shall be applicable in relation to that trust receipt and the goods to which it relates.

(2) In order to comply with the provisions of this subsection, a document which is executed by any person in the circumstances mentioned in subsection (1) must contain the following undertakings on the part of that person in respect of the goods to which the document relates :—

(i) an undertaking to hold those goods in trust for the agency in favour of which it is executed, to mark the goods or the packages or cases containing them in a specified manner, and to keep the goods in specified premises until the exportation thereof ;

(ii) an undertaking, upon the exportation from Ceylon of those goods, to deliver to the agency the bills of lading and other shipping documents relating to such goods ;

(iii) an undertaking not to sell those goods to any other person in Ceylon except with the consent of the agency, and in the event of any such sale with such consent to deliver the proceeds of sale from time to time as received to the agency ;

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(iv) an undertaking, in the event of those goods not being exported from Ceylon within a specified period, to deliver the goods to, or to the order of, the agency upon demand made in writing in that behalf ;

(v) an undertaking to permit the agency, without prior notice, from time to time to enter and inspect the premises in which those goods are kept and to take stock of such of those goods as may be in the premises.

(3) Nothing in subsection (2) shall be deemed to prevent the inclusion in the document of any undertakings, conditions or stipulations in addition to the undertakings specified in that subsection.

Legal effect of trust receipts to which this Ordinance applies.

4. (1) Where a trust receipt for imported goods, or a trust receipt for goods for exportation, has been executed by any person in conformity with the provisions of section 2 or section 3 and the trust receipt is registered under the Registration of Documents Ordinance as a bill of sale affecting the goods to which it relates, the following provisions shall apply during such time as any money stated in the trust receipt to be due or to become payable thereunder to the agency remain due and unpaid :—

(i) The agency shall, in the event of the seizure of the goods by any other person in execution of any decree of any court, be entitled, upon application made to that court in the action in the course of which the seizure was effected, to an order directing that the goods shall be delivered to the agency and shall be sold, either by public auction by an auctioneer selected by the agency and approved by the court, or in such manner as the court may direct, and in accordance with such directions as may be issued by the court.

Upon the sale of such goods the agency shall be entitled to retain out of the proceeds of sale the amount due under the trust receipt, and the balance, if any, of the proceeds of sale

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shall be paid into court and be deemed to be proceeds of the sale of the goods in execution of the decree under which they were seized.

(ii) The agency shall, in the event of the insolvency of the person by whom the trust receipt is executed, be entitled to obtain from the court in which the proceedings upon such insolvency are pending, an order directing that the goods to which the trust receipt relates shall be delivered to the agency and shall be sold either by public auction by an auctioneer selected by the agency and approved by the court, or in such other manner as the court may direct, and in accordance with such directions as may be issued by the court.

Upon the sale of such goods, the agency shall be entitled to retain out of the proceeds of sale the amount due under the trust receipt, and the balance, if any, of the proceeds of sale shall be paid into court to the credit of the assignee of the estate of the insolvent.

(iii) Where any goods are delivered to the agency in compliance with any undertaking referred to in paragraph (iv) of section 2 (2) or in paragraph (iv) of section 3 (2), the agency may sell the goods so delivered, whether after removal thereof, or at the premises in which the goods are kept if the person executing the trust receipt consents to a sale at such premises.

The agency shall be entitled to retain, out of the proceeds of sale of the goods, the amount due to it under the trust receipt, and the balance, if any, shall be paid to the person by whom the trust receipt was executed.

(iv) The person by whom the trust receipt was executed shall, if he commits a breach or fails to comply with any undertaking referred to in subsection (2) or subsection (3) of section 2, or in subsection (2) of section 3, as the case may be, being an undertaking contained in the trust receipt, be guilty of an offence and shall, on conviction be liable to imprisonment

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of either description for a term not exceeding three months or to a fine not exceeding five hundred rupees or to both such imprisonment and fine.

(2) The provisions of this Ordinance relating to the payment to, or the recovery by, an approved credit agency, of the amount due under a trust receipt shall be in addition to, and not in substitution or derogation of, the provisions of any written or other law under which any right or remedy is available to the agency for the purpose of the recovery of that amount, or where any part of that amount has already been paid or recovered, of the balance remaining due.

Approved credit agencies.

5. (1) In this Ordinance, " approved credit agency " means—

(*a*) any banking company as defined in section 333 of the Companies Ordinance, which is declared by the Director of Commerce, [2] by Notification published in the Gazette, to be an approved credit agency for the purposes of this Ordinance ;

(*b*) the Ceylon State Mortgage Bank, the Agricultural and Industrial Credit Corporation, the Loan Board, the Ceylon Savings Bank, and the Local Loans and Development Commissioners ; or

(*c*) any other company, firm, institution or individual for the time being declared by the Director of Commerce, [2] by Notification published in the Gazette, to be an approved credit agency for the purposes of this Ordinance.

(2) Nothing in this Ordinance shall be deemed or construed to authorize any institution mentioned in paragraph (*b*) of subsection (1) to make loans or afford any credit facilities in consideration of the execution of trust receipts, if the power to make such loans or to afford such facilities is not conferred on such institution by the Ordinance providing for the establishment, powers and functions of such institution.

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CHAPTER 87

TRUSTS

AN ORDINANCE TO DEFINE AND AMEND THE LAW RELATING TO TRUSTS.

Ordinances Nos. 9 of 1917, 4 of 1918, 1 of 1934.

[*16th April, 1918.*]

CHAPTER I

PRELIMINARY

Short title.

1. This Ordinance may be cited as the Trusts Ordinance.

Application of English law.

2. All matters with reference to any trust, or with reference to any obligation in the nature of a trust arising or resulting by the implication or construction of law, for which no specific provision is made in this or any other enactment, shall be determined by the principles of equity for the time being in force in the High Court of Justice in England.

Interpretation.

3. In this Ordinance, unless the context or the subject-matter otherwise implies—

(*a*) "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another person, or of another person and the owner, of such a character that, while the ownership is nominally vested in the owner, the right to the beneficial enjoyment of the property is vested or to be vested in such other person, or in such other person concurrently with the owner ;

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(*b*) a trust does not include a fideicommissum ;

(*c*) the person who reposes or declares the confidence is called the " author of the trust " ;

(*d*) the person who accepts the confidence is called the " trustee " ;

(*e*) the person for whose benefit the confidence is accepted is called the " beneficiary " ;

(*f*) the subject-matter of the trust is called " trust property " or " trust money " ;

(*g*) " the beneficial interest " or " interest " of the beneficiary is his right against the trustee as owner of the trust property ; and

(*h*) the instrument, if any, by which the trust is declared is called the " instrument of trust " ;

(*i*) the expression " instrument of trust " includes a scheme settled under Chapter X of this Ordinance ;

(*j*) a breach of any duty imposed on a trustee, as such, by any law for the time being in force is called a " breach of trust " ;

(*k*) a person is said to have " notice " of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by any person whom the court may determine to have been his agent for the purpose of receiving or obtaining such information ;

(*l*) every person is " competent to contract " who is of the age of majority, or has otherwise acquired the status of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified by law from contracting ;

(*m*) a " married woman " is competent to contract :

Provided that in any case in which the consent, concurrence, acquiescence, or ratification of a beneficiary is referred to, the power

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of consent, concurrence, acquiescence, or ratification of a married woman who is a beneficiary shall be subject to the same conditions and limitations as her power to contract with reference to the matter in question;

(*n*) "court" means the District Court having jurisdiction in the matter in question, or a District Court upon which the Supreme Court, on the application of any party interested, may confer jurisdiction for the purposes either of the trust generally or of the matter in question;

(*o*) "notarially executed" means executed in the manner prescribed by section 2 of the Prevention of Frauds Ordinance, and any reference to "notarial execution" shall be deemed to include a reference to execution in accordance with the Deeds and Documents (Execution before Public Officers) Ordinance.

CHAPTER II

Of The Creation Of Trusts

Lawful purpose.

4. (1) A trust may be created for any lawful purpose. The purpose of a trust is lawful, unless it is—

(*a*) forbidden by law, or

(*b*) is of such a nature that, if permitted, it would defeat the provisions of any law, or

(c) is fraudulent, or

(*d*) involves or implies injury to the person or property of another, or

(*e*) the court regards it as immoral or opposed to public policy.

(2) Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes,

C 25——J. N. R 7589 (4/60)

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of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section the expression "law" includes where the trust property is immovable and situate in a foreign country, the law of such country.

Illustrations

(*a*) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(*b*) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death to B. A is declared an insolvent. The trust for A is invalid as against his creditors.

Trust of immovable property.

5. (1) Subject to the provisions of section 107, no trust in relation to immovable property is valid unless declared by the last will of the author of the trust or of the trustee, or by a non-testamentary instrument in writing signed by the author of the trust or the trustee, and notarially executed.

Trust of movable property.

(2) No trust in relation to movable property is valid unless declared by the last will of the author of the trust or of the trustee, or by a non-testamentary instrument in writing signed by the author of the trust or the trustee, or unless the ownership of the property is transferred to the trustee by delivery.

(3) These rules do not apply where they would operate so as to effectuate a fraud.

Creation of trust.

6. Subject to the provisions of sections 5 and 107, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts—

(*a*) an intention on his part to create thereby a trust,

(*b*) the purpose of the trust,

(*c*) the beneficiary,

(*d*) the trust property, and

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(unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.

Illustrations

(*a*) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and C.

(*b*) A bequeaths certain property to B, "hoping he will continue it in the family". This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(*c*) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(*d*) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust property is not indicated with sufficient certainty.

(*e*) A bequeaths a shop and stock in trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust, for A's creditors and C.

Who may create trusts.

7. A trust may be created—

(*a*) by every person competent to contract; and

(*b*) with the permission of the court by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust property.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary. It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. (1) Every person capable of holding property may be a beneficiary.

Disclaimer by beneficiary.

(2) A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

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Who may be trustee.

10. (1) Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

No one bound to accept trust.

(2) No one is bound to accept a trust.

Acceptance of trust.

(3) A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of trust.

(4) Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust property from vesting in him.

(5) A disclaimer by one of two or more co-trustees vests the trust property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations

(*a*) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(*b*) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(*c*) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III

Of The Duties And Liabilities Of Trustees

Trustee to execute trust.

11. (1) The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

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(2) Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by the court.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be—

(*a*) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and

(*b*) in the case of debts not bearing interest, to make such payment without interest.

Illustrations

(*a*) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(*b*) A, a trustee of certain land for X, Y, and Z, is authorized to sell the land to B for a specified sum. X, Y, and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(*c*) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust property to B's husband C, on the security of his bond. C becomes insolvent, and B requests A to make the loan. A may refuse to make it.

Trustee to inform himself of state of trust property.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust property ; to obtain, where necessary, a transfer of the trust property to himself ; and (subject to the provisions of the instrument of trust) to get in trust moneys invested on insufficient or hazardous security.

Illustrations

(*a*) The trust property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(*b*) The trust property is money in the hands of one or two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

Trustee to protect title to trust property.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being

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had to the nature and amount or value of the trust property, may be reasonably requisite for the preservation of the trust property and the assertion or protection of the title thereto.

Illustration

The trust property is immovable property, which has been given to the author of the trust by an unregistered instrument. The trustee's duty is to cause the instrument to be registered.

Trustee not to set up title adverse to beneficiary.

14. The trustee must not for himself or another set up or aid any title to the trust property adverse to the interest of the beneficiary.

Care required from trustee.

15. A trustee is bound, subject to the provisions of the instrument of trust, to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own ; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction, or deterioration of the trust property.

Illustrations

(*a*) A, living in Colombo, is a trustee for B, living in London. A remits trust funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such and payable at London. The bills are dishonoured. A is not bound to make good the loss.

(*b*) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(*c*) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(*d*) A, a trustee directed to sell the trust property by auction, sells the same, but does not advertise the sale, and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(*e*) A, a trustee for B, in execution of his trust, sells the trust property, but from want of due diligence on his part fails to receive part of the purchase money. A is bound to make good the loss thereby caused to B.

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(*f*) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(*g*) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(*h*) A, a trustee for B, allows the trust to be executed solely by his co-trustee C. C misapplies the trust property. A is personally answerable for the loss resulting to B.

Conversion of perishable property.

16. Where the trust is created for the benefit of several persons in succession, and the trust property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, or unless the court otherwise directs, to convert the property into property of a permanent and immediately profitable character.

Trustee to be impartial.

17. (1) Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

(2) Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the court to control the exercise reasonably and in good faith of such discretion.

Illustration

A, a trustee for B, C, and D, is empowered to choose between several specified modes of investing the trust property. A in good faith chooses one of these modes. The court will not interfere, although the result of the choice may be to vary the relative rights of B, C, and D.

Trustees to prevent waste.

18. Where the trust is created for the benefit of several persons in succession, and one of them is in possession of the trust property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

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Accounts and information.

19. A trustee is bound—

(*a*) to keep clear and accurate accounts of the trust property, and

(*b*) at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust property.

Investment of trust money.

20. Where the trust property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others :—

(*a*) in promissory notes, debentures, stock, or other securities of the Government of Ceylon, or of the Government of the United Kingdom, or of the Government of India ;

(*b*) in bonds, debentures, and annuities charged by the Parliament of the United Kingdom on the revenues of India ;

[40 & 41, Vict. c. 59.] [55 & 56, Vict. c. 35.] [63 & 64, Vict. c. 62.]

(*c*) in any colonial stock which is registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 to 1900, and with respect to which there have been observed such conditions (if any) as the Lords Commissioners of the Treasury of the United Kingdom may, by Order notified in the London Gazette, prescribe ;

(*d*) in the debenture or rent charge or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three *per centum* per annum on its ordinary stock ;

(*e*) in stock or debentures of or shares in any railway or other company the interest whereon shall have been guaranteed by the Governments of India or Pakistan ;

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(*f*) on a first mortgage of immovable property situated in Ceylon or the United Kingdom :

Provided that the property is not a leasehold for a term of years, and that the value of the property exceeds by one-third, or if consisting wholly or mainly of buildings, exceeds by one-half the mortgage moneys ;

(*g*) in debentures issued by the Ceylon State Mortgage Bank ;

(*h*) on any other security authorized as a trustee investment by the law of England for the time being (other than real or heritable securities) ;

(*i*) on any other security expressly authorized by the instrument of trust or by any rule which the Minister[1] may from time to time prescribe in that behalf.

Saving as to existing investments and investments in Government Savings Bank.

21. Nothing in section 20 shall apply to investments made before the commencement of this Ordinance, or shall be deemed to preclude, in any case in which the trust money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank (including the Ceylon Savings Bank).

Sale by trustee directed to sell within specified time.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by the court.

Illustration

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

Liability for breach of trust.

23. (1) Where the trustee commits a breach of trust, he is liable to make good the loss which the trust property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without duress or

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undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein with full knowledge of the facts of the case and of his rights as against the trustee.

(2) A trustee committing a breach of trust is not liable to pay interest except in the following cases :—

(*a*) where he has actually received interest ;

(*b*) where the breach consists in unreasonable delay in paying trust money to the beneficiary ;

(*c*) where the trustee ought to have received interest, but has not done so ;

(*d*) where he may be fairly presumed to have received interest ;

(*e*) where the breach consists in failure to invest trust money and to accumulate the interest or dividend thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate ;

(*f*) where the breach consists in the employment of trust property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate or for the net profits made by such employment.

(3) He is liable in case (*a*) to account for the interest actually received, and in cases (*b*), (*c*), and (*d*) to account for simple interest at the rate of six *per centum* per annum, unless the court otherwise directs.

Illustrations

(*a*) A trustee improperly leaves trust property outstanding, and it is consequently lost ; he is liable to make good the property lost, but he is not liable to pay interest thereon.

(*b*) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. B is answerable to C for the loss.

(*c*) A trustee is guilty of unreasonable delay in investing trust money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(*d*) The duty of the trustee is to invest trust money in any of the securities mentioned in section 20, clause (*a*), (*b*), (*c*), or (*d*). Instead of so doing, he retains the money

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in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust money when the investment should have been made, and the intermediate dividends and interest thereon.

(*e*) The instrument of trust directs the trustee to invest trust money either in any such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.

(*f*) The instrument of trust directs the trustee to invest trust money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(*g*) Trust property is invested in one of the securities mentioned in section 20, clause (*a*), (*b*), (*c*), or (*d*). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(*h*) The trust property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

No set-off allowed to trustee.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set off against his liability a gain which has accrued to another portion of the trust property through another and distinct breach of trust.

Non-liability for predecessor's default.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability for co-trustee's default.

26. (1) Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee :

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(*a*) where he has delivered trust property to his co-trustee without seeing to its proper application ;

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(*b*) where he allows his co-trustee to receive trust property and fails to make due inquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require ;

(*c*) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it, or does not within a reasonable time take proper steps to protect the beneficiary's interest.

Joining in receipt for conformity.

(2) A co-trustee who joins in signing a receipt for trust property, if he proves, or if it otherwise appears that he has not received the same, is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Illustration

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase money is lost. C may be compelled to make good the amount.

Several liability of co-trustees.

27. (1) Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Contribution as between co-trustees.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss, and if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

(2) Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

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Non-liability of trustee paying without notice of transfer by beneficiary.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of trustee where beneficiary's interest is forfeited to Government.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

Indemnity of trustees.

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds, and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person in whose hands any trust property may be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor otherwise for involuntary losses.

Relief of trustee from consequences of breach of trust.

31. If it appears to the court that a trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve the trustee either wholly or partly from personal liability for the same.

CHAPTER IV

Of The Rights And Powers Of Trustees

Right to title deed.

32. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust property.

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Right to reimbursement of expenses.

33. (1) Every trustee may reimburse himself, or pay or discharge out of the trust property, all expenses properly incurred in or about the execution of the trust, or the realization, reservation, or benefit of the trust property, or the protection or support of the beneficiary.

(2) If he pays such expenses out of his own pocket, he has a first charge upon the trust property for such expenses and interest thereon ; but such charge (unless the expenses have been incurred with the sanction of the court) shall be enforced only by prohibiting any disposition of the trust property without previous payment of such expenses and interest.

(3) If the trust property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Right to be recouped for erroneous overpayment.

(4) Where a trustee has by mistake made an overpayment to the beneficiary, he may reimburse the trust property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such overpayment.

Right to indemnity from gainer by breach of trust.

34. (1) A person other than a trustee, or a transferee in good faith for consideration who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach, and where such person is a beneficiary, the trustee has a charge on his interest for such amount.

(2) Nothing in this section shall be deemed to entitle a trustee to be indemnified who has in committing the breach of trust, been guilty of fraud.

Illustration

The trustee of a family trust bona fide pays over a certain part of the trust moneys to a member of the family contrary to the terms of the instrument of trust, and the court orders the trustee to replace the money. He is entitled to be indemnified by the person to whom he has paid it.

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Right to apply to court for opinion in management of trust property.

35. (1) Any trustee may, without instituting a suit, apply by petition to the court for its opinion, advice, or direction on any present questions respecting the management or administration of the trust property other than questions of detail, difficulty, or importance not proper, in the opinion of the court, for summary disposal.

(2) A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the court thinks fit.

(3) The trustee stating in good faith the facts in such petition, and acting upon the opinion, advice, or direction given by the court, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

(4) The costs of every application under this section shall be in the discretion of the court to which it is made.

Right to settlement of accounts.

36. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust property examined and settled ; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

General authority of trustee.

37. In addition to the powers expressly conferred by this Ordinance and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection, or benefit of the trust property, and for the protection or support of a beneficiary who is not competent to contract.

Power to lease.

38. (1) Except with the permission of the court, and subject to any special statutory provision in that behalf, no trustee shall lease trust property for a term expiring at a date later than the end of ten years from the date of the execution of the lease, or if the date of the termination of the trust is ascertained, for a term

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expiring at a date later than the date of such termination, nor without reserving the best yearly rent that can be reasonably obtained.

(2) Any lease executed without the permission of the court for a term exceeding the limits authorized by this section shall be void to the extent to which it so exceeds the said limits.

Power to sell in lots, and either by public auction or private contract.

39. Where the trustee is empowered to sell any trust property, he may sell the same, subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

Power to sell under special conditions.

Power to buy in and re-sell.

40. (1) The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or terms of payment, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby:

Provided he shall have acted in good faith and without negligence.

Time allowed for selling trust property.

(2) Where a trustee is directed to sell trust property or to invest trust money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Illustrations

(*a*) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(*b*) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

Power to convey.

41. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

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Power to vary investments.

42. (1) A trustee may, at his discretion, call in any trust property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature.

Power of court to authorize sale, exchange, &c., of trust property.

(2) When any immovable property is the subject-matter of any trust, the court may authorize any sale, exchange, mortgage, or other disposition of the property, which it considers to be in the interests of the objects of the trust.

(3) Nothing contained in subsection (2) shall be deemed to derogate from the rights of a trustee under subsection (1).

Power to apply property of minors, &c., for their maintenance.

43. (1) Where any property is held by a trustee in trust for a minor, either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of majority, or on the occurrence of any event before his attaining that age, the trustee may at his sole discretion pay to the minor's parent or guardian, if any, or otherwise apply for or towards the minor's maintenance, education, or benefit, the income of the property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the minor's maintenance or education or not.

(2) The trustee shall accumulate all the residue of the income in the way of compound interest by investing the same and the resulting income thereof from time to time in securities in which he is by the instrument of trust, if any, or by section 20 of this Ordinance, authorized to invest trust money, and shall hold the accumulations for the benefit of the minor; but so that the trustee may at any time, if he thinks fit, apply the accumulations, or any part thereof, as if the same were income arising in the then current year.

(3) This section applies only if and as far as contrary intention is not expressed in the instrument of trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

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(4) Where the income of the trust property is insufficient for the minor's maintenance, or education, or marriage, or advancement in life, the trustee may, with the permission of the court, and not otherwise, apply the whole or any part of such property for or towards such maintenance, education, marriage, or advancement.

Power to give receipts.

44. Any trustees or trustee may give a receipt in writing for any money, securities, or other movable property payable, transferable, or deliverable to them or him by reason, or in the exercise, of any trust or power ; and, in the absence of fraud, such receipt shall discharge the person paying, transferring, or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to compound, &c.

45. (1) Two or more trustees acting together, or if there is only one trustee of the trust, such trustee may, if and as they or he shall think fit—

(*a*) accept any composition or any security for any debt or for any property claimed ;

(*b*) allow any time for payment of any debt ;

(*c*) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust ; and

(*d*) for any of those purposes enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to them or him seem expedient, without being responsible for any loss occasioned by any act or thing so done by them or him in good faith and without negligence.

(2) The powers conferred by subsection (1) on two or more trustees acting together may be exercised by a sole acting trustee, when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

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(3) This section applies only if and as far as a contrary intention is not expressed in the instrument of trust if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) Nothing in this section shall be deemed to affect the application of the law relating to the property of minors.

Power to several trustees of whom one disclaims or dies.

46. When an authority to deal with the trust property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Suspension of trustee's power by decree.

47. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the court by which the decree has been made, or, where an appeal against the decree is pending, of the Supreme Court.

CHAPTER V

Of The Disabilities Of Trustees

Trustee cannot renounce after acceptance.

48. A trustee who has accepted the trust cannot afterwards renounce it, except—

(*a*) with the permission of the court ; or

(*b*) if the beneficiary is competent to contract, with his consent ; or

(*c*) by virtue of a special power in the instrument of trust.

Trustee cannot delegate.

49. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless—

(*a*) the instrument of trust so provides ; or

(*b*) the delegation is in the regular course of business ; or

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(c) the delegation is necessary ; or

(d) the beneficiary, being competent to contract, consents to the delegation ; or

(e) the court so directs.

Explanation.—The appointment of an attorney or agent or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

Illustrations

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust property to D and E upon the trusts of A's will.

(b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

Co-trustees cannot act singly.

50. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides, or except when on good cause shown the court otherwise directs.

Control of discretionary power.

51. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by the court.

Trustee may not charge for services.

52. (1) In the absence of express directions to the contrary contained in the instrument of trust, or of a contract to the contrary entered into with the beneficiary, an order of court, or express statutory provision in that behalf, a trustee has no right to remuneration for his trouble, skill, and loss of time in executing the trust.

(2) Nothing in this section shall be deemed to prejudice the right of any resident trustee actually managing the daily administration of any religious foundation, in respect of which the remuneration of the trustee shall not have been settled under section 108, to such remuneration as has been in practice received :

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Provided that such remuneration shall in no case exceed ten *per centum* of the gross income of the foundation.

Trustee may not use trust property for his own profit.

53. A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.

Trustee for sale or his agent may not buy.

54. No trustee whose duty it is to sell trust property, and no agent employed by such trustee for the purpose of the sale may, directly or indirectly, buy the same or any interest therein on his own account or as agent for a third person.

Trustee may not buy beneficiary's interest without permission.

55. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of the court, buy or become mortgagee or lessee of the trust property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage, or lease is manifestly for the advantage of the beneficiary.

Trustee for purchase.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it or any part thereof, or obtain a mortgage or lease of it or any part thereof for himself.

Co-trustees may not lend to one of themselves.

56. A trustee or co-trustee whose duty it is to invest trust money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

CHAPTER VI

Of The Rights And Liabilities Of The Beneficiary

Right to rents and profits.

57. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust property.

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Right to specific execution.

58. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest.

Right to transfer of possession.

And, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract, and all of one mind, he or they may require the trustee to transfer the trust property to him or them, or to such person as he or they may direct.

Illustrations

(*a*) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains majority, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust property, require the trustees to transfer it immediately to him.

(*b*) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000.

(*c*) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust, accounts, &c.

59. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust property, the accounts of the trust property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to transfer beneficial interest.

60. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest.

Right to sue for execution of trust.

61. When no trustees are appointed, or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the court until the appointment of a trustee or new trustee, or until the execution of the trust becomes practicable.

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Right to proper trustees.

62. Subject to the provisions of the instrument of trust, the beneficiary has a right to require that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation 1.—The following are not proper persons within the meaning of this section:—An alien enemy; a person having an interest inconsistent with that of the beneficiary; a person in insolvent circumstances: a minor.

Explanation 2.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations

(*a*) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust property.

(*b*) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(*c*) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(*d*) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(*e*) A, a trustee for B, refuses to act, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust, B may institute a suit to have A removed and a new trustee appointed in his room.

Right to compel to perform any act of duty.

63. The beneficiary has a right to require that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Illustrations

(*a*) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(*b*) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

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Wrongful purchase by trustee.

64. (1) Where a trustee has wrongfully bought trust property, the beneficiary has a right to have the property declared subject to the trust, or re-transferred by the trustee if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase money paid by the trustee, with interest and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must—

(*a*) account for the net profits of the property,

(*b*) be charged with an occupation rent if he has been in actual possession of the property, and

(*c*) allow the beneficiary to deduct a proportionate part of the purchase money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

(2) Nothing in this section—

(*a*) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, have contracted in good faith with the trustee or purchaser; or

(*b*) entitles the beneficiary to have the property declared subject to the trust or re-transferred where he, being competent to contract, has himself, without duress or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

Following trust property into the hands of third persons; into that into which it has been converted.

65. (1) Where trust property comes into the hands of a third person inconsistently with the trust, the beneficiary may institute a suit for a declaration that the property is comprised in the trust.

(2) Where the trustee has disposed of trust property, and the money or other property which he has received therefor can be traced in his hands or the

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hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust property.

Illustrations

(*a*) A, a trustee for B of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(*b*) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust money so misemployed.

Saving of rights of certain transferees.

66. (1) Nothing in section 65 entitles the beneficiary to any right in respect of property in the hands of—

(*a*) a transferee in good faith for consideration without having notice of the trust, either when the purchase money was paid, or when the conveyance was executed ; or

(*b*) a transferee for consideration from such a transferee.

(2) A judgment-creditor of the trustee attaching and purchasing trust property is not a transferee for consideration within the meaning of this section.

(3) Nothing in section 65 applies to money or currency notes in the hands of a bona fide holder to whom they have passed in circulation, or to negotiable instruments in the hands of a bona fide holder for value, or shall be deemed to affect sections 22 and 23 of the Sale of Goods Ordinance, or the rights of any holder in good faith for consideration of any document of title which by law passes the ownership of goods to which it relates by endorsement or delivery, or the liability of a person to whom a debt or charge is transferred, or the right of a person who holds property under a title declared indefeasible by statute or of his successor in title.

Acquisition by trustee of trust property wrongfully converted.

67. Where a trustee wrongfully sells or otherwise transfers trust property and afterwards himself becomes the owner of the property, the property again

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becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

Right in case of blended property.

68. Where the trustee wrongfully mingles the trust property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Wrongful employment by partner trustee of trust property for partnership purposes.

69. If a partner, being a trustee, wrongfully employs trust property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries unless he had notice of the breach of trust. The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations

(*a*) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(*b*) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

70. Where one of several beneficiaries being competent to contract—

(*a*) joins in committing a breach of trust ; or

(*b*) knowingly obtains any advantage therefrom without the consent of the other beneficiaries ; or

(*c*) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries ; or

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(*d*) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

Rights and liabilities of beneficiary's transferee.

71. Every person to whom a beneficiary transfers his interests has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII

Of Vacating The Office Of Trustee

Office how vacated.

72. The office of a trustee is vacated by his death or by his discharge from his office.

Discharge of trustee.

73. A trustee may be discharged from his office only as follows :—

(*a*) by the extinction of the trust ;

(*b*) by the completion of his duties under the trust ;

(*c*) by such means as may be prescribed by the instrument of trust or by any scheme under this Ordinance ;

(*d*) by appointment under this Ordinance of a new trustee in his place ;

(*e*) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, by the consent of all the beneficiaries being competent to contract ; or

(*f*) by the court.

Petition to be discharged from trust.

74. Notwithstanding the provisions of section 11, every trustee may apply by petition to the court to be discharged from his office ; and, if the court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be

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paid out of the trust property. But where there is no such reason, the court shall not discharge him, unless a proper person can be found to take his place.

Appointment of new trustees on death, &c.

75. (1) Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is absent from Ceylon for such a continuous period and under such circumstances that, in the opinion of the court, it is desirable, in the interests of the trust, that his office should be declared vacant, or is declared an insolvent, or desires to be discharged from the trust, or refuses or is or becomes, in the opinion of the court, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(*a*) the person nominated for that purpose by the instrument of trust (if any); or

(*b*) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

(2) Every such appointment shall be by writing under the hand of the person making it, and shall be notarially executed.

(3) Every instrument by which any such appointment is made, in so far as it affects immovable property, shall contain the particulars required by section 13 of the Registration of Documents Ordinance and shall be deemed to be an instrument affecting land for the purposes of the said Ordinance :

Provided that no deed of appointment of a trustee of any charitable trust shall be deemed to be invalidated by reason of the fact that it does not contain the said particulars, or shall be liable to be defeated by the

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registration of any subsequent deed, order, or other instrument under section 7 of the said Ordinance.

(4) On an appointment of a new trustee, the number of trustees may be increased.

(5) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

Appointment by court.

76. (1) Whenever any such vacancy or disqualification occurs, and it is found not reasonably practicable to appoint a new trustee under section 75, or where for any other reason the due execution of the trust is or becomes impracticable, the beneficiary may, without instituting a suit, apply by petition to the court for the appointment of a trustee or a new trustee, and the court may appoint a trustee or a new trustee accordingly.

Rules for selecting new trustees.

(2) In appointing new trustees, the court shall have regard—

(*a*) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust ;

(*b*) to the wishes of the person, if any, empowered to appoint new trustees ;

(*c*) to the question whether the appointment will promote or impede the execution of the trust ; and

(*d*) where there are more beneficiaries than one, to the interests of all such beneficiaries.

(3) Every order of appointment made under this section shall, in so far as it affects immovable property, contain the particulars required by section 13 of the Registration of Documents Ordinance and section 29 of the said Ordinance shall apply to every such order in the same manner as if it were an instrument which affects land :

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Provided that no order of appointment of a trustee of any charitable trust under this section shall be deemed to be invalidated by reason of the fact that it does not contain the said particulars, or shall be liable to be defeated by the registration of any subsequent deed, order, or other instrument under section 7 of the said Ordinance.

Vesting of trust property in new trustees.

77. (1) Whenever any new trustee is appointed under section 75 or section 76, or under or in pursuance of any other provision of this Ordinance, all the trust property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representatives of any trustee, and all the rights of suit in relation thereto of the trustee in whose place the appointment is made, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers of new trustees.

(2) Every new trustee so appointed, and every trustee appointed by a court either before or after the passing of this Ordinance, shall have the same powers, authorities, and discretions, and shall in all respects act as if he had been originally nominated a trustee by the author of the trust.

(3) Where any trust property comprises any stocks or any shares or securities transferable in any book kept by any company or society, or any shares in any ship registered under the law relating to merchant shipping, an instrument or order of appointment shall not take effect so far as it relates thereto, unless and until notice in writing of the appointment under such instrument or order shall have been given by or on behalf of the new trustee so appointed to the person or authority in charge of the register or book in which such stocks, shares, or securities, as the case may be, are entered, and upon such notice in writing being given, and on reasonable proof being furnished that such stocks, shares, or securities form part of the said trust property, the new trustee shall be entitled to a transfer into his name of any such stocks, shares, or securities, and to the receipt of all dividends, interest, or other sums due, or to become due, in respect of any such stocks, shares, or securities.

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Survival of trust.

78. On the death or discharge of one of several co-trustees the trust survives, and the trust property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII

Of The Extinction Of Trusts

Trust how extinguished.

79. A trust is extinguished—

(*a*) when its purpose is completely fulfilled ; or

(*b*) when its purpose becomes unlawful ; or

(*c*) subject to the powers of the court under Chapter X and to section 110 (4), when the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise ; or

(*d*) when the trust, being revocable, is expressly revoked.

Revocation of trust.

80. (1) A trust created by will may be revoked at the pleasure of the testator.

(2) A trust created otherwise than by will can be revoked only—

(*a*) where all the beneficiaries are competent to contract, by their consent ;

(*b*) where the trust has been declared by a non-testamentary instrument or by word of mouth, in exercise of a power of revocation expressly reserved to the author of the trust ; or

(*c*) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors, at the pleasure of the author of the trust.

Illustration

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation not to defeat what trustees have duly done.

81. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

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CHAPTER IX

CONSTRUCTIVE TRUSTS

Where obligation in nature of trust is created.

82. An obligation in the nature of a trust (hereinafter referred to as a "constructive trust") is created in the following cases.

Where it does not appear that transferor intended to dispose of beneficial interest.

83. Where the owner of property transfers or bequeaths it, and it cannot reasonably be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations

(*a*) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, reasonably be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(*b*) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, reasonably be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(*c*) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may reasonably be inferred from the circumstances that the gift was for B's benefit.

Transfer to one for consideration paid by another.

84. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Trust incapable of execution or executed without exhausting trust property.

85. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust property, the trustee, in the absence of a direction to the contrary, must hold the trust property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

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Illustrations

(*a*) A conveys certain land to B—

"Upon trust", and no trust is declared ; or

"Upon trust to be thereafter declared", and no such declaration is ever made ; or

Upon trusts that are too vague to be executed ; or

Upon trusts that become incapable of taking effect ; or

"In trust for C", and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(*b*) A transfers Rs. 10,000 in the four per cents, to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representatives.

(*c*) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of a particular form of worship. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(*d*) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land, if purchased.

Transfer for illegal purpose.

86. Where the owner of property transfers it to another for an illegal purpose, and such purpose is not carried out into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Bequest for illegal purpose.

87. (1) Where a testator bequeaths certain property upon trust, and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by duress.

(2) Where property is bequeathed and the revocation of the bequest is prevented by duress, the legatee must hold the property for the benefit of the testator's legal representative.

C 27——J. N. R 7589 (4/60)

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Transfer pursuant to rescindable contract.

88. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid, and subject to any compensation or other relief to which the transferee may be by law entitled.

Debtor becoming creditor's representative.

89. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

Advantage gained by fiduciary.

90. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations

(*a*) A, an executor, buys at an under-value from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(*b*) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(*c*) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(*d*) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.

(*e*) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(*f*) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(*g*) A, a guardian, buys up for himself incumbrances on his ward B's estate at an under-value. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

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Advantage gained by exercise of undue influence.

91. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage gained by qualified owner.

92. Where a co-owner, mortgagee, or other person with a qualified interest in any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such person, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustration

A mortgages land to B, who enters into possession. B allows taxes due on the land to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

Property acquired with notice of existing contract.

93. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract :

Provided that in the case of a contract affecting immovable property, such contract shall have been duly registered before such acquisition.

Purchase by person contracting to buy property to be held on trust.

94. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

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Advantage secretly gained by one of several compounding creditors.

95. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Constructive trusts in cases not expressly provided for.

96. In any case not coming within the scope of any of the preceding sections where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations

(*a*) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(*b*) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

(*c*) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is revoked by A as to Rs. 10,000 and B thereupon holds that sum for the benefit of A.

Obligor's duties, liabilities, and disabilities.

97. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and, save as in this Ordinance otherwise provided, is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that—

(*a*) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill, and loss of time in such cultivation or employment; and

(*b*) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with anyone through whom such person claims, he may, without the permission of the court, buy or become lessee or mortgagee of the property or any part thereof.

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98. Nothing contained in this Chapter shall impair the rights of transferees in good faith for valuable consideration, or create an obligation in evasion of any law for the time being in force.

Saving rights of bona fide purchasers.

CHAPTER X

Charitable Trusts

99. (1) The expression "charitable trust" includes any trust for the benefit of the public or any section of the public within or without Ceylon of any of the following categories:—

Special definitions.

(*a*) for the relief of poverty; or

(*b*) for the advancement of education or knowledge; or

(*c*) for the advancement of religion or the maintenance of religious rites and practices; or

(*d*) for any other purposes beneficial or of interest to mankind not falling within the preceding categories.

(2) The expression "adaptation" with reference to a trust means adaptation of the trust in such a manner as to carry out the wishes of the author of the trust as nearly as practicable, according to the doctrine of *cyprès,* where it is not possible to carry out those wishes in the exact manner prescribed by the instrument of trust.

(3) The expression "settlement of a scheme" includes variation of a scheme previously settled.

(4) The expression "place of religious resort" includes the establishments commonly known as "*madams*" or "*chattrams*".

100. The court shall have the same power for the establishment, regulation, protection, and adaptation of all "charitable trusts" (as defined by this Ordinance) as are exercised for the time being with reference to "charitable trusts" within the meaning of English law by the High Court of Justice in England.

General powers of the court.

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Actions for carrying into effect trusts for public charity.

101. (1) In case of any alleged breach of any express or constructive charitable trust, or whenever the direction of the court is deemed necessary for the administration of any such trust, the Attorney-General acting *ex officio,* or two or more persons having an interest in the trust, and having obtained the consent in writing of the Attorney-General, may institute an action in the court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is held or situate to obtain a decree—

(*a*) removing any trustees or trustee of the charity and, if necessary, appointing new trustees thereof ;

(*b*) directing accounts and inquiries ;

(*c*) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust ;

(*d*) authorizing the whole or any part of the trust property to be let, sold, mortgaged, or exchanged ;

(*e*) settling a scheme for the management of the trust ;

(*f*) granting such further or other relief as the nature of the case may require.

(2) Nothing contained in this or the next succeeding section shall be deemed to preclude the trustee or author of any charitable trust from applying to the court by action or otherwise for such direction or relief as he may be entitled to obtain under the general provisions of this Ordinance, or for the purpose of invoking the assistance of the court for the better securing of the objects of the trust, or for regulating its administration or the succession to the trusteeship, and upon any such application the court may make such order as it may deem equitable.

(3) For the purpose of any proceeding under this section with respect to any religious trust, regard shall be had to the statutory or other powers belonging to, or customarily exercised by, the authorities of any religious body or society concerned in the administration of the trust.

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(4) This section shall not apply to trusts governed by the next succeeding section.

Suits by persons interested in religious trusts.

102. (1) Subject to the conditions of subsection (3) hereof, any five persons interested in any place of worship, or in any religious establishment or place of religious resort, or in the performance of the worship or of the service thereof, or in the trusts, express or constructive, relating thereto, may, without joining as plaintiff any of the other persons interested, institute an action in the court within the local limits of whose civil jurisdiction any such place or establishment is situate, or if such place is situate outside Ceylon, and the action is instituted with respect to immovable property situate within Ceylon, in the court having local jurisdiction, to obtain a decree—

(*a*) settling a scheme for the management of the trusts thereof ;

(*b*) vesting any property in the trustees ;

(*c*) enumerating the properties comprised in the trust, or declaring that any property is trust property comprised in the trust ;

(*d*) directing accounts and inquiries ;

(*e*) declaring what proportion of the trust property or of any interest therein shall be allocated to any particular object of the trust ;

(*f*) declaring any trustee, manager, or superintendent of such place or establishment, or member of any committee of management, guilty of any misfeasance, breach of trust, or neglect of duty ;

(*g*) awarding damages and costs against any such trustee, manager, superintendent, or member of a committee in respect of any such misfeasance, breach of trust, or neglect of duty ;

(*h*) directing the removal of any trustee, manager, superintendent, or member of a committee, and, if necessary, directing the appointment of any new trustee, manager, superintendent, or member of a committee ;

(*i*) directing the specific performance of any act by any trustee, manager, superintendent, or member of a committee ;

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(*j*) granting such further or other relief as the nature of the case may require.

(2) The interest required in order to entitle a person to sue under this section need not be a pecuniary or immediate interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trust. Any person who is connected with the trust as donor, or by family or hereditary interests, or who for a period of not less than twelve months has been in the habit of attending at the performance of the worship or services of, or connected with, the place or establishment in question, or of contributing to the general or any special expenses incidental to such worship or services, or of partaking in the benefit of any distribution of alms thereat, or in connection therewith, or of otherwise enjoying the benefit of the trust, shall be deemed to be a person interested within the meaning of this section.

(3) No action shall be entertained under this section unless the plaintiffs shall have previously presented a petition to the Government Agent of the Administrative District in which such place or establishment is situate praying for the appointment of a commissioner or commissioners to inquire into the subject-matter of the plaint, and unless the Government Agent shall have certified that an inquiry has been held in pursuance of the said petition, and that the commissioner or commissioners (or a majority of them) has reported—

(*a*) that the subject-matter of the plaint is one that calls for the consideration of the court ; and

(*b*) either that it has not proved possible to bring about an amicable settlement of the questions involved, or that the assistance of the court is required for the purpose of giving effect to any amicable settlement that has been arrived at.

(4) It shall be the duty of the Government Agent, in any case in which he shall have good reason to believe that the persons presenting such petition or any five of them are persons interested within the meaning of subsection (2) of this section, for which purpose he may require to be satisfied by affidavit or otherwise, to appoint for the purposes of the inquiry a commissioner

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or commissioners whom he may consider to be a person or persons of acknowledged standing and repute in the general or local religious community concerned ;

Provided that the Government Agent may appoint himself as the commissioner or as one of the commissioners ;

Provided further, that the Government Agent may require the petitioners to deposit with him an amount sufficient to cover the reasonable expenses of the commissioner or commissioners in respect of travelling expenses and subsistence incidental to the inquiry prayed for and any such costs certified by the Government Agent to have been properly incurred for the purposes of the inquiry and to have been duly paid shall be deemed to be costs in the action.

(5) It shall be the duty of any commissioner or commissioners appointed for the purpose of any such inquiry to render a report in terms of subsection (3) hereof within such time as shall be specified for the purpose by the Government Agent, or within such further time as he may from time to time authorize.

(6) The report shall be filed in the office of the Government Agent, and the petitioners and the trustee shall be entitled, on payment of the usual copying charges, to be furnished with a copy thereof.

(7) The court shall not be precluded from amending the plaint so as to include therein any matter arising in the course of the proceedings by the fact that such matter was not included in the petition to the Government Agent, if it shall be of opinion that in all the circumstances of the case such matter may be equitably included in the action.

(8) This section shall not apply to any Christian religious trust.

Power to refer matter for arbitration or inquiry.

103. In any action instituted under the last preceding section, it shall be lawful for the court—

(*a*) on the application of the parties, to order any matter in difference therein to be referred for decision to one or more arbitrators ;

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(*b*) to appoint a committee for the purpose of making an inquiry and reporting to the court with reference to any matter involved in the action or arising in the course thereof, or for the purpose of assisting the court in the exercise of its powers under the last preceding section, or for the settlement or adjustment of any matter involved in the action or arising in the course thereof.

Powers of commissioners, &c.

104. (1) The following persons, that is to say—

(*a*) any commissioner or commissioners appointed under section 102 (4) ;

(*b*) any persons directed to make inquiries under section 102 (1) (*d*) ;

(*c*) any arbitrator or committee appointed under section 103,

shall, in addition to any other powers necessary for the effective discharge of the duties imposed upon such persons, have the following powers, that is to say—

(i) to summon witnesses ;

(ii) to administer oaths or affirmations ;

(iii) to require the trustee or any witness summoned for the purpose to give all particulars that may be within his knowledge relating to any immovable property which is or ought to be comprised in the trust, the offerings received for the purposes of the trust, the expenses incidental to its administration and the manner in which it is conducted.

(2) Any person who, without due excuse, the proof of which shall lie on him, shall make default in complying with any summons authorized under this section, or who shall refuse to answer to the best of his ability any question or inquiry addressed to him under

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the provisions of this section, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding two hundred rupees.

Power of court as to accounts.

105. In the exercise of its powers under section 102, without prejudice to its general powers under that section, the court may—

(*a*) order any trustee of any place or establishment therein mentioned to file accounts for a period not exceeding three years prior to the date of the order ;

(*b*) hold or direct an inquiry into the matters complained of or accounts so filed ;

(*c*) surcharge and falsify any item in the accounts ;

(*d*) require the trustee to make good any defalcation, irregular payment, or deficiency ;

(*e*) in any case in which it shall be satisfied that owing to the manner in which the trust incidental to such place or establishment has been conducted in the past it is not possible for the trustee to furnish accounts, require as a condition of the continuance of the trustee in his office that he shall deposit for the purposes of the trust a specified amount not exceeding the amount for which, in the opinion of the court after inquiry into all the circumstances of the case, he may be reasonably held to be responsible in respect of the three years prior to the date of the order ;

(*f*) indemnify the trustee on such terms as it may deem equitable in respect of any past neglects, misfeasances, or irregularities ;

(*g*) direct the manner in which all future accounts shall be kept ;

(*h*) authorize in any scheme framed under the said section the devotion of a portion of the income of the trust property to the education of children of the religious community interested in the trust, and, if necessary, the utilization of any immovable property comprised in the trust as a site for the said purpose.

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Application of religious law.

106. In settling any scheme for the management of any trust under section 102, or in determining any question relating to—

(*a*) the constitution or existence of any such trust ;

(*b*) the devolution of the trusteeship ;

(*c*) the administration of the trust ;

the court shall have regard—

(i) to the instrument of trust (if any) ;

(ii) to the religious law and custom of the community concerned ;

(iii) to the local custom or practice with reference to the particular trust concerned ;

and may have regard to any arrangement *de facto* in force for the purpose of the administration of the trust.

De facto trusts.

107. In dealing with any property alleged to be subject to a charitable trust, the court shall not be debarred from exercising any of its powers by the absence of evidence of the formal constitution of the trust, if it shall be of opinion from all the circumstances of the case that a trust in fact exists, or ought to be deemed to exist.

Special powers of court.

108. In settling any scheme for the management of a charitable trust (without prejudice to its general powers), the court shall have the powers following :—

(*a*) to provide for the periodical auditing of the accounts of the trust property by auditors appointed by or subject to the approval of the court, or otherwise as the court may deem expedient ;

(*b*) to provide for the visitation of the charity ;

(*c*) to provide for the settlement of the remuneration of the trustee :

Provided that no such remuneration shall in any case exceed ten *per centum* of the gross income of the trust ;

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(*d*) to devote any surplus income that may be available after the reasonable satisfaction of the objects of the trust to the extension of such objects, or, if the court see fit, to purposes of education.

Exclusion of trusts under the Buddhist Temporalities Ordinance and the Muslim Intestate Succession and Wakfs Ordinance.

109. This Chapter shall not apply—

(*a*) to religious trusts regulated by the Buddhist Temporalities Ordinance ;

(*b*) to religious trusts regulated by the Muslim Intestate Succession and Wakfs Ordinance, No. 10 of 1931, in so far as this Chapter is inconsistent with the provisions of that Ordinance.

CHAPTER XI

Miscellaneous

Rule against perpetuities.

110. (1) No trust shall operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of the constitution of the trust, and the minority of some person who shall be in existence at the expiration of that period and to whom, if he attains full age, the interest created is to belong.

(2) If owing to any trust an interest is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of the provisions of this section, such interest fails as regards the whole class.

(3) Where an interest fails by reason of the provisions of this section, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

(4) In any case in which any interest intended to be created fails by reason of the provisions of this section, the court shall have power to give effect to the trust in such a manner as to carry out as nearly as practicable the intentions of the author of the trust, subject to the limits imposed by this section, and may make any order necessary for the purpose.

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(5) The restrictions of this section shall not apply to charitable trusts as defined by section 99.

Prescription.

111. (1) In the following cases, that is to say—

(*a*) in the case of any claim by any beneficiary against a trustee founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy ;

(*b*) in the case of any claim to recover trust property, or the proceeds thereof still retained by a trustee, or previously received by the trustee and converted to his use ; and

(*c*) in the case of any claim in the interests of any charitable trust, for the recovery of any property comprised in the trust, or for the assertion of title to such property,

the claim shall not be held to be barred or prejudiced by any provision of the Prescription Ordinance.

(2) Save as aforesaid, all rights and privileges conferred by the Prescription Ordinance shall be enjoyed by a trustee in all actions and legal proceedings in the like manner and to the like extent as they would have been enjoyed if the trustee had not been a trustee :

Provided that in the case of any action or other proceeding by a beneficiary to recover money or other property, the period of prescription shall not begin to run against such beneficiary, unless and until the interest of such beneficiary shall be an interest in possession.

(3) No beneficiary as against whom there would be a good defence by virtue of this section shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding and this section had been pleaded.

(4) Nothing in this section shall preclude the court from giving effect to any application by a trustee for any equitable relief to which he would otherwise be entitled on any ground recognized by the court.

(5) This section shall not apply to constructive trusts, except in so far as such trusts are treated as express trusts by the law of England.

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Vesting orders.

112. (1) In any of the following cases, namely :—

(i) where it is uncertain in whom the title to any trust property is vested ; or

(ii) where a trustee or any other person in whom the title to trust property is vested has been required in writing to transfer the property by or on behalf of a person entitled to require such transfer, and has wilfully refused or neglected to transfer the property for twenty-eight days after the date of the requirement,

the court may make an order (in this Ordinance called a " vesting order ") vesting the property in any such person in any such manner or to any such extent as the court may direct.

(2) A vesting order under any provision of this Ordinance shall have the same effect as if the trustee or other person in whom the trust property was vested had executed a transfer to the effect intended by the order.

(3) A vesting order under this Ordinance, in so far as it affects immovable property, shall contain the particulars required by section 13 of the Registration of Documents Ordinance, and section 29 of the said Ordinance shall apply to every such order in the same manner as if it were an instrument which affects land :

Provided that no such order in the case of any charitable trust shall be invalidated by reason of the fact that it does not contain the said particulars, or shall be liable to be defeated by the registration of any subsequent deed, order, or other instrument under section 7 of the said Ordinance.

(4) Where any trust property comprises any stocks or any shares or securities transferable in any book kept by any company or society, or any shares in any ship registered under the law relating to merchant shipping, a vesting order under this section shall not take effect, so far as it relates thereto, unless and until notice of such order in writing shall have been given by or on behalf of the person in whom the property is vested under the order to the person or authority in charge of the register or book in which such stocks, shares, or securities, as the case may be, are entered,

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and upon such notice in writing being given, and on reasonable proof being furnished that such stocks, shares, or securities form part of the said trust property, the person in whom the property is vested under the order shall be entitled to a transfer into his name of any such stocks, shares, or securities, and to the receipt of all dividends, interest, or other sums due, or to become due, in respect of any such stocks, shares, or securities.

(5) In all cases in which a vesting order can be made under this section the court may, if it is more convenient, appoint a person to transfer the property, and a transfer by that person in conformity with the order shall have the same effect as an order under this section, and every person so appointed for the purposes of all transactions, proceedings, and formalities incidental to the said transfer shall have all the powers and capacities of the trustee or other person in whom the trust property was vested, and shall be deemed to be the duly authorized attorney of such trustee or other person for the purposes aforesaid.

Devolution of trust property.

113. (1) Where, whether before or after the commencement of this Ordinance, it is declared or intended in any instrument of trust that the trustee of the trust shall be a person for the time being holding or acting in any public office, or holding or acting in any office or discharging any duty in any public or private institution, body, corporation, association, or community, or where any property comes into or is in the possession or ownership of any such person in any of the aforesaid capacities upon any constructive trust, the title to the trust property shall devolve from time to time upon the person for the time being holding or acting in any such office, or discharging such duty, without any conveyance, vesting order, or other assurance otherwise necessary for vesting the property in such person.

(2) Where, whether before or after the commencement of this Ordinance, in the case of any charitable trust, or in the case of any trust for the purpose of any public or private association (not being an association for the purpose of gain), a method for the appointment of new trustees is prescribed in the instrument of trust

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(other than nomination in the manner referred to in paragraph (*a*) of section 75), or by any rule in force, or in the absence of any such prescribed method is established by custom, then upon any new trustee being appointed in accordance with such prescribed or customary method, and upon the execution of the memorandum referred to in the next succeeding subsection, the trust property shall become vested without any conveyance, vesting order, or other assurance in such new trustee and the old continuing trustees jointly, or if there are no old continuing trustees, in such new trustee wholly.

(3) Every appointment under the last preceding subsection shall be made to appear by a memorandum under the hand of the person presiding at the meeting, or other proceeding at which the appointment was made, and attested by two other persons present at the said meeting or proceeding. Every such memorandum shall be notarially executed.

(4) It shall be the duty of the Registrar-General to prepare and maintain special registers of trustees appointed under subsection (2) of this section, and it shall be the duty of every notary before whom any such memorandum is attested to forward to the prescribed officer for the purpose of such registers all such particulars with reference to such memorandum as may be prescribed by rules made under the Notaries Ordinance.

(5) All rules made in pursuance of the last preceding subsection shall apply to notaries who are proctors in the same manner as to other notaries, anything in section 36 of the Notaries Ordinance, to the contrary notwithstanding.

Incorporation of trustees.

114. The Minister[1] may, in his discretion, by Order, on the application of the trustees of any charitable trust or of any public or private association (not being an association for the purposes of gain), authorize the incorporation of the said trustees, and upon the publication of the said Order, the said trustees of the charity or association and their successors for the time being shall be constituted a corporation under such style and subject to such conditions as may be specified in the Order.

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Persons may assign property in trust to themselves and others.

115. Any person shall have power to assign and convey movable and immovable property, now by law assignable, directly to himself and another person, or other persons or corporation, by the like means as he might assign or convey the same to another. And no transfer or assignment of movable or immovable property heretofore made or executed by a person to himself and another person or persons or corporation shall be deemed to be in any manner invalid by reason of its being a transfer or assignment by a person to himself and another person or persons or corporation :

Provided that nothing in this section contained shall give any validity to any assignment or conveyance which would have been heretofore by any law or custom invalid by any other reason than by reason of its being an assignment or conveyance by a person to himself and any other person or persons or corporation.

Procedure.

116. (1) All actions and other proceedings under this Ordinance shall be governed by the enactments and rules relating to civil procedure for the time being in force.

(2) The Judges of the Supreme Court may make rules regulating the procedure to be observed in all proceedings under this Ordinance in respect of all matters for which no provision is made by such enactments and rules, and pending the making of such rules, such procedure shall be followed as shall be directed by the court.

(3) All petitions presented in any court in any proceeding under this Ordinance shall bear a stamp of ten rupees.

Costs.

117. If the court shall be of opinion, at the termination of any suit instituted with reference to any trust, that the suit has been for the benefit of the trust, and that no party to the suit ought to be made responsible for the whole of the costs, the court may order the costs or such portion as it may consider just to be paid out of the trust property.

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CHAPTER 88

PUBLIC TRUSTEE

AN ORDINANCE TO CONSTITUTE THE OFFICE OF PUBLIC TRUSTEE AND TO PROVIDE FOR THE APPOINTMENT OF A PUBLIC TRUSTEE, AND TO AMEND THE LAW RELATING TO THE ADMINISTRATION OF TRUSTS.

Ordinances Nos. 1 of 1922, 11 of 1931, 59 of 1938.

[*22nd November, 1930.*]

PRELIMINARY

1. This Ordinance may be cited as the Public Trustee Ordinance. Short title.

APPOINTMENT OF PUBLIC TRUSTEE AND DEPUTIES

2. There may be appointed [3] an officer to be called the Public Trustee of Ceylon, in this Ordinance and in all other written law referred to as the Public Trustee. Appointment of Public Trustee.

3. The Public Trustee shall be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole. Public Trustee to be a corporation.

4. There may be appointed [3] a deputy or deputies to assist the Public Trustee; and any deputy so appointed shall, subject to the general or specific orders of the Public Trustee, be competent to discharge any of the duties and exercise any of the powers of the Public Trustee, and, when discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Public Trustee. Appointment and powers of Deputy Public Trustee.

POWERS, DUTIES, LIABILITIES, AND IMMUNITIES OF PUBLIC TRUSTEE

5. (1) The Public Trustee shall, subject to the provisions of this Ordinance and rules made thereunder, be capable of being appointed and of acting under that name— General powers and duties of Public Trustee.

(*a*) as an ordinary trustee;

(*b*) as collector of estates under an order to collect;

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(c) as a custodian trustee ;

(d) as curator of the estate of a minor ;

(e) as manager of the estate of a person of unsound mind ;

(f) as attorney for persons absent from Ceylon for the purpose of receiving and paying money ;

[§ 2, 59 of 1938.] (g) as the next friend or guardian for the action under Chapter XXXV of the Civil Procedure Code of any minor or person of unsound mind referred to in section 14 (1).

(2) Save as hereinafter expressly provided, the Public Trustee shall have the same powers, duties, and liabilities, and be entitled to the same rights and privileges, and be subject to the same control and orders of the court as any other trustee acting in the same capacity.

Applications to the court.

6. (1) A person aggrieved by any act or omission or decision of the Public Trustee in relation to any trust may apply to the court, and the court may make such order in the matter as the court thinks just.

(2) Any order made by the court under subsection (1) shall have the effect of a decree of court.

(3) The Public Trustee may apply to the court for its direction or opinion on any question arising in the course of the administration of any trust, and the court may deal with any such application as the justice of the matter may require.

(4) The Judges of the Supreme Court may make rules regulating the procedure to be observed in all applications under this section, and, pending the making of such rules, such procedure shall be followed as shall be directed by the court.

(5) For the purpose of the calculation of stamp duty on any such proceedings, whenever the subject-matter in issue is of the value of one thousand five hundred rupees or over, such subject-matter shall be charged as of the value of one thousand five hundred rupees, and, whenever the subject-matter in issue is of the value of less than one thousand five hundred rupees,

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no stamp duty shall be charged in respect of any such proceedings, excepting stamp duty payable in respect of service of process.

Liability of Consolidated Fund for acts of Public Trustee.

7.[1] All sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge shall be a charge on the Consolidated Fund, except where the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed, and which neither he nor any of his officers could by exercise of reasonable diligence have averted, and in that case the Public Trustee shall not, nor shall the Consolidated Fund be subject to any liability.

Notice of action against Public Trustee.

8. (1) If any suit be brought by a creditor against the Public Trustee, such creditor shall be liable to pay the costs of suit, unless he proves that not less than one month previous to the institution of the suit he had applied in writing to the Public Trustee stating the amount and other particulars of his claim, and had given such evidence in support thereof as, in the circumstances of the case, the Public Trustee was reasonably entitled to require and had required.

(2) If any such suit is decreed in favour of the creditor, he shall, nevertheless, unless he is a secured creditor or otherwise entitled to preference, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

(3) Nothing in section 461 of the Civil Procedure Code, shall apply to any suit against the Public Trustee in which no relief is claimed against him personally.

Public Trustee may decline any trust, but not on ground of small value.

9. Subject to the provisions of this Ordinance, the Public Trustee may decline, either absolutely or except on conditions which he may lay down to accept any trust, but he shall not decline to accept any trust on the ground only of the small value of the trust property.

Public Trustee not to accept certain trusts.

10. The Public Trustee shall not accept any trust which involves the management or carrying on of any business, except in the cases in which he may be authorized to do so by rules made under this Ordinance, or for the purpose of winding up an estate, nor any trust under a deed of arrangement for the benefit of

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creditors, nor any trust which involves the exercise, supervision, or control by him as trustee of any religious observance or ceremony or the decision of any questions as to the religious merit or character of any individual or institution.

Public Trustee to be sole trustee.

11. The Public Trustee shall, except where he is appointed a custodian trustee, always be sole trustee, and it shall not be lawful to appoint the Public Trustee to be trustee along with any other person.

Public Trustee to retain share of minor, &c.

12. If any minor or person of unsound mind is entitled to any gift, legacy, or share of the assets of a deceased person, it shall be lawful for the Public Trustee to retain the same in his hands as trustee for such minor or person of unsound mind pending the order of court, or until claimed by a duly appointed trustee.

Executor or administrator may pay to official trustee, legacy, share, &c., of minor or person of unsound mind.

13. (1) If any minor or person of unsound mind is entitled to any gift, legacy, or share of the assets of a deceased person, it shall be lawful for the person by whom such gift is made, or for the executor or administrator by whom such legacy or share is payable or transferable, or for any trustee of such gift, legacy, or share, to transfer the same by an instrument in writing to the Public Trustee, if he consents thereto.

(2) If any minor or person of unsound mind is entitled to any money which is in court, the court may, if it thinks fit, order, with the consent of the Public Trustee, that such money shall be transferred to the Public Trustee.

(3) The Public Trustee shall be deemed to be a suitable person to be appointed manager of the estate of a person of unsound mind under section 567 of the Civil Procedure Code, and a fit person to receive a certificate of curatorship in respect of the property of a minor under section 586 of that Code.

(4) On the appointment of the Public Trustee as manager of the estate of a person of unsound mind, or on the grant to him of a certificate of curatorship in respect of the property of a minor, all property to which such person of unsound mind or minor is entitled shall become vested in the Public Trustee as trustee for such person of unsound mind or minor respectively.

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Appointment of Public Trustee as next friend or guardian *ad litem* of a minor or person of unsound mind in certain cases.
[§ 3, 59 of 1938.]

14. (1) The Public Trustee may be appointed as the next friend or guardian for the action—

(*a*) of any minor having an interest in any estate of which the Public Trustee is trustee, or of any minor in respect of whose property a certificate of curatorship has been duly granted to the Public Trustee ; or

(*b*) of any person of unsound mind having any interest in any estate of which the Public Trustee is trustee or of any person of unsound mind of whose estate the Public Trustee is the duly appointed manager ;

and all the provisions of Chapter XXXV of the Civil Procedure Code shall apply accordingly, subject to the following modifications :—

(i) it shall not be necessary for the Public Trustee to support by affidavit any application made by him for his appointment as next friend or guardian for the action, as the case may be ;

(ii) it shall not be necessary for any person to aver or for the court to be satisfied that the proposed next friend or guardian for the action, as the case may be, is a fit or proper person or an adult of sound mind or full age ; and

(iii) it shall not be necessary for the minor or person of unsound mind to whom the application relates to appear before the court in person when any such application is made, unless the court otherwise directs.

(2) No appointment of the Public Trustee under this section shall be made without his consent.

(3) All costs incurred by the Public Trustee in any action as the next friend or guardian for the action of any minor or person of unsound mind shall be a charge upon the property, both movable and immovable, of that minor or person of unsound mind, as the case may be.

(4) In this section " person of unsound mind " means a person adjudged to be of unsound mind under the provisions of any written law for the time being in force.

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Maintenance of minors and persons of unsound mind.

15. When any money of any minor or person of unsound mind is in the hands of the Public Trustee, in the absence of any order of court, the Public Trustee may from time to time pay such sum of money to such person as he thinks fit, to be applied by such person for the maintenance, education, and advancement of such minor or person of unsound mind, or may himself so apply such sum.

Transfer to Public Trustee of proceeds of sales under section 4 of the Entail and Settlement Ordinance.

16. When any money being the proceeds of a sale effected under the authority of section 4 of the Entail and Settlement Ordinance is in court, the court may, if it thinks fit, direct that such money shall be transferred to the Public Trustee, to be dealt with according to such directions as it may give from time to time.

Property of convict may be vested in Public Trustee.

17. (1) Whenever a person has been sentenced by any court to a term of imprisonment of not less than three years, such court may, on the application of the person sentenced and with the consent of the Public Trustee and subject to the payment of the prescribed fees, order that the property of such person shall be vested in the Public Trustee for the purpose of its custody and management during the period of the imprisonment.

(2) Upon the making of any such order, the Public Trustee shall be entitled to institute or maintain any suit or proceeding for the recovery of such property, and it shall be the duty of the Public Trustee, and he is hereby authorized to keep and manage such property in such manner as will be for the best interests of such person and his dependants.

Entry of Public Trustee by that name in books of a company.

18. The entry of the Public Trustee by that name in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to enter the name of the Public Trustee on its books by reason only that the Public Trustee is a corporation, and, in dealings with property, the fact that the person or one of the persons dealt with is the Public Trustee, shall not of itself constitute notice of a trust.

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Public Trustee's petition for grant of letters of administration.

19. (1) Whenever the Public Trustee applies for letters of administration in accordance with the provisions of this Ordinance, it shall be sufficient if the petition required to be presented for the grant of such letters states—

(*a*) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner ;

(*b*) the names and addresses of the surviving next of kin of the deceased if known ;

(*c*) the full and true particulars of the property left by the deceased so far as he has been able to ascertain the same ;

(*d*) particulars of the liabilities of the estate if known.

(2) Save as provided in this section, the Public Trustee shall not be required to file accounts of the property of the deceased before the court.

Public Trustee not to take oath as executor or administrator.

20. Notwithstanding anything in the Civil Procedure Code contained, the Public Trustee shall not be called upon to take any oath as an executor or administrator.

Public Trustee need not give bond or security nor pay assessed estate duty in advance.

21. (1) Where any bond or security would be required from a private person upon the grant to him of administration, or upon his appointment to act in any capacity, the Public Trustee, if administration is granted to him, or if he is appointed to act in such capacity as aforesaid, shall not be required to give such bond or security, but shall be subject to the same liabilities and duties as if he had given such bond or security.

(2) Notwithstanding anything in section 55 of the Estate Duty Ordinance contained, it shall be lawful for the District Court to grant probate or letters of administration to the Public Trustee without the payment of the amount of assessed estate duty having been made or secured as therein provided, but nothing herein contained shall exempt the Public Trustee from eventually paying such estate duty as is required under the provisions of the said Ordinance.

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Public Trustee exempted from formal affidavits.

(3) The Public Trustee shall not be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Ordinance, and, if the facts stated in any such petition are not within the Public Trustee's own personal knowledge, the petition shall be subscribed and verified by any person competent to make the verification.

Prescribed person may act for Public Trustee, except as to acts which can be done only by an advocate or proctor.

22. On behalf of the Public Trustee, such person as may be prescribed may take any oath, make any declaration, verify any account, give personal attendance at any court or place, and do any act or thing whatsoever which the Public Trustee is required or authorized to take, make, verify, give, or do :

Provided that nothing in this Ordinance or in any rule made under this Ordinance shall confer upon any person not otherwise entitled thereto any right to appear, or act, or be heard in or before any court or tribunal, on behalf or instead of the Public Trustee, or to do any act whatsoever on behalf or on the instructions of the Public Trustee, which could otherwise be lawfully done only by an advocate or a proctor.

Power to examine on oath.

23. The Public Trustee may, whenever he desires, for the purposes of this Ordinance, to satisfy himself regarding any question of fact, examine upon oath, which he is hereby authorized to administer, any person who is willing to be so examined by him regarding such question.

THE PUBLIC TRUSTEE AS ORDINARY TRUSTEE

Appointment of Public Trustee to be trustee.

24. (1) The Public Trustee may by that name, or any other sufficient description, be appointed to be trustee of any will or settlement or other instrument creating a trust or to perform any trust or duty belonging to a class which he is authorized by the rules made under this Ordinance to accept, and may be so appointed whether the will or settlement or instrument creating the trust or duty was made or came into operation before or after the commencement of this Ordinance, and either as an original or as a new trustee, in the same cases, and in the same manner, and by the same persons or court, as if he were a private trustee, with

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this modification that though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee.

Retirement of original trustees.

(2) Where the Public Trustee has been appointed a trustee of any trust, all existing trustees under the trust shall upon such appointment cease to be trustees.

Public Trustee not to be new trustee where settlement forbids.

(3) The Public Trustee shall not be so appointed as a new trustee where the will, settlement, or other instrument creating the trust or duty contains a direction to the contrary, unless the court otherwise order.

Notice of proposed appointment of Public Trustee.

(4) Notice of any proposed appointment of the Public Trustee as a new trustee shall, where practicable, be given in the prescribed manner to all persons beneficially interested or to any existing trustee who are resident in Ceylon, and whose addresses are known to the persons proposing to make the appointment, or, if such beneficiaries are minors, to their guardians; and if any such person as aforesaid entitled to notice within twenty-one days from the receipt of the notice applies to the court, the court may, if, having regard to the interests of all the beneficiaries, it considers it expedient to do so, make an order prohibiting the appointment being made, provided that a failure to give any such notice shall not invalidate any appointment made under this section.

(5) Where, by the terms of an instrument of trust or a will, the consent of any person is requisite to the appointment of a trustee, and such person refuses to consent to the appointment of the Public Trustee to such office, or where the person whose consent is so requisite is a minor, or person of unsound mind, or is absent from Ceylon, or is under any other disability, then such appointment of the Public Trustee may be made without such consent, if the court so orders and directs.

Transfer of trusts to other trustees or persons by Public Trustee.

25. (1) Nothing in this Ordinance shall be deemed to prevent the transfer by the Public Trustee of any trust property vested in him to—

(*a*) the original trustee (if any) ; or

(*b*) any other lawfully appointed trustee ; or

(*c*) any other person if the court so directs.

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(2) Upon such transfer, such property shall vest in such trustee or other person, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Public Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer :

Provided that, in the case of any transfer under this section, the Public Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Ordinance.

Power as to granting probate.

26. (1) The court may grant probate or letters of administration of any will or estate to the Public Trustee by that name, and for that purpose the court shall consider the Public Trustee as in law entitled equally with any other person or class of persons to obtain the grant of letters of administration, save that the consent or citation of the Public Trustee shall not be required for the grant of letters of administration to any other person, and that, as between the Public Trustee and the widower, widow, or next of kin of the deceased, the widower, widow, or next of kin shall be preferred, unless for good cause shown to the contrary.

Transfer of administration to Public Trustee by executor or administrator.

(2) Any executor who has obtained probate, or any administrator who has obtained letters of administration, notwithstanding he has acted in the administration of the deceased's estate and notwithstanding the existence of any other executor or administrator, may apply to the court for an order transferring such estate to the Public Trustee for administration. If the court makes any such order, the estate of the deceased left unadministered and all rights and obligations in respect thereof shall, without other assurances in the law, become and be conveyed, assigned, and transferred to the Public Trustee as executor or administrator, as the case may be, so that the same shall thereupon become and be legally and effectually vested in him, and, subject to the provisions of this Ordinance, the Public Trustee shall have all the powers of such executor or executors, administrator or administrators, and

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such executor or executors, administrator or administrators, shall not be in any way liable in respect of any act or default in reference to such estate subsequent to the date of such order other than the act or default of himself or themselves, or of persons other than himself or themselves for whose conduct he or they is or are in law responsible.

Administration of estates by Public Trustee.

27. If any person dies leaving within Ceylon assets exceeding the value of two thousand five hundred rupees, and no person to whom a court is entitled to grant probate or letters of administration in respect of his estate applies, within four months of his death, either for probate of his will, or for letters of administration, then the Public Trustee may in the prescribed manner and within a reasonable time after he has had notice of the death of such person, take such proceedings as may be necessary to obtain letters of administration in respect of his estate, and may administer the same :

Provided that it shall be competent for the Public Trustee to take such proceedings before the expiry of the said four months if he is able to satisfy the court that such earlier application is essential for the safety of the estate.

Application by beneficiaries or heirs that Public Trustee be appointed.

28. Where an application for probate or letters of administration has been made to a court by a person other than an executor named in the will, and most of the persons interested in the estate as beneficiaries under the will, or heirs make it appear either at the time of making the application or subsequently to the court that the estate can be more economically or satisfactorily administered by the Public Trustee, it shall be competent to the court to appoint the Public Trustee if he consents to administer the estate.

Power of court to direct Public Trustee to apply for administration.

29. Whenever any person has died leaving an estate within Ceylon, the court having authority to appoint an administrator of the estate, on being satisfied that danger is to be apprehended of misappropriation, deterioration, or waste of such estate unless letters of

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administration of the estate of such person are granted, may, upon the application of the Public Trustee or of any person interested in such estate or in the due administration thereof, make an order, upon such terms as to indemnifying the Public Trustee against costs and other expenses as the court thinks fit, directing the Public Trustee to apply for letters of administration of the estate of such person.

Power to direct Public Trustee to collect and hold assets until right of succession is determined.

30. (1) Whenever any person has died leaving an estate within Ceylon, and the court having authority to appoint an administrator of the estate is satisfied that there is no person immediately available who is legally entitled to the succession to such estate, or that danger is to be apprehended of misappropriation, deterioration, or waste of such estate, before it can be determined who may be legally entitled to the succession thereto, or whether the Public Trustee is entitled to letters of administration of the estate of such deceased person, the court may, upon the application of the Public Trustee or of any person interested in such estate, or in the due administration thereof, forthwith direct the Public Trustee to collect and take possession of such estate, and to hold, deposit, realize, sell, or invest the same according to the directions of the court; and in default of any such directions, according to the provisions of this Ordinance so far as the same are applicable to such estate.

(2) Any order of the court made under the provisions of this section shall entitle the Public Trustee—

(*a*) to maintain any suit or proceeding for the recovery of such estate or any part thereof; and

(*b*) if he thinks fit, to apply for letters of administration of the estate of such deceased person; and

(*c*) to retain out of the estate any fees chargeable under rules made under this Ordinance, and to

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reimburse himself for all payments made by him in respect of such estate which a private administrator might lawfully have made.

Grant of probate or letters to person appearing in the course of proceedings taken by Public Trustee under sections 29 and 30.

31. If in the course of proceedings under the provisions of sections 29 and 30 any person appears and establishes his claim to probate of a will, or to a grant of letters of administration as next of kin of the deceased, and gives such security as may be required of him by law, the court shall grant probate of the will or letters of administration accordingly, and shall award to the Public Trustee the costs of any proceedings taken by him under this section to be paid out of the estate as part of the testamentary or intestate expenses thereof. But if no person appears and establishes his claim to probate of a will, or to a grant of letters of administration as next of kin of the deceased within such period as to the court seems reasonable, or if any person who has established his claim to a grant of letters of administration as next of kin of the deceased fails to give such security as may be required of him by law, the court may grant letters of administration to the Public Trustee.

Recall of Public Trustee's administration, and grant of probate, &c., to executor or next of kin.

32. If an executor or next of kin of the deceased who has not been personally served with a citation, or who has not had notice thereof in time to appear pursuant thereto, establishes to the satisfaction of the court a claim to probate of a will or to letters of administration in preference to the Public Trustee, any letters of administration granted in accordance with the provisions of this Ordinance to the Public Trustee may be revoked, and probate or letters of administration may be granted to such executor or next of kin as the case may be:

Provided that no letters of administration granted to the Public Trustee shall be revoked for the cause aforesaid without his consent, unless the application for that purpose is made within twelve months after the grant to the Public Trustee, and the court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

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Cost of obtaining administration, &c., may on revocation be ordered to be paid to Public Trustee out of assets.

33. If any letters of administration granted to the Public Trustee in accordance with the provisions of this Ordinance are revoked, the court may order the costs of obtaining such letters of administration, and the whole or any part of any fees which would otherwise have been payable under this Ordinance, together with the costs of the Public Trustee in any proceedings taken to obtain such revocation, to be paid to or retained by the Public Trustee out of the estate :

Provided that nothing in this section shall affect the provisions of paragraph (c) of subsection (2) of section 30.

After revocation letters granted to Public Trustee to be deemed as regards the Public Trustee to have been voidable only.

34. If any letters of administration granted to the Public Trustee in accordance with the provisions of this Ordinance are revoked, the same shall, so far as regards the Public Trustee and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by such Public Trustee or other person as aforesaid, after notice of a will or of any other fact which would render such letters void :

Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Public Trustee or any person acting under his authority in pursuance of such letters, unless, within the period of one month from the time of giving such notice, proceedings are commenced to prove the will, or to cause the letters to be revoked, and such proceedings are prosecuted without unreasonable delay.

Payments made by Public Trustee prior to revocation.

35. If any letters of administration granted to the Public Trustee in accordance with the provisions of this Ordinance are revoked upon the grant of probate of a will, or upon the grant of letters of administration with a copy of the will annexed, all payments made or acts done by or under the authority of the Public Trustee in pursuance of such letters of administration prior to the revocation, which would have been valid under any letters of administration lawfully granted to him with a copy of such will annexed, shall be deemed valid notwithstanding such revocation.

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Advertisements, &c., before grant of administration to Public Trustee optional.

36. Notwithstanding anything in the Civil Procedure Code to the contrary, an order for the grant of letters of administration to the Public Trustee may in the first instance be an order absolute provided that the prescribed notice of such order shall be duly given.

Substitution by court of Public Trustee for trustee guilty of misconduct, &c.

37. When it is proved to the satisfaction of the court that any private trustee has been guilty of such misconduct or mismanagement of the trust property as to render his continuance in office undesirable, the court may remove him from office and appoint the Public Trustee or some other fit and competent person in his place :

Provided that the Public Trustee shall not be appointed if it appears to the court that there is some other fit and competent person willing to carry out the terms of the trust who is entitled to be appointed by reason of the terms of a will or other instrument creating a trust.

Deposit of will with Public Trustee.

38. The Public Trustee may accept the custody of the will of any living person, subject to the payment of the prescribed fees.

Investigation by Public Trustee of condition and accounts of trusts, &c.

39. (1) Any trustee or any beneficiary under any trust may apply to the court that the condition and accounts of such trust be investigated by the Public Trustee or by some other person appointed by him, and the court may, with the consent of the Public Trustee and after notice to such parties as it considers entitled to the same, make order accordingly.

(2) The Public Trustee or the other person making such investigation shall have the powers of an auditor under section 48 and that section shall apply accordingly. On the completion of the investigation, the Public Trustee or the other person shall forward to the applicant and to every trustee—

(i) a copy of the accounts,

(ii) his report thereon, and

(iii) a certificate signed by him to the effect either that the accounts exhibit a true view of the state of affairs of the trust and that he has

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inspected and verified the securities of the trust fund investments or that such accounts are deficient in such respects as he may specify in the certificate.

(3) The expenses of the investigation shall be such as may be agreed upon between the applicant and the Public Trustee, and shall, unless the Public Trustee otherwise directs, be borne by the estate ; and, in the event of the Public Trustee so directing, he may order that such expenses shall be borne by the applicant or by the trustees personally or partly by them and partly by the applicant.

THE PUBLIC TRUSTEE AS COLLECTOR UNDER AN ORDER TO COLLECT

Administration of estate of person believed to be dead.

40. (1) Whenever it is made to appear to the court that there is reasonable ground to suppose that any person who usually resided within the jurisdiction of such court has died intestate leaving property in Ceylon, the court may order and empower the Public Trustee to collect the estate of such person.

(2) Every such order shall be valid until revoked, and shall empower the Public Trustee to—

(*a*) collect, manage, and administer the movable property of such supposed deceased person ;

(*b*) enter upon and receive the rents and profits and otherwise manage the immovable property ; and

(*c*) pay and discharge the debts and liabilities of such person ;

in like manner as if he were certainly dead, and the Public Trustee had obtained letters of administration to his estate.

(3) The Public Trustee shall not proceed to any distribution of the assets without an order of the court specially authorizing him to make such distribution.

(4) Within fourteen days after any order to collect has been granted, the Public Trustee shall, unless the court otherwise orders, cause notice of the fact that

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such order has been granted to be published twice in some newspaper published in the town or place where such person resided, or if there is no such newspaper, then twice in some daily newspaper published in Ceylon.

THE PUBLIC TRUSTEE AS CUSTODIAN TRUSTEE

Custodian Trustee.

41. (1) Subject to rules under this Ordinance, the Public Trustee may, if he consents to act as such, and whether or not the number of trustees has been reduced below the original number, be appointed to be custodian trustee of any trust—

(*a*) by order of the court made on the application of any person on whose application the court may order the appointment of a new trustee ; or

(*b*) by the testator, settlor, or other creator of any trust ; or

(*c*) by the person having power to appoint new trustees.

(2) Where the Public Trustee is appointed to be custodian trustee of any trust—

(*a*) the trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose vesting orders may, where necessary, be made under the Trusts Ordinance ;

(*b*) the management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the " managing trustees ") ;

(*c*) as between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom ;

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(*d*) the custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs, the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them ;

(*e*) all sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee :

Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they may direct, or into such bank to the credit of such person as they may direct, and in such case shall be exonerated from seeing to the application thereof, and shall not be answerable for any loss or misapplication thereof ;

(*f*) the power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the same power of applying to the court for the appointment of a new trustee as any other trustee ;

(*g*) in determining the number of trustees for the purposes of the Trusts Ordinance, the custodian trustee shall not be reckoned as a trustee ;

(*h*) the custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any written statement by the managing trustees as to any birth, death, marriage, or other matter of pedigree or relationship, or other matter of fact, upon which the title to the trust property or any part thereof may depend, nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee ;

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(*i*) the court may, on the application of either the custodian trustee, or any of the managing trustees, or of any beneficiary, and on proof to its satisfaction that it is the general wish of the beneficiaries, or that on other grounds it is expedient, to terminate the custodian trusteeship, make an order for that purpose, and the court may thereupon make such vesting orders and give such directions as under the circumstances may seem to the court to be necessary or expedient.

(3) The provisions of this section shall apply in like manner as to the Public Trustee, to any banking or insurance company or other body corporate entitled by rules made under this Ordinance to act as custodian trustee, with power for such company or body corporate to charge and retain or pay out of the trust property fees not exceeding the fees chargeable by the Public Trustee as custodian trustee.

Distribution of Assets of Estates

Distribution of assets.

42. (1) When the Public Trustee has given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he has notice of.

(2) He shall not be liable for the assets so distributed to any person of whose claim he had no notice at the time of such distribution.

(3) No notice of any claim which has been sent in and has been rejected or disallowed in part by the Public Trustee shall affect him unless proceedings to enforce such claim are commenced within three months after notice of the rejection or disallowance of such claim has been given in the prescribed manner, and unless such proceedings are prosecuted without unreasonable delay.

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(4) Nothing in this section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

(5) In computing the period of limitation for any suit, appeal, or application under the provisions of any law for the time being in force, the period between the date of submission of the claim of a creditor to the Public Trustee and the date of the final decision of the Public Trustee on such claim shall be excluded.

Paying over to the Treasury of accumulations in the hands of Public Trustee.

43. When any moneys payable to a beneficiary under a trust have been in the hands of the Public Trustee for a period of twelve years or upwards in consequence of the Public Trustee having been unable to trace the person entitled to receive the same, such moneys shall be paid over to the Deputy Secretary to the Treasury [1] by the Public Trustee to be credited to the Consolidated Fund : [3]

Provided that no such moneys shall be so paid over if any action or proceeding is pending in respect thereof in any court.

Mode of proceeding by claimant to recover money so paid over.

44. (1) If any claim is made to any moneys so paid over, and such claim is established to the satisfaction of the Secretary to the Treasury, [1] the Secretary to the Treasury [1] shall order the payment to the claimant of the amount in respect of which the claim is established.

(2) If such claim is not established to the satisfaction of the Secretary to the Treasury,[1] the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the court, and, after taking such evidence as it thinks fit, such court shall make such order on the petition in regard to the payment of such moneys as it thinks fit.

(3) The court may further direct by whom all or any part of the costs of such proceedings shall be paid.

FEES CHARGEABLE BY PUBLIC TRUSTEE

Fees and expenses to be charged by Public Trustee.

45. (1) There shall be charged in respect of the duties of the Public Trustee such fees, whether by way of percentage or otherwise, as may be prescribed.

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(2) The fees under this section may be at different rates for different properties or classes of properties or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Ordinance (including such sum as the Secretary to the Treasury [1] may determine to be required to insure the public revenue against loss under this Ordinance).

(3) The incidence of the fees and expenses under this section as between capital and income shall be determined by the Public Trustee.

(4) Any expenses which might be retained or paid out of the trust fund, if the Public Trustee were a private trustee, shall be so retained or paid, and any fees leviable under this Ordinance shall be retained or paid in like manner as and in addition to such expenses.

(5) Rules made under this Ordinance may provide that interest shall be charged on all or any of the fees due under this section and may specify the circumstances in which and the rate at which such interest shall be charged. [§ 4, 59 of 1938.]

Disposal of fees.

46. The Public Trustee shall transfer and pay to the Deputy Secretary to the Treasury [1] in such manner and at such times as the Minister [1] may prescribe all fees received by him under this Ordinance, and the same shall be carried to the credit of the Consolidated Fund.[3]

AUDIT

Audit of Public Trustee's accounts.

47. (1) The accounts of the Public Trustee shall be audited at least once annually, and at any time if the Minister [1] so direct, by the prescribed person and in the prescribed manner.

(2) The auditor shall examine such accounts, and shall forward to the Minister [1] a statement thereof in the prescribed form, together with a report thereon and a certificate signed by him, showing—

(*a*) whether the accounts contain a full and true account of everything which ought to be contained therein ; and

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(*b*) whether the books, which by any rules made under this Ordinance are directed to be kept by the Public Trustee, have been duly and regularly kept ; and

(*c*) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Ordinance or any rules made thereunder ;

or (as the case may be) that such accounts are deficient, or that the Public Trustee has failed to comply with this Ordinance or the rules made thereunder, in such respects as may be specified in such certificate.

Auditor's power to summon witnesses and call for documents.

48. (1) Every auditor shall have the powers of a civil court under the Civil Procedure Code—

(*a*) to summon any person whose presence he may think necessary to attend him from time to time ; and

(*b*) to examine any person on oath to be by him administered ; and

(*c*) to issue a commission for the examination on interrogatories or otherwise of any person ; and

(*d*) to summon any person to produce any document or thing, the production of which appears to be necessary for the purposes of such audit or examination.

(2) Any person who, when summoned, refuses, or without reasonable cause neglects, to attend or to produce any document or thing, or attends and refuses to be sworn or to be examined, shall be deemed to have committed an offence within the meaning of section 190 of the Penal Code.

Cost of audit, &c., how paid.

49. The costs of and incidental to every such audit and examination shall be determined in accordance with rules made by the Minister, [1] and shall be defrayed in the prescribed manner.

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MISCELLANEOUS

Right of person interested to inspection and copies of accounts.

50. Every beneficiary under a trust which is being administered by the Public Trustee, and every person interested in the administration of any estate which is in the charge of the Public Trustee, shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor, and, on payment of the prescribed fee, to be furnished with copies thereof or extracts therefrom, and nothing in the Trusts Ordinance shall affect the provisions of this section.

False evidence.

51. (1) Whoever, during any examination authorized by this Ordinance, makes upon oath a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

(2) If the rules require a declaration to be made for any purpose, a person who makes such declaration, knowing the same to be untrue in any particular, shall be guilty of the offence of giving false evidence.

Rules.

52. (1) The Minister[1] shall make rules for carrying into effect the objects of this Ordinance, and in particular for all or any of the following purposes, that is to say :—

(*a*) establishing the office of Public Trustee and prescribing the trusts or duties he is authorized to accept or undertake, and the security, if any, to be given by the Public Trustee, his deputies, and his officers ;

(*b*) the transfer to and from the Public Trustee of any property ;

(*c*) the accounts to be kept and an audit thereof ;

(*d*) the establishment and regulation of any branch office ;

(*e*) excluding any trusts from the operation of this Ordinance or any part thereof ;

(*f*) the classes of corporate bodies entitled to act as custodian trustees ;

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(*g*) the form and manner in which notices under this Ordinance shall be given ;

(*h*) the investment of trust funds.

(2) Every rule under this Ordinance shall be laid as soon as conveniently may be before the Senate and the House of Representatives,[1] and may at any time within forty days of their being so laid before the Senate and the House of Representatives,[1] or at any of the three meetings of the Senate and the House of Representatives[1] succeeding such date, by resolution of the Senate or the House of Representatives,[1] be disallowed, amended, or otherwise dealt with as may be directed by the said resolution, but without prejudice to anything that may have been done thereunder.

Interpretation.

53. In this Ordinance unless the context otherwise requires—

" assets " includes all the property, movable and immovable, of a deceased person, which is chargeable with and applicable to the payment of his debts and legacies, or available for distribution among his heirs and next of kin ;

" expenses " includes costs and charges ;

" letters of administration " means letters of administration of the estate and effects of a deceased person, whether general or with a copy of the will annexed, or limited either in time or otherwise ;

" prescribed " means prescribed by rules under this Ordinance ;

" private trustee " means a trustee other than the Public Trustee ;

" trust " includes an executorship or administratorship ; and the expression " trustee " shall be construed accordingly ; and the expression " trust property " shall include all property in the possession or under the control wholly or partly of the Public Trustee by virtue of any trust.

Other expressions have the same meaning as in the Trusts Ordinance.

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CHAPTER 89

MORTGAGE

AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO MORTGAGE.

Acts Nos. 6 of 1949, 53 of 1949, 11 of 1953.

[*16th January, 1950.*]

PART I

SHORT TITLE AND INTERPRETATION

Short title.

1. This Act may be cited as the Mortgage Act.

Interpretation.

2. In this Act, unless the context otherwise requires—

"appointed date" means the 16th day of January, 1950;

"hypothecary action" means an action to obtain an order declaring the mortgaged property to be bound and executable for the payment of the moneys due upon the mortgage and to enforce such payment by a judicial sale of the mortgaged property;

"land" includes things attached to the earth or permanently fastened to anything attached to the earth, and any estate, right, or interest in or over land;

"mortgage" includes any charge on property for securing money or money's worth;

"mortgagee" includes any person from time to time deriving title under or through the original mortgagee.

Approved credit agencies.

3. In this Act "approved credit agency" means—

(*a*) any banking company as defined in section 333 of the Companies Ordinance, which is declared by the Director of Commerce, by Notification

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published in the Gazette, to be an approved credit agency for the purposes of this Act ;

(*b*) the Ceylon State Mortgage Bank, the Agricultural and Industrial Credit Corporation, the Loan Board, the Ceylon Savings Bank, and the Local Loans and Development Commissioners ;

(*c*) any other company, firm, institution, or individual for the time being declared by the Director of Commerce, by Notification published in the Gazette, to be an approved credit agency for the purposes of this Act.

PART II

Hypothecary Actions On Mortgages Of Land

GENERAL

Application of this Part.

4. The provisions of this Part shall apply only to a mortgage of land, to any action to enforce payment of the moneys due upon a mortgage of land, and to any hypothecary action in respect of any land.

Interpretation of terms in this Part.

5. (1) For the purposes of this Part—

" person entitled to notice ", in relation to a hypothecary action in respect of any land, means any person who—

(*a*) has any interest in the land (whether by way of mortgage or otherwise), being an interest (i) to which the mortgage in suit in the hypothecary action has priority ; and (ii) which was created or arises by virtue of an instrument duly registered under the Registration of Documents Ordinance, as an instrument affecting the land, prior to the time of the registration of the *lis pendens* of the hypothecary action, and

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(*b*) has, prior to such time, registered an address for the service on him of legal documents in accordance with the provisions of section 6 of this Act,

and includes a person declared by subsection (2) of this section to be entitled to notice of the action ;

" registered address " means an address registered in accordance with the provisions of section 6 of this Act.

(2) Where a notice of seizure of any land is, after the registration of a mortgage of that land but before the registration of the *lis pendens* of a hypothecary action upon such mortgage, duly registered for the time being under the Registration of Documents Ordinance, the judgment creditor in the action in which such seizure was effected may register an address under section 6, and if such address is registered, shall be a person entitled to notice of the hypothecary action.

Registration of address for service of documents.

6. (1) Application for the registration of an address for the service of legal documents shall be made substantially in the form set out in the First Schedule to this Act.

(2) The address for service shall be registered in or in continuation of the folio in which is registered the mortgage of the land in respect of which the applicant has an interest :

Provided, however, that where such mortgage includes more than one land, it shall be sufficient if the address of the applicant is registered in the folio relating to the land in which he has an interest.

(3) Where the applicant declares in his application that a previously registered address is cancelled, the Registrar shall make a new entry in the register and cancel the registration of the previous address.

(4) The fee for registration of an address for service or for a change of such address shall be fifty cents for each address, with an addition of ten cents for each folio after the first in which the address is to be registered.

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Actions on mortgage.

7. (1) Notwithstanding anything in section 34 of the Civil Procedure Code, a claim to enforce payment of the moneys due upon a mortgage may be joined to a claim in a hypothecary action, or a separate action may be brought in respect of each such remedy.

(2) In every such action the mortgagor shall be sued as defendant whether or not he is in possession of the mortgaged land at the time when the action is instituted.

Lis pendens to be registered, &c.

8. An order for the issue of summons in a hypothecary action shall not be made by any court unless a declaration under the hand of a proctor is filed of record—

[§ 2, 53 of 1949.]

(*a*) certifying that the *lis pendens* of such action has been duly registered under the Registration of Documents Ordinance as an instrument affecting the land to which the action relates, and that such registration has been effected in or in continuation of the folio in which the mortgage bond sued upon in the action was registered ;

(*b*) certifying that the register maintained under the Registration of Documents Ordinance or a certified extract therefrom, and all relevant entries in such register, have been personally inspected by such proctor or by any other specified proctor, at or after the time of the entry in the register of the *lis pendens* of the action ; and

(*c*) containing a statement of the name and registered address of every person, if any, found upon such inspection to be a person entitled to notice of the action.

ISSUE OF NOTICE OF HYPOTHECARY ACTION, ADDITION OF PARTIES, INTERVENTION, &c.

Notice of hypothecary action.

9. (1) Notice of a hypothecary action shall, upon an order being made for the issue of summons on the defendants in the action, be issued to every person who is stated in the declaration filed under section 8

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to be a person entitled to notice of such action, but who has not been joined as a defendant to the action.

(2) Where notice is not issued under subsection (1) to any person entitled to such notice, any party to the action may thereafter, but before the sale of the mortgaged land in execution of a hypothecary decree, apply to the court for the issue of notice of the action to such person, (whether or not his name was mentioned in the declaration filed under section 8), and notice shall be issued accordingly.

Manner of issue of notice.

10. (1) Notice of a hypothecary action may be issued to a person entitled to notice of such action in the manner provided in paragraph (*a*) hereunder or in the manner provided in paragraph (*b*) hereunder, at the option of the plaintiff :—

(*a*) (i) The secretary of the court shall send to that person by registered post to his registered address a notice in the prescribed form ; it shall be the duty of the secretary to make an entry that the notice was sent in the journal of the proceedings in the action, and to file in such journal the receipt issued by the post office in respect of such notice ; and such entry and receipt shall be taken as conclusive proof, in the absence of fraud that the notice was duly sent ;

(ii) A copy of such notice shall, within the period of two weeks from the date of the posting of the notice under sub-paragraph (i), be affixed in a conspicuous position upon the mortgaged land by the Fiscal under a precept from the court ;

(iii) A copy of such notice shall be published in a newspaper specified by the court ; [§ 3, 53 of 1949.]

(*b*) The notice of action may be served in any manner provided by the Civil Procedure Code for the service of summons.

(2) The notice referred to in sub-paragraphs (i) and (ii) of paragraph (*a*) of subsection (1) shall be in English, and shall be accompanied by a translation

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thereof in Sinhalese or Tamil as the court may direct.

Manner of issue of process, &c., where person entitled to notice is a party to the action.

11. (1) Where the plantiff in a hypothecary action joins as a defendant any person entitled to notice of the action, the provisions of section 10 shall apply in relation to the service on such person of the summons in the action in like manner as they apply in relation to the issue of notice of the action.

(2) Where any person entitled to notice of a hypothecary action is added as a party to the action, the provisions of section 10 shall apply in relation to the service on such person of any notice, process, order, decree or other document or written communication, in like manner as they apply in relation to the issue of notice of the action.

Rights of person to whom notice is issued.

12. Where notice of a hypothecary action is issued to any person under section 9 and in the manner provided by section 10—

(*a*) such person shall be entitled at his option to be added as a party to the action upon application made to the court in that behalf within one month of the date of the posting of the notice to him under section 10 (1) (*a*) or of the publication of a copy thereof under that section, whichever is the later, or where the notice is served in like manner as a summons, within one month of the date of such service ;

(*b*) such person may, in the discretion of the court upon such terms as the court thinks just, be added as a party to the action upon application made after the expiry of the period of one month referred to in paragraph (*a*) but before the sale of the land under the hypothecary decree :

Provided, however, that every finding, order, decree or thing done in the action prior to the date of the application under paragraph (*b*) shall, unless the court in its discretion otherwise orders, bind the person so added in like manner as though he had previously been a party to the action.

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Right of person entitled to notice to be added as a party before sale.

13. Any person entitled to notice of a hypothecary action to whom such notice has not been issued under section 9 and in the manner provided by section 10 shall be entitled, on application made by him to the court at any time before the sale of the mortgaged land in execution of a hypothecary decree, to be added as a party to the action.

Rights of person added during pendency of action.

14. Where any person, to whom notice of a hypothecary action has been issued under subsection (2) of section 9 and in the manner provided by section 10, is added as a party to the action under paragraph (*a*) of section 12, or any person entitled to notice of a hypothecary action is added as a party under section 13—

(*a*) no finding, order, decree or proceeding previously made or taken in the action shall bind him except in so far as he may consent to be bound thereby ;

(*b*) such person shall be entitled to raise any question or issue which he could have raised if he had originally been a party to the action, and any other party may raise any question or issue arising in consequence ;

(*c*) a fresh trial shall be had on every issue previously raised in the action, unless such person consents to be bound by the previous finding thereon ;

(*d*) upon the trial of any issue whether previously raised or not, no part of the evidence previously taken shall be evidence upon that issue, except in so far as all the parties to the action agree to be bound by such evidence ;

(*e*) if a decree had been entered in the action prior to the addition of such person as a party thereto, the court shall, if such person so requires, make order suspending the operation of such decree, and shall, after the trial of all the issues as herein before provided, confirm the judgment previously given and the decree entered thereon or annul such judgment and decree and give a new judgment and enter a new decree, as the circumstances of the case may require.

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Persons noticed or added to be bound by decree and sale.

15. Every party to a hypothecary action, and every person entitled to notice of the action and to whom notice of the action is issued under section 9 and in the manner provided by section 10, and every person who is added as a party under section 12 or section 13, shall be bound by the decree and sale in the hypothecary action.

Intervention by person interested who is not entitled to notice.

16. Every person having any interest in the mortgaged land by virtue of an instrument to which the mortgage in suit has priority, but who is not a person entitled to notice of the action as herein before defined, shall be bound by every order, decree or sale or thing done in the hypothecary action :

Provided, however, that any such person may at any time before the entry of the decree in the action be added as a party on application made by him in that behalf upon such terms as the court may impose, but any person so added shall be bound by every finding or order previously made in the action and by the proceedings previously taken therein except in so far as the court may in its discretion otherwise order.

Meaning of "party omitted".

17. In sections 18 to 23, "party omitted from a hypothecary action" means a person entitled to notice of the hypothecary action but who is not declared by section 15 to be bound by the decree and sale in that action.

Party omitted may intervene after sale and dispute the amount of decree or claim balance proceeds.

18. (1) A party omitted from a hypothecary action may at his option intervene in the action after the sale of the mortgaged land in execution of a hypothecary decree, but before the distribution of the proceeds of the sale, for the purpose of raising an issue as to the sum due under the mortgage in suit in the hypothecary action, and the court shall, if it finds after inquiry and hearing such evidence as may be adduced upon such issue, that the sum actually due is less than the sum stated in the decree to be due under the mortgage, amend the decree in so far as it relates to the sum found to be due under the mortgage.

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(2) The raising of any issue or the amendment of any decree under subsection (1) shall not in any way affect the validity of the sale in execution of the hypothecary decree.

(3) A party omitted from a hypothecary action who intervenes in that action under subsection (1) shall, whether or not he makes a claim under section 57 to participate in the balance proceeds of sale of the mortgaged land, be bound by the sale in that action and by the decree (whether or not it is amended under that subsection) in like manner as though he had been a party to the action.

(4) Where a party omitted from a hypothecary action makes a claim under section 57 to participate in the balance of the proceeds of sale of the mortgaged land, then, notwithstanding that he may not have intervened in the action under subsection (1) of this section, he shall be bound by the decree and sale in the action in like manner as though he had been a party thereto.

Action by or against party omitted for settlement of rights, &c.

19. (1) Where a party omitted from a hypothecary action is not a person who is by subsection (3) or subsection (4) of section 18 declared to be bound by the decree and sale in that action, and a conveyance of the mortgaged land has been executed in favour of the person who had purchased that land at the sale (hereinafter referred to as " the prior sale ") in execution of the hypothecary decree in that action—

(*a*) the party omitted may institute an action, to which the mortgagor and the purchaser at the prior sale shall be added as parties, for the purpose of obtaining a decree declaring him to be entitled to the land or to any interest therein, or where such party omitted is a mortgagee, for the purpose of obtaining a hypothecary decree in respect of the land ;

(*b*) the purchaser of the land at the prior sale may institute an action to which the mortgagor and the party omitted shall be added as parties, for the settlement of the rights and liabilities of the purchaser, the mortgagor and the party omitted.

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(2) In this section and in sections 20 to 23, "purchaser at the prior sale" includes any person deriving title under or from the person who purchased the land at the prior sale.

[§ 4, 53 of 1949.]

(3) The court may, if it thinks fit so to do having regard to the circumstances of any case, permit the party omitted to institute an action under subsection (1), notwithstanding that a conveyance of the mortgaged land may not have been executed in favour of the purchaser of the land.

Issue may be raised as to amount properly due under mortgages paid off out of proceeds of prior sale.

20. In any action instituted under section 19, the party omitted from the hypothecary action may raise any issue as to the moneys due under any mortgage, which had priority over the interest of the party omitted and which was wholly or partly paid off out of the proceeds of the prior sale. Where such issue is raised, the mortgagee under that mortgage shall be added as a party to the action instituted under section 19 and the court shall determine afresh the sum actually due thereunder.

Procedure where court finds that moneys are due to party omitted from mortgagor.

21. (1) Where the court, in any action instituted under section 19, finds that any moneys are due from the mortgagor to the party omitted by virtue of the instrument under which he claims, the court shall enter a decree ordering that the land sold at the prior sale shall be resold, unless the purchaser at the prior sale pays to the party omitted, before a date specified in the decree, the moneys so found to be due to the party omitted from the mortgagor.

(2) Upon the resale of the mortgaged land under the decree entered under subsection (1), the proceeds of resale shall be distributed as follows:—

(i) firstly, the purchaser at the prior sale shall be entitled to payment of the amount at which he purchased the land at the prior sale, or of the total amount of the moneys paid off out of such purchase money to every mortgagee under a mortgage which had priority over the interest of the party omitted, whichever amount is the less:

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Provided, however, that where the court has under section 20 determined the amount of the moneys due under any such mortgage, and the amount so determined is less than the moneys actually paid off thereon in the prior action, the amount so determined shall be taken, for the purposes of the preceding provisions of this paragraph, to be the moneys due under that mortgage ;

(ii) secondly, after payment of any amount to which the purchaser is entitled under paragraph (i), the party omitted shall be entitled to payment of the amount found under subsection (1) to be due to him from the mortgagor ;

(iii) thirdly, the purchaser at the prior sale shall be entitled to any balance remaining after the payments referred to in sub-paragraphs (i) and (ii), have been made.

(3) Where any moneys are paid to the party omitted by the purchaser at the prior sale in compliance with the decree under subsection (1) or any moneys are paid to the party omitted under paragraph (ii) of subsection (2), the following provisions shall apply :—

(*a*) If the mortgage was created before the appointed date, the purchaser of the land at the prior sale shall be entitled, in the action instituted under section 19, to an order directing the mortgagor to pay to such purchaser an amount equal to the amount so paid to the party omitted ;

(*b*) If the mortgage was created after the appointed date, then, if, but only if, any amount had in the prior hypothecary action been paid to the mortgagor out of the proceeds of sale of the mortgaged land at the prior sale, the purchaser at such prior sale shall be entitled, in the action instituted under section 19, to an order directing the mortgagor to pay to such purchaser an amount equal to the moneys actually so paid to the party omitted under this section or

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to the moneys paid to the mortgagor out of the proceeds of the prior sale, whichever amount is the less.

(4) Any order made under subsection (3) may be enforced in the same manner as an order or decree for the payment of money in an ordinary action.

Provisions applicable where party omitted is a transferee.

22. (1) Where the court is satisfied that the instrument, under which the party omitted from the hypothecary action claims an interest in the land, transferred to him the title of the mortgagor to the land, but that such title was subject to the mortgage in suit in the prior hypothecary action, the court shall enter decree declaring the party omitted to be entitled to the land subject to the right of the purchaser at the prior sale to a hypothecary charge to the extent of the amount at which he purchased the land at the prior sale or of the total amount of the moneys paid off out of such purchase money to every mortgagee under a mortgage which had priority over the interest of the party omitted, whichever amount is less, and ordering that in default of the payment of such amount to the purchaser by the party omitted the land shall be sold against the party omitted for the recovery of such amount :

Provided, however, that where the court has under section 20 determined the amount of the moneys due under any such mortgage, and the amount so determined is less than the sum actually paid off thereon out of the proceeds of the prior sale, the amount so determined shall be taken, for the purposes of the preceding provisions of this subsection, to be the moneys due under that mortgage.

(2) In any case to which subsection (1) of this section applies the court shall, if satisfied that any moneys were paid to the mortgagor out of the proceeds of the prior sale, make order directing the mortgagor to pay to the purchaser at the prior sale an amount equal to the moneys so paid to the mortgagor out of those proceeds, and such order may be enforced in the same manner as an order or decree for the payment of money in an ordinary action.

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Order against prior mortgagee if over-payment was made from proceeds of prior sale.

23. (1) In any case where, by reason that the amount of the moneys determined by the court under section 20 to be due on any mortgage is less than the amount of the moneys actually paid off on that mortgage out of the proceeds of the prior sale, there has been an over-payment to the mortgagee under that mortgage (hereinafter referred to in this section as "the prior mortgagee"), the following provisions shall apply:—

(*a*) If no moneys are paid to the party omitted under section 21 (1) in compliance with the decree entered thereunder or under paragraph (ii) of section 21 (2) out of the proceeds of the resale, the party omitted shall be entitled, in the action instituted under section 19, to an order directing the prior mortgagee to pay to him the amount found under section 21 (1) to be due to him from the mortgagor or the amount of such over-payment, whichever amount is less;

(*b*) If any moneys are paid to the party omitted under section 21 (1) in compliance with the decree entered thereunder or under paragraph (ii) of section 21 (2) out of the proceeds of the resale—

(i) the purchaser at the prior sale shall be entitled, in the action instituted under section 19, to an order directing the prior mortgagee to pay to such purchaser the amount of the moneys so paid to the party omitted or the amount of such over-payment, whichever amount is less;

(ii) if the moneys so paid to the party omitted are less than the amount found under section 21 (1) to be due to him from the mortgagor, the party omitted shall be entitled, in the action instituted under section 19, to an order directing the prior mortgagee to pay to him the amount of the deficiency:

Provided, however, that no order shall be made under this sub-paragraph against the prior mortgagee unless, and

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except to the extent to which, the amount of the over-payment exceeds the amount specified in the order made against the prior mortgagee under sub-paragraph (i) of this paragraph;

(c) If the party omitted is a transferee, and the provisions of section 22 are accordingly applicable, the purchaser at the prior sale shall, in the action instituted under section 19, be entitled to an order directing the prior mortgagee to pay to him the amount of such over-payment.

(2) Any order made under subsection (1) may be enforced in the same manner as an order or decree for the payment of money in an ordinary action.

EFFECT OF SALE IN EXECUTION OF DECREE UPON PUISNE MORTGAGE

Meaning of "prior mortgage", "puisne mortgage", &c.

24. In section 25—

"prior mortgage", in relation to any other mortgage of the same land, means a mortgage which has priority over such other mortgage; and "prior mortgagee" has a corresponding meaning;

"puisne mortgage", in relation to any other mortgage of the same land, means a mortgage over which such other mortgage has priority; and "puisne mortgagee" has a corresponding meaning.

Effect of conveyance upon sale under puisne mortgage.

25. Where any mortgaged land is sold in execution of a decree in a hypothecary action upon a puisne mortgage, and the conveyance of the mortgaged land is executed in favour of the purchaser at such sale (hereinafter in this section referred to as "the purchaser under the puisne mortgage"), the following provisions shall apply:—

(*a*) The puisne mortgagee, and every person who being entitled to notice of the action upon the puisne mortgage is by virtue of any of the preceding provisions of this Part bound by the decree and sale in that action, shall not be

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entitled to notice of any hypothecary action instituted subsequent to the date of such conveyance on any prior mortgage of that land, but shall be bound by the decree and sale in the latter action ;

(*b*) The purchaser under the puisne mortgage shall, if the mortgaged land is subsequently sold in execution of the decree in any hypothecary action upon a prior mortgage, be entitled upon making a claim in that behalf under section 57, to the entirety of the balance of the proceeds of the sale of the land remaining after satisfaction of the moneys found to be due in that action to the prior mortgagee and of the claim, if any, of any other person preferred by virtue of any other instrument having priority to the puisne mortgage ;

(*c*) If the purchaser under the puisne mortgage is a person entitled to notice of a subsequent hypothecary action upon a prior mortgage of the land but is a party omitted from the latter action, and if an action is instituted under section 19, then, for the purposes of the application of the provisions of subsection (1) of section 22, no mortgage shall be deemed to have priority over the interest of such party omitted unless it had priority over the puisne mortgage in suit in the action in which the land was sold to such purchaser ;

(*d*) If the conveyance to the purchaser under the puisne mortgage was executed after the date of the registration of the *lis pendens* of a hypothecary action upon a prior mortgage of the land, and if the puisne mortgagee under the mortgage in suit in the action in which such purchaser purchased the mortgaged land is a party omitted from the subsequent hypothecary action, then such purchaser, unless he is added as a party to the latter action under section 16 or makes a claim under section 57 in the latter action, shall be deemed to be a party omitted from the latter action and the provisions of paragraph (c) of this section shall be applicable ;

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(*e*) Except in the cases referred to in paragraphs (*c*) and (*d*) of this section, the purchaser under the puisne mortgage shall, whether or not he is a party to any hypothecary action upon any prior mortgage of the mortgaged land, be bound by the decree and sale in the latter action.

DEATH, INSOLVENCY OR DISABILITY OF MORTGAGOR OR PERSON ENTITLED TO NOTICE

Appointment of representative of deceased mortgagor or of deceased party to hypothecary action.

26. (1) Where any mortgagor dies before the institution of a hypothecary action in respect of the mortgaged land, or any mortgagor or any person who is or becomes a party to a hypothecary action dies after the institution of the action, and grant of probate of the will or issue of letters of administration to the estate of the deceased has not been made, the court in which the action is to be or has been instituted may in its discretion, after the service of notice on such persons, if any, and after such inquiry as the court may consider necessary, make order appointing a person to represent the estate of the deceased for the purpose of the hypothecary action, and such person may be made or added as a party to the action :

Provided, however, that such order may be made only if—

(*a*) the value of the mortgaged property does not exceed two thousand five hundred rupees ; or

(*b*) a period of six months has elapsed after the date of the death of the deceased ; or

(*c*) the court is satisfied that delay in the institution of the action would render the action not maintainable by reason of the provisions of the Prescription Ordinance.

(2) In making any appointment under subsection (1) the court shall appoint as representative a person who after summary inquiry appears to the court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued :

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Provided, however, that in the event of a dispute between persons claiming to be entitled to be so appointed, the court shall make such an appointment (whether of one of those persons or of any other person) as would in the opinion of the court be in the interests of the estate of the deceased.

Effect of representative being made a party.

27. Where any appointment is made under section 26 and the person so appointed is a party to the action, every order, decree and sale or thing done in the hypothecary action (including the seizure and sale in execution of the property of the deceased mortgagor not included in the mortgage in suit) shall have the like effect as though the executor or administrator of the deceased were a party to the action.

Provision for death, insolvency, unsoundness of mind or minority of party entitled to notice and for registration of addresses and issue of notice in such cases.

28. (1) The duly appointed executor of the will or the administrator of the estate of a deceased person, or the duly appointed assignee of the estate of an insolvent, or the duly appointed curator or manager of the estate of a minor or person of unsound mind, may, whether or not such deceased person, insolvent, minor or person of unsound mind has himself registered his address under section 6, register an address under that section on behalf of such estate.

(2) Where the registration of the address of the executor or administrator or of the assignee, curator or manager, as the case may be, is not effected as provided in subsection (1), any other person interested may register an address under section 6 on behalf of the estate of the deceased person or of the insolvent, minor or person of unsound mind. The address so registered shall be cancelled forthwith upon the registration of an address under subsection (1) on behalf of such estate.

(3) Where notice of a hypothecary action is issued under section 9 and in manner provided by section 10—

(*a*) to any executor or administrator or to any assignee, curator or manager who has registered an address as provided in subsection (1) ; or

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(*b*) to any other person who has registered an address as provided in subsection (2) and whose address is for the time being registered, and if the deceased person, insolvent, minor or person of unsound mind had himself registered an address under section 6, to the address registered by him,

notice of the hypothecary action shall be deemed to have been duly issued for the purpose of binding the estate of such deceased person, insolvent, minor or person of unsound mind.

(4) In any case referred to in paragraph (*b*) of subsection (3), any person to whom notice of the hypothecary action is issued or any other person may, within one month of the date of the posting of the notice or of the publication thereof, whichever is the later, or where the notice is served in like manner as a summons, within one month of the date of such service, make application to the court for the appointment of some person to represent the estate of the deceased or of the insolvent, minor or person of unsound mind as the case may be, and the court shall appoint a person accordingly.

In making such appointment the court shall appoint as representative a person who after summary inquiry appears to court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued, or who would ordinarily be appointed to be the curator, assignee or manager of the estate, as the case may be :

Provided, however, that in the event of a dispute between persons claiming to be entitled to be so appointed, the court shall appoint as representative such of those persons or such other person, whose appointment in the opinion of the court will be in the interests of the estate.

Where the court is satisfied that proceedings are pending for the appointment of an executor, administrator, assignee, curator or manager, the court may on that ground postpone the appointment of a representative for any period not exceeding three months.

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Estate to be bound if notices issued as provided in section 28.

29. (1) Where notice of a hypothecary action is issued under section 9 and in manner provided by section 10 to the registered address of a person entitled to notice of the action, then, notwithstanding that such person may be or may have been dead or an insolvent or a minor or person of unsound mind at the time of the issue of the notice, the estate of such person shall be bound by every order, decree or sale or thing done in the hypothecary action whether or not application is made under subsection (4) of section 28 for the appointment of a representative, unless the executor or administrator or assignee, curator or manager or any other person had registered an address on behalf of the estate under subsection (1) or subsection (2) of that section.

(2) In any case where notice of a hypothecary action is in manner provided in section 10 issued to an executor, administrator, curator, assignee or manager who has registered his address as provided in subsection (1) of section 28, then, notwithstanding such death, insolvency, minority or unsoundness of mind, the estate shall be bound by every order, decree or sale or thing done in the hypothecary action, whether or not such executor, administrator, assignee, curator or manager becomes a party to the action.

(3) Where—

(*a*) notice of a hypothecary action is issued under section 9 and in manner provided by section 10 to any person who has registered an address under subsection (2) of section 28 on behalf of the estate of a deceased person or insolvent or person of unsound mind or minor ; and

(*b*) if the deceased person, insolvent, person of unsound mind or minor had himself registered an address, such notice is issued to that address,

then, notwithstanding the death, insolvency, minority, or unsoundness of mind, the estate shall be bound by every order, decree or sale or thing done in the hypothecary action, whether or not a representative is appointed under subsection (4) of section 28 and becomes a party to the action.

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Estate to be bound notwithstanding death, &c., if address not registered.

30. Where any person having any interest in a mortgaged land, to which the mortgage in suit has priority, has not registered an address under section 6, and no other person registers an address on his behalf or on behalf of his estate as provided in subsection (1) or subsection (2) of section 28, then, notwithstanding that the person having such interest may be dead or an insolvent, minor, or person of unsound mind at the time of the institution of the hypothecary action, the estate of such person shall be bound by every order, decree or sale or thing done in the hypothecary action.

Special provision for actions on mortgages created before the appointed date.

31. (1) The provisions of sections 28 to 30 shall not apply in the case of any action instituted for the enforcement of a mortgage created before the appointed date.

(2) Where a hypothecary action is instituted for the enforcement of a mortgage created before the appointed date, and the court is satisfied that any person entitled to notice of the action is or was dead or an insolvent, minor or person of unsound mind before or at the time of the issue to him of notice of the action, the person to whom probate of the will or letters of administration to the estate of the deceased is granted, or, as the case may be, the duly appointed assignee or curator or manager shall be added as a party to the action upon application made to the court in that behalf whether by such person or by any party to the action :

Provided, however, that it shall be lawful for the court in the circumstances and subject to the conditions set out in section 26 to appoint a representative of the deceased for the purpose of the hypothecary action, and in any such case the representative so appointed may be added as a party to the action in lieu of the executor or administrator.

(3) Where the executor or administrator or the duly appointed representative of a deceased person, or, as the case may be, the assignee, curator, or manager of the estate of the insolvent, minor, or person of unsound mind is not added as a party under subsection (2), the executor or administrator or, as the case may be, the assignee, curator or manager shall—

(*a*) be entitled upon making a claim in that behalf under section 57 to participate in the proceeds

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of sale remaining after satisfaction of the amount decreed to be due upon the mortgage in suit in the action ; or

(*b*) if he does not so participate, be deemed to be a party omitted for the purpose of enabling an action to be brought by or against him under section 19 and if such an action is brought the provisions of sections 20 to 23 shall apply accordingly.

Death, insolvency or unsoundness of mind of mortgagor after entry of decree.

32. Where any mortgagor dies or is adjudged an insolvent or a person of unsound mind at any time after the entry of decree in a hypothecary action and before the sale of the mortgaged land under the decree, no proceedings for the execution or enforcement of the decree shall be taken, or if taken shall be of any effect, unless the duly appointed executor of the will or administrator of the estate of the deceased or a representative appointed under section 26, or, as the case may be, the assignee or manager of the estate of the insolvent or person of unsound mind, is made a party to the action.

POWER OF PLAINTIFF TO JOIN CLAIMANTS ADVERSE TO MORTGAGOR OR TO APPLY FOR DECLARATION AS TO POSSESSION OF LAND IN THE EVENT OF SALE

Power of plaintiff to join claimant adverse to mortgagor.

33. (1) The plaintiff in a hypothecary action may at his option join as a party to the action any person alleged by the plaintiff to claim any right to ownership or possession of the mortgaged land by title adverse to that of the mortgagor.

(2) Where any person is so joined as a party to the action, such person or any other party may raise any issue upon any question relating to the right of ownership or possession of the land ; and in any such case the court shall, after hearing such evidence as may be adduced by any party to the action, make an adjudication upon the issue so raised.

(3) Where the adjudication of the court upon any issue raised as herein before provided is to the effect that the mortgagor is not entitled to the land or any

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part or share thereof, no decree shall be entered in the action for the sale of the land or such part or share thereof, as the case may be.

(4) Where any person is joined as a party to the action under subsection (1), every adjudication by the court on any question relating to the title of the land or to the right of possession thereof shall be *res adjudicata* as between all parties to the action including the party so added.

Provision for declaration by court as to removal from land of persons claiming adversely to mortgagor.

34. (1) Upon the institution of a hypothecary action in respect of any land, the plaintiff may at his option, at any time after the registration of the *lis pendens* of the action and before the issue of a precept or order for the service of summons, make application to the court for a declaration that, in the event of decree being entered for the sale of the land the court will order the removal from the land of all persons whomsoever who may resist the delivery of possession to the purchaser at the sale.

No such application shall be entertained by the court unless it is accompanied by a plan of the land.

(2) Upon such application being made, the court shall direct—

(*a*) that notices of the application shall be published in two separate issues of each of two newspapers specified by the court ;

(*b*) that such notices shall be posted by the Fiscal under a precept from court in at least three conspicuous places on the land, and that similar notices shall be posted at the District Court, Magistrate's Court and Rural Court, if any, having jurisdiction in the area in which the land is situated, at the kachcheri of the district in which the land is situated, and at such other places as the court may think fit ;

(*c*) that notice of the action shall be published by beat of tom-tom in the vicinity of the land on two specified dates in the presence of a Fiscal's officer or headman or other officer specified by the court.

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(3) Every notice under subsection (2) shall contain a statement to the effect that a plan of the land has been filed in the court and will be available for inspection by any person interested.

(4) For the purposes of paragraph (*a*) of subsection (2), the court shall direct publication in two newspapers which appear to the court to be the most appropriate for the purpose of conveying information of the action to the residents of the area in which the land is situated.

(5) The notices required to be posted by paragraphs (*b*) and (*c*) of subsection (2) shall be posted either before the date of the last publication of the notice under paragraph (*a*) of subsection (2) or not later than two weeks after that date.

Right of claimant to be added as party and to raise issues as to right of possession, &c.

35. (1) Where notices have been published and posted as provided in section 34, any person claiming to be entitled to possession of the land or of any part or share thereof under any right or title adverse to that of the mortgagor shall be entitled, on application made to the court in that behalf at any time within two months of the date of the last publication of the notice under paragraph (*a*) of section 34 (2), to be added as a party to the action for the purpose of securing an adjudication by the court upon his claim.

(2) Where any person is added as a party under subsection (1), such person or any other party may raise any issue (including an issue on a question of title) relevant to the claim to possession of the land and in any such case the court shall, after hearing such evidence as may be adduced by any party to the action, make an adjudication upon the issue so raised.

Order of court upon application under section 35.

[§ 5, 53 of 1949.]

36. (1) Where no person makes application to be added as a party under section 35, or where the court is satisfied that none of the persons so added is entitled to possession of the land, the court shall make the declaration for which application was made by the plaintiff under subsection (1) of section 35 :

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Provided, however, that where any person appears before the court at any time within the period of two months specified in subsection (1) of section 35, and satisfies the court—

(*a*) that he was placed in charge of the land by a person who is absent from Ceylon ; and

(*b*) that there is no duly appointed attorney in Ceylon of such last-mentioned person,

the court shall not make such declaration.

(2) Where the adjudication of the court upon any issue raised as herein before provided is to the effect that the mortgagor is not entitled to the land or to any part or share thereof, the court shall make order dismissing the hypothecary action in so far as it relates to the land or such part or share.

(3) Where the adjudication of the court upon any such issue is that any party added under section 35 is entitled to possession of the land or any part thereof and that the mortgage in suit in the action is subject to the rights of such person, no declaration shall be made under subsection (1) of this section in respect of the land or that part thereof, as the case may be.

(4) Where any person is added as a party to the action under section 35, every adjudication by the court upon any question relating to the title to the land or to the right to possession thereof shall be *res adjudicata* as between all the parties to the action including the parties so added.

(5) The making of a declaration under this section, or the removal from the land of any person in pursuance of the order made under section 55 in terms of such declaration—

(*a*) shall not affect or prejudice the right of any person (other than (i) a person declared by the preceding sections of this Act to be bound by the decree, or (ii) a person added as a party under this section) to institute proceedings for the recovery of possession of the land from the purchaser or for declaration of title thereto ; and

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(*b*) shall not operate as *res adjudicata* in such proceedings upon any question as to the right to possession or ownership of the land.

APPOINTMENT OF RECEIVER OF MORTGAGED LAND

Application for appointment of receiver of mortgaged land.

37. (1) The plaintiff in a hypothecary action may, at any time after the registration of the *lis pendens* of the action, make application to the court by petition for the appointment of a receiver of the land which is the subject of the action.

Such application shall be supported by affidavit of the plaintiff stating the sum lent to the mortgagor, the sum, if any, repaid out of the loan, the sums due to the mortgagee by way of principal and interest, and the current market value of the mortgaged land.

(2) Subject as hereinafter provided, the application for the appointment of a receiver shall, unless the plaintiff otherwise desires, be dealt with *ex parte* by the court :

Provided, however, that where the application is made at any time after the filing of an answer by the mortgagor, the application shall be dealt with after notice to the mortgagor.

(3) This section and sections 38 to 45 shall not apply to any action upon a mortgage created before the appointed date.

Cases where court may refuse to appoint receiver.

38. (1) The court may refuse to make an order for the appointment of a receiver—

(*a*) if, having regard to the situation, nature and value of the land and the amount which in the circumstances of the case can reasonably be allowed as remuneration to a receiver, the court is of opinion that a suitable person is not available for such appointment ;

(*b*) if it appears to the court that the amount claimed by the plaintiff to be due on the mortgage, less such amount, if any, as may have been brought into court by the mortgagor is not more than one-half of the current market value of the land.

[§ 6, 53 of 1949.]

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(2) Save as provided in subsection (1), the court shall not refuse to make an order for the appointment of a receiver upon application duly made in that behalf.

[§ 6, 53 of 1949.] Notwithstanding anything in subsection (1), the court shall not refuse to make an order for the appointment of a receiver in any case where the court is satisfied that the mortgagor or other person in possession of the mortgaged land has committed any act of waste in respect of the land and that the appointment of a receiver is necessary for the purpose of the prevention of such acts.

Cancellation of appointment.

39. (1) The court may cancel the appointment of a receiver—

(*a*) at the instance of the plaintiff ; or

(*b*) where the appointment had been made without notice to the mortgagor, if it is subsequently shown to the satisfaction of the court that the amount claimed by the plaintiff to be due on the mortgage, less such amount if any as may have been brought into court by the mortgagor, is not more than one-half of the current market value of the land ; or

[§ 7, 53 of 1949.]

(*c*) if the court considers such cancellation expedient owing to any default or negligence on the part of the receiver, or if the court is satisfied that the amount of the remuneration allowed to the receiver is excessive and that he is unwilling to accept as remuneration the amount which the court, after hearing the mortgagor, considers to be reasonable ; or

(*d*) at the instance of the receiver, if he is unwilling to continue in his appointment as such.

(2) Where the appointment of a receiver is cancelled under paragraph (*c*) or paragraph (*d*) of subsection (1), the court may, if the plaintiff so desires, make a new appointment of a receiver.

Order for appointment, &c.

40. (1) Every order for the appointment of a receiver shall—

(*a*) provide for the committal of the land to the custody and management of the receiver ;

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(*b*) fix the amount of the remuneration to be payable to the receiver, whether specifically or by reference to a specified percentage of the amount of the rents and profits derived from the land.

(2) The court may, if it considers it necessary so to do, require the receiver to give such security as the court may consider adequate.

(3) Where the receiver is obstructed by any person in taking custody of the land, the court may, after considering such representations as may be made by such person, by order direct the removal of such person from the land.

Rights and powers of receiver.

41. (1) The person appointed under this Part to be the receiver of any land shall have and may exercise all the rights and powers of the owner of the land for the management, protection, and preservation of the land and the collection of the rents and profits thereof.

(2) The court may on application made by the receiver or any party to the action—

(*a*) give such directions as it may consider necessary relating to the exercise of the rights and powers conferred by subsection (1) ;

(*b*) by order authorize the receiver to institute or defend any action or proceedings in respect of any matter affecting the land or the administration or management thereof.

Duties and liabilities of receiver.

42. Every receiver appointed under the preceding provisions of this Part shall—

(*a*) render accounts to the court in such form and at such times as the court may direct in that behalf ;

(*b*) make payment into court to the credit of the action, from time to time as the court may direct, of the nett rents and profits of the land ;

(*c*) be responsible for any damage to the land, or for any loss of income, incurred by his gross negligence or by any intentional act of omission on his part.

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Payment of subsistence allowance to mortgagor.

43. (1) Where it is shown to the satisfaction of the court—

(*a*) that the income, if any, derived by the mortgagor from sources other than the land is insufficient to enable the mortgagor to meet the expenses necessary for the subsistence of himself and his dependants, and

(*b*) that any balance remains out of the nett rents and profits of the land after payment therefrom of the remuneration of the receiver,

the court may, after considering how far it is necessary to keep in court the amount of the rents and profits or any part thereof for the purpose of securing that the land and the amount so kept will provide adequate security for the payment of the amount claimed by the plaintiff to be due to him, direct the payment to the mortgagor, out of the balance so remaining, of a monthly allowance sufficient to meet such expenses of the mortgagor.

(2) Any directions given under subsection (1) may be varied or revoked by the court on application made by the plaintiff or the mortgagor.

Nett profits to be kept in court.

44. (1) All moneys paid into court by the receiver shall, unless the court otherwise directs, be kept in court to the credit of the action until the final disposal thereof:

Provided that payment may from time to time be made, out of such moneys, of the remuneration due to the receiver, or of such amounts as may be directed under section 43 to be paid to the mortgagor, or of such amounts as may from time to time be ordered by the court to be paid to the receiver for the purposes of the management of the land.

(2) The amount of the moneys in court shall be applied in satisfaction of the sums if any for which decree is entered in the action.

(3) No seizure of such moneys in execution of any order or decree in any other action shall affect the operation of subsection (2) of this section.

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45. No appeal shall lie against the refusal of the court to make any order for the appointment of a receiver or against any order appointing a receiver or against any other order or directions made or given under any of the provisions of sections 37 to 43, other than an order made under subsection (3) of section 40.

Restriction of appeals against orders under sections 37 to 43.

SALE UNDER HYPOTHECARY DECREE

46. No decree in any hypothecary action upon any mortgage of land which is created after the appointed date and no decree in any action for the recovery of any moneys due upon any such mortgage, shall order any property whatsoever, other than the mortgaged land, to be sold for the recovery of any moneys found to be due under the mortgage, and no property whatsoever, other than the mortgaged land, shall be sold or be liable to be sold in execution of any such decree.

Property liable to sale in execution of decree.

In this section "action for the recovery of moneys due upon a mortgage" includes any action for the recovery of any debt secured by a mortgage whether the cause of action sued upon arises by reason of the mortgage or otherwise.

47. The provisions of section 46 shall have effect notwithstanding anything in any other law or in any mortgage bond or other instrument.

Operation of section 46.

48. (1) Where in a hypothecary action the court finds that the mortgage ought to be enforced, the decree shall, in relation to the mortgaged land, order that the land shall be sold in default of payment, within a period of two months from the date of the decree, of the moneys due under the mortgage :

Order for sale in decree, &c.

Provided, however, that the court may, in its discretion and subject to such conditions including the making of specified payments on specified dates as it thinks fit, on application made in that behalf before the entry of the decree and after consideration of the circumstances of both the mortgagor and mortgagee, fix, in lieu of the aforesaid period of two months, such longer period as the court may consider reasonable.

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(2) In issuing the commission for the sale of the mortgaged land the court shall specify the amount due under the decree at the time of the issue of the commission and the amount so specified shall be mentioned in the advertisement of the sale.

Where the sale is stayed or adjourned and a subsequent advertisement is necessary, the court shall on application made by the plaintiff and upon his certifying that any part payment has been made of the amount due under the decree, give notice to the Fiscal or auctioneer of the amount due under the decree at the time of such application, and in such event the amount so notified shall be mentioned in the subsequent advertisement.

Special provision for seizure and sale.

49. Subject as hereinafter provided, where the plaintiff desires that the land shall be seized prior to the sale, the court may order that the land shall be seized by the Fiscal under section 237 of the Civil Procedure Code and where the land is so seized the provisions of the Civil Procedure Code relating to the seizure, sale, confirmation of the sale, and conveyance and delivery of immovable property sold in execution of a decree for the payment of money shall apply accordingly and the provisions of sections 53 to 56 of this Act shall not apply :

Provided that no such order shall be made in any case where a declaration has been made under section 36.

Directions and other provisions as to sale.

50. (1) Where no order is made under section 49 for the seizure of the land, the court may in the decree or subsequently give directions—

(*a*) specifying the person by whom the land shall be sold ;

(*b*) specifying the manner and time of the advertisement of the sale and the person by whom the conveyance to the purchaser is to be executed ;

(*c*) prescribing the conditions of the sale ;

(*d*) in relation to such other matters for which the court considers directions to be necessary.

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(2) Where the plaintiff so desires the court may direct the land to be sold by the Fiscal, and in any such case the sale may be conducted on behalf of the Fiscal by the Deputy Fiscal or by any other person authorized in writing by the Fiscal.

(3) Any directions given under the preceding provisions of this section may be altered by subsequent directions of the court.

(4) Where no order is made under section 49 for the seizure of the land, the following provisions shall apply in relation to the sale :—

(*a*) The person conducting the sale shall put up the land for sale first at the current market value of the land as appraised by him, or if the appraised value is fixed by the court under section 51 (3) at such appraised value, and if there be no bidders then at the amount mentioned as required by section 48 in the advertisement as the amount due under the decree and in the event of there being no bidders at such sale also, then immediately thereafter the land shall be put up for sale to the highest bidder :

Provided that where an order has been made under section 52 (1), the land shall not be sold at the first sale if the highest bid is less than the appraised value as fixed under section 51 (3);

(*b*) If the judgment debtor or any other person on his behalf, at any time before the hour fixed for the sale, pays to the officer conducting the sale the full amount mentioned as required by section 48 in the advertisement as the amount due under the decree and also the charges incurred for advertisement and incidental to the sale of the land, the sale shall be stayed ;

(*c*) In every case where a sale has taken place the person conducting the sale shall (i) not later than forty-eight hours after the time of the sale, deposit at the nearest kachcheri to the credit of the action the amount realized at the sale and forward the kachcheri receipt to the

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court by which the order to sell was issued, and (ii) in making the report required by section 282 of the Civil Procedure Code, specify the manner in which the sale has been held, the name of each bidder and each bid made by such bidder ;

(*d*) Every person making a bid at the sale shall be bound by the conditions of sale prescribed by the court under the preceding provisions of this section whether or not he signs an agreement to be bound thereby ;

(*e*) If the court finds that any sum is due in respect of the sale by reason of the operation of the conditions of sale from any person bound by such conditions, the court may make order directing the payment of such sum by such person to the credit of the action, and such order may be enforced in the same manner as an order or decree entered by the court in an ordinary action.

Leave to plaintiff to bid and purchase.

51. (1) The plaintiff in a hypothecary action shall not be entitled to bid for or purchase any mortgaged land sold in execution of the decree unless leave to bid and purchase is granted to him by the court.

(2) Every application by the plaintiff for leave to bid for and purchase any mortgaged land shall be accompanied by an appraisement from the person directed to conduct the sale setting out the current market value of the land.,

A copy of such appraisement shall be sent by the secretary by registered post to the proctor for the mortgagor or where no proxy has been filed shall be served on the mortgagor in like manner as a summons and copies shall be sent by registered post to every other party to the action who has registered an address under section 6 ; the mortgagor or any such party may within a period of fourteen days from the date of the service or posting of the copy make objection to the valuation set out therein.

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(3) The court shall, after consideration of such objections, if any, as may be made under subsection (2), by order fix the amount which shall be taken, for the purposes of the succeeding provisions of this section, to be the appraised value of the land.

(4) Leave to the plaintiff to bid for and purchase any mortgaged land shall in every case be subject to the condition that the plaintiff shall not bid for or purchase the land except at or above the amount of the appraised value of the land as fixed under subsection (3) or the amount required by section 48 to be mentioned in the advertisement as the amount due under the decree, whichever such amount is the less.

(5) Where two or more lands are subject to the mortgage and one advertisement only is published in respect of the sale of such lands, it shall be the duty of the Fiscal or auctioneer to specify in the advertisement the order in which such lands will be sold, whether or not directions prescribing the order of sale are given under section 52.

(6) Where application is made under subsection (2) after the publication of the advertisement of the sale, and it is necessary in consequence of such application to alter the date of the sale and publish a fresh advertisement of the sale, the court may order that the costs of the postponement and of the fresh advertisement shall be borne by the plaintiff.

(7) No appeal shall lie against any order made under this section.

Directions for second sale if highest bid is less than current market value.

52. (1) The court may in any hypothecary action on application made by the mortgagor and upon such terms as the court may think fit, direct that if the highest bid at the sale of any mortgaged land is less than the amount of the appraised value of the land as fixed under section 51 (3), the land shall not be sold at that sale, and that a second sale of the land shall be held.

Order of sale where more than one land is mortgaged.

(2) Where more than one land is subject to the mortgage in suit in the action, the court may upon application made by the mortgagor in that behalf, prescribe the order in which the lands shall be sold and may fix different dates for the sales of different lands.

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Form of conveyance to purchaser.

53. The conveyance to the purchaser of any mortgaged land sold in execution of a hypothecary decree shall, except in a case to which section 49 applies, be in the form in the First Schedule to this Act :

Provided, however, that such form may in any case be varied or modified by the court in such manner as the court may consider necessary in the circumstances of the case.

Delivery of possession, &c.

54. In any case, other than a case in which a declaration has been made under section 36 or in which an order is made under section 49, the court shall on application made by the purchaser make an order for the delivery of possession to the purchaser or any other person on his behalf, and an order so made shall have the like effect and be enforced in the same manner as an order made under section 287 of the Civil Procedure Code in the case of a sale by the Fiscal under that Code.

Removal of all persons whomsoever where declaration has been made under section 36.

55. (1) In any case where a declaration has been made under section 36, the court shall on application made by the purchaser order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the land, and if need be, by removing therefrom all persons whomsoever who may refuse to vacate the same.

(2) Where an order is made under subsection (1), and the Fiscal reports to the court that he was unable to put the purchaser or any other person on his behalf in possession of the land, the court shall direct the Fiscal to post in conspicuous places on the land a notice in the form set out in the First Schedule to this Act and to report to the court within seven days of the posting of such notice—

(*a*) whether or not the purchaser or such other person was put in possession of the land ; and

(*b*) whether he was obstructed in attempting to put the purchaser or such person in possession,

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and if so, the manner of such obstruction and the person or persons by whom such obstruction was caused.

(3) Where the court is satisfied upon the report of the Fiscal that any person whosoever refused to yield up possession at any time after the date of the posting of the notice referred to in subsection (2) or obstructed or resisted the Fiscal at any time after that date, the court may commit the person so refusing to yield up possession or causing such obstruction or resistance to jail for a term which may extend to thirty days, and direct the purchaser to be put into possession of the land.

(4) Where possession of the land is delivered to the purchaser and he is at any time within two months thereafter hindered or obstructed by any person in maintaining effective possession of the land, the court may commit the person causing such hindrance or obstruction to jail for a term which may extend to thirty days :

Provided, however, that nothing in the preceding provisions of this subsection shall affect or prejudice the right of the purchaser upon any such hindrance or obstruction being caused (whether within or after the period of two months aforesaid) to any remedy which may be claimed in that behalf under any written or other law.

(5) Nothing in sections 323 to 330 of the Civil Procedure Code shall apply in any case where an order for the delivery of possession to the purchaser or any other person on his behalf is made under this section.

Fiscal to prepare plan of the land of which possession is delivered.

56. Where delivery of possession of a mortgaged land has been made to the purchaser under section 54 or section 55, the Fiscal shall upon a request made in that behalf by the purchaser and the payment by the purchaser of the necessary expenses, cause a plan to be prepared of the land of which possession was delivered. The plan so prepared shall after being endorsed by the Fiscal with a certificate to the effect that it is a plan of the land of which possession was delivered be furnished to the purchaser.

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Claims to balance proceeds of sale.

57. Where any land is sold in execution of a hypothecary decree in respect thereof, any person who claims any interest in the balance of the proceeds of sale remaining after satisfaction of the moneys due under the mortgage in suit in the action shall (whether or not he is a party to the action or a person entitled to a notice thereof) be entitled to establish such claim, and where such claim is established to participate in such balance proceeds.

Rights of seizing creditor to participate in balance proceeds of sale.

58. (1) Where any land is sold in execution of a hypothecary decree in respect thereof—

(*a*) any judgment-creditor claiming under a notice of seizure of the land which had been duly registered under the Registration of Documents Ordinance before the registration of the *lis pendens* of the hypothecary action shall, whether or not he has registered an address under section 6 of this Act, be entitled to make a claim under section 57 and to participate in the proceeds of sale remaining after satisfaction of the moneys due on the mortgage in suit in the hypothecary action ;

(*b*) no person claiming under any seizure of the land effected or registered after the date of the registration of the *lis pendens* of the hypothecary action shall, by reason of such seizure, be entitled to participate in such balance proceeds, but nothing in this paragraph shall prejudice the right of such person after the sale of the land to seize the right, title and interest of the mortgagor in such balance proceeds.

(2) The rights of any person claiming under a notice of seizure to participate in the balance proceeds as provided in paragraph (*a*) of subsection (1), shall, as between himself and any other person claiming whether under a notice of seizure or any other instrument, have priority according to the time of registration :

Provided, however, that where two or more notices of seizure of any land are registered by different

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persons and no other person has any interest in the land by virtue of any other instrument registered between the dates of the registration of such notices of seizure, such different persons shall be entitled to claim a rateable distribution of the balance proceeds of sale remaining available for distribution.

MISCELLANEOUS

Decree absolute in default of appearance.

59. Where a hypothecary action is heard *ex parte* under section 85 of the Civil Procedure Code, the decree shall be a decree absolute and not a decree *nisi*.

Costs.

60. (1) A mortgagee's costs recoverable in a hypothecary action include all costs, charges and expenses properly incurred by him in relation to the action whether before or after the institution of the hypothecary action notwithstanding that they may have been incurred after the entry of decree in the action.

(2) In any case where notice of a hypothecary action is not issued under subsection (1) of section 9 to a person entitled to such notice and such person is thereafter added as a party whether in pursuance of a notice under subsection (2) of that section or under section 13 or such person intervenes in the action under section 18, the court shall have the power to make such orders as to costs, whether as against the plaintiff or otherwise, and to revise any orders previously made in the proceedings, as the court may think fit in the circumstances of the case.

Application of Chapter XXII of the Civil Procedure Code.

61. (1) Where the mortgaged land is directed to be sold by any person other than the Fiscal, or where the mortgaged land is directed to be sold by the Fiscal without being previously seized as provided in section 49—

(*a*) sections 271, 273, 282, 283, 289 and 291 to 295 of the Civil Procedure Code shall be applicable ;

(*b*) sections 296 and 297 of that Code shall be applicable if the property is sold by the Fiscal ;

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(*c*) sections 338 to 340, 342, 344, 345, 346, 349 and 350 of that Code shall be applicable ;

(*d*) section 343 of that Code shall be applicable, subject to the modification that the court shall not under that section stay execution proceedings for the purpose only of allowing time for payment by the judgment-debtor, unless he satisfies the court that there is reason to believe that the amount of the decree may be raised by mortgage, lease or private sale of the mortgaged land or of any other immovable property of the debtor, and to the further modification that the time allowed for the purpose aforesaid shall not be longer than six months ;

[§ 8, 53 of 1949.]

(*e*) sections 288 and 323 to 330 of that Code shall be applicable in every case where an order is made under section 54 of this Act for the delivery of possession of the mortgaged land to the purchaser at the sale ;

(*f*) save as herein before provided, nothing in Chapter XXII of the Civil Procedure Code shall be applicable.

(2) For the purpose of the application of the provisions of the Civil Procedure Code where the land is sold by a person other than the Fiscal, any reference in those provisions to the Fiscal shall be deemed to be a reference to the person conducting the sale.

(3) Nothing in sections 298 to 319 of the Civil Procedure Code shall apply in any hypothecary action or any action to enforce payment of the moneys due upon a mortgage of land.

(4) Where the mortgaged land is sold by the Fiscal after being seized as provided in section 49, and an order for the delivery of possession is made under section 287 of the Civil Procedure Code, the provisions of sections 323 to 330 of that Code shall be applicable.

Application of this Part.

62. Save as otherwise herein before provided, the provisions of this Part shall apply to mortgages created before the appointed date :

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Provided that nothing in those provisions shall apply to any action instituted before the appointed date, and the provisions of the Mortgage Ordinance shall, notwithstanding the repeal thereof, continue to apply in relation to any action instituted before that date.

PART III

Conventional General Mortgage—Floating And Concurrent Mortgage—Power Of Attorney To Confess Judgment

General mortgages abolished.

63. No conventional general mortgage, executed after the 14th day of January, 1871, shall be valid and effectual, so as thereby to give the mortgagee any lien, charge, claim, or priority over or in respect of any property movable or immovable.

Effect of mortgages to secure future liability, &c.

64. (1) In any of the following cases, that is to say :

(*a*) where a mortgage is given to secure future advances (whether with or without any previous advances or other liability) ;

(*b*) where a mortgage is given to secure the floating balance from time to time due upon any account ;

(*c*) where a mortgage is given to secure any contingent liability,

such mortgage shall, subject to the provisions of sub-sections (2) and (3), be effective to the full extent of the charge intended to be created thereby as against any person claiming under any subsequent mortgage or transfer, notwithstanding that no money may have been actually due at the date of such subsequent mortgage or transfer in respect of the liability intended to be secured, and irrespective of the actual amount so due on such date.

C 32——J. N. R 7589 (4/60)

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(2) Where any property which is subject to a mortgage given for any purposes mentioned in paragraph (*a*) or paragraph (*b*) or paragraph (*c*) of subsection (1) is seized in execution of a decree in favour of any person other than the mortgagee, the seizing creditor may make application to the court by which the decree was entered for the issue of a notice of such seizure on the mortgagee ; and where such notice is issued, then, notwithstanding anything in subsection (1), the mortgage shall as against a person purchasing such property at a sale under the seizure or any other person claiming under him, be effective only to the extent of the moneys actually due under the mortgage at the date of the receipt by the mortgagee of the notice issued by the court under the preceding provisions of this subsection.

(3) The preceding provisions of this section shall apply to the mortgage of any property movable or immovable :

Provided, however, that where a mortgage of movable property is given for any purpose referred to in paragraph (*a*) or paragraph (*b*) or paragraph (*c*) of subsection (1), the preceding provisions of this section shall affect only the extent to which the property is subject to the mortgage, and the movable property shall not, by reason of the operation of those provisions, be deemed or construed to continue to be subject to the mortgage to any extent whatsoever as against any person claiming under a subsequent mortgage or transfer, unless—

(*a*) such property continues, by virtue of any law other than this Act, to be subject to the mortgage to the extent of the moneys actually due thereunder at the date of the subsequent transfer or mortgage ; or

(*b*) where no moneys are actually due at that date, unless such property would by virtue of such other law have continued to be subject to the mortgage if moneys had been actually due thereunder at that date.

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(4) Nothing in subsection (2) shall apply in the case of any mortgage given for the purpose of guaranteeing the fidelity of a person employed as the servant or agent of another person or of securing the due custody and payment of moneys which may come into the hands of any person in his capacity as such servant or agent. [§ 9, 53 of 1949.]

(5) In this section " transfer " includes any instrument creating any interest in the mortgaged property.

Action by concurrent mortgagee.

65. (1) Where a mortgage bond is executed in favour of two or more persons (each of whom is hereinafter referred to as a " mortgagee ") in consideration of sums due or to be due to each of such persons by the mortgagor,

(*a*) any such mortgagee to whom any moneys secured by the mortgage are due and payable, may institute a hypothecary action for the enforcement of the mortgage, and in such action join as a defendant every such mortgagee who is not a plaintiff in the action ;

(*b*) any such mortgagee, whether or not he is a plaintiff in the action, shall be entitled to prove before decree the amount of the moneys due to him under the mortgage, and the decree shall order payment of separate amounts to each mortgagee who has so proved the amount due to him ;

(*c*) the mortgaged property shall be liable to be sold under the decree on application made by any of the mortgagees to whom payment is ordered by the decree notwithstanding that the amounts due to all the mortgagees have not been proved before decree, and the sale of the mortgaged property in execution of the hypothecary decree shall extinguish the rights in relation to the property of every such mortgagee, whether he is joined as a plaintiff or as a defendant ;

(*d*) the court shall make such orders in relation to the distribution of the proceeds of the sale or the retention thereof in court, as may be necessary having regard to the rights of the parties

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to payment out of such proceeds or to any other interests of the parties in such proceeds ; and any mortgagee who has not proved his claim before decree may prove such claim after decree :

Provided, however, that if payment out of the proceeds of the sale is not made to any such mortgagee by reason that a claim of any other such mortgagee in such proceeds has not been proved, and if such other claim remains unproved for a period of six months after the sale, the court shall order payment to be made out of such proceeds to such mortgagees whose claims have been proved whether before or after decree.

(2) In any action upon any mortgage bond referred to in subsection (1) no leave to bid for and purchase any mortgaged land shall be granted to any mortgagee under section 51 except upon the condition that he shall not bid for or purchase the land except at or above the total amount due under the decree to all the mortgagees to whom payment is ordered to be made thereby, or the appraised value of the land as fixed under subsection (3) of that section, whichever is less.

(3) Where in any action upon any mortgage bond referred to in subsection (1), the court has made an adjudication as to the amount due under the mortgage to every mortgagee, then any such mortgagee shall, at the sale of the mortgaged land—

(*a*) if the full amount ordered in the decree to be paid to all the mortgagees is greater than the appraised value of the land, be given credit in an amount which bears to the appraised value the same proportion as the amount ordered in the decree to be paid to him bears to the full amount so ordered to be paid to all the mortgagees ; or

(*b*) if the appraised value is the same as or greater than the full amount so ordered to be paid, be given credit up to the amount ordered in the decree to be paid to him.

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(4) Where in any action upon a mortgage bond referred to in subsection (1) the court has made an adjudication as to the amount due under the mortgage to one or some only, but not all, of the mortgagees, no mortgagee shall at the sale of the mortgaged land be given any credit notwithstanding that any amount may be ordered in the decree to be paid to him.

(5) The preceding provisions of this section shall apply in the case of every bond referred to in subsection (1) notwithstanding anything in the bond contained :

Provided that those provisions shall not apply where the bond contains provision expressly referring to this section and excluding its operation.

Warrant of attorney to confess judgment in mortgage action.

66. (1) In the case of any mortgage created after the appointed date, no warrant or power of attorney shall be given to any person to confess judgment in any action for the enforcement of the mortgage, and no warrant or power so given shall be of any force or effect in law :

Provided that nothing in the preceding provisions of this section shall apply in any case where a general power of attorney referred to in section 25 of the Civil Procedure Code has been granted by any mortgagor.

(2) Where a warrant or power of attorney to confess judgment in any action for the enforcement of a mortgage has, at any time before the appointed date, been given to a proctor, no judgment or decree in such action, whether entered before or after such date, and no sale in execution of such decree, shall be or be held to be invalid on the ground that—

(*a*) the warrant or power, being executed in the form No. 12 in the First Schedule to the Civil Procedure Code, did not authorize the proctor to consent to the entry of judgment or decree for the sale of any property of the mortgagor ; or

(*b*) the warrant or power was not executed in the aforesaid form No. 12 in that it contained provision authorizing or purporting to authorize the

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proctor to consent to the entry of judgment or decree for the sale of any property of the mortgagor ; or

(*c*) the warrant or power authorized the proctor to consent to the entry of judgment or decree for a specified sum and not for the sum due and payable under the mortgage.

Production to court of title deeds of mortgaged land.

67. Where the mortgagee of any land is in possession of the title deeds relating to the mortgaged land, the court having jurisdiction to entertain an action upon the mortgage may, whether or not such action is instituted, if it is satisfied on application made by the mortgagor by petition and affidavit that the mortgagor is likely to be able to effect a sale, mortgage or lease of the land to any other person, make order directing the mortgagee to produce such title deeds and to keep them in the custody of the court during such period as may be specified in the order, for the purpose of enabling them to be inspected and examined by such person.

No security for costs in actions on mortgage.

68. Nothing in Chapter XXVIII of the Civil Procedure Code shall apply in any hypothecary action or in any action to enforce payment of the moneys due upon any mortgage.

PART IV

Special Mortgage Of Land Accompanied By Deposit Of Title Deeds

Creation of mortgage by deposit of deeds and prescribed instrument.

69. The owner of any land may create a mortgage of such land in favour of any approved credit agency by—

(*a*) the execution of an instrument in the form set out in the Second Schedule to this Act ; and

(*b*) the deposit with such agency of the title deeds of such land.

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Execution and attestation of instrument.

70. (1) The instrument referred to in section 69 may be signed in the presence of, and the execution of such instrument may be attested by, the manager or secretary or any director or other person holding any prescribed office in the agency and at least one other witness ; and where such instrument is so signed and attested, nothing in section 2 of the Prevention of Frauds Ordinance shall apply thereto.

[§ 10, 53 of 1949.]

(2) Every instrument referred to in section 69 shall be executed in duplicate.

[§ 10, 53 of 1949.]

(3) Every approved credit agency—

(*a*) shall cause to be numbered with consecutive integral numbers the instruments executed in its favour under section 69 according to the order in which they are executed ;

(*b*) shall, before the fifteenth day of each month, deliver or transmit to the Registrar of Lands of the district in which it carries on business the duplicates of all such instruments executed in its favour during the preceding month together with a list of the instruments ;

(*c*) shall deliver or transmit to the Registrar of Lands of the district in which it carries on business, so as to reach the Registrar on or before Wednesday in each week, a list of such instruments executed in its favour during the week ending the previous Saturday ;

(*d*) if any such instrument affects a land situated in any district other than that in which the agency carries on business, shall, on or before the fifteenth day of the month following that in which the same was executed, besides transmitting the duplicates in manner aforesaid, deliver or transmit a copy of the instrument to the Registrar of the district in which such land is situated, together with a list of all such instruments as relate to lands in such last-mentioned district ; and

(*e*) if any such instrument is executed by an attorney, shall forward a copy of the power of attorney to the Registrar of Lands, together with the duplicate of the instrument.

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[§ 10, 53 of 1949.] (4) An instrument referred to in section 69 may be registered under the Registration of Documents Ordinance as an instrument affecting land.

[§ 10, 53 of 1949.] (5) The provisions of subsection (2) * of section 24 of the Registration of Documents Ordinance shall apply in relation to any instrument referred to in section 69 in any case where movable property is also affected thereby.

Special provisions as to payment of stamp duty.

71. (1) In the case of an instrument referred to in section 69, an amount equal to one-fifth of the duty chargeable under Schedule A to the Stamp Ordinance in the case of a bond or mortgage of a like nature (which duty so chargeable is hereinafter referred to as the "statutory stamp duty") may be paid at the time of execution, and where such amount is paid, the instrument shall be deemed to be duly stamped for the purposes of that Ordinance if proceedings for the recovery of the moneys secured by the instrument are instituted, or the instrument is discharged, during the period of six months commencing on the date of the execution thereof.

(2) In any case where one-fifth of the statutory stamp duty is paid at the time of the execution of any instrument referred to in section 69, the following provisions shall have effect :—

(*a*) A further amount equal to one-fifth of the statutory stamp duty may be paid to the Commissioner of Stamps before the expiry of the period of six months referred to in subsection (1) or within fourteen days thereafter, and upon such payment being certified by the Commissioner of Stamps as hereinafter provided, the instrument shall be deemed to be duly stamped for the purposes of the Stamp Ordinance if proceedings for the recovery of the moneys secured by the instrument are instituted, or the instrument is discharged, during the period of six months immediately succeeding the period referred to in subsection (1) ;

(*b*) A further amount equal to two-fifths of the statutory stamp duty may be paid before the expiry of the succeeding period of six months

* Repealed by section 7 of Ordinance No. 13 of 1947.

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referred to in paragraph (*a*) of this subsection or within fourteen days thereafter, and upon such payment being certified by the Commissioner of Stamps as hereinafter provided, the instrument shall be deemed to be duly stamped for the purposes of the Stamp Ordinance if proceedings for the recovery of the moneys secured by the instrument are instituted or the instrument is discharged, during the period of one year immediately succeeding the said period of six months ;

(*c*) Where proceedings for the recovery of the moneys secured by the instrument are not instituted, or the instrument is not discharged before the expiry of a period of two years from the date of the execution thereof, the instrument shall be deemed for the purposes of the Stamp Ordinance to be an instrument which is not duly stamped unless a further amount equal to one-fifth of the statutory stamp duty is paid before the expiry of the aforesaid period of two years or within fourteen days thereafter, and such payment is certified by the Commissioner of Stamps as hereinafter provided ; and where such payment is so made and certified the instrument shall for all purposes be deemed to be duly stamped in like manner as though the statutory stamp duty had been paid at the time of the execution of the instrument ;

(*d*) Where, by reason of the fact that payments of duty have not been made as provided in the preceding paragraphs, the instrument is deemed for the purposes of the Stamp Ordinance to be not duly stamped, then, for the purposes of the application of the proviso to section 41 of that Ordinance, the amount of the duty chargeable on such instrument under that Ordinance shall be deemed to be an amount equal to six-fifths of the statutory stamp duty and the amount of the deficiency to be recovered under that proviso shall be determined accordingly.

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(3) Where the Commissioner of Stamps, or any other officer of his department duly authorized by him in that behalf, is satisfied, upon presentation to him of an instrument, that a payment has been duly made in accordance with any provision of paragraphs (*a*) to (*c*) of subsection (2), the Commissioner or such officer shall by means of an endorsement under his hand on such instrument certify that such payment has been duly made.

No payment shall be certified by the Commissioner or any officer under the preceding provisions of this subsection unless the instrument is presented to him within fourteen days of the date of such payment :

Provided, however, that the Commissioner or such officer may in his discretion certify such payment notwithstanding any delay in the presentation of the instrument, if he is satisfied that the delay was due to inadvertence.

(4) All payments of stamp duty under subsection (2) of this section shall be made by sending to the Commissioner the amount of the further duty from time to time to be paid under that subsection.

Right of mortgagee to make and recover payments of stamp duty.

72. (1) The payments for which provision is made by section 71 may be made by the approved credit agency without prior reference to the person executing the instrument.

(2) The amount of every payment made as provided by section 71 may be added to the amount the payment of which is secured by the instrument, and if so added, shall be recoverable accordingly.

PART V

Mortgage Of Movables : Special Provisions Applicable Where Mortgagee Is An Approved Credit Agency

Right of approved agency to realize shares mortgaged in specified circumstances.

73. (1) Where the holder of any shares—

(*a*) creates a mortgage of such shares in favour of an approved credit agency by means of an instrument in the form set out in the Third Schedule to this Act, and

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(*b*) deposits with such agency the certificate or certificates issued to him in respect of such shares, and

(*c*) executes and delivers to such agency an instrument of transfer of such shares in favour of such agency or of any nominee of such agency, or an instrument of transfer in which the name of the transferee is not entered at the time of the execution (hereinafter referred to as a "transfer in blank"),

the provisions hereinafter set out shall apply, that is to say—

(i) if the shares are mortgaged as security for the payment of any moneys stated to be payable on demand, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency of a notice of demand in accordance with the provisions of section 74, or

(ii) if the shares are mortgaged as security for the payment of any moneys stated to be payable on a specified or ascertainable date, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency, after that date, of a notice of demand in accordance with the provisions of section 74,

it shall be lawful for the agency to sell, or as the case may be to cause the nominee to sell, the shares, at their current market value, and where a transfer in blank had been executed, to complete the sale by the insertion in the transfer in blank of the name of the purchaser as the transferee of the shares.

(2) The right of the agency to sell any shares under subsection (1) shall include the right to purchase the shares at the current market value, or where the transfer had been executed in favour of the agency to retain the shares, credit being in either event given

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to the mortgagor to the extent of the current market value.

(3) The rights of the agency under the preceding provisions of this section may be exercised in respect of all the shares which are for the time being subject to the mortgage under the instrument referred to in subsection (1) (*a*) or separately in respect of any shares so subject.

Address of mortgagor and issue of notice of demand.

74. (1) Every instrument of mortgage referred to in paragraph (*a*) of section 73 (1) shall contain the address to which notice of demand of payment may be sent to the mortgagor by the agency:

Provided, however, that upon any change of address the mortgagor may notify the new address to the agency and such new address, if acknowledged in writing by the agency, shall, for the purposes of section 73, be the address to which a notice of demand of payment may be sent.

(2) Every such notice of demand shall be sent by registered post in a letter to the address of the mortgagor as stated in the instrument referred to in paragraph (*a*) of section 73 (1) or to such new address as may for the time being have been notified and acknowledged as provided in subsection (1) of this section.

Effect of exercise of right of sale, &c.

75. (1) Upon the exercise under section 73 of the right of sale or purchase of any shares and the completion of a transfer in blank by the insertion of the name of the purchaser as transferee of the shares, the transfer as so completed shall have the like effect as though it had been executed by the mortgagor at the time of completion.

(2) Where a transfer (other than in blank) of any shares has been executed by the mortgagor as provided in section 73 in favour of an approved credit agency or a nominee of such agency, the fact that the transfer had been executed by way of mortgage shall not affect the right of the agency or the nominee, during the pendency of the mortgage, to apply to be registered as holder of the shares and to be so registered.

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Proceeds of sale or purchase to be applied in satisfaction of debt.

76. Upon the sale or purchase of any shares in exercise of the right conferred by section 73—

(*a*) the moneys realized upon such sale or credited as provided in section 73 (2) shall be applied by the agency in satisfaction of the debt due and payable under the mortgage, and the mortgagor shall be entitled to receive the balance, if any, remaining after such debt is satisfied ;

(*b*) if the moneys realized or credited upon the sale or purchase of all the shares mortgaged by the instrument are insufficient to satisfy such debt, the deficiency may be recovered from the mortgagor in the ordinary course of law.

Rights of mortgagor on discharge of mortgage.

77. Where a mortgage of shares has been created as provided in section 73, and the mortgage is discharged by payment of the moneys due and payable thereunder, or by reason that the moneys realized upon a sale or purchase of some only of the shares so mortgaged are sufficient to satisfy the debt, or otherwise—

(*a*) the mortgagor shall be entitled, in the case of a transfer in blank, to receive from the agency the certificate or certificates in respect of such shares or of the shares remaining unsold, as the case may be, together with the transfer in blank in respect thereof ;

(*b*) the mortgagor shall be entitled in the case of a transfer otherwise than in blank, to receive from the agency or its nominee at the instance of the agency, a duly executed instrument of retransfer of the share or of the shares remaining unsold, as the case may be.

Right to damages, &c., for wrongful sale.

78. (1) Where any shares mortgaged as provided in section 73 are sold or caused to be sold, or are purchased by the agency, otherwise than in the due exercise of the right conferred in that behalf by that section, the mortgagor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by reason of such sale or purchase :

Provided, however, that no such action for any loss or damage shall be maintainable by the mortgagor on the ground that notice of demand under section 74 was not received by him, if it is proved that such

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notice was sent by registered post in a letter addressed to the mortgagor at the proper address referred to in the aforesaid section 74, and that the right of sale or purchase was exercised after one month from the date of such posting.

Savings for application of company law, &c., as to transfers and registration.

79. The operation of any other written law or of any regulations or provisions which apply to the transfer of shares, or to the registration of the transferee of any shares as the holder thereof, or which confer any right to decline to effect such registration shall not in any way be affected or modified by reason that a transfer of any such shares is effected in the exercise of the right conferred by section 73.

Meaning of "shares".

80. For the purpose of sections 73 to 79—

"shares" means any shares, debentures, stock or other securities in the funds of the Government of any part of Her Majesty's Realms and Territories or in the capital of any company incorporated or registered in any part of those Realms and Territories ;

"certificate" means any share certificate or any other document certifying that a person is the holder of any shares as herein before defined.

Rights of approved agency to surrender mortgaged life policy in specified circumstances.

81. Where the holder of a policy of life insurance—

(*a*) creates a mortgage of the policy in favour of an approved credit agency by means of an instrument in the form set out in the Third Schedule to this Act, and

(*b*) assigns the policy to the agency by way of mortgage and deposits it with such agency,

the following provisions shall have effect, that is to say—

(i) if the policy is mortgaged as security for the payment of any moneys stated to be payable on demand, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within six months of the issue of notice of demand of payment in accordance with the provisions of section 82, or

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(ii) if the policy is mortgaged as security for the payment of any moneys stated to be payable on any specified or ascertainable date, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within six months of the issue, after that date, of notice of demand of payment in accordance with the provisions of section 82, or

(iii) if any premium due on the policy remains unpaid after one month from the issue, in accordance with the provisions of section 82, by the agency of a notice demanding payment of such premium to be made to the insurer,

such agency shall be entitled to surrender the policy to the insurer and to receive payment of the surrender value of the policy or of such amount as would have been payable to the assured if the policy had been surrendered by him.

[§ 11, 53 of 1949.]

In any case to which this section applies, the payment to the agency by the insurer of the surrender value of the policy or of such other amount of which the agency is declared by this section to be entitled to receive payment shall be a discharge of the liability of the insurer upon the policy.

Address of mortgagor and issue of notice of demand.

82. (1) Every instrument of mortgage referred to in paragraph (*a*) of section 81 shall contain the address to which notice of demand of payment may be sent to the mortgagor by the agency :

Provided, however, that upon any change of address the mortgagor may notify the new address to the agency which shall thereupon acknowledge the new address in writing ; and such new address, if so acknowledged, shall, for the purposes of section 81, be the address to which a notice of demand of payment may be sent.

(2) Every such notice of demand shall be sent by registered post in a letter to the address of the mortgagor as stated in the instrument referred to in paragraph (*a*) of section 81 or to such new address as may

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for the time being have been notified and acknowledged as provided in subsection (1) of this section.

Moneys received upon surrender to be applied in satisfaction of debt.

83. Where any policy of insurance is surrendered in the exercise of the right conferred by section 81—

(*a*) the moneys received by the agency from the insurer shall be applied in satisfaction of the debt due and payable under the mortgage ;

(*b*) the mortgagor shall be entitled to payment from the agency of the balance, if any, remaining after satisfaction of such debt ;

(*c*) if the moneys so received are insufficient to satisfy such debt, the agency shall be entitled to recover the deficiency in the ordinary course of law.

Right to damages, &c., for wrongful surrender.

84. If the policy is surrendered by the agency otherwise than in the due exercise of the right conferred by section 81, the mortgagor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by him in consequence of such surrender :

Provided, however, that no such action for any loss or damage shall be maintainable by the mortgagor on the ground that notice of demand under section 82 was not received by him, if it is proved that such notice was sent by registered post in a letter addressed to the mortgagor at the proper address referred to in the aforesaid section 82, and that the right of surrender was exercised after the period of six months or the period of one month of the date of such posting, whichever such period is applicable.

Power of approved credit agency to sell corporeal movables which are subject to mortgage.

85. (1) Where a mortgage of any corporeal movables is created in favour of an approved credit agency, it shall be lawful for the agency, subject to the provisions of subsections (2) and (3), to sell any of the movables subject to the mortgage which may for the time being be actually in the possession and custody of the agency.

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(2) The power conferred on the agency by subsection (1) to sell any movables shall be exercised only if the instrument of mortgage or an agreement between the parties contains provision referring to this section and empowering the agency to exercise the power of sale conferred thereby, and if either of the following conditions is fulfilled, that is to say—

(*a*) where the mortgage is created as security for the payment of any moneys stated to be payable on demand, if the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency of a notice of demand in accordance with the provisions of section 86 ; or

(*b*) where the mortgage is created as security for the payment of any moneys stated to be payable on a specified or ascertainable date, if the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency, after that date, of a notice of demand in accordance with the provisions of section 86.

(3) Every sale in exercise of the power conferred by subsection (1) shall be by public auction, and it shall be the duty of the agency to take such steps as are necessary to ensure—

(*a*) that a notice containing a description of the movables to be sold and specifying the date fixed for the sale, is published in two issues of a daily newspaper circulating in Ceylon at least one week before the date fixed for the sale, and

(*b*) that the sale takes place on the date so specified, or if the sale is postponed, that a further notice containing the particulars specified in subparagraph (*a*) is published at least one week before the date to which the sale is postponed.

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Notice of demand of payment prior to exercise of power of sale.

86. (1) The power of sale conferred by section 85 shall not be exercised unless the instrument of mortgage contains an address to which notice of demand of payment may be sent to the mortgagor by the agency ; or where there is no such instrument unless the mortgagor has in writing signed by him furnished an address as aforesaid to the mortgagee :

Provided, however, that upon any change of address, the mortgagor may notify his new address to the agency, and such new address, if acknowledged in writing by the agency, shall for the purposes of section 85 be the address to which a notice of demand of payment may be sent.

(2) Every such notice of demand of payment shall be sent by registered post in a letter to the address of the mortgagor as stated in the instrument of mortgage or the writing referred to in subsection (1), or to such new address as may, for the time being, have been notified and acknowledged as provided by that subsection.

Application of proceeds of sale.

87. Upon a sale of any movables in the exercise of the right conferred by section 85—

(*a*) the moneys realized upon such sale shall be applied by the agency in satisfaction of the debt due and payable under the mortgage, and the mortgagor shall be entitled to receive the balance, if any, remaining after such debt is satisfied ;

(*b*) if the moneys realized upon the sale are insufficient to satisfy such debt, the deficiency may be recovered from the mortgagor in the ordinary course of law.

Damages for wrongful sale of mortgaged property

88. Where any movables are caused to be sold by the agency otherwise than in the due exercise of the powers conferred in that behalf by section 85 or where the provisions of subsection (3) of that section are not complied with in relation to the sale, the mortgagor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by reason of the sale or of the non-compliance, as the case may be :

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Provided, however, that no action for any loss or damage shall be maintainable by the mortgagor on the ground that notice of demand of payment was not received by him, if it is proved that such notice was sent by registered post in a letter addressed to the mortgagor at the proper address referred to in section 86, and that the power of sale was exercised after one month from the date of such posting.

Meaning of "book debt".

89. In sections 90 to 95 " book debt " means any debt which—

(*a*) is due or may become due to any person on account of any loan made in the ordinary course of any business carried on by that person as a money-lender, or on account of goods sold in the ordinary course of any business carried on by that person as a seller of such goods, or on account of work or services performed or rendered in the ordinary course of any business carried on for profit by that person, and

(*b*) is shown in the books kept by such person in the ordinary course of the business.

Rights of approved credit agency to which book debts are assigned by way of mortgage.

90. (1) An assignment of any book debt shall, if such assignment is executed in favour of an approved credit agency and is expressed to be by way of mortgage and is duly registered under the Registration of Documents Ordinance, confer on the agency, in addition to the right to enforce such mortgage by action in any competent court, the right to demand, accept and recover payment of such debt from the person owing such debt to the assignor :

Provided, however, that no right herein before conferred on the agency shall be exercisable—

(*a*) unless notice of the assignment is given by the agency, to the person owing such debt, in any manner provided by section 91, and the debt is due and unpaid at the date on which notice is so given ;

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(*b*) if the right to demand, accept or receive such payment is, by the instrument of the mortgage, declared to be conditional upon the happening of any event or the non-fulfilment of any obligation by the assignor, unless such event has happened or such obligation has not been fulfilled within the time specified in that behalf in the instrument, as the case may be.

(2) The provisions of subsection (1) shall apply in relation to a book debt notwithstanding—

(*a*) that it may not be specially assigned ; or

(*b*) that it may not have been due, or that the consideration therefor may not have passed, at the time of the execution of the assignment.

Manner of giving notice of assignment to person owing book debt.

91. (1) Notice of the assignment of a book debt may be given by the agency to a person owing such debt in any manner set out hereunder, that is to say—

(*a*) by sending or presenting to the person owing such debt a notice addressed to such person and signed by the assignor to the effect that the debt has been assigned to the assignee ; or

(*b*) by sending or presenting to such person (i) a general notice signed by the assignor to the effect that all book debts which are due or may become due have been assigned to the assignee, or (ii) a copy of such notice certified by a director, manager, partner or secretary of the agency.

(2) Any notice referred to in paragraph (*a*) or paragraph (*b*) of subsection (1) may be signed by the assignor at the time of the execution of the assignment or at any time thereafter, and may be sent or presented to the person owing the debt at any time while the assignment is operative.

Application of moneys received in payment of mortgage debt.

92. Where payment of a book debt is made to the agency upon demand made in that behalf of the person owing such debt, the amount of the payment shall be applied in satisfaction of the moneys for the time being

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due and payable to the agency under the mortgage, and the balance, if any, remaining out of such proceeds shall be payable to the assignor.

Damages for wrongful exercise of power to recover book debt.

93. Where any book debt is recovered by the agency otherwise than in the due exercise of the powers conferred by section 90, the assignor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by reason of such recovery.

Provision for recovery of book debt by assignor notwithstanding assignment.

94. (1) Notwithstanding the execution of any assignment referred to in section 90, but subject as hereinafter provided, the assignor shall, unless and until notice of the assignment is given to the person owing the debt, have the same right to recover such debt from such person whether by way of action or otherwise, and to appropriate to his own use any moneys so recovered, as though the assignment had not been executed :

Provided, however, that the agency shall be entitled, upon making application to any court in which an action for the enforcement of the assignment can properly be instituted, by petition supported by an affidavit declaring that moneys are due and payable to him under the mortgage, to obtain *ex parte* an injunction restraining the assignor from recovering any such debt, and if need be an order authorizing the Fiscal—

(*a*) to enter the premises in which the assignor carries on his business, together with a person nominated in that behalf by the assignee and approved by the court ;

(*b*) to take possession of any such books kept or found therein as may contain entries relating to the book debts which are subject to the assignment ; and

(*c*) to deliver such books to the assignee for the purpose of enabling him to recover such debts from the persons by whom they are owing,

and where an injunction is so issued nothing in the preceding provisions of this section shall authorize or be deemed to authorize the assignor to recover or sue for any debt in breach of such injunction.

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(2) Where an injunction has been issued under subsection (1) or any order relating to the books has been made under that subsection, the court may thereafter upon application made by the assignor and after such inquiry as it may consider necessary, make such order in relation to the injunction and to the books as the court may think fit.

Protection for debtor paying without notice of assignment.

95. Notwithstanding the execution of any assignment referred to in section 90, the assignee shall not be entitled to demand or recover payment of any book debt which is subject to the assignment from the person owing such debt if such debt had been paid by such person to the assignor before notice under section 91 is received by him.

PART VI

Mortgage Of Movables : General

APPOINTMENT OF RECEIVER

Application for appointment of receiver where entire stock in trade, &c., is mortgaged.

96. (1) Where a mortgage is created in respect of the entirety of the goods which are, or may at any future time be, in any specified premises, or of the goods which constitute or may at any future time constitute the entire stock in trade in any specified premises, and an action is instituted by the mortgagee for the enforcement of the mortgage or the recovery of the moneys due thereunder, the mortgagee may, at or after the time of the institution of the action, make application to the court by petition for the appointment of a receiver of the mortgaged property.

(2) Such application shall be supported by affidavit of the mortgagee stating the sum lent to the mortgagor, the sum, if any, repaid out of the loan, and the sums due to the mortgagee by way of principal and interest.

(3) Subject as hereinafter provided, the application for the appointment of a receiver shall, unless the mortgagee otherwise desires, be dealt with *ex parte* by the court :

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Provided, however, that where the application is made at any time after the filing of an answer by the mortgagor, the application shall be dealt with after notice to the mortgagor.

Refusal to appoint receiver.

97. The court may refuse to make an order for the appointment of a receiver under section 96, if having regard to the value and nature of the business the stock in trade of which is the subject of the mortgage, or the nature and value of the goods, as the case may be, and to the amount which in the circumstances of the case can reasonably be allowed as the remuneration of the receiver, the court is of opinion that a suitable person is not available for such appointment.

Save as herein before expressly provided, the court shall not refuse to make order for the appointment of a receiver upon application duly made in that behalf in any case to which section 96 applies.

Directions in order of appointment, &c.

98. (1) Every order for the appointment of a receiver in any case to which section 96 applies shall—

(*a*) provide for the committal of the mortgaged property and if need be of the business carried on by the mortgagor at the specified premises to the custody and the management of the receiver ;

(*b*) contain such directions as the court may in its discretion consider necessary authorizing the receiver to carry on the business of the mortgagor at the premises, to sell all or any of the mortgaged property whether by public auction or otherwise, and to exercise in respect of the mortgaged property such other rights as may be specified in the order.

(2) The court may, by subsequent order, on application made by the receiver, the mortgagor or the mortgagee—

(*a*) give any directions which might have been given in an order under subsection (1), or vary any directions previously given whether under that subsection or under the preceding provisions of this subsection ;

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(*b*) authorize the receiver to institute or defend any action or proceedings in respect of any matter affecting the mortgaged property or the management and administration of the business or the recovery of any moneys due upon the sale of the mortgaged property.

(3) The person appointed to be the receiver of the mortgaged property shall, for the purposes of the exercise of the rights conferred on him by any directions given under the preceding provisions of this section, have and be entitled to exercise all the rights and powers of the owner of the mortgaged property.

(4) Where the receiver is obstructed in taking possession of the mortgaged property, the court may after inquiry make such orders as may be necessary for the purpose of securing that delivery of possession is given to the receiver.

Duties and liabilities of receiver.

99. Every receiver appointed in any case to which section 96 applies shall—

(*a*) render accounts to court in such form and at such times as the court may direct in that behalf ;

(*b*) make payment to court to the credit of the action, from time to time as the court may direct, of the nett receipts received by him in his capacity as such ;

(*c*) be responsible for any damage to the mortgaged property, or for the loss of any income, incurred by his gross negligence or by any intentional act on his part.

Moneys to be kept in court.

100. (1) All moneys paid into court by the receiver under section 99, shall, unless the court otherwise directs, be kept in court to the credit of the action until the final disposal of the action :

Provided that payment may from time to time be made out of such moneys of the remuneration due to the receiver.

(2) The amount of the moneys in court to the credit of the action at the date of the decree entered in the

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action shall be applied in satisfaction of the amount stated in the decree to be due upon the mortgage.

(3) No seizure of such moneys in execution of any order or decree in any other action (other than an action for the enforcement of a mortgage having priority to the mortgage in suit in the action referred to in section 96) shall affect the operation of subsection (2) of this section.

Restriction of appeals against appointment, &c., of receiver.

101. No appeal shall lie against the refusal of the court to make any order for the appointment of a receiver upon application under section 96 or against any order or directions made or given under any of the provisions of sections 97 to 100, other than the provisions of subsection (4) of section 98.

MORTGAGE OF MOTOR VEHICLES

Special registration of mortgage of motor vehicle.

102. (1) Where any motor vehicle is mortgaged to any person—

(*a*) the instrument of mortgage shall, on presentation to the Registrar of Motor Vehicles, be registered by means of an entry made in the Register of Motor Vehicles kept under the Motor Traffic Act;

(*b*) the certificate of registration issued under that Act to the registered owner of the motor vehicle may be presented to the Registrar of Motor Vehicles, who shall, on such presentation, make an endorsement on the certificate to the effect that the motor vehicle has been mortgaged by the instrument of mortgage.

(2) Application for registration under subsection (1) shall be made by the mortgagor and shall be accompanied by a fee of one rupee.

(3) The Registrar shall, on application made in that behalf by any person interested and on payment of a fee of one rupee, issue a certified copy of any entry made under subsection (1).

(4) In this section and in sections 103 and 104, " motor vehicle " has the same meaning as in the Motor Traffic Act.

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Registered mortgage of motor vehicle to subsist notwithstanding sales, &c., to third party.

103. Where the instrument of mortgage of any motor vehicle has been registered under section 102, the following provisions shall apply :—

(*a*) Notwithstanding anything in any other law, any sale or other disposition of the motor vehicle by or against the mortgagor shall not, so long as the mortgage continues in force, extinguish or be deemed to extinguish the mortgage of the motor vehicle, which shall remain subject to the mortgage in the hands of the transferee or other person in whose favour such disposition is effected ;

(*b*) Upon the issue by the Registrar under the Motor Traffic Act of any new certificate of registration to any person registered as the new owner or of a duplicate certificate, the Registrar shall make an endorsement on the certificate to the effect that the motor vehicle has been mortgaged by the instrument referred to in paragraph (*a*) of section 102 (1).

Cancellation of registration of mortgage of motor vehicle.

104. The registration by the Registrar of an instrument of mortgage of a motor vehicle and any endorsement made upon the certificate of registration under section 102 or under section 103 to the effect that the motor vehicle is mortgaged, shall be cancelled by the Registrar at the request of the mortgagee or upon an order being made by a District Court directing such cancellation upon application made to it in that behalf by petition and affidavit.

RIGHTS OF MORTGAGEE OF MOVABLES IN SPECIFIED CIRCUMSTANCES

Rights of mortgagee of movables seized by other creditor.

105. (1) Where any movable property whatsoever which is subject to a mortgage is seized in execution of a decree in favour of any person other than the mortgagee—

(*a*) the claim of the mortgagee shall not be investigated or dealt with as provided in sections 241 to 247 of the Civil Procedure Code ;

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(*b*) the mortgagee shall be entitled to make application to be added as a party to the proceedings in which the seizure was effected ;

(*c*) where the mortgagee is so added before the sale under the seizure, and makes application in that behalf supported by affidavit declaring that the property is subject to a mortgage in his favour, the court shall order that the sale under the seizure be stayed and that the property be sold by public auction by an auctioneer to be appointed under subsection (2).

(2) Notice of an order under subsection (1) (*c*) shall be given to the parties to the action, and the court shall after such inquiry as may be necessary appoint an auctioneer to conduct the sale and give directions as to the time and manner of such sale.

(3) Where the seizure of the movable property is released after the making of an order under subsection (1) (*c*) for the sale thereof, the order under that subsection shall be annulled and no further proceedings shall be taken thereon.

(4) Where the mortgagee is added under subsection (1) as a party to the action and the movable property is or has been sold, whether under the seizure or under an order made under subsection (1) (*c*), and it is proved to the satisfaction of the court (after trial of such relevant issues as may be framed) that the movable property was at the date of such addition subject to the mortgage and either (i) that any sum was due and payable under the mortgage at that date or on demand, or (ii) that any sum, the amount of which is ascertainable, is certain to fall due for payment under the mortgage upon the effluxion of time without the happening of any future event or the future fulfilment of any condition—

(*a*) the court shall order that payment shall be made to the mortgagee, out of the proceeds of the sale of the property, of the sum so proved ;

(*b*) the balance, if any, remaining out of such proceeds shall be deemed to be the proceeds of a sale held under the seizure and be available for distribution accordingly ;

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(c) if the proceeds of the sale are insufficient to satisfy the sum so proved, the payment of such proceeds to the mortgagee shall not prejudice his right to recover any amount outstanding by subsequent action against the mortgagor, but in any such action every determination of the court under the preceding provisions of this subsection shall be *res adjudicata* as between all persons who were parties to the proceedings under this section.

Rights of mortgagee of movables upon insolvency of mortgagor.

106. (1) Where any movable property whatsoever is subject to a mortgage, and the mortgagor is adjudicated insolvent, the mortgagee shall, upon making an application in that behalf by petition and affidavit in the proceedings upon such insolvency, be entitled to obtain in those proceedings an order directing that the property be sold by public auction by an auctioneer approved by the court in accordance with such directions as may be issued by the court in that behalf.

The court may, if it thinks fit, before approving the auctioneer or giving such directions, issue notice to the assignee of the estate of the insolvent.

(2) Where any property is sold upon application made under subsection (1), and it is proved to the satisfaction of the court, after trial of such relevant issues as may be framed, that the movable property was at the date of the application subject to the mortgage and either (i) that any sum was due and payable under the mortgage on that date or (ii) that any sum, the amount of which is ascertainable, is certain to fall due for payment under the mortgage upon the effluxion of time without the happening of any future event or the future fulfilment of any condition—

(*a*) the court shall order that payment shall be made to the mortgagee, out of the proceeds of sale of the property, of the sum so proved ;

(*b*) the balance, if any, remaining out of such proceeds shall be kept in court to the credit of the assignee ;

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(c) if the proceeds of sale are insufficient to satisfy the sum so proved, the payment of such proceeds to the mortgagee shall not prejudice his right to prove his claim in respect of the deficiency in the proceedings upon insolvency.

DECREE AND SALE OF MOVABLES IN HYPOTHECARY ACTION

Order for sale and directions.

107. Where in a hypothecary action in respect of any movable property the court finds that the mortgage ought to be enforced, the decree shall, in relation to the mortgaged movables, order that the movables shall be sold in default of payment within such period as may be specified by the court not exceeding one month from the date of the decree, of the moneys due under the mortgage :

Provided, however, that the court may, in its discretion and subject to such conditions, including the making of specified payments on specified dates as it thinks fit, on application made in that behalf before the entry of the decree, fix such longer period than one month as the court may consider reasonable.

Manner of sale of mortgaged movables.

108. Subject as hereinafter provided the mortgaged movables shall be seized and sold by the Fiscal under Chapter XXII of the Civil Procedure Code and all the provisions of that Code relating to the seizure and sale and delivery to the purchaser of movable property seized in execution of a decree for the payment of money shall apply accordingly :

Provided, however, that the court may, in its discretion if it thinks fit so to do, either in the decree or subsequently, direct that the property shall be sold by the Fiscal or by an auctioneer approved by the court, without being previously seized, and shall in such case in the decree or subsequently give directions as to the conduct and conditions of sale to the delivery of possession to the purchaser at such sale, and as respects such other matters as the court may find necessary.

Application of this Part.

109. The provisions of sections 96 to 106 shall not apply to any mortgage created before the appointed date.

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PART VII

MISCELLANEOUS

RIGHTS OF LANDLORD IN RELATION TO GOODS UPON PREMISES OF WHICH RENT IS IN ARREAR

Injunction to restrain removal of goods from premises the rent of which is in arrear.

110. (1) A plaintiff in an action for the recovery of the rent due from a tenant in respect of any premises shall be entitled, upon satisfying the court that rent is due from the tenant and has been in arrear for one month after it has become due, to obtain from the court, *ex parte*, an injunction restraining the tenant from removing any goods from the premises or causing or permitting the removal therefrom of any goods, at any time while any rent remains due and unpaid, unless authority has been granted in that behalf under subsection (3).

(2) Every application for an injunction under subsection (1) shall be made in the manner provided by section 662 of the Civil Procedure Code and all the provisions of Chapter XLVIII of that Code, other than section 664, shall apply accordingly.

(3) When an injunction has been issued under subsection (1) in respect of the goods upon any premises and is for the time being in force, the court may upon application made by petition supported by affidavit, and after notice to the plaintiff and such inquiry as the court may deem necessary, by order authorize the removal of any goods from the premises if satisfied—

(*a*) that such goods are owned by any person other than the tenant or a member of his family ; or

(*b*) that such goods are not household goods and are owned by a member of the family of the tenant.

(4) Where an injunction has been issued under subsection (1) in respect of the goods upon any premises and is for the time being in force, any person who knowing or having reason to believe that it is unlawful for the tenant to remove or cause or permit the removal of the goods from the premises, removes or assists in the removal from the premises of any goods the removal

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of which is not authorized by order under subsection (3), may be punished as for a contempt of court in like manner as a tenant in case of disobedience.

Liability of goods to seizure under decree for rent.

111. (1) Subject to the proviso to section 218 of the Civil Procedure Code, all goods belonging to a tenant and all household goods belonging to any member of his family as hereinafter defined and for the time being upon any premises shall be liable to be seized in execution of a decree in an action against the tenant for rent due in respect of the premises, and where such goods are so seized and sold, the payment of the amount of the decree shall be a first charge on the proceeds of sale in preference to any other charge or interest whatsoever other than a charge in favour of Her Majesty or of any local authority.

(2) No action for damages shall lie by reason of the seizure, in execution of any decree in an action for rent due in respect of any premises, of any goods for the time being upon the premises, on the ground only that they do not belong to the tenant or to a member of his family as hereinafter defined.

Rights of landlord in relation to goods on premises.

112. A landlord of any premises shall not, by reason of the non-payment of rent of such premises, have any right in respect of the goods which are or may have been upon the premises, other than the right conferred by section 110 and the right to seize goods which are declared by section 111 to be liable to such seizure, or which, being goods belonging to the tenant, are liable to seizure under the Civil Procedure Code.

" Member of the family " defined.

113. In sections 110 to 112, " member of the family ", in relation to a tenant, means the wife or any child of the tenant residing with him, and includes any relative or other person dependent upon the tenant and residing with him.

APPROVAL OF CREDIT AGENCIES, &C.

Approval of credit agencies, &c.

114. (1) Every application for a declaration of any company, firm, institution or individual as an approved credit agency under paragraph (c) of section 3 shall be made to the Director of Commerce.

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Every such application shall be referred to a board consisting of a chairman and two other persons nominated by the Minister.

(2) The Director shall, if the board so recommends upon any application, by Notification published in the Gazette, declare the applicant to be an approved credit agency for the purposes of this Act.

(3) The decision of the board upon any such application shall be final.

(4) Where any company, firm, institution or individual has been declared under paragraph (c) of section 3 to be an approved credit agency, the board of its own motion or on representations made by the Director of Commerce may recommend to the Director that the declaration made under that paragraph should be revoked with effect from a date specified by the board. The decision of the board in any such case shall be final, and upon such recommendation being made the Director shall by notification in the Gazette revoke the declaration with effect from the date so specified :

Provided, however, that the revocation shall not in any way affect the validity or the operation of any instrument duly executed in favour of such agency under any provision of this Act or of any other written law prior to the date on which the revocation takes effect, or affect the power of such agency to exercise after that date any right which may be exercised under any such written law by virtue of the instrument so executed before that date.

(5) The members of the board may be paid such remuneration (not exceeding fifty rupees for each sitting) as may be fixed by the Minister, out of moneys voted for the purpose by Parliament.

(6) The members of the board shall hold office for such period as may be specified by the Minister at the time of appointment ; but any such appointment may be revoked by the Minister at any time.

(7) Nothing in Part IV or Part V of this Act shall be deemed or construed to authorize any institution mentioned in paragraph (b) of section 3 to make loans

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upon the security of any property, if the power to make loans on such security is not conferred on such institution by the written law providing for the establishment, powers and functions of such institution.

RULES

115. (1) The Minister of Justice may make rules— Rules. [§ 3, 11 of 1953.]

(*a*) providing for the amendment of any of the forms set out in any of the Schedules to this Act or the substitution for any such form of any new form ;

(*b*) authorizing the inclusion in any instrument executed under section 69 of any covenants and agreements on the part of the person creating the mortgage or of the agency in whose favour the mortgage is created ;

(*c*) declaring the offices which shall be prescribed offices for the purposes of section 70 ; and

(*d*) authorizing the use, in lieu of, or in addition to, any of the forms set out in any of the Schedules to this Act, of such translations thereof in Sinhalese or in Tamil or in both those languages as may be approved by him.

(2) Every rule made under subsection (1) shall be submitted to the Senate and the House of Representatives for approval. Every rule so approved shall be published in the Gazette, and shall come into force upon such publication.

SAVINGS FOR APPOINTMENT OF RECEIVERS UNDER CIVIL PROCEDURE CODE

116. The powers conferred by this Act for the appointment of receivers of mortgaged property shall be in addition to and not in substitution or derogation of the power to appoint receivers which is conferred by Chapter L of the Civil Procedure Code : Savings for appointment of receivers under Civil Procedure Code.

Provided that nothing in that Chapter shall apply in any case where application is duly made under this Act for the appointment of a receiver.

C 34——J. N. R 7589 (4/60)

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FIRST SCHEDULE

[Section 6.]

Form I †

APPLICATION FOR REGISTRATION OF ADDRESS FOR SERVICE OF LEGAL DOCUMENTS

To the Registrar of Lands of——.

I (name in full and address) ———— apply under section 6 of the Mortgage Act for registration in or in continuation of the folio (or folios) specified in B below of the address specified in A below as the address for service on me of legal documents in any hypothecary action to enforce any mortgage registered in the folio or folios specified in B below. Particulars of the instrument under which I derive title are given in C below.

A

Address for Service

(Name of person to whom legal documents are to be sent. This person may be the applicant or another person.)

(Full postal address in Ceylon.)

e.g., H. John Perera,
No. 18 Maliban Street,
Pettah, Colombo.

B

Folio (or folios) in which the Address is to be registered

Volume :————.
Folio :————.
Volume :————.
Folio :————.

C

Particulars of Instrument under which Applicant derives Title

(1) Number and date of deed :————.
(2) Name of attesting notary :————.
(3) Volume and folio where the deed is registered: ————.

2. I further declare that my address for service previously registered with you on————in volume————folio———— is hereby cancelled.

3. The registration fee of Rs.————is enclosed in stamps.

————,
(Signature of applicant or agent.) *

* Agent means an agent authorized in writing by the applicant or proctor or notary public.

† Use of Sinhalese and Tamil translations of this form authorized.—Gazette No. 10,554 of 24.7.1953.

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Form 2

[Sections 9 and 10.]

NOTICE OF HYPOTHECARY ACTION

In the District Court/Court of Requests of————.

Action No.————. ————Plaintiff/s.

vs.

————Defendant/s.

To*————of (registered address).

Notice is hereby issued to you in terms of section 9 (1)/9 (2) of the Mortgage Act of the above action instituted upon a mortgage of the land/s described in the Schedule hereto.

* Name of each person to whom notice is issued.

————,
Secretary.

Schedule

(Description of Land/s.)

Form 3

[Section 34.]

NOTICE

In the District Court/Court of Requests of————.

Action No.————. ————Plaintiff/s.

vs.

————Defendant/s.

Notice is hereby given—

(*a*) that the plaintiff in the above action has made application under section 34 of the Mortgage Act for a declaration that in the event of decree being entered for the sale of the land described in the Schedule hereto, the court will order the removal of all persons whomsoever who may resist the delivery of possession of the land to the purchaser at the sale;

(*b*) that any person claiming to be entitled to possession of the land or any portion thereof shall be entitled to make application within two months to this court under section 35 of the Act to be added as a party to the above action and to secure an adjudication upon his claim;

(*c*) that a plan of the land has been filed of record in this court and is available for inspection by any person interested.

————,
Secretary.

Schedule

(Description of land.)

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[Section 55.]

Form 4

CONVEYANCE

(*Title.*)

To all to whom these presents shall come, greeting.

Whereas by a mortgage bond dated————, and bearing number————and attested by————, notary public, and registered in the————District Land Registry at folio ————the payment to————of the sum of————rupees was secured with interest by mortgage of the property hereinafter described and hereby conveyed :

And whereas by a decree entered in action No.————of the District Court of————on the————day of————it was ordered and decreed that————the defendant in the said action do pay to————the plaintiff in the said action forthwith the sum of————rupees (Rs.————), being the aggregate amount of the principal, interest, and costs due in respect of the said mortgage bond, together with interest thereon at the rate of————*per centum* per annum from the date of the said decree until payment ; and that in default of payment of the said sum, interest, and costs within (state period) from the date of the said decree the said property be sold :

And whereas an order for the sale of the said premises was subsequently given by the court to the Fiscal/*———— under section 50 of the Mortgage Act :

And whereas after due notice and publication in manner by law prescribed the said property was exposed to public sale on the————day of————, 19—, by————acting under the authority of the said Fiscal/*————and was sold to————as the highest bidder at the said sale for the sum of————rupees :

And whereas the said (purchaser) has duly paid the whole of the said purchase money and thus became entitled to a conveyance of the said property (or, where the plaintiff is purchaser) and whereas the said (purchaser) has been allowed the amount of the purchase money (or as the case may be) in reduction of his claim, and has produced the order of court, copy whereof is hereunto annexed, and has thus become entitled, &c. :

And whereas the said court by an order dated the———— day of ————, 19—, copy of which is hereunto annexed, has duly confirmed the said sale :

Now these presents witness that the said Fiscal/*———— in consideration of the said sum of————rupees so paid by (or credited to) the said (purchaser) as aforesaid, the receipt whereof the said Fiscal/*————doth hereby acknowledge, hath sold and assigned, and by these presents doth sell and assign unto the said (purchaser), his heirs, executors, administrators, and assigns, the property described in the Schedule hereto. To have and to hold the same with their and every of their appurtenances to him, the said (purchaser), his heirs, executors, administrators, and assigns for ever.

In witness whereof the said Fiscal/*————hath hereunto subscribed his name at————this————day of————, 19—.

(Signature)————.

Witnesses :————.

Schedule

(To contain a description of the property conveyed.)

* Strike out what is inapplicable.

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Form 5 [Section 55.]

In the District Court of————.

No————.

Whereas the land known as————situated at————and more fully described in the Schedule hereto was, under the decree in the above action, sold to————of————hereinafter referred to as "the purchaser" and whereas it has been reported to this court that the Fiscal was obstructed in attempting to put the purchaser or some other person on his behalf in possession of such land in terms of the order made under this action and dated the————day of————:

Now, therefore, this is to direct ALL PERSONS WHOMSOEVER forthwith to yield up possession thereof, without obstruction or resistance, to the purchaser or such other person upon pain of suffering the penalties prescribed in that behalf in section 55 of the Mortgage Act.

By Order of the Court,

————,
(Secretary.)

Schedule

(Description of Land.)

SECOND SCHEDULE

Form 6 [Section 69.]

I/We*————of————do hereby, in terms of section ————of the Mortgage Act, mortgage the land described in the First Schedule hereto to————of————, an approved credit agency as defined in that Act, as security for the payment of all sums due and owing or which may be or become due and owing from me/us* to the said agency/on* account of the matters and transactions mentioned/(or)/* under the instrument entered into this day and referred to/in the Second Schedule hereto.

And I/We* hereby declare that the title deeds of the land aforesaid have been deposited with the agency in terms of the said section.

(Signature)————.

† Signed by the aforesaid————of————in the presence of————(Manager/† Director/† Prescribed Officer) and of (1)————and (2)————(witnesses).

†(Where not notarially executed.)

(Signatures)————.

First Schedule

(Description of Land.)

Second Schedule

(Matters or transactions referred to (or) instrument referred to.)

* Delete if inapplicable.

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[Section 73.]

THIRD SCHEDULE

Form 7

I/We*,————of————do hereby mortgage the shares described in the First Schedule hereto to————of————, an approved credit agency within the meaning of the Mortgage Act as security for the payment of all sums due and owing from me/us* to the said agency/on* account of the matters and transactions mentioned/(or)* under the instrument entered into this day and referred to/in the Second Schedule hereto.

And I/We* hereby declare that the share certificates relating to the said shares have been deposited with the said agency and that I/We* have executed a transfer/transfer in blank* of the said shares and delivered such transfer to the said agency.

(Signature)————.

Signed by the said————of————in the presence of (1) ————and (2)————(witnesses).

(Signature)————.

First Schedule

(Description of shares.)

Second Schedule

(Matters or transactions referred to/(or)/instrument referred to.)

*Delete if inapplicable.

[Section 81.]

Form 8

I/We*————of————hereby mortgage my/our* rights under the policy of life insurance mentioned in the First Schedule hereto to————of————, an approved credit agency within the meaning of the Mortgage Act as security for the payment of all sums due and owing or which may be or become due and owing from me/us* to the agency/on* account of the matters and transactions/(or)/*under the instrument entered into this day and referred to/in the Second Schedule hereto.

And I/We* hereby declare that the policy has been assigned to the said agency by way of mortgage and has been deposited with the agency.

(Signature)————.

Signed by the said————of————in the presence of (1) ————and (2)————(witnesses).

First Schedule

(Particulars of Policy.)

Second Schedule

(Matters and transactions referred to/or/instrument referred to.)

* Delete if inapplicable.

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